

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

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LIEN AGREEMENT

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APN: 339-020-040, 339-020-041, 339-020-042,  
339-020-043, 339-020-004, 339-020-005, 339-020-  
006, 339-020-0, 339-020-008 and 339-030-022

THIS LIEN AGREEMENT ("Lien Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the CITY OF MENIFEE, a California municipal corporation ("City") and RCFC INVESTMENTS, LLC, a California limited liability company ("Owner").

**RECITALS**

A. The City and the Owner cooperated on the recordation of the Final Map for, Tract No. 31456, on July 13, 2022, a proposed development comprised of one hundred seventy-six (176) single family residential homes, a private park, drainage facilities, public streets, and one (1) open space lot, located in the City of Menifee, County of Riverside, State of California (the "Project") more fully described on Exhibit "A-1" and depicted on Exhibit "A-2", which is on file with the County Recorder's office.

B. In connection the recordation of the Final Map, Owner has executed the subdivision agreement and delivered to the City subdivision bonds issued by an approved surety in the amount of nine million thirty-one thousand dollars (\$9,031,000.00). Such bonds are currently valid and active. The bonds are for the costs of the Public Improvements approved by the City Engineer is attached as Exhibit "B" and incorporated herein by this reference.

C. Said bonds have come up for renewal and inasmuch as the owner has no intention of starting construction on the Project including its public improvements, the Owner now requests to replace the current subdivision bonds with an alternate form of security, that being this Lien Agreement.

D. California Government Code Section 66499 authorizes the City and Owner to enter into this Lien Agreement in satisfaction of the security obligations contained in the

## Subdivision Improvement Agreement.

E. City has found and determined that it would not be in the public interest to require the installation of the Public Improvements sooner than three years after recordation of the Final Map.

F. Owner has provided a title insurance policy and current title report to the City from a title company approved by the City and issued within the 60 days prior to the execution of this Lien Agreement that documents that the Owner is the record owner of the Property and the Property is not subject to any mortgages, deeds of trust, or judgment liens.

### **OPERATIVE PROVISIONS**

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledged, the Parties hereto agree as follows:

#### **I. Owner Performance and Obligations**

A. Owner hereby grants to City, in accordance with the terms and conditions of this Lien Agreement, a lien upon the Property as security for the following obligations of Owner (collectively, the "Obligations"):

(1) Construction of the Public Improvements specified in Exhibit "B" attached hereto; provided, however, that Owner's obligation hereunder shall extend to the actual cost of the construction of the Public Improvements, notwithstanding that such costs may exceed the estimate set forth in Exhibit "B"; and

(2) Payment of the balance of the fees or provision of the improvements or services described in the Subdivision Code (collectively, "Fees"), in the amount required in accordance with the Subdivision Code, as determined appropriate by the Director of Public Works.

This Lien secures the Obligations and the remedies provided herein for breach of the Obligations.

B. For so long as title to the property remains subject to this Lien Agreement, Owner shall not: (1) commence work on any portion of the Public Improvements except as necessary to correct or prevent threats to the public health, safety or general welfare with the consent of the City or (2) sell or permit the sale of any lot shown on the Final Map.

C. Prior to commencing the installation and/or construction of any portion of the Public Improvements required by the Subdivision Improvement Agreement, Owner shall deposit fees for inspection, tests and other related purposes, and shall substitute other forms of security satisfactory to City in place of this Lien Agreement.

D. Owner shall provide all substitute forms of security in the amounts and for the purposes set forth in the Subdivision Improvement Agreement, except that the amounts shall be calculated using the estimated cost of the Public Improvements at the time of substitution, as ascertained by City.

E. Owner shall substitute acceptable security for this Lien Agreement and commence construction of the Public Improvements required by the Subdivision Improvement Agreement within three (3) years following the date of recordation of the Final Map. At its sole discretion, the City may grant up to three extensions of time for one year each. For each extension of time, Owner shall provide a title insurance policy and current title report from a title company approved by the City, and issued within 60 days prior to the request for an extension of time, that documents that Owner is the record owner of the real property to be divided as identified on the Final Map and the real property to be divided is not subject to any mortgages, deeds of trust, or judgment liens.

F. Owner shall pay the Fees related to the work required by the Subdivision Improvement Agreement for which the Fees are required prior to issuance of any building permit.

G. Owner agrees that if suit is brought upon this Lien Agreement, all costs and reasonable expenses and fees incurred by the City in successfully enforcing Owner's obligations shall be paid by Owner, including attorneys' fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

H. Owner agrees to indemnify, and hold harmless, the City, its officers, employees and agents from any liability whatsoever based or asserted upon: (i) any act or omission of Owner, its employees and agents relating to or in any way connected with the accomplishment of work, obligations, or performance of service under this Lien Agreement; or (ii) the approval of this Lien Agreement. As part of the foregoing indemnity, Owner agrees to protect and defend, with counsel selected by City, at Owner's own expense, including attorneys' fees, the City, its officers, employees and agents in any legal action based upon such alleged acts or omissions.

## II. City's Performance and Obligations

A. Following (1) City's approval of the substitute forms of security submitted by Owner, (2) deposit by Owner of fees for inspections, tests and other specific purposes and (3) Owner's payment or other performance of the obligations encompassed by the Subdivision Improvement Agreement, performance of which are secured by this Lien Agreement, City shall release the Property from the provisions of this Lien Agreement, and shall execute any necessary release to enable Owner or its transferee to clear the record of title of the Property so released of the lien herein imposed.

B. In no instances shall this Lien Agreement compel the City to construct the

required Public Improvements.

C. The City shall consider this agreement as a satisfactory replacement for the existing subdivision bonds posted by the owner and shall release said bonds upon the recordation of this Lien Agreement.

### III. Owner's Representations and Warranties

Owner represents and warrants that no lots within the Property have been sold, no construction permits (including but not limited to grading permits and building permits) have been issued and are active for all or part of the Property, and no construction of any of the Public Improvements has commenced.

### IV. Effect of Lien Agreement

A. From the date of recordation of this Lien Agreement, a lien shall attach to the Property which shall have the priority of a judgment lien in an amount necessary to discharge all obligations contained in the Subdivision Improvement Agreement and any Fees. Under no circumstances shall the City agree to subordinate the lien.

B. Owner shall have the right to convey or sell fee title to the entire property, or a portion thereof, encumbered by this Lien Agreement, so long as the purchaser agrees in writing to accept and be bound by the terms and provisions of this Lien Agreement, the applicable Subdivision Improvement Agreement, and the Fees, or has provided alternative security acceptable to the City. Any new lien agreement entered into by a purchaser of the Property must provide for completion of the Public Improvements by the same date as is specified herein.

C. This Lien Agreement shall expire upon release of the Property by the City, except that Owner's obligation to commence the Public Improvements within three (3) years from the date of recordation of this Lien Agreement (or such date as may have been extended in accordance with the Subdivision Code), as described in Section I (F) above, shall not expire but shall remain in full force and effect until satisfactory completion of the Public Improvements in full compliance with the Subdivision Improvement Agreement.

D. Notwithstanding any provisions of the Subdivision Code to the contrary, so long as this Lien Agreement is utilized for security as described herein, the City is not obligated to accept offers of dedication for street or drainage purposes on the property.

### V. Events of Default

Upon the occurrence of any one of the following events, Owner shall be deemed in default hereunder:

A. Filing of any proceedings or action by or against Owner to declare Owner bankrupt or to appoint a receiver or trustee for Owner or to make an assignment for the benefit

of creditors or to do anything else of a similar nature or purpose under any state or federal bankruptcy or insolvency laws, if such proceedings or actions are not discharged within (60) days.

B. Levy of any attachment or writ of execution against Owner and the Property whereby the Property is taken or occupied or attempted to be taken or occupied by someone other than Owner and such attachment or execution is not released within 60 days.

C. Sale of any lot shown on the Final Map prior to release of the lien created by this Lien Agreement.

D. Breach by Owner of any other term or condition of this Lien Agreement or the Subdivision Improvement Agreement or Owner's failure to fully and faithfully discharge its obligations hereunder within the time specified in Section VI below.

All References to Owner in this section shall be deemed to include Owner's successors, assignees, and transferees.

#### VI. City's Remedies

Upon the occurrence of any of the events described in Section V, above, City may declare a breach of this Lien Agreement by if Owner does not cure such violation within 90 days after Owner's receipt of written notice from the City (or, if not curable within 90 days, within such period of time as is reasonably necessary, but in no event more than 180 days, provided Developer diligently commences and pursues such cure and indemnifies the City for all related costs, of whatever kind) and City may exercise any one or more of the following remedies:

A. Pursue any or all if the remedies provided in the Subdivision Improvement Agreement;

B. Enforce this lien by appropriate action in court or as provided by law and in the event of enforcement is by action in court, the Owner agrees that the amount of said lien shall include reasonable attorneys' fees which shall be taxed as a cost in any suit for such enforcement;

C. Estimate the cost of the work required to complete the Public Improvements, and all fees, and foreclose said lien in said amount;

D. Pursue any other remedy, legal or equitable, for the foreclosure of a lien. Owner, its heirs and assigns, shall pay reasonable attorneys' fees to be taxed as cost in said proceedings.

#### VII. General Provisions

A. Recordation. This Lien Agreement shall be recorded by City with the County Recorder immediately following execution of this Lien Agreement indexed by (1) all parties hereto, and (2) all parties having any record title interest in the subject real property, pursuant to Government Code Section 66436, acknowledge subordination of their interest of this Lien Agreement.

B. Contingency. This Lien Agreement shall not take effect until it has been approved by the City Council of the City of Menifee.

C. Entire Agreement. This Lien Agreement together with all exhibits and other agreements expressly referred to herein, constitutes the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties, and statements, oral or written are superseded.

D. Further Assurances. The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Lien Agreement and the intentions of the parties.

E. Governing Law. This Lien Agreement shall be governed, interpreted, construed, and enforced in accordance with laws of the State of California.

F. Headings. The captions and section headings used in this Lien Agreement are inserted for convenience of reference only and are not intended to define, limit or effect construction or interpretation of any term or provision hereof.

G. Modification. Waiver. No modification, waiver, amendment or discharge of this Lien Agreement shall be valid unless the same is in writing and signed by all parties.

H. No Other Inducement. The making, execution and delivery of this Lien Agreement by the parties hereto have been induced by no representations, statements, warranties, or agreements other than those expressed herein.

I. Severability. If any term, provision, covenant, or condition of this Lien Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Lien Agreement shall not be effected thereby, and each term, provision, covenant, or condition of this Lien Agreement shall be valid and enforceable to the fullest extent permitted by law.

J. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be entered into as of the date first written above.

CITY OF MENIFEE, a Municipal Corporation  
in the State of California

RCFC INVESTMENTS, LLC, a California  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Gordon D. Youde, Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

EXHIBIT "A-1"

LEGAL DESCRIPTION

Real property in the City of Menifee, County of Riverside, State of California, described as follows:

LOTS 1 THROUGH 192, INCLUSIVE, AND LETTERED LOTS "A" THROUGH "M", INCLUSIVE OF TRACT NO. 31456, IN THE CITY OF MENIFEE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 484, PAGES 51 THROUGH 68, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.





# EXHIBIT "B"

## ESTIMATED COSTS

### CITY OF MENIFEE ENGINEERING DEPARTMENT CONSTRUCTION COST WORKSHEET

PARCEL MAP OR TRACT MAP NO. TR 31456 DATE: 1/6/2022  
IP: \_\_\_\_\_

IMPROVEMENTS	FAITHFUL PERFORMANCE SECURITY (100% of Estimated Construction Costs)		MATERIAL & LABOR SECURITY (**50% of Estimated Construction Costs)	
Street/Drainage	\$ 6,063,677.44	\$ 6,063,500.00	\$ 3,031,750.00	
*Flood Control	\$ 1,323,679.00	\$ 1,323,500.00	\$ 661,750.00	
Dom Wtr EMWD	\$ 463,449.60	\$ 463,500.00	\$ 231,750.00	
Rec Wtr EMWD	\$ 0.00	\$ 0.00	\$ 0.00	
Sewer EMWD	\$ 1,180,812.80	\$ 1,180,500.00	\$ 590,250.00	
Total	<u>9,031,418.84</u>	<u>9,031,000.00</u>	<u>4,515,500.00</u>	
Warranty Retention (10%)		<u>903,100.00</u>		

#### DESIGN ENGINEER'S CALCULATION OF IMPROVEMENT BONDING COSTS

Construction items and their quantities, as shown on the attached sheets, are accurate for the improvements required to construct the above project and the mathematical extensions, using City's unit costs, are accurate for determining bonding costs

Above amounts do G do not G include additional 20% for recordation prior to having signed plans (Ordinance 460, Section 10.3E).

Frank Artiga  
Signature  
Frank Artiga  
Name Typed or printed

3/9/2022  
Date  
C 61860  
RCE#  
9/30/2023  
Exp. Date



Civil Engineer's Stamp

\*Flood Control Construction Cost Estimate to be provided by Flood Control District. Provide a copy of Flood Control District letter stating cost estimate.

#### \*\*\* PLEASE READ INSTRUCTIONS BELOW \*\*\*

- Quantities are to be taken from the Improvement Plans. Unit cost are to be as provided on "City of Menifee Improvement Requirement Worksheet."
- Show Performance Bond Amounts to the nearest \$500.00. Material and Labor Bond Amounts are 50% of Performance Bond Amounts. \*\*100% for Flood Control items.
- For Construction items not covered by "The City of Menifee Improvement Requirements Worksheet", Design Engineer is to provide his opinion of construction cost and use that cost. If City of Menifee Unit Costs are determined to be too low, in the opinion of the design engineer, the higher costs as provided by the Design Engineer should be used.