

**COMMUNITY FACILITIES DISTRICT NO. 2025-1 (MENIFEE VISTA)  
OF THE CITY OF MENIFEE**

**ACQUISITION, CONSTRUCTION AND FUNDING AGREEMENT**

THIS ACQUISITION, CONSTRUCTION AND FUNDING AGREEMENT (the “Agreement”) is made and entered into by and between CITY OF MENIFEE (the “City”), acting for and on behalf of itself and COMMUNITY FACILITIES DISTRICT NO. 2025-1 (MENIFEE VISTA) OF THE CITY OF MENIFEE (the “Community Facilities District” or “CFD”) and RICHMOND AMERICAN HOMES OF MARYLAND, INC., a Maryland corporation (the “Developer”), each individually a “Party” and collectively the “Parties.”

**WHEREAS**, Developer has requested that the City consider the formation of the CFD pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”), and undertake proceedings for the authorization of special taxes and issuance of bonded indebtedness for the payment of the construction and/or acquisition of certain improvements to be owned, operated or maintained by the City and Eastern Municipal Water District (the “Water District”), and incidental expenses in accordance with the Act; and

**WHEREAS**, in order to proceed in a timely way with development of the property within the CFD which is described in the attached **Exhibit “A”** (the “Developer Property”), Developer desires to fund through the Community Facilities District (i) the City’s acquisition or construction of certain improvements that are to be owned, operated and maintained by the City or are otherwise required to be constructed by the City (“City Improvements”), as more particularly set forth and described in the Description of Cost Estimates attached hereto as **Exhibit “B,”** (ii) improvements included in the City’s fee programs (the “City Fee Facility Improvements”), as more particularly set forth and described in **Exhibit “B,”** and (iii) the improvements of the Water District described in **Exhibit “C”** hereto (the “Miscellaneous Improvements” and together with the City Improvements and the City Fee Facilities Improvements, collectively the “Improvements”); and

**WHEREAS**, the City is authorized by the Act to form the CFD and to issue bonds secured by Special Taxes (as defined in Section 2.2) of the CFD (the “Bonds”) to fund the Improvements; and

**WHEREAS**, the City Council has adopted the City’s policies and procedures concerning the use of special district financing programs to finance the Improvements (the “Policy”); and

**WHEREAS**, the purpose of this Agreement is to constitute a formal understanding between Developer and the City (pursuant to the requirements of Government Code Section 53313.51 and other provisions of the Act and the Policy) concerning financial and other obligations and responsibilities related to the formation of the Community Facilities District and the Improvements to be financed by the Community Facilities District, when and if formed, to the extent funds are available, and to set forth the conditions upon which (1) the Community Facilities District will reimburse Developer or its designee for the cost of the City Improvements constructed by or on behalf of the Developer and (2) the Community Facilities District will fund the City Fee Facility Improvements thereby satisfying corresponding City fees; and (3) the Community Facilities District will also fund the Miscellaneous Improvements described in **Exhibit “C.”**

**NOW, THEREFORE**, it is mutually agreed between the respective Parties as follows:

**1. Feasibility Study.** The City has retained, at the Developer's expense, the necessary consultants to analyze the proposed formation of the CFD to finance the Improvements, including a special tax consultant, bond counsel, and other consultants deemed necessary by the City. The Developer has advanced to the City a sum of money for such costs. From time to time, Developer will make additional advances, within 10 business days following receipt from the City of a request for an additional advance, to cover the costs of the formation proceedings and any change proceedings under the Act requested by the Developer. The City will provide to Developer on request a summary of how the advances have been spent and the unexpended balance remaining. The amounts advanced by the Developer, other than \$5,000 (which is non reimbursable) and, to the extent determined reasonable and appropriate by the City, expenses incurred by the Developer for legal and other consultant costs in connection with the formation proceedings, any change proceedings and the issuance of Bonds, will be reimbursable to the Developer, without interest, from the proceeds of Bonds. In the event that Bonds are not issued to provide a source of reimbursement to Developer, the City shall not have any liability to Developer to reimburse it for any of the amounts previously advanced by Developer and expended by the City.

Prior to the issuance of the Bonds, the City will request a final advance for any unpaid expenses incurred during preparatory technical, financial and legal work; and following payment of such expenses, the City shall promptly release the balance, if any, of the advance to the Developer. Should the City's expenses exceed the remaining balance, the City will bill the Developer for the difference, which the Developer agrees to pay within 10 days following receipt of such billing, subject to the conditions of paragraph one of this section.

**2. Sale of Bonds.**

**2.1 City Policies.** The City Council has adopted the Policy, setting forth the City's policies and procedures concerning the use of special district financing programs to finance the Improvements. Pursuant to the Policy, the total annual amount of the special taxes to be collected with respect to a parcel within the CFD and all other taxes and assessments which will be collected with respect to such parcel from the secured tax roll must not exceed two percent (2%) of the Fair Market Value (as defined in the Policy) of such parcel at the time of CFD formation.

The Parties hereby agree that, unless waived by the City, at the time of issuance of the Bonds the ratio of the value of all parcels of property within the CFD to the amount of outstanding community facilities district or assessment district bonds attributable to such parcels (the "Value-to-Lien Ratio") may not be less than four-to-one (4:1). Unless waived by the City, the Fair Market Value of the property within the CFD for purposes of determining the foregoing ratio will be determined based on the appraised value of the property determined by appraisal made by an appraiser selected by the City with a valuation date within three (3) months of the issuance of the Bonds, or, with respect to completed homes (as determined in the sole discretion of the City) or issuance of refunding bonds, the assessed value of the property, or some combination thereof. Subject to satisfaction of the Policy and the requirements of this Agreement, the City shall use reasonable efforts to issue and sell the Bonds in one or more series in an amount sufficient to fund the Improvements in accordance with the schedule for development of the Developer Property. The ultimate decision as to issuance and sizing lies in the sole legislative discretion of the City.

## 2.2 Security for Payment of Special Taxes.

(a) Concurrently with the issuance and sale of each series of the Bonds, the owner of any land within the CFD which the City has determined, in its sole discretion, to use in the sizing of such series of Bonds (the "Sizing Property"), together with any Sizing Property owned by any affiliate (collectively, an "Account Party"), for which the Maximum Special Taxes for the then-current fiscal year (as defined in the Rate and Method of Apportionment of Special Tax for the CFD ("Rate and Method") and such Special Tax referred to herein as the "Special Tax" or "Special Taxes"), are equal to or exceed 20% of the aggregate Maximum Special Taxes authorized to be levied on the Sizing Property in such fiscal year, shall deliver to the City either (i) a renewable irrevocable instrument of credit from a financial institution (rated "A" or better, or otherwise approved by the City) and approved by the City, or (ii) cash in-lieu thereof (a "Security"). The Security shall be in an amount calculated by multiplying the Special Tax Requirement (as defined in the Rate and Method) for the then current and following fiscal year, by the percentage of the Maximum Special Taxes for the current fiscal year allocable to the Developer Property owned by the Account Party (the "Stated Amount). The Security shall be maintained by the Account Party in each fiscal year until terminated in accordance with Section 2.2(c) below. While the Security is still required the Stated Amount of such Security shall be reduced as set forth in a Certificate of Reduction or Termination (as defined in Section 2.2(c) below).

The Security shall name the Fiscal Agent as a beneficiary and shall provide that the Fiscal Agent may draw an amount equal to any delinquencies in payment of semiannual installments of the Special Taxes levied on property owned by the Account Party. The total amount to be drawn under the Security shall not exceed an amount equal to the Special Taxes owed by the Account Party that is delinquent at the time the draw is made. The amount drawn on the Security shall be applied in the same manner and for the same purposes as the delinquent Special Taxes would have been applied; provided, however the payment of a draw under the Security will not be deemed to cure the delinquency in payment of the Special Taxes.

If, subsequent to a draw on the Security and prior to the satisfaction of any reimbursements due to the institution providing the Security (the "Security Provider") pursuant to this Agreement, the City receives payment of all or a portion of the delinquent Special Taxes or the proceeds of a sale of delinquent real property pursuant to foreclosure proceedings ("Delinquency Proceeds") for a parcel for which the Security has been drawn, the Security Provider (or its designee, which may be the Developer) shall be reimbursed for such draws to the extent of Delinquency Proceeds net of the City's costs of collection. The Security Provider is intended by the Parties to be a third party beneficiary of this Section 2.2.

(b) The Security shall be renewed, or a substitute Security reasonably satisfactory to the City (a "Substitute Security") provided, not less than thirty (30) calendar days prior to the expiration of the Security or Substitute Security then in effect. If the Account Party provides a Substitute Security to the City, then the Fiscal Agent shall return any existing Security on the effective date of the Substitute Security to the Security Provider.

If the Security is not renewed within thirty (30) days prior to its expiration date and the requirements for release or termination of the Security as set forth in Section 2.2(c) below have not then been met, the full amount of the Security may be drawn by the Fiscal Agent and deposited in an account established under the Indenture (as hereinafter defined) or in such account established with a financial institution selected by the City. Thereafter, amounts in such account

shall be held as security, and if Special Taxes owed by the Account Party are not paid prior to delinquency, then such amounts in such account may be applied by the City to pay the delinquent Special Taxes owed by the Account Party with respect to such property on the same terms and conditions applicable hereunder to draws on the Security.

At such time as the Security is renewed, or a Substitute Security is accepted by the Fiscal Agent, or the requirement for the Security has been terminated pursuant to this section, the City or its designee, shall release all amounts in the Security account to the Security Provider (or its designee, which may be the Developer) within ten (10) calendar days from the date of renewal or acceptance.

(c) Following the sale or transfer by the Account Party of any property to a person other than the Account Party, or upon the prepayment of the Special Tax obligation for a parcel owned by the Account Party, the Account Party shall notify the Community Facilities District of such event, in writing, and, if requested by the Account Party, the Stated Amount of the Security shall be reduced and be recalculated in accordance with this Section 2.2; provided, however, that any costs associated with the recalculation and reduction shall be borne by the Account Party. Subject to Section 2.2(d) below, the Stated Amount may be reduced to an amount determined by the method of calculation set forth in Section 2.2(a) hereof. The Security shall be terminated upon the earlier of (i) when the Sizing Property owned by, or under option to, the Account Party is responsible for less than 20% of the Maximum Special Taxes applicable to all of the Sizing Property or (ii) when the Account Party has paid (or cause to be paid) all Special Taxes owed by the Account Party in the current fiscal year and the Sizing Property owned by, or under option to, the Account Party is expected to be responsible for less than 20% of the Maximum Special Taxes in the next fiscal year.

Reduction or termination of a Security shall occur automatically upon submission to the Security Provider by the Fiscal Agent of a "Certificate of Reduction or Termination" upon valuation of the Certificate of Reduction or Termination by the City. The City shall direct that the Fiscal Agent deliver to the Security Provider such Certificate of Reduction or Termination promptly upon receiving from the Account Party a certification which shall be made under penalty of perjury and which shall indicate (i) the legal description of all Sizing Property owned by the Account Party, and either (ii) a recalculation of the new Stated Amount that the Account Party proposes be applicable to the Security or (iii) if termination of the Security is requested, a statement that one of the requirements set forth in the preceding paragraph for termination of the Security has been satisfied.

The Account Party shall notify the City of any events that will result in a reduction of the Stated Amount of the Security and shall provide the City with verification of said events. The Account Party may provide the Fiscal Agent with a Substitute Security in the reduced amount, and the Fiscal Agent shall release and return to the Security Provider the Security then in effect. The Parties expressly acknowledge that the Account Party's failure to so notify the City or to reduce the Security at the times prescribed herein shall in no way effect or invalidate sale or transfer of property, or recordation of maps on property.

(d) If any Sizing Property is sold or transferred by an Account Party with the result that the Sizing Property owned by the transferee together with any of its affiliates ("Transferee") is responsible for 20% or more of the aggregate Maximum Special Taxes of all Sizing Property, a Security on the same terms specified in Section 2.2(a) above will be furnished by Transferee with respect to all Sizing Property owned by such Transferee. Any applicable purchase

and sale agreement and/or escrow instructions shall notify the Transferee of this Security requirement and obligate the Transferee to provide such Security, if applicable. The Security of the Account Party will not be reduced to reflect the sale or transfer of such Sizing Property until a Security is furnished by the Transferee and accepted by the Fiscal Agent. The issuing financial institution and the form and terms of said Security will be subject to reasonable prior approval by the City. All terms provided in this Section 2.2 are applicable to the Transferee by replacing the term “Account Party” at each place where it occurs in each section with the term “Transferee.” Each provider of a Security for a Transferee shall be an express third party beneficiary of the provisions of this Section 2.2.

Any costs related to the holding or maintaining the Security, including any fees of a fiscal agent, trustee or other depository shall be borne by the Account Party.

2.3 Major Landowner Initial and Continuing Disclosure. An owner of land which is responsible for twenty percent (20%) or more of the Special Tax levy applicable to the Sizing Property in the fiscal year in which the Bonds are issued or in the fiscal year following the fiscal year in which the Bonds are issued (a “Major Landowner”) will be required to provide all information regarding the development of its property, including the financing plan for such development, which is necessary to ensure that the official statement for such Bonds complies with the requirements of Rule 15c2-12 and Rule 10b-5 of the Securities and Exchange Commission (the “Rule”) and all other applicable federal and state securities laws. Additionally, Developer acknowledges that, if it is a Major Landowner at the time of issuance of the Bonds, it will be necessary that Developer enter into a continuing disclosure agreement to provide such continuing disclosure pertaining to the development of the land owned by Developer to assist in the marketing of the Bonds.

2.4 Bond Issuance Parameters. The terms and conditions upon which each series of the Bonds shall be issued and sold, the method of sale of the Bonds and the pricing of the Bonds shall be determined solely by the City in its legislative discretion in conformance with the Act, the Policy, and this Agreement. Each series of Bonds shall be issued with a term not to exceed 35 years from the date of issuance of the Bonds. The proceeds of the Bonds shall be used in the following priority to (1) fund a reserve fund for the payment of principal and interest with respect to the Bonds in an amount equal to the least of (i) ten percent (10%) of the total bond issue, (ii) maximum annual debt service on Bonds, or (iii) 125% of average annual debt service; (2) fund capitalized interest through the interest payment date on the Bonds for which Special Taxes are not available for payment of debt service on the Bonds or such longer period as requested by the Developer and approved by the City, subject to the Act; (3) reimburse the Developer or its designee pursuant to Section 1 hereof for CFD formation costs advanced by the Developer which have not already been reimbursed to the Developer from collected Special Tax; (4) pay for costs of issuance of the Bonds including, without limitation, underwriter’s discount, bond counsel and disclosure counsel fees, appraisal and special tax consultant fees, printing, fiscal agent fees, and reasonable Developer legal and financial consultant costs; (5) pay for the costs of forming the Community Facilities District; and (6) pay for the actual costs of the Improvements. At the request of the Developer, the City, in consultation with the underwriter of the Bonds, may consider providing for surety or bond insurance in lieu of all or a portion of the reserve fund in order to generate additional proceeds to fund Improvements. The Community Facilities District shall maintain records relating to the disbursements of proceeds of the sale of the Bonds. The Indenture or Resolution or Fiscal Agent Agreement (hereinafter “Indenture”) for the Bonds shall establish an acquisition and construction fund or improvement fund (herein, the “Improvement Fund”) to be held by the fiscal agent (“Fiscal

Agent”) into which shall be deposited initially the proceeds of the Bonds net of the amount of proceeds required to fund items (1) through (5) in the second preceding sentence. The Indenture shall also establish separate accounts of the Improvement Fund designated the “City Improvements Account,” “City Fee Facility Improvements Account,” and any Miscellaneous Improvement Account(s) for the Miscellaneous Improvements described in **Exhibit “C,”** into which shall be deposited such portions of the Improvement Fund as agreed by the Parties and directed by the City in writing at or subsequent to the closing of the sale of the Bonds consistent with the following priorities:

(a) An amount sufficient to fund the reasonable, current estimated cost of the City Fee Facility Improvements anticipated to be funded out of the Bonds being issued shall be deposited in the City Fee Facility Improvements Account (any Special Taxes collected by the CFD remaining after the payment of administrative expenses of the CFD and the reimbursement of the Developer for CFD formation costs and Improvements pursuant to Section 3 hereof shall be deposited into the City Fee Facility Improvements Account at the time of Bond issuance, unless otherwise directed in writing by the Developer);

(b) An amount equal to 20% of the amount funded in (a) shall be deposited in the City Fee Facility Improvements Account;

(c) If applicable, an amount to be agreed upon between Developer and the CFD prior to the issuance of Bonds sufficient to fund the reasonable, current estimated costs of the City Improvements shall be deposited, or later transferred, to the City Improvements Account; and

(d) If applicable, an amount to be agreed upon between Developer and the CFD prior to the issuance of Bonds sufficient to fund the reasonable, current estimated cost of the Miscellaneous Improvements described in **Exhibit “C”** hereto, anticipated to be funded out of the Bonds being issued shall be deposited, or later transferred, to the applicable Miscellaneous Improvement Account(s).

Interest earned on moneys deposited in each of the City Fee Facility Improvements Account, the City Improvements Account and the Miscellaneous Improvements Account(s) shall remain in such accounts until such time as all of the Improvements have been funded. Additionally, the Developer may direct the CFD to transfer excess moneys in any of the City Fee Facility Improvements Account, the City Improvements Account or the Miscellaneous Improvements Account(s) to another Account. The Indenture shall provide that amounts remaining in the Improvement Fund after funding all proposed Improvements (such completion of funding to be agreed by the City and the Developer) shall be deposited in the special tax fund or bond service fund and be applied to pay debt service on the Bonds and/or to call Bonds in advance of maturity.

**3. Allocation of Special Taxes.** Prior to the issuance of Bonds, the City Council of the City, acting as the legislative body of the Community Facilities District, may levy Special Taxes on all parcels classified as Developed Property pursuant to the Rate and Method. Such Special Taxes collected by the City shall first be applied to fund annual administrative expenses of the Community Facilities District and then to fund Improvements in the same manner as the proceeds of Bonds as set forth herein. Upon sale and delivery of the Bonds, the City shall annually levy the Special Tax as provided for in documents pursuant to which the Bonds were issued. Following the issuance of the

last series of Bonds, the City shall have no obligation to levy Special Taxes to reimburse the Developer for the costs of any Improvements not paid for from Bond proceeds.

**4. Notice of Special Tax.** Developer shall provide written notice to all potential initial purchasers of lots advising of the special tax obligation applicable to the Developer Property in the form required by Section 53341.5 of the Government Code.

**5. Design Plans and Specifications.** The requirements of this Section shall not apply to any City Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD, but they shall apply to all other City Improvements for which the Acquisition Price is paid. All plans, specifications and bid documents for the City Improvements (“Plans”) constructed or to be constructed by the Developer shall be prepared by the Developer at the Developer’s initial expense, subject to approval by the applicable public agency. Costs for preparation of the Plans will be eligible for reimbursement, conditioned upon the final approval of the applicable public agency and the availability of funds. Reimbursement of costs for plan revisions will be considered on a case by case basis. All facilities which were not complete prior to the formation of the District, as determined by the City, shall be bid in accordance with “public works” requirements of Section 7 to be eligible for reimbursement.

**6. Construction of Improvements.** The requirements of this Section shall not apply to any City Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD, but they shall apply to all other City Improvements for which the Acquisition Price is paid.

6.1 Acquisition of City Improvements. Upon the approval of Plans for a City Improvement, the Developer will provide for construction of such City Improvement in accordance with Sections 6.2 and 7 of this Agreement. Sections 6.2 and 7 specify the requirements for construction of the City Improvements that the City believes are necessary to ensure that such City Improvements are constructed as if they had been constructed under the direction and supervision, or under the authority of the City.

6.2 Acquisition. With respect to City Improvements, a qualified engineering firm (the “Field Engineer”) shall be employed by the Developer to provide all field engineering surveys determined to be necessary by the City’s inspection personnel. Field Engineer shall promptly furnish to City a complete set of grade sheets listing all locations, offsets, etc., in accordance with good engineering practices, and attendant data and reports resulting from Field Engineer’s engineering surveys and/or proposed facility design changes. City shall have the right, but not the obligation, to review, evaluate and analyze whether such results comply with applicable specifications.

As necessary as determined by City, a full-time soil-testing firm, approved by City, shall be employed by the Developer to conduct soil compaction testing and certification. The Developer shall promptly furnish results of all such compaction testing to the City for its review, evaluation and decision as to compliance with applicable specifications. In the event the compaction is not in compliance with applicable specifications, the Developer shall be fully liable and responsible for the costs of achieving compliance. A final report certifying all required compaction in accordance with the specifications shall be a condition of final approval of facilities.

The costs of all surveying, testing and reports associated with the City Improvements furnished and constructed by the Developer's contractor(s) shall be eligible to be paid from funds in the City Improvements Account.

The City shall not be responsible for conducting any environmental, archaeological, biological, or cultural studies or any mitigation requirements that may be requested by appropriate Federal, State, and/or local agencies. Any such work shall be paid for and conducted by the Developer and reimbursed out of the City Improvements Account.

Should the Developer notify the City that the Developer is unable to complete such City Improvement, the City shall have the right but not the obligation to require the Developer to make an irrevocable offer of dedication to the City of the land owned by the Developer for the City Improvement identified in the notice and to assume responsibility for the work to be performed thereunder. In the event the City elects to assume the responsibility for any work on a previously awarded contract as described in the preceding sentence, the following will occur: (i) the Developer will make an irrevocable offer of dedication to the City of the land owned by the Developer for such City Improvement identified in the notice; (ii) to the extent permitted by law and the applicable contract, the Developer will assign all of the contracts for the work performed to date on the City Improvement identified in the notice to the City, if requested to do so by the City Manager; the City will use its best efforts to complete the City Improvement within a reasonable time frame; and upon completion of the City Improvement, to the extent there are Special Taxes or proceeds of the Bonds available following payment to the City for the costs of completing such City Improvement, the Developer will be reimbursed for the lesser of the cost or value of the previously unreimbursed satisfactory work performed or paid for by the Developer. The cost of such work will be determined by taking the unreimbursed amounts expended by the Developer under the contract(s) taken over by the City and deducting any incremental cost incurred by the City to complete the work under the contracts in question. Incremental cost shall be costs in excess of the sum of the original contract cost plus change orders approved by the City.

## **7. Public Works Requirements.**

7.1 City Requirements. In order that the City Improvements for which the Acquisition Price is paid may be properly and readily acquired by the City, the Developer shall comply with all of the requirements in this Section 7.1 with respect to any such City Improvements to be acquired with funds in the City Improvements Account and the Developer shall provide such proof to the City as the City may reasonably require and at such intervals and in such form as the City may reasonably require, that the requirements under this Section 7.1 have been satisfied as to all such City Improvements. Notwithstanding the foregoing, City Improvements shall only be eligible for financing by the CFD if the City determines that the conditions under Section 53313.5 have been satisfied with respect to such City Improvements.

(a) The Developer shall prepare a bid package for review, comment and approval by the City Manager or his or her designee (the "City Representative") for any City Improvements bid after the effective date of this Agreement.

(b) For any City Improvements bid after the effective date of this Agreement, the Developer shall, after obtaining sealed bids for the construction of the City Improvements in conformance with the procedures and requirements of the City, submit to the City written evidence of such competitive bidding procedure, including evidence of the means by which

bids were solicited, a listing of all responsive bids and their amounts, and the name or names of the contractor or contractors to whom the Developer proposes to award the contracts for such construction, which shall be the lowest responsible bidder.

(c) For any City Improvements bid after the effective date of this Agreement, the following provisions apply: the City Representative shall attend the bid opening for such City Improvements. If unable to attend the bid opening, the City Representative shall approve or disapprove of a contractor or contractors, in writing, within five (5) business days after receipt from the Developer of the name or names of such contractor or contractors recommended by the Developer. If the City Representative disapproves of any such contractor, the Developer shall select the next lowest responsible bidder from the competitive bids received who is acceptable to the City Representative.

(d) The specifications and bid and contract documents shall require all such contractors to pay prevailing wages and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects and as required by the procedures and standards of the City with respect to the construction of its public works projects.

(e) The Developer shall submit faithful performance and payment bonds in form and substance reasonably acceptable to the City with respect to the City Improvements.

(f) The Developer and its contractor and subcontractors shall be required to provide proof of insurance coverage throughout the term of the construction of the City Improvements, which they will construct in conformance with the City's standard procedures and requirements. The City's insurance requirements are set out in Section 21 herein.

(g) The Developer and all such contractors shall comply with such other requirements relating to the construction of the City Improvements which the City may impose by written notification delivered to the Developer and each such contractor at the time either prior to the receipt of bids by the Developer for the construction of such City Improvements or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof; provided that such other requirements shall only be imposed to the extent the City reasonably determines they are required in order to comply with applicable law. In accordance with Section 7, the Developer shall be deemed the awarding body and shall be solely responsible for compliance and enforcement of the provisions of the Labor Code, Government Code, and Public Contract Code.

(h) A "Change Order" is an order from the Developer to a contractor authorizing a change in the work to be performed and a "Significant Change Order" is an order from the Developer to a contractor authorizing a change in the work to be performed where such Change Order is larger than 10% of the contract amount for such City Improvement. After the effective date of this Agreement, the Developer shall receive comments from the City Representative prior to the Developer's approval of any Significant Change Order. The City Representative shall comment on or deny the Significant Change Order request within ten (10) calendar days of receipt of all necessary information. The City's comments to a Significant Change Order shall not be unreasonably delayed, conditioned or withheld. After the effective date of this Agreement, field verification that the work was performed in accordance with a Change Order or a Significant Change Order shall be required, which verification shall be demonstrated by the signature of a City Representative on the Change Order or Significant Change Order. The Developer shall not be entitled to be compensated for costs

associated with a Change Order or a Significant Change Order that has not been approved or if the work has not been verified, as applicable, by the City Representative in accordance with this Section 7(h).

Developer shall provide proof to the City, at such intervals and in such form as the City may reasonably require, that the foregoing requirements have been satisfied as to all of the City Improvements which are funded through Bond proceeds.

**8. Inspection; Completion of Construction.** The requirements of this Section shall not apply to any City Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD, but they shall apply to all other City Improvements for which the Acquisition Price is paid.

The City shall have primary responsibility for inspecting the City Improvements to assure that the work is being accomplished in accordance with the Plans. Such inspection does not include inspection for compliance with safety requirements by the Developer's contractor(s). The City's personnel shall be granted access to each construction site at all reasonable times for the purpose of accomplishing such inspection. Upon satisfaction of the City's inspectors, the Developer shall notify the City in writing that a City Improvement has been completed in accordance with the Plans. Any actual costs reasonably incurred by the City for inspection not previously paid by the Developer shall be reimbursed from funds in the City Improvements Account.

Within three (3) business days of receipt of written notification from City inspectors that a City Improvement has been completed in accordance with the Plans, the City Representative shall notify the Developer in writing that such City Improvement has been satisfactorily completed. Upon receiving such notification, the Developer shall file a Notice of Completion with the County of Riverside Records Office, pursuant to the provisions of Section 3093 of the Civil Code. The Developer shall furnish to the City a duplicate copy of each such Notice of Completion showing thereon the date of filing with the County of Riverside (the "County"). City will in turn file a notice with the County for acceptance.

**9. Liens.** With respect to any City Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD, prior to any payment by the CFD to the Developer for such City Improvement, the Developer shall provide to the City such evidence or proof as the City shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment for the construction of the City Improvements have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. With respect to City Improvements, upon the earlier of (i) receipt of all applicable lien releases, or (ii) expiration of the time for the recording of claim of liens as prescribed by Sections 3115 and 3116 of the Civil Code the Developer shall provide to the City such evidence or proof as the City shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment for the construction of the City Improvements have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation.

**10. Acquisition; Acquisition Price; Source of Funds.** The acquisition price of a City Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD shall be its fair market value, as determined by the City Manager or his or her designee, as of the date of acquisition. The City shall consider input and data

provided by the Developer prior to determining the final fair market value. The Actual Cost (as defined below) of the City Improvement shall be presumed to be its fair market value unless there is reasonable evidence that a lower amount is the fair market value.

The costs eligible to be included in the acquisition price of a City Improvement that is not described in the preceding paragraph (the "Actual Costs") shall include:

(i) The actual hard costs for the construction of such City Improvement as established by the City-approved construction contracts, Change Orders, and approved Significant Change Orders, including costs of payment, performance and maintenance bonds and insurance costs, pursuant to this Agreement;

(ii) The design and engineering costs of such City Improvement including, without limitation, the costs incurred in preparing the Plans;

(iii) The costs of environmental evaluations and public agency permits and approvals attributable to the City Improvement;

(iv) Costs incurred by the Developer for construction management and supervision of such City Improvement, not to exceed five percent (5%) of the actual construction cost;

(v) Professional costs associated with the City Improvement such as engineering, inspection, construction staking, materials, testing and similar professional services; and

(vi) Costs approved by the City in accordance with the Act of acquiring any real property or interests therein required for the City Improvement including, without limitation, temporary construction easements, temporary by-pass road and maintenance easements.

Provided the Developer has complied with the requirements of this Agreement, the City agrees to pay the acquisition price of a completed City Improvement to the Developer or its designee within thirty (30) days after the Developer's satisfaction of the preconditions to such payment stated herein, but only to the extent there are sufficient funds available in the City Improvements Account. Except in the case of a City Improvement described in the first paragraph of this Section, the acquisition price to be paid from Bond proceeds for the acquisition of a City Improvement by the City shall be the least of (1) the value of the City Improvement; or (2) the total of the Actual Costs of the City Improvement ("Acquisition Price"). The Actual Cost of the City Improvement shall be presumed to be its Acquisition Price unless there is reasonable evidence that a lower amount is the actual value.

As a condition to the payment of the Acquisition Price, the ownership of the completed City Improvement shall be transferred to the City by grant deed, bill of sale or such other documentation as such public agency may require free and clear of all taxes, liens, encumbrances, and assessments, but subject to any exceptions determined by the City to not interfere with the actual or intended use of the land or interest therein (including the lien of a community facilities district so long as the subject property is exempt from taxation or is otherwise not taxable by such community facilities district). Upon the transfer of ownership of City Improvements or any portion thereof to the City, the City shall be responsible for the maintenance of such City Improvements or the portion transferred. Notwithstanding the foregoing, the Acquisition Price of a City Improvement may be paid prior to

transfer of ownership and acceptance of the City Improvement if it is substantially completed at the time of payment. The City Improvement shall be considered “substantially complete” when it has been reasonably determined by the City to be usable, subject to final completion of such items as the final lift or any other items not essential to the primary use or operation of the City Improvement.

For purposes of determining the Acquisition Price to be paid by the Community Facilities District for the acquisition of the City Improvements by the City (other than City Improvements described in the first paragraph of this Section), the value of such City Improvements shall include the construction costs specified in the City-approved contracts (subject to the next sentence), Change Orders, and City-approved Significant Change Orders conforming to Section 6, as hereinbefore specified. City approval is a condition prior to initiation of contract work for City Improvements bid after the effective date of this Agreement. However, if the City reasonably determines that the additional Actual Costs are excessive and that the value of the City Improvements is less than the total amount of such Actual Costs and such construction costs, the price to be paid for the acquisition of the City Improvements shall be the value thereof as determined by the Engineer, subject, however, to the Developer’s right to appeal to the City Council.

Upon completion of the construction of a City Improvement, the Developer shall deliver or cause to be delivered to the City a Disbursement Request Form in substantially the form of **Exhibit “D,”** attached hereto, copies of the contract(s) with the contractor(s) who have constructed the City Improvement and other relevant documentation with regard to the payments made to such contractor(s) and each of them for the construction of the City Improvement, documentation evidencing payment of prevailing wages, and shall also provide to the City invoices and purchase orders with respect to all equipment, materials and labor purchased for the construction of the City Improvements. The City shall require the Engineer to complete its determination of the value of the City Improvements as promptly as is reasonably possible.

The payment of the Acquisition Price of any City Improvement that is included in the City’s fee program shall not preclude the grant of City fee credits to the Developer for such City Improvements.

Notwithstanding the preceding provisions of this Section, the source of funds for the acquisition of the City Improvements or any portion thereof shall be funds in the City Improvements Account. If for any reason beyond the City’s control the Bonds are not sold, the City shall not be required to acquire the City Improvements from the Developer, except to the extent of funds from the collection of Special Taxes. In such event, the Developer shall complete the design and construction and offer to the City ownership of such portions of the City Improvements as are required to be constructed by the Developer as a condition to recordation of subdivision maps for the Developer Property (but only at such times as required by such condition), but need not construct any portion of the City Improvements which it is not so required to construct. Reimbursement for these facilities would be made from the collection of Special Taxes over time.

In addition to the foregoing, the City shall have the right to withhold payment for acquisition of a City Improvement, if:

(a) the Developer or any of its affiliates is delinquent in the payment of any Special Taxes levied by the Community Facilities District on properties then owned by the Developer or any of its affiliates within the CFD, or

(b) the Developer is not then in substantial compliance with a condition or obligation imposed upon the Developer Property by the City, including but not limited to, payment of all applicable fees, dedication of all applicable rights-of-way or other property and construction requirements.

The City shall immediately provide written notice to the Developer of the decision to withhold any such payment and shall specify the reason for such decision. If the payment is withheld as a result of the delinquency in the payment of Special Taxes, the notice shall identify the delinquent parcels and the amount of such delinquency. If the payment is withheld as a result of substantial non-compliance with a condition or obligation, the notice shall specify such condition or obligation and what action will be necessary by the Developer to substantially comply with such condition or obligation. Upon receipt of evidence reasonably satisfactory to the City that the Developer has paid the delinquent Special Taxes or complied with the subject condition or obligation, the City shall forthwith make all payments which have been withheld pursuant to the provisions of this Section.

**11. Easements and/or Fee Title Ownership Deeds.** Without limiting the Developer's rights to reimbursement for such grants pursuant to Section 10 above, the Developer shall, at the time the City acquires the City Improvements as provided in Section 10 hereof, grant or cause to be granted to the City, by appropriate instruments prescribed by the City, all easements across private property and/or fee title ownership deeds which may be reasonably necessary for the proper operation and maintenance of such City Improvements, or any part thereof, but only to the extent located within the Developer Property.

**12. Permits.** The Developer shall be responsible for obtaining all necessary construction permits from the City and/or the County (as appropriate) covering construction and installation of the City Improvement.

**13. Maintenance.** Prior to the transfer of ownership of a City Improvement by the Developer to the City, as provided in Section 10 hereof, the Developer shall be responsible for the maintenance thereof and shall require its contractor(s) to repair all facilities damaged by any party other than the City, prior to acceptance by the City and/or make corrections determined to be necessary by the City's inspection personnel. The City shall not be permitted to place any City Improvement in service prior to acceptance of the same, unless the Developer otherwise consents in writing.

**14. Inspection of Records.** The City shall have the right to review all books and records of the Developer pertaining to the costs and expenses incurred by the Developer for the design and construction of the City Improvements during normal business hours by making arrangements with the Developer. The Developer shall have the right to review all books and records of the City pertaining to costs and expenses incurred by the City for services of the Engineer by making arrangements with the City.

**15. Ownership of Improvements.** Notwithstanding the fact that some or all of the City Improvements may be constructed in dedicated street rights-of-way or on property which has been or will be dedicated to the City, each City Improvement shall be and remain the property of the Developer until acquired by the City as provided in this Agreement.

**16. Materials and Workmanship Warranty.** The requirements of this Section shall not apply to any City Improvement that was complete (as determined by the City Council) prior to the

adoption by the City Council of the resolution forming the CFD, but they shall apply to all other City Improvements.

Upon the completion of the acquisition of a City Improvement by the City, the performance bond related to such individual City Improvement provided by the Developer pursuant to Section 7.1(e) hereof, shall be reduced by 90%, and the remaining 10% shall serve as a maintenance bond to guarantee that such City Improvement will be free from defects due to faulty workmanship or materials for a period of one year.

**17. City Fee Facility Improvements.** The Developer may be required pursuant to the conditions of development or the fee ordinance to pay certain City fees (the “City Fees”) relating to the City Fee Facility Improvements prior to the availability of proceeds of the Bonds to pay for such City Fee Facility Improvements. In the event such City Fees are paid prior to the availability of Bond proceeds, the amounts paid to the City shall be deemed to be deposits (each a “Deposit”) that are subject to refund by the City to the Developer in accordance with this Agreement. The City shall place each Deposit in a capital facilities account(s). If the Developer has made any Deposits to the City, then following deposit of Bond proceeds in the City Fee Facility Improvements Account, the City shall return to the Developer, from the capital account in which the Deposits were deposited the Deposits not previously returned, without interest or other earnings thereon. The City shall be so obligated to return such Deposits only to the extent that an equivalent amount of the Deposits to be returned is deposited in the City Fee Facility Improvements Account from Bond proceeds or Special Tax collections prior to the issuance of Bonds.

Bond proceeds used to finance City Fee Facility Improvements which relate to the City Fees shall be allocated first for return of all Deposits prior to being allocated to the payment of City Fees not previously deposited by the Developer. Any Deposits that have not been returned to the Developer at the time it is determined that there will be no further Bond proceeds available (i.e. the final series of Bonds to finance the Improvements have been issued) shall be retained by the City and may be used for the purposes for which the City Fee was required, and the unrefunded Deposits shall constitute full and final payment for such City Fees, without any increase of any kind.

**18. Miscellaneous Improvements.** Improvements unrelated to the City Improvements and the City Fee Facility Improvements are described in **Exhibit “C”** attached hereto. The amounts deposited in the applicable Miscellaneous Improvements Account(s), if any, will be disbursed for the acquisition or construction of Miscellaneous Improvements in accordance with the provisions in the applicable Joint Community Facilities Agreement. Any amounts in the applicable Miscellaneous Improvements Account(s) shall be disbursed at the written direction of the City upon Developer’s submittal of a payment request which will be based upon applicable entity’s payment request form as provided for in the applicable Joint Community Facilities Agreement. Upon receipt of such payment request, the City shall submit a written requisition for payment of the requested amount to the Fiscal Agent for the Bonds, who shall directly pay the amount requested to the applicable entity.

**19. Independent Contractor.** In performing this Agreement, Developer is an independent contractor and not the agent of the City. The City shall not have any responsibility for payment to any contractor or supplier of Developer. It is not intended by the Parties that this Agreement create a partnership or joint venture among them and this Agreement shall not otherwise be construed.

**20. Indemnification.** Developer shall assume the defense of, indemnify and save harmless, the City, its officers, employees and agents, and the Community Facilities District, its officers, employees and agents, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subject or put, by reason of, or resulting from such person's or entity's performance of its obligations under this Agreement and the construction of the City Improvements and the Miscellaneous Improvements, the failure of the Developer to provide notice of the Special Tax to be levied by the Community Facilities District pursuant to Section 53341.5 of the Act (but only if the Developer is required by law to provide such notice), or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Developer, its officers, directors, employees or agents to the City, the Community Facilities District, the underwriter of the Bonds and its counsel, the appraiser, the special tax consultant, the market absorption consultant or bond counsel regarding the Developer, its proposed developments, its property ownership, and any contractual arrangement it may enter into in a disclosure document describing the Community Facilities District and the risks relating to the Bonds. No provision of this Agreement shall in any way limit the extent of Developer's responsibility for payment of damages resulting from the operations of Developer and its contractors; provided, however that Developer shall not be required to assume the defense or indemnify and save harmless any person or entity as to actions, damages, claims, losses or expenses resulting from the breach of this Agreement, the willful misconduct of such person or entity or their officers, agents, consultants or employees.

**21. Insurance Requirements.** For City Improvements bid after the effective date of this Agreement for which the Acquisition Price is paid, the Developer shall not commence work on such City Improvement under this Agreement prior to obtaining insurance with a company or companies acceptable to the City, nor shall the Developer allow any contractor or subcontractor to commence work on their respective contracts until all insurance required by this Agreement have been obtained. The required insurance, endorsements and policy limits shall be as follows:

**A. GENERAL LIABILITY**

Developer shall obtain and maintain Commercial General Liability Insurance covering all operations by or on behalf of Contractor or their subcontractors providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- Premises and Operations
- Products and Completed Operations
- Contractual Liability
- Explosion, collapse and Underground Hazards, including subsidence and any other form of earth movement (if applicable)
- Personal Injury Liability
- Independent Contractors

**NOTE: Claims-made or Modified Occurrence Policy are NOT ACCEPTABLE.**

1. LIMITS—Limits of liability shall be no less than:
- |  |             |
|--|-------------|
| a. Each Occurrence                         | \$2,000,000 |
| b. Personal & Advertising Injury           | \$2,000,000 |
| c. Products/Completed Operations Aggregate | \$4,000,000 |

d. General Aggregate \$4,000,000

2. ENDORSEMENTS—Endorsements MUST be attached to certificate and added to your policy:

- a. Additional Insured endorsement naming City as additional insureds.
- b. Primary and non-contributory wording endorsement stating that the Contractor's insurance is primary and any insurance maintained by the additional insureds is non-contributory.
- c. A Waiver of Subrogation or Waiver of Transfer of Rights of Recovery Against Others To Us shall be issued in favor of those additional insureds named in A.2.a. above.

**B. WORKERS COMPENSATION**

Workers' Compensation insurance shall be provided with statutory limits as required by applicable state law of regulation. If the Contractor is self-insured, it must provide proof of that fact.

1. LIMITS—Employer's Liability Limits shall be no less than:

- a. Each Accident for Bodily Injury by Accident \$1,000,000
- b. Each Employee for Bodily Injury by Disease \$1,000,000
- c. Policy Limit for Bodily Injury by Disease \$1,000,000

2. ENDORSEMENTS—Endorsements MUST be attached to certificate and added to your policy:

- a. WAIVER OF SUBROGATION—A Waiver of Subrogation or Waiver of Transfer of Rights of Recovery Against Others to Us shall be issued in favor of those additional insureds named in A.2.a. above.

**C. AUTOMOBILE**

Automobile Liability insurance shall include coverage for all owned (if any), hired and non-owned automobiles.

1. LIMITS—Limits of Liability shall be no less than:

- a. Combined Single Limit \$1,000,000
- or
- b. Bodily Injury Each Person Limit \$1,000,000
  - c. Bodily Injury Per Occurrence Limit \$1,000,000
  - d. Property Damage Per Occurrence Limit \$1,000,000

2. ENDORSEMENTS—Endorsements MUST be attached to certificate and added to your policy:

- a. Additional Insureds as provided in ISO form CA 00 01 or its equivalent naming those additional insureds named in A.2.a. above.
- b. Primary and non-contributory wording endorsement stating that the contractor's insurance is primary and any insurance maintained by the additional insureds is non-contributory.

- c. Waiver of Subrogation as provided in ISO form CA 00 01 or its equivalent in favor of those additional insureds named in A.2.a. above.

**22. Conflict With Other Agreements.** Except as specifically provided herein, nothing contained herein shall be construed as releasing Developer from any condition of development or requirement imposed by any other agreement with City. In the event of a conflicting provision, such other agreement shall prevail unless such conflicting provision is specifically waived or modified in writing by City.

**23. Notices.** Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either Party shall be deemed to have been received when personally delivered or seventy-two (72) hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid. Any notice to the Community Facilities District or the City shall be addressed to City of Menifee, 29844 Haun Road, Menifee, CA 92586, Attention: Chief Financial Officer. Any notice to Developer shall be addressed to Richmond American Homes of Maryland, Inc., 391 Main Street, Suite 205, Corona, CA 92880, Attention: \_\_\_\_\_.

Each Party may change its address for delivery of notice by delivering written notice of such change of address to the other Party hereto.

**24. No Gift or Waiver.**

24.1 No Gift or Waiver for City Improvements. The Developer and the City acknowledge that:

(a) The Developer or its predecessor may have constructed or may be constructing City Improvements before funds that will be used to acquire them are available with the expectation that the Developer will be reimbursed for such City Improvements to the extent and in the manner set forth in this Agreement.

The City may inspect City Improvements and process Disbursement Request Forms even if funds from the proceeds of Bonds available at the time of such inspection and processing do not exist or are not then sufficient to satisfy the Disbursement Request in full.

(b) The Developer may convey City Improvements to the City and the City may accept such City Improvements even if funds from the proceeds of Bonds available at the time of such conveyance and acceptance do not exist or are not then sufficient to satisfy the Disbursement Request in full.

If the City accepts City Improvements before a Disbursement Request is paid in full, the unpaid balance of the Disbursement Request will be paid from time to time, in any number of installments and irrespective of the length of time payment is deferred, as funds from the proceeds of Bonds become available.

(c) The Developer's conveyance or dedication of City Improvements to the City before the availability of funds from the proceeds of Bonds to acquire the City Improvements is not and shall not be deemed, a gift or a waiver of the Developer's right to payment of the purchase price of such City Improvements pursuant to this Agreement.

24.2 No Gift or Waiver for City Fees. The Developer and the City acknowledge that:

(a) Prior to the availability of funds from the proceeds of Bonds, the Developer or its predecessor may have been or may be required to deposit funds to assure payment of applicable City Fees of the City.

The Developer or its predecessor has deposited or will be depositing such funds with the expectation that the Developer will be reimbursed for these Deposits to the extent and in the manner set forth in this Agreement.

(b) The reimbursement of such Deposits pursuant to Section 17 of this Agreement may occur from time to time, in any number of installments and irrespective of the length of time payment is deferred, as funds become available.

The Developer's deposit of such funds to the City before the availability of funds to reimburse the Developer is not, and shall not be deemed, a gift or a waiver of the Developer's right to reimbursement of such Deposits pursuant to this Agreement.

## **25. General Provisions.**

25.1 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the City and the Developer and their respective heirs, executors, legal representatives, successors, and authorized assigns.

25.2 Amendment. This Agreement may be amended at any time but only in writing signed by each Party hereto.

25.3 Entire Agreement. This Agreement, and the agreements referenced herein, contains the entire understanding and agreement between the Parties with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the Parties with respect to the subject matter of this Agreement. There are no oral or written representations, understanding, undertakings or agreements which are not contained or expressly referred to herein, and any such representations, understandings or agreements are superseded by this Agreement. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Parties hereto, or the failure by a Party to exercise its rights upon the default of another Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Parties with the terms of this Agreement thereafter. This Agreement shall be binding upon, and enforceable by and against the Community Facilities District upon the establishment of the Community Facilities District.

25.4 Exhibits. All exhibits attached hereto are incorporated into this Agreement by reference.

25.5 Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Parties hereto, or the failure by a Party to exercise its rights

upon the default of another Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Parties with the terms of this Agreement thereafter.

25.6 No Third Party Beneficiaries. Except as provided explicitly in this Agreement, no person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the City, the Community Facilities District, the Developer, and the Security Provider (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

25.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

25.8 Assignment. Developer may assign all or any of its rights pursuant to this Agreement to a purchaser of all or any portion of the Developer Property. Such a purchaser and assignee shall, as a condition to taking an assignment of such rights, enter into an assignment and assumption agreement with the City and Developer, in a form reasonably acceptable to Developer and the City, whereby such rights assigned are specified and such purchaser agrees, except as may be otherwise specifically provided therein, to assume the obligations of Developer pursuant to this Agreement and to be bound thereby. A company that acquires all of the assets of the Developer, including ownership of the Developer itself, shall be deemed a successor and shall not require an assignment or assumption agreement to be bound by, and enjoy the benefits of, this Agreement.

25.9 Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

25.10 Construction of Agreement. This Agreement has been reviewed by legal counsel for both the City and Developer and shall be deemed for all purposes to have been jointly drafted by the City and Developer. No presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

25.11 Termination. The provisions of this Agreement related to the acquisition and financing of the Improvements shall terminate and be of no further force or effect if the first series of Bonds for the CFD are not sold within ten years from the date of this Agreement unless extended by agreement of all the Parties. If the City is unable to sell the first series of Bonds for the CFD after diligent, commercially reasonable efforts to do so, this Agreement shall terminate and be of no further force and effect; provided, however, in such event, any collected Special Taxes remaining after the payment of administrative expenses of the CFD and reimbursement to the Developer of CFD formation costs shall be used to pay for Improvements in accordance with this Agreement and Developer shall receive a credit against City Fees otherwise payable to City in the amount so used to pay for City Fee Facility Improvements.

25.12 Attorneys' Fees. In the event of any action or proceeding, including an arbitration or a reference pursuant to Section 638 et seq., of the Code of Civil Procedure brought by any Party against any other under this Agreement, the prevailing Party shall be entitled to recover its actual attorneys' fees and all fees, costs and expenses incurred for prosecution, defense, consultation, or advice in such action or proceeding. In addition to the foregoing, the prevailing Party shall be entitled to its actual attorneys' fees and all fees, costs and expenses incurred in any post-judgment

proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

25.13 Venue and Forum. Any action at law or in equity arising under this Agreement brought by any Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Riverside, State of California, and the Parties waive all provisions of law providing for the filing removal or change of venue to any other Court.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written below.

DATED: April 2, 2025

CITY OF MENIFEE, a political subdivision  
of the State of California

By: \_\_\_\_\_  
Armando G. Villa, City Manager

ATTEST:

By: \_\_\_\_\_  
Stephanie Roseen, City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY FOR THE CITY OF  
MENIFEE

By: \_\_\_\_\_  
Jeffrey T. Melching, City Attorney

RICHMOND AMERICAN HOMES OF  
MARYLAND, INC., a Maryland corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LIST OF EXHIBITS**

- EXHIBIT A - DESCRIPTION OF DEVELOPER PROPERTY
- EXHIBIT B - DESCRIPTION OF COST ESTIMATES
- EXHIBIT C - MISCELLANEOUS IMPROVEMENTS
- EXHIBIT D - DISBURSEMENT REQUEST FORM

**EXHIBIT A**

**DESCRIPTION OF DEVELOPER PROPERTY**

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

County of Riverside Assessor Parcel No:

330-230-023

**EXHIBIT B**

**DESCRIPTION OF COST ESTIMATES OF THE IMPROVEMENTS <sup>(1)</sup>**

**I. CITY FEE FACILITY IMPROVEMENTS.**

Estimated Cost of the City Fee Facility Improvements

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<i>Description</i>	<i>Estimated Cost</i>
Law Enforcement	\$97,152
Fire	67,968
Circulation	745,344
General Government	123,552
Parks	180,960
Quimby	(362,520)
City Projects (20% Premium) <sup>(2)</sup>	315,499
<b>Total City Fees Facility Improvements</b>	<b><u>\$ 1,892,995</u></b>

**II. CITY IMPROVEMENTS.**

Those facilities constructed by or on behalf of the Developer and needed by City in order to provide services to the Developer Property, including the following:

<i>Description</i>	<i>Estimated Cost</i>
Street Improvements (Holland, Evans, Corson)	<u>\$ 2,408,245</u>
<b>Total City Improvements</b>	<b><u>\$ 2,408,245</u></b>

<sup>(1)</sup> Amounts are estimates and subject to change. The Acquisition Price will be funded with Bond proceeds.

<sup>(2)</sup> To be funded pursuant to Section 2.4(b).

**EXHIBIT C**

**DESCRIPTION OF THE MISCELLANEOUS IMPROVEMENTS**

Water District facilities included in the Water District's capacity and connection fee programs used to finance expansion projects, exclusive of in-tract facilities constructed by a property owner, but including and not limited to the following:

<b>Description</b>	<b>Estimated Cost</b>
Water Financial Participation Fee	\$ 719,808
Sewer Financial Participation Fee	337,344
Sewer Treatment Capacity Fee	639,552
Water Supply Development Fee	39,072
Water Meter Fee (1" Meter)	<u>38,880</u>
<b>Total Estimated Water District Facilities Fees</b>	<b><u>\$ 1,774,656</u></b>

Those facilities constructed by or on behalf of the Developer and needed by the Water District in order to provide services to the Developer Property and also include any of the following:

<b><i>Estimated Cost of the Water District Improvements</i></b>	
<b><i>Description</i></b>	<b><i>Estimated Cost</i></b>
EMWD 1800 Pressure Zone	\$1,198,265

**EXHIBIT D**

**CFD NO. 2025-1 (MENIFEE VISTA) OF THE CITY OF MENIFEE**

**DISBURSEMENT REQUEST FORM**

1. Community Facilities District No. 2025-1 (Meniffee Vista) of the City of Meniffee (the "CFD") is hereby requested to pay from the \_\_\_\_\_ Account, or any applicable account or sub-account thereof, established by the CFD in connection with its 20\_\_ Special Tax Bonds (the "Bonds") to City of Meniffee (the "City") as payee, the sum set forth below:

\$ \_\_\_\_\_ (the Requested Amount")

2. The Requested Amount represents the payment of City Fees for \_\_\_ lot(s) within the boundaries of the CFD (the "Property").

(Tract No. \_\_\_\_\_, Lot Nos. \_\_\_\_\_).

Or, City Improvements as supported by attached documentation.

3. The Requested Amount is due and payable, and has not formed the basis of any prior request or disbursement.

4. The City, as payee, is hereby directing payment of the Requested Amount be payable to \_\_\_\_\_ (the "Developer"), pursuant to the wiring instructions attached hereto.

5. The Requested Amount is authorized and payable pursuant to the terms of the certain Acquisition, Construction and Funding Agreement (the "Agreement") between the City of Meniffee, acting for and on behalf of itself and the CFD and Developer.

6. Capitalized undefined terms used herein shall have the meaning ascribed to them in the Agreement.

Dated:

DEVELOPER:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated:

CITY OF MENIFEE

By: \_\_\_\_\_

Its: \_\_\_\_\_

[ATTACH WIRING INSTRUCTIONS]