

**COUNTY OF RIVERSIDE
CITY OF MENIFEE
COMMUNITY FACILITIES DISTRICT NO. 05-8 (SCOTT ROAD CFD)
IMPROVEMENT CREDIT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

This IMPROVEMENT CREDIT AGREEMENT FOR TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM (this "Agreement") is entered into this ____ day of _____, 20____ by and between the County of Riverside, a political subdivision of the State of California (the "County"), City of Menifee, an incorporated city within the boundaries of the County (the "City"), and FPG Tricon Menifee Property LLC, a Delaware limited liability company with its principal place of business at 27271 Las Ramblas, Suite 100 Mission Viejo, CA 92691 (the "Developer"). The County, the City, and the Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, the Developer owns Tract No. 32628, for which a Final Map was recorded on November 13, 2007 as Instrument No. 2007-0685937 (the "Tract") and is located within the City of Menifee, County of Riverside, California, as depicted in Exhibit "A," attached hereto and incorporated herein by this reference;

WHEREAS, the Tract consists of three hundred three (303) multi-family residential units;

WHEREAS, the Tract was approved by County prior to City's incorporation, and was conditioned by County to participate in some form of funding mechanism, such as a Community Facilities District, that would provide a means of financing the construction of the following public facilities (the "Scott Road Improvements") that were determined by County to be necessary to mitigate the transportation and circulation needs that would result from the Tract:

- (i) The widening of Scott Road to four lanes between Antelope Road and Briggs Road including all associated appurtenances and rights-of-way;
- (ii) The widening of the interchange at Interstate 215 and Scott Road and the modification of the ramps to meet future traffic demands including all associated appurtenances and rights-of-way;
- (iii) The full width improvement to Scott Road from Antelope Road to State Route 79 including all associated appurtenances and rights-of-way, bringing into conformance said facility with the Transportation Uniform Mitigation Fee Program ("TUMF"), as amended from time

to time (collectively, the "Scott Road Improvements");

WHEREAS, the Riverside County Board of Supervisors (the "Board"), on April 4, 2006, (i) adopted Resolution No. 2006-092 establishing Community Facilities District No. 05-8 (Scott Road) of the County of Riverside ("Scott Road CFD") and authorizing the levy of a special tax to pay for the construction or financing of the Scott Road Improvements, (ii) adopted Resolution No. CFD 2006-02 determining the need to incur bonded indebtedness in an aggregate principal amount not to exceed \$100,000,000 to finance the Scott Road Improvements, and (iii) called a special election for April 18, 2006, for the qualified electors of the Scott Road CFD to consider propositions dealing with the levy of the special tax and the incurrence of bonded indebtedness;

WHEREAS, the Board, on April 25, 2006, canvassed the results of the special election and determined that the qualified electors voted and approved the propositions by more than two-thirds of the votes cast and caused a Notice of Special Tax Lien for the Scott Road CFD to be recorded on May 4, 2006;

WHEREAS, County, by the adoption of Ordinance No. 824, as amended from time to time, established the Transportation Uniform Mitigation Fee Program which requires a developer to pay the fee (the "TUMF") which is set by said Ordinance and which is to be paid as a condition of receiving certification allowing for the occupancy of a residential or commercial structure; the TUMF is intended to represent a new structure's fair share of the estimated costs to construct those transportation improvements needed to mitigate the traffic impacts and burdens placed on the Regional System of Highways and Arterials ("RSA") generated by a residential or commercial development and determined necessary to protect the safety, health and welfare of persons traveling to and from the such residential or commercial development using the RSA;

WHEREAS, the Tract is located within the boundaries of the Scott Road CFD, as shown on the Boundary Map of the Scott Road CFD recorded as Instrument No. 2006-0167553 on March 8, 2006, or within territory that has been annexed to the Scott Road CFD;

WHEREAS, the Scott Road Improvements have been identified as part of the RSA and to be among those facilities whose construction is to be financed by the collection of the TUMF;

WHEREAS, the Rate and Method of Apportionment of Special Tax for the Scott Road CFD (the "RMA") that was approved by the Board and the qualified electors of the Scott Road CFD is intended to reflect the amount of the TUMF approved for any given fiscal year, beginning July 1, 2005, with the intent that each unit within a single-family residential tract and each unit within a multi-family residential development will receive a credit against the TUMF in an amount set forth in this Agreement;

WHEREAS, the Scott Road Improvements are to be constructed by the Riverside County Transportation Department as the lead agency, and from the proceeds of special taxes levied or the proceeds of special tax bonds issued by the Scott Road CFD;

WHEREAS, on October 1, 2008, City incorporated, and the Tracts and improvements are

CFD 05-8 (Scott Road CFD)
3-Party TUMF Improvement Credit Agreement
FPG Tricon Menifee Property LLC
Tract No. 32628

included within City's municipal boundaries;

WHEREAS, City reduced the TUMF during calendar year 2010 but that reduction ended as of December 31, 2010; and

WHEREAS, County, City and the Developer now desire to enter into this Agreement to provide a means by which Developer's participation in the Scott Road CFD is offset against Developer's obligation to pay the applicable TUMF (the "TUMF Credit") for the Tract in accordance with the TUMF administrative plan.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer, County, and City hereby agree as follows:

TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Construction of Improvements. County and City shall be responsible for constructing the Scott Road Improvements.

3.0 TUMF Credit.

3.1 TUMF Credit for Single-Family Residential Development: (Not Applicable)
The Developer obtained the first building permit for a "production unit" located within the Tract on _____, 20___. The TUMF in effect on July 1st preceding the issue date of said first building permit was \$_____ per single-family residential unit. Each single-family residential unit within the Tract is to receive a credit, which is the lesser of (a) the amount equal to the TUMF in effect on said July 1st or (b) the amount equal to 100% of the TUMF charged at issuance of a certificate of occupancy for said unit (the "TUMF Credit Amount"). At no time shall the TUMF Credit Amount exceed 100% of the TUMF charged for said unit. The Developer understands that the TUMF is adjusted annually, and the Developer agrees that should the TUMF in effect on the date it secures a certificate of occupancy for each single-family residential unit constructed on a lot within the Tract is greater than the TUMF Credit Amount for said unit, the Developer will be obligated to pay the differential amount in cash prior to securing the certificate of occupancy for said unit.

3.2 TUMF Credit for Multi-family Residential Development: The Developer obtained the first building permit for a "production unit" located within the Tract on May 18, 2023. The TUMF in effect on July 1st preceding the issue date of said first building permit was \$6,580 per multi-family residential unit. Each multi-family unit within the Tract is to receive a credit, which is the lesser of (a) the amount equal to the TUMF in effect on said July 1st or (b) the amount equal to 100% of the TUMF charged at issuance of a certificate of occupancy for said unit (the "TUMF Credit Amount"). At no time shall the TUMF Credit Amount exceed 100% of the TUMF charged for said unit. The Developer understands that the TUMF is adjusted annually, and the Developer agrees that

should the TUMF in effect on the date it secures a certificate of occupancy for each multi-family residential unit constructed on said Parcels within the Tract is greater than the TUMF Credit Amount for said unit, the Developer will be obligated to pay the differential amount in cash prior to securing the certificate of occupancy for said unit.

4.0 Miscellaneous.

4.1 Assignment. Developer may assign all or a portion of its rights pursuant to this Agreement to a purchaser of one or more lots within the Tract (an "Assignment"). Developer and such purchaser and assignee (the "Assignee") shall provide to the County and City such reasonable proof as each of them may require that the Assignee is the purchaser of said lots within the Tracts. Any assignment pursuant to this paragraph 4.1 shall not be effective unless and until Developer and Assignee have executed an assignment agreement with County and with City in a form reasonably acceptable to both County and City, whereby Developer and Assignee agree, except as may be otherwise specifically provided therein, to the following: (i) Assignee shall receive all or a portion of Developer's rights pursuant to this Agreement, including credits up to the Maximum TUMF Credit for each single-family residential unit developed on a lot within the Tract or for each multi-family residential unit developed on a parcel within the Tract purchased by the Assignee pursuant to this Agreement and (ii) the Assignee shall be bound by all applicable provisions of this Agreement.

4.2 Relationship between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency among County, City, and Developer, or between any of the Parties.

4.3 Indemnification. Developer agrees to protect, indemnify, defend and hold the Community Facilities District, County and City, and their respective directors, officers, Legislative Body, Board of Supervisors, City Council, elected and appointed officials, employees, representatives, and agents (the "Indemnified Parties"), and each of them harmless from and against any and all claims, including, but not limited to, third-party claims, and against any and all losses, liabilities, expenses, suits, actions, decrees, judgments, awards, reasonable attorney's fees, and court costs which the Indemnified Parties or any combination thereof may suffer or which may be sought against or recovered or obtained from the Indemnified Parties, or any combination thereof, as a result of or by reason of or arising out of or in consequence of any acts, omissions, negligence, or willful misconduct of Developer, its employees, or agents in connection with (a) the approval or performance of this Agreement, (b) the awarding of credit pursuant to or on account of this Agreement, and/or (c) the untruth or inaccuracy of any representation or warranty made by said Developer in this Agreement. If said Developer fails to do so, the Indemnified Parties, or each of them, shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including reasonable attorney's fees or court costs, to and recover the same from said Developer. The provisions of this Section shall survive the termination discharge or other termination of this Agreement.

4.4 Warranty as to Property Ownership; Authority to Enter Agreement.

Developer hereby warrants that it owns fee title to the Tract and that it has the legal capacity to enter into this Agreement. Each Party separately warrants that the individual(s) who have signed this Agreement on behalf of such Party has the legal power, right, and authority to enter into this Agreement on behalf of such Party, and each individual signing this Agreement has been duly authorized to do so on behalf of said Party.

4.5 Prohibited Interests. Developer represents and warrants that it has not

employed or retained any company or person, other than a bona fide employee working solely for Developer, or any parent or related entity of Developer, to solicit or secure this Agreement. Developer also warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Developer, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon the making of this Agreement. For breach of this representation and warranty, County and City shall each have the right to rescind this Agreement without liability.

4.6 Notices. All notices, demands, invoices, and written communications

shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To County: Riverside County
 Transportation Department
 Attention: Alvin Medina
 4080 Lemon Street, 8th Floor
 Riverside, CA 92501
 Phone No. (951) 955-1667

To City: City of Menifee
 Attention: Nick Fidler
 29844 Haun Road
 Menifee, CA 92586
 Phone No. (951) 672-6777

To Developer: FPG Tricon Menifee Property LLC
 Attention: Bryan Bergeron
 27271 Las Ramblas, Suite 100
 Mission Viejo, CA 92691
 Phone No. (714) 722-1170

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time successfully sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

4.7 Cooperation: Further Acts. The Parties shall fully cooperate with one

another, and shall take any additional acts or sign any additional documents as may be necessary,

appropriate, or convenient to attain the purposes of this Agreement.

4.8 Construction; References; Captions. It is agreed that the Parties and their agents, including legal counsel, have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and that any ambiguity shall not be construed against either Party as the Party responsible for drafting this Agreement. Any term referencing time, days, or period for performance shall be deemed calendar days and not business days. All references to Developer include all personnel, employees, and agents of Developer, except as otherwise specified in this Agreement. All references to County and City include its elected and appointed officials, Board, City Council, officers, employees, and agents except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

4.9 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by all Parties.

4.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

4.11 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

4.12 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation of the Parties under this Agreement.

4.13 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

4.14 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

4.15 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

4.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

4.17 Entire Agreement. This Agreement contains the entire agreement between County, City and Developer with respect to matters specifically addressed herein and supersedes any prior oral or written statements or agreements between County, City and Developer with respect to such matters.

[Signatures of Parties on Next Page]

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

CITY OF MENIFEE:

By: _____
Armando G. Villa, City Manager

APPROVED AS TO FORM:

By: _____
Jeffrey Melching, City Attorney

ATTEST:

By: _____
Stephanie Roseen, Acting City Clerk

DEVELOPER:

FPG Tricon Meniffee Property LLC, a Delaware limited liability company

By: FPG Tricon Meniffee Holdings LLC, a Delaware limited liability company, it's Sole Member

By: FPG INVESTORS B2, LLC, a California limited liability company, its Manager

By:  _____
Bryan Bergeron
Vice President

[Signatures continued on next page]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

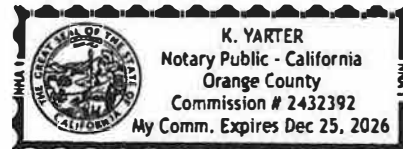
State of California
County of Orange)

On January 3, 2024 before me, K. Yarter, Notary Public
(insert name and title of the officer)

personally appeared Bryan Bergeron,
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is~~/are~~
subscribed to the within instrument and acknowledged to me that he~~/she/they~~ executed the same in
his~~/her/their~~ authorized capacity~~(ies)~~, and that by his~~/her/their~~ signature~~(s)~~ on the instrument the
person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature K. Yarter (Seal)

COUNTY OF RIVERSIDE:

RECOMMENDED FOR APPROVAL:

By: _____
Patricia Romo
Interim Director of Transportation

APPROVED AS TO FORM:

By: _____
Stephanie Nelson
Deputy County Counsel

APPROVAL BY THE COUNTY BOARD OF
SUPERVISORS:

By: _____
Kevin Jeffries
Chairman, County Board of Supervisors

ATTEST:
Kimberly Rector
Clerk of the Board

By: _____

Deputy

EXHIBIT “A”

FINAL TRACT MAP AND VICINITY MAP

[ATTACHED BEHIND THIS PAGE]

0 250 500 1,000 Feet
1 inch = 500 feet
Orthophotos Flown 2016
Printed by CSegarra on 12/15/2023

Vicinity Map Tract No. 32628

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