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CONTRACT	
NO.	<u>CT-FN-17-447</u>
AMENDMENT NO.	_____
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Pima County Director of Finance and Risk Management
130 West Congress Street, 6th Floor
Tucson, Arizona 85701

DEVELOPMENT
AND INTERGOVERNMENTAL AGREEMENT
FOR
ROCKING K SOUTH COMMUNITY FACILITIES DISTRICT
(PIMA COUNTY, ARIZONA)
by and among
PIMA COUNTY, ARIZONA,
ROCKING K SOUTH COMMUNITY FACILITIES DISTRICT
(PIMA COUNTY, ARIZONA)
and
ROCKING K DEVELOPMENT CO.

THIS DISTRICT DEVELOPMENT, AND INTERGOVERNMENTAL AGREEMENT (ROCKING K SOUTH COMMUNITY FACILITIES DISTRICT) ("Agreement"), is entered into, effective as of July 11, 2017 (the "Effective Date") by and among Pima County, Arizona, a political subdivision of the State of Arizona ("County"), Rocking K South Community Facilities District, a municipal corporation and political subdivision of the State of Arizona ("District"), and Rocking K Development Company, an Arizona corporation ("Rocking K") (each a "Party" and collectively the "Parties").

1. Background and Purpose.

- 1.1. The County Board of Supervisors, on January 17, 2017, (the "Formation Date"), pursuant to Rocking K's petition, formed the District under A.R.S. §§ 48-701 through 48-725 (the "CFD Act").
- 1.2. The District is comprised of the real property described and depicted in the attached **Exhibit A** (the "Property").
- 1.3. The Trust, on behalf of the Trust's beneficiaries, is the owner of the Property. Rocking K is a beneficiary of the Trust and is the developer of the real property in the District. Fidelity National Title Agency, Inc., an Arizona corporation, is signing this Agreement solely in its capacity as trustee under Trust No. 60380 and not in its corporate capacity (the "Trust"), to consent to its recordation on the Property.
- 1.4. The Property is subject to (i) the Amended and Restated Rocking K Development Agreement recorded in the Official Records of Pima County as Instrument No. 2011-3251226 (the "Off-Site Improvements Agreement"); (ii) the Rocking K Specific Plan, approved by County Ordinance No. 1990-129 on December 18, 1990, as amended by the First Amendment to Rocking K Specific Plan, approved by County Ordinance 1997-69 on September 16, 1997, as it may be further amended from time to time (the "Specific Plan"), and (iii) the Master Block Plat recorded in the Pima County Recorder's Office in Book 64 of Maps & Plats at Page 85.
- 1.5. A general plan for the District (the "General Plan") is on file with the District Clerk, describing certain public infrastructure that the District has authority to construct or acquire. The portions of the Infrastructure that are eligible for reimbursement as provided in this Agreement are described in the attached **Exhibit B** (the "Eligible Infrastructure").
- 1.6. The Board of Directors of the District (the "District Board"), on the Effective Date, has called an election to authorize the District Board to:
 - A. Issue general obligation bonds of the District ("Bonds") in an amount up to \$46,500,000, with an interest rate not in excess of 8%.
 - B. Annually levy, assess and collect an ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding Bonds (the "Debt Service Tax").

C. Annually levy, assess and collect an ad valorem property tax at a rate of up to \$0.30 per \$100.00 of net assessed value against all taxable property in the District to pay the operational expenses of the District (the "O/M Tax").

1.7. This Agreement is a "development agreement" under the CFD Act and A.R.S. § 11-1101 and, as between the District and the County, an "intergovernmental agreement" under A.R.S. §§ 11-951 through 11-955.

1.8. The Parties are entering into this Agreement, among other things, in order to establish a method by which Rocking K can submit a report to the District concerning an identified, separately functional, portion of the Eligible Infrastructure (a "Project") that has been or will be built by Rocking K and conveyed to the County. Projects that have been approved by the District Board and conveyed to the County are eligible for reimbursement if there are available Bond proceeds, as provided in this Agreement.

1.9. This Agreement is consistent with the County's Comprehensive Plan, as applicable to the Property on the Effective Date.

2. Project Financing.

2.1. References to Projects. As used in this Agreement, a "Proposed Project" is a Project with respect to which Rocking K has submitted a Report as provided in Section 3 below; an "Approved Project" is a Proposed Project that has been approved by the District; a "Completed Project" is a Proposed Project that has been both approved and completed in compliance with this Agreement; and an "Accepted Project" is a Completed Project that has, under the terms of this Agreement, been accepted by the County and District and conveyed to the County.

2.2. Project Eligibility. In order for a Project to be eligible for reimbursement under this Agreement, it must primarily benefit the Property and be:

- A. "Public infrastructure" with the meaning of the Act;
- B. Part of the "Eligible Infrastructure" described on **Exhibit B**;
- C. Consistent with the General Plan and the Specific Plan;
- D. Built in compliance with applicable County standards and legal requirements, the information in the Report (as defined in Section 3 below), and all requirements in this Agreement, including specifically those in Section 6; and
- E. Completed by Rocking K and accepted by the County before the 25th anniversary of the Formation Date.

2.3. No District Obligation. Rocking K acknowledges and agrees that:

- A. The approval of any Report, the issuance and sale of Bonds (even when a Report that contemplates such a bond issuance has been approved), and the levy of District

taxes, fees or charges, are subject to the sole, absolute and unfettered discretion of the District Board.

- B. Nothing in this Agreement creates or imposes, and no action or inaction taken at any time by the District under this Agreement can create or impose, either expressly or impliedly, any District obligation to issue or continue to issue Bonds of any amount or levy or continue to levy any tax of any type or amount.
- C. Rocking K has no, and expressly waives any future, claim or cause of action against the District or County, or any elected official, officer or employee of the District or County, related to any failure to approve a Proposed Project Report; issue Bonds, even if scheduled in an Approved Project Report; or levy any tax (except the Debt Service Tax necessary to pay debt service on outstanding Bonds).
- D. Rocking K is not now relying and will not in the future rely, for the development of the Property, on the issuance of any District Bonds, the imposition of any District taxes, assessments, or fees, or the approval of any Proposed Project Report.

2.4. Limitations on Bond Issuances. Rocking K specifically acknowledges all of the following:

- A. Target Tax Rate. The District does not intend to issue a series of Bonds if the debt service for that series, when added to the debt service of all outstanding Bonds, would cause the Debt Service Tax Rate for any year to exceed \$2.30 per one hundred dollars of the District's taxable net assessed value ("NAV") as of the year of issuance. To help ensure the Target Tax Rate will not be exceeded, even if property values decrease in the future, when calculating the amount of debt that may be issued, the District will use only 85% of the NAV within the District as shown on the certified tax roll for the current tax year, and will assume a delinquency factor for tax collections equal to the greater of (i) 5% and (ii) the average annual delinquency factor for the District for the previous 5 years (or since formation if less than 5 years).
- B. Terms. The District may issue Bonds in amounts, and subject to such terms and conditions as the District Board, in its sole discretion, directs, regardless of whether this is consistent with the financing plan set forth in any Report. The District intends that Bonds will have a maximum maturity of 15 years, and, except for the first series of Bonds issued, does not intend to issue any series of Bonds with a principal amount less than \$1,500,000.
- C. Reserve Fund. A portion of the proceeds of a series of Bonds may, if the District Board in its sole discretion deems it necessary, be used to fund a reserve fund securing payment of debt service on that series of the Bonds. The amount so used will not exceed the maximum amount permitted by the Internal Revenue Code of 1986, as amended, and the related Treasury Regulations.
- D. Other Issuances. The District, at any time, may issue and sell Bonds if the proceeds of such Bonds are, in the District Board's sole discretion, necessary to alleviate or

otherwise contain a bona fide threat to public health and safety within the District or repair or replace an Accepted Project.

E. Marketability. The District and County make no representation or warranty that the Bonds can be sold.

3. Standby Contribution Agreements. If Rocking K requests that the District use greater than 85% of the NAV within the District as shown on the certified tax roll for the current tax year to calculate the Target Tax Rate pursuant to paragraph 2.4(A) above, the District Board may condition the issuance of any series of Bonds on the execution by Rocking K of an agreement (a "Standby Contribution Agreement"), in a form acceptable to the District Administrator, in which Rocking K agrees to pay to the District, on the date of initial issuance and delivery of the corresponding series of Bonds, and in each subsequent fiscal year of the District while any portion of those Bonds are outstanding, an amount necessary to maintain the tax rate for debt service on all outstanding Bonds at no more than \$2.30 per \$100.00 of NAV, assuming a delinquency as set forth in Section 2.4 above, and after giving credit for any balance in the debt service fund.

3.1. To provide adequate assurances for payment of any amounts due under a Standby Contribution Agreement, Rocking K will deposit a letter of credit in the District's name with a depository specified by the District, using a form of depository agreement acceptable to the District Administrator. The depository agreement will provide that amounts held by the depository will be paid to the District if either of the following occurs: (i) Rocking K fails to pay any amount due under the Standby Contribution Agreement after expiration of any applicable notice and cure period; or (ii) the letter of credit is terminated or expires, and Rocking K has failed to provide a substitute letter of credit.

3.2. Each Standby Contribution Agreement will provide that it will terminate, and any remaining funds held by the depository will be returned to Rocking K, when one of the following occurs:

A. The District has paid or made provision for payment in full of all outstanding Bonds of the series with respect to which that Standby Contribution Agreement was executed.

B. The District Administrator determines that, for each of the most recent 3 fiscal years, a levy at the rate of \$2.30 for each \$100 of NAV would have been sufficient, if applied to only 85% of the NAV of the District, to cover the debt service on all outstanding Bonds, assuming a delinquency factor as set forth in Section 2.4 above, and without credit for any debt service fund balance.

4. Initial Bond Issuance. Without limiting the District's sole discretion pertaining to a decision whether to issue Bonds, the District currently intends to issue the first series of Bonds no later than necessary to have the debt service tax rate of \$2.30 appear on the first tax bill applicable to any single family residential dwelling unit within the District after it is conveyed, as a single lot, to other than a homebuilder.

5. Proposed Project Reports.

5.1. Submission. Rocking K may from time to time submit to the District a report (“Report”) pertaining to a particular Project, prepared by the Rocking K Engineer and other qualified persons. “Rocking K Engineer” means a firm of professional licensed engineers, approved by the District Engineer and hired by Rocking K in compliance with the Procurement Requirements (as defined in Section 6 below).

5.2. Contents. The Report must comply with the Act, and contain the following elements:

- A. A detailed description of the Proposed Project, and any preliminary designs or concept plans or, if the Proposed Project has already been completed, the final plans.
- B. A map showing the location of the Proposed Project and the area it benefits or will benefit.
- C. An itemized estimate of the cost to design and construct the Proposed Project or, if the Proposed Project has been completed, the Engineers’ Certificate described in paragraph 7.3 below.
- D. An estimate of future maintenance costs for the Proposed Project, and a schedule showing total estimated or actual maintenance costs for all existing Approved Projects, Completed Projects, and Accepted Projects.
- E. If the Proposed Project has not already been completed, a proposed design and construction schedule, together with an explanation of any factors that might reasonably be expected to cause a delay in either commencement or completion.
- F. Title, environmental, and any other appropriate reports showing the legal and physical condition of the real property on which the Proposed Project is or will be located, if it is not already owned by the County or District.
- G. A financing plan, including a proposed schedule for the sale of Bonds. This must include calculations showing the estimated impact of each such Bond issuance on the Debt Service Tax rate, taking into account the estimated interest rate, the debt service on all outstanding Bonds, the timing and impact of other Bond issuances included in the financing plans of other Approved Projects, and any reasonably anticipated increases or decreases in NAV.

5.3. Report Review. The District Administrator will cause the submitted Report to be reviewed by the District Engineer and any other appropriate County or District staff or outside consultants. Rocking K will cooperate fully during this review process, and will provide any additional information or clarification requested. Once this review is completed, the District Administrator will cause the public hearing required by § 48-715 to be scheduled and noticed, and will present the Report to the District Board, along with a staff report and recommendation.

- 5.4. Withdrawal. Rocking K may withdraw the Report at any time before the conclusion of the public hearing. Rocking K will reimburse the District and County for any costs incurred prior to the withdrawal in reviewing the Proposed Project and Report, including compensation for staff time, and any payments to outside consultants.
- 5.5. Hearing and Board Action. After the public hearing the District Board will approve or reject the Report in its sole and unfettered discretion. Rocking K may amend or supplement the rejected Report and resubmit it as a new Report.
6. Design and Construction of Project. Rocking K will, at its sole cost and expense, cause each Project for which it intends to seek reimbursement from the District to be designed and constructed as provided below.
- 6.1. Procurement. Contracts for all engineering, design, and construction work for the Project (“Project Contracts”) will be awarded and administered in compliance with the requirements of Title 34, Arizona Revised Statutes, and the County’s Procurement Code (the “Procurement Requirements”). Rocking K will require contractors to provide the payment and performance bonds required by Title 34, and will pay contractors as provided in Title 34.
- 6.2. No Recourse to County or District. Each Project Contract must advise the contractor/vendor (“Project Contractor”) that it will have no recourse, directly or indirectly, to the District or the County for the payment of any amounts due under the Project Contract, and that Rocking K is solely liable for such payments.
- 6.3. Liabilities and Risks. As between Rocking K and the District and County, Rocking K will bear all risks, liabilities, obligations and responsibilities under the Project Contracts and all risk of loss of or damage to the Project occurring before conveyance to the County.
- 6.4. Insurance. Rocking K will cause the County and the District to be named as insureds and provided waivers of subrogation endorsements on any and all insurance policies required under the Project Contracts.
- 6.5. Assignment of Warranties. Rocking K will provide, in each Project Contract, that it has the right to assign all its warranties, guarantees and owner’s rights under the Project Contract to the District or the County, without requiring the consent of the Project Contractor.
- 6.6. County Review and Inspections. Rocking K will cause plans and specifications for the Project to be prepared and will submit them for County review and approval in accordance with the County’s normal practice. After plans and specifications are approved, Rocking K will cause the Project to be constructed in compliance with the approved plans and specifications, and all applicable County standards, and in a good and workmanlike manner. The County may inspect the work as it progresses, according to normal County practices.

7. Conveyance of Completed Project and Reimbursement of Rocking K.

7.1. Conveyance. Rocking K will convey each Completed Project to the County, the County will accept it, and the District will pay the approved Acquisition Price from available bond proceeds as provided below, subject to all applicable limitations and conditions in this Agreement.

- A. The County's acceptance will be subject to the requirements and conditions precedent that normally apply and are used by the County when accepting completed public infrastructure from developers, and to the County Engineer's review and approval of the documentation provided under paragraph 7.3 below.
- B. The conveyance will include fee title to or, at the County's discretion, an easement on the land on which the Completed Project was built, if it is not already owned by the County or District. The width of any rights-of-way will be as stated in the Specific Plan or according to County standards.
- C. Conveyance of the Completed Project will be accomplished using a document substantially in the form of **Exhibit C**, or another form approved by the District Engineer.

7.2. Acquisition Price. The "Acquisition Price" for a Completed Project is the sum of all costs incurred by Rocking K specifically for design and construction of the Completed Project, except for any costs incurred in connection with acquisition of real property interests, and any other items that **Exhibit B** identifies as ineligible for reimbursement, or that are identified by the District Engineer as ineligible for reimbursement. The Acquisition Price will be established by the Engineers' Certificate, as defined below. The District's acceptance of the Acquisition Price will be evidenced by the District Engineer's signature on the Engineers' Certificate.

7.3. Documentation and Engineers' Certificate. With respect to each Completed Project, Rocking K will provide to the District Engineer evidence of final payment; lien releases; assignments of warranties, Project Contracts, and payment and performance bonds; a sworn certificate in the form of **Exhibit D** (the "Engineers' Certificate") signed by the Rocking K Engineer; and any other documents required by the District Administrator or District Engineer. The District Engineer will review all the documentation provided and will, if it is satisfactory, sign the Engineers' Certificate, evidencing acceptance of the Acquisition Price.

7.4. Reimbursement from Available Bond Proceeds. The District will, subject to all the conditions and limitations set forth in this Agreement, pay Rocking K the approved Acquisition Price for each Accepted Project, but only when and to the extent it has available, unrestricted Bond proceeds for that purpose. Payment by the District is not a condition precedent to Rocking K's obligation to convey the Completed Project to the County. The District's obligation to pay for an Accepted Project will expire 15 years after the project was completed, regardless of whether the entire Acquisition Price was paid. If there are not sufficient Bond proceeds to pay the entire Acquisition Price at the

time of conveyance, the District may include the unpaid portion in one or more future Bond financings.

8. Administration and Operation of District.

8.1. County Maintenance of Accepted Projects; Administrative Services.

- A. The County will (i) repair and maintain all Accepted Projects; (ii) provide all staff and administrative services to the District, which does not have its own employees; and (iii) procure supplies and services for the District from outside consultants and vendors, including independent financial advisors, attorneys, bond counsel, underwriters, and engineers, using standard County procurement procedures. All the costs associated with providing all such services and supplies, including charges for staff time, are "District Expenses." "Administrative Expenses" means all District Expenses other than the cost of maintaining and repairing Accepted Projects (which are referred to in this Agreement as "Maintenance Expenses").
- B. District Expenses may be incurred by the District, or by the County on the District's behalf, subject to the District's approved budget but otherwise in the sole discretion of the District Board or District Administrator or his designees, as appropriate.

8.2. Payment of District Expenses. The District will, to the extent of available funds, on an annual or other administratively convenient basis, reimburse the County for District Expenses from the proceeds of the O/M Tax and the District Shortfall payments made by Rocking K under paragraph 8.3. Rocking K agrees that the District may call an election not less than three years after the date of formation of the District to increase the O/M Tax to an amount up to \$0.50 per \$100.00 of assessed valuation against all taxable property in the District. The proceeds of any O/M Tax in excess of \$0.30 shall be used exclusively for Maintenance Expenses.

8.3. Shortfalls. For each fiscal year during the "Shortfall Period," as defined below, Rocking K will pay to the District any amount by which that year's Administrative Expenses exceed the amount of O/M Tax receipts remaining after payment of that year's Maintenance Expenses (a "District Shortfall"), provided that the District has levied or will levy for that entire fiscal year the O/M Tax at the maximum authorized rate. The "Shortfall Period" is a 30-year period commencing on the Effective Date.

- A. Rocking K, or, if approved by the District Administrator in his sole discretion, in lieu of Rocking K, a homeowners association or similar association (an "HOA"), will, on or before July 1 each year during the Shortfall Period, pay the District the amount of the District Shortfall projected in the adopted District Budget for the fiscal year beginning on July 1, plus or minus (as appropriate) any amount by which the actual shortfall in the fiscal year that ended June 30 of the previous calendar year exceeded or was less than the amount actually paid by Rocking K for that year.
- B. Notwithstanding the foregoing, Rocking K is not obligated to pay a District Shortfall in excess of \$10,000.00 per Fiscal Year.

- C. The District may set off any overdue District Shortfall payments against Acquisition Price payments to Rocking K.

9. Indemnification.

9.1. Indemnified Parties. As used in this Section, "Indemnified Parties" means the County, the District, and all County and District elected officials, officers, and employees.

9.2. Rocking K Indemnity. Except as set forth in the next paragraph, Rocking K will indemnify, defend, and hold each Indemnified Party harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising in whole or in part from any alleged action or inaction related to the formation, activities or administration of the District or the carrying out of the provisions of this Agreement. This includes, but is not limited to, anything related to (i) the levy or collection of the Debt Service Tax; (ii) the offer or sale of Bonds; (iii) any alleged violation of state and federal laws that regulate the issuance and sale of securities; and (iv) any Project Contract or any Approved, Completed, or Accepted Project, including claims of any contractor, vendor, subcontractor or supplier.

9.3. Exclusions. The above indemnity obligation does not extend to any loss, claim, damage or liability to the extent that it:

- A. Is caused by the gross negligence or willful misconduct of any Indemnified Party.
- B. Is covered by insurance (excluding any self-insurance or coverage provided pursuant to any insurance contracts obtained by the County in the course of its normal business and not specifically for District purposes) that names the District as an insured or beneficiary, or by a contractual indemnity given by another entity. Rocking K will indemnify and defend the Indemnified Party to the extent that such coverage is insufficient to fully do so, but that obligation is secondary to and in excess of the primary insurance, risk retention or other indemnification options or remedies of the Indemnified Party.
- C. Arises from a construction defect in any Accepted Project that was not known to Rocking K and is discovered one (1) year or more following acceptance by the County or District.
- D. Is caused by a breach of this Agreement by the District, County or other Indemnified Party.
- E. Arises from any District administrative activity, tax or assessment levy, or offer or sale of Bonds, that is not related to any activity of Rocking K, or to infrastructure that was constructed by Rocking K, or to infrastructure that was the subject of an approved Report submitted by Rocking K.

9.4. Defense; Notification.

- A. An Indemnified Party will promptly notify Rocking K after receiving any written claim or threat of legal action against the Indemnified Party that is covered by the above indemnity obligation. The notification will be in writing and include a copy of the claim or threat. If an Indemnified Party fails to give the required notice, Rocking K's liability on its indemnity will be reduced by, and only by, the amount of any damages attributable to that failure.
- B. If a legal action is commenced against an Indemnified Party, Rocking K may, or if requested by the Indemnified Party will, participate in the action or defend the Indemnified Party with counsel satisfactory to the Indemnified Party and Rocking K. Except as provided below, Rocking K will not be liable for the litigation expenses, including attorney fees, if an Indemnified Party retains their own counsel after Rocking K notifies the Indemnified Party that Rocking K is electing to assume the party's defense.
- C. Rocking K will, however, pay litigation expenses, including attorney fees for counsel retained by an Indemnified Party, if Rocking K does not provide counsel when the Indemnified Party asks it to do so, or if an Indemnified Party reasonably concludes that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Rocking K (in which case Rocking K shall not have the right to direct the defense of such action on behalf of such Indemnified Party).

9.5. District Indemnity. To the extent permitted by applicable law, the District will indemnify, defend and hold harmless the County and each individual Indemnified Party (the "District Indemnified Parties") for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from, in connection with, or relating to the performance of this Agreement. The District is not, however, obligated to indemnify the District Indemnified Parties with respect to damages caused by the gross negligence or willful misconduct of the District Indemnified Parties. This indemnity obligation is secondary to Rocking K's obligations under Section 9.2 above.

10. Tax-Exempt Status of Bonds. No Party will knowingly take, or cause to be taken, any action that would cause interest on any Bond to be includable in gross income for federal income tax purposes of the Internal Revenue Code of 1986, as amended.

11. Disclosure.

11.1. "Disclosure statement" as used in this section means a written notice, in a form reasonably satisfactory to the District Administrator, that the Property is within the boundaries of the District, that Bonds may currently be outstanding and/or issued by the District in the future, and that the District will levy taxes to pay the debt service on Bonds and pay the administrative and operational expenses of the District.

11.2. Obligation to Provide Disclosure Statement. Rocking K, and each successor owner of any portion of the Property, upon entering into a contract to sell any portion of the

Property, will provide a Disclosure Statement to the purchaser, and file a copy of the Disclosure Statement, signed by the new owner, with the District Administrator. Any owner's failure to provide a purchaser with the Disclosure Statement will not relieve that subsequent owner from the obligation to pay District taxes and assessments.

11.3. Additional Information. Rocking K and successor developers of any portion of the Property will provide any information and documents, including audited financial statements, to the District or to any necessary repository or depository, to the extent necessary for the underwriters of the Bonds to comply with Rule 15c2-12 of the Securities Exchange Act of 1934.

12. Successors; Assignments.

12.1. Binding Agreement. Each Party's rights and obligations under this Agreement will inure to the benefit of, and be binding upon, its legal representatives, successors and assigns.

12.2. City as Successor to County. If any portion of the Property is incorporated or annexed into a municipality, that municipality will be the successor to the County's rights and obligations under this Agreement with respect to the annexed property, from and after the effective date of the annexation.

12.3. Right to Assign. No Party may assign its rights or obligations under this Agreement to another without the prior written consent of the other Parties, who may not unreasonably withhold that consent. Notwithstanding the foregoing, Rocking K may assign its rights and obligations under this Agreement to an affiliated entity without the prior written consent of the County and the District, but that assignment will not operate as a release of Rocking K unless the District consents to such a release in writing.

12.4. Sale of Individual Lots. Unless prohibited by law, this Agreement will automatically terminate as to, and will not constitute a title condition or encumbrance on, any individual lot upon conveyance of that lot to an individual purchaser (not as part of a bulk sale). In this Section, "lot" means any lot upon which a home or commercial building has been completely constructed and with respect to which a certificate of occupancy has been issued, that is shown on a recorded subdivision plat that has been approved by the County. Any title insurer may rely on this Section when issuing any commitment or policy of title insurance to the purchaser of any individual lot.

13. Entire Agreement. This Agreement sets forth the entire understanding of the parties as to the matters addressed, as of the date this Agreement is executed. It is intended to reflect the mutual intent of the Parties, and will not be strictly construed against any Party.

14. Amendment. This Agreement cannot be altered or otherwise amended except by an instrument in writing signed by each of the Parties, except that an amendment signed by only Rocking K and the District will be effective as between them Rocking K and the District, provided it does not amend any right, benefit or obligation of the County.

15. Applicable Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.
16. Waiver. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.
17. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.
18. Conflict of Interest. The County and the District each have the right, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the County or the District, is, at any time during that three-year period, an employee or agent of Rocking K in any capacity or a consultant to Rocking K with respect to the subject matter of this Agreement. In addition, the County and District may each recoup from Rocking K any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that entity. Rocking K has not taken and will not take any action that would give rise to a right of cancellation under this paragraph.
19. Term. Unless terminated earlier by agreement of the Parties, this Agreement will automatically terminate on December 31, 2058, or on such earlier date as all authorized Bonds have been issued and then paid in full, or such later date as any Bonds outstanding as of December 31, 2058, are paid in full.

20. Notices.

20.1. All notices, certificates or other communications under this Agreement will be sufficiently given and will be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to County or the District:	Pima County, County Administrator 130 W. Congress St., 10 th Floor Tucson, Arizona 85701 (Telephone) (Fax)
With a copy to:	Pima County, County Attorney 32 N. Stone Ave., Suite 2100 Tucson, Arizona 85701-1412 (Telephone) (Fax)

If to Rocking K: David Goldstein, President
Rocking K Development Co.
2200 E. River Rd., Suite 115
Tucson, Arizona 85718
(520) 577-0200

With a copy to: Dana Stagg Belknap, Esq.
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85015
(602) 530-8348

- 20.2. Any Party, by notice given in compliance with this Section, may designate different addresses to which subsequent notices, certificates or other communications must be sent.
21. Severability. If a court finds that a provision of this Agreement is invalid or unenforceable, that will not invalidate or render unenforceable any other provision of the Agreement.
22. Other Obligations. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law, and the provisions of this Agreement shall not affect the Parties' rights and obligations contained in the Off-Site Improvements Agreement and Specific Plan.
23. Recordation. No later than ten (10) days after this Agreement is executed and delivered by each of the Parties, Rocking K will on behalf of the County and the District record a copy of this Agreement with the County Recorder of Pima County, Arizona.
24. Force Majeure. No Party will be in default due to a failure to observe or perform any restriction or obligation under this Agreement if the failure is due to *Force Majeure*, so long as the Party uses its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. "*Force Majeure*" means any condition or event not within the control of a party obligated to perform hereunder, including, without limitation, "acts of God"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure of a Party to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of an opposing party, in either case when such course is in the judgment of the Party unfavorable to the Party, does not constitute failure to use its best efforts to remedy such a condition or event.
25. Legislative Acts. Notwithstanding any provision of this Agreement to the contrary, neither the District nor the County is required to do anything under this Agreement that requires a

formal act of that entity's governing board until such formal act is taken. This Agreement in no way acquiesces to or obligates the County or the District Board to perform a legislative act.

26. Default.

26.1. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice from any other Party of the failure or delay constitutes a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action, then the Party will have such additional time as is reasonably necessary to perform or comply so long as the Party commences performance or compliance within the 30-day period and diligently proceeds to complete such performance or fulfill such obligation.

26.2. The default notice must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event the default is not timely cured as provided above, any non-defaulting Party may exercise any legal rights or remedies for the default.

IN WITNESS WHEREOF, the officers of the County and of the District have duly affixed their signatures and attestations, and the officers of Rocking K their signatures, all as of the day and year first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

PIMA COUNTY

By: Sharon Bronson
Sharon Bronson, Chair of the Board of Supervisors

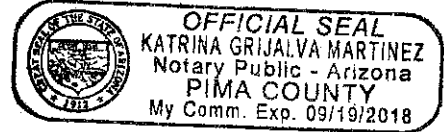
Date: JUL 11 2017

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 11th day of July, 2017, by Sharon Bronson as Chair of the Board of Supervisors of Pima County, a political subdivision of the State of Arizona.

Katrina Grijalva Martinez
Notary Public

(Affix Seal Here)



ATTEST:

Julie Castaneda Deputy
Julie Castaneda, Clerk of the Board of Supervisors

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the County who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the County.

Regina LaSalle
Deputy County Attorney

**ROCKING K SOUTH COMMUNITY
FACILITIES DISTRICT**

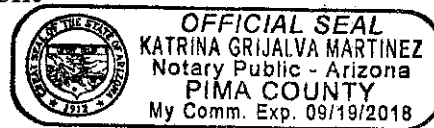
By: Sharon Bronson JUL 11 2017
Sharon Bronson, Chair of the District
Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 11th day of July, 2017, by Sharon Bronson as Chair of the Board of Directors of Rocking K South Community Facilities District, an Arizona community facilities district.

Katrina Grijalva Martinez
Notary Public

(Affix Seal Here)



ATTEST:

Julie Castaneda Deputy
Julie Castaneda, District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

Dyana Lalass
Deputy County Attorney

**ROCKING K DEVELOPMENT
COMPANY, INC.**, an Arizona
corporation, on behalf of itself and all
beneficiaries of the Trust

By: 
David Goldstein, President

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 6 day of
July, 2017, by David Goldstein, President of Rocking K Development Company,
Inc., an Arizona corporation, on behalf of the corporation.

My commission expires: June 15, 2020




Notary Public

**CONSENT TO DISTRICT DEVELOPMENT, FINANCING PARTICIPATION,
WAIVER AND INTERGOVERNMENTAL AGREEMENT (ROCKING K SOUTH
COMMUNITY FACILITIES DISTRICT)**

Fidelity National Title Agency, Inc., an Arizona corporation, in its capacity as trustee under Trust No. 60380 and not in its corporate capacity (the "Trust"), hereby signs this Agreement solely to consent to its recordation on the real property in the District.

FIDELITY NATIONAL TITLE AGENCY, INC., an
Arizona corporation, as trustee of Trust No. 60380
and not in its corporate capacity

By: Martha L. Hill
Martha L. Hill, Trust Officer

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 5th day of
JULY, 2017, by Martha L. Hill, Trust Officer of Fidelity National Title Agency,
Inc., an Arizona corporation.

My commission expires:

Rita L. Kippes
Notary Public

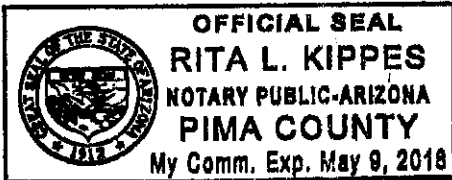


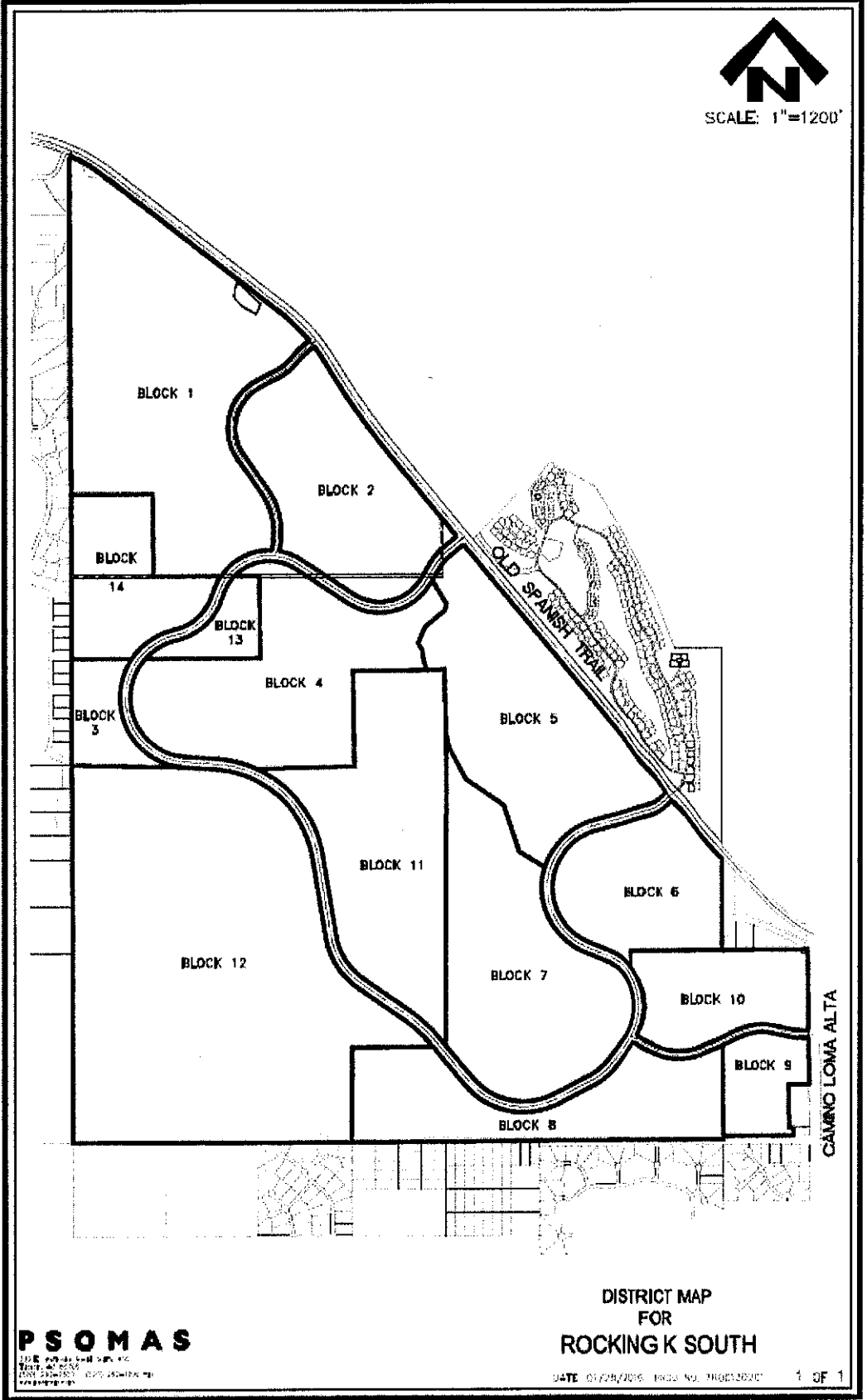
EXHIBIT A

The Property

Blocks 1 through 14 of Rocking K South, a subdivision of Pima County, Arizona, as recorded in Book 64 of Maps and Plats, at Page 85, in the office of the Pima County Recorder.



SCALE: 1"=1200'



DISTRICT MAP FOR ROCKING K SOUTH

PSOMAS
PLANNING SERVICES OF SANTA MONICA ASSOCIATES, INC.
 1000 AVENUE 100, SUITE 100
 SANTA MONICA, CALIFORNIA 90404
 TEL: 310.317.1000 FAX: 310.317.1001
 WWW.PSOMAS.COM

DATE: 01/29/2016 PLOD NO.: 110012800 1 OF 1

53835 / 00449455 / v19

5784591v4/8505-0004

EXHIBIT B

ELIGIBLE INFRASTRUCTURE

Spine Road Improvements: roadway improvements and related work for Rocking K Ranch Loop, Monument View Way and Pump House Road as shown on the Final Plat for Rocking K South, Blocks 1-14, recorded at Book 64, Page 85, and further as detailed on the Site Construction Permit Public Paving Plan for Rocking K South (P14SI00029). Eligible improvements include but are not limited to paving, subgrade, base course, curb, paths/trails/sidewalks, traffic signal, striping, signage, grading/earthwork, utility adjustments, and jurisdictional fees.

Old Spanish Trail (along District property frontage between spine roads): roadway improvements and related work for Old Spanish Trail along the District property between the two intersections of Rocking K Ranch Loop with Old Spanish Trail. Eligible improvements include but are not limited to paving, subgrade, base course, curb, paths/trails/sidewalks, traffic signal, striping, signage, grading/earthwork, utility adjustments, and jurisdictional fees.

Camino Loma Alta: roadway improvements and related work for Camino Loma Alta from the intersection of Old Spanish Trail south along the frontage of the District property. Eligible improvements include but are not limited to paving, subgrade, base course, curb, paths/trails/sidewalks, traffic signal, striping, signage, grading/earthwork, utility adjustments, and jurisdictional fees.

Engineering: costs including but not limited to engineering, geotechnical/soils, landscape architecture, traffic reports, environmental, biological, archeological, hydrological/hydraulic, as-builts, testing and jurisdictional fees necessary for the design, and permitting of the Eligible Improvements.

Surveying: land surveying costs necessary for the construction, dedication, as built, testing and jurisdictional fees related to the design and construction of the Eligible Improvements.

On-Site Public Sewer: all public sewer improvements and related work including design, construction, testing and jurisdictional fees necessary to provide sewer service to the District property. Eligible sewer improvements include but are not limited to sewer improvements and related work located within Rocking K Loop, Monument View Way, Pump House Road and other sewer improvements not located within a subdivision development parcel.

Drainage: all drainage improvements and related work for Rocking K Ranch Loop, Monument View Way, Pump House Road, Old Spanish Trail (along District property frontage between spine roads) and Camino Loma Alta. Eligible improvements include but are not limited to storm drain, culverts, catch basins erosion control, slope protection, scuppers, headwalls, wing walls, grading, cut off walls and hand rail.

Landscaping in right of way: all landscaping improvements and related work located within Rocking K Ranch Loop, Monument View Way, Pump House Road, Old Spanish Trail (along District property frontage between spine roads) and Camino Loma Alta. Eligible improvements

include but are not limited to plant material (trees, shrubs, cacti, hydroseed, etc.), inert materials (decomposed granite, boulders, rip rap, etc), irrigation, and grading.

Public Parks, Trails, Monuments: all work necessary to improve public parks within the District property that comply with all County standards and are in excess of 10 acres in size, and all trails and related public improvements that are shown on the Final Plat for Rocking K South, Blocks 1-14, recorded at Book 64, Page 85 which will fulfill the "Rocking K Ranch Trail and Park Sites Agreement" requirement for "Trails South of Old Spanish Trail" and "Trail #67-Old Spanish Trail." Eligible improvements include but are not limited to all work necessary for the improvement of the public parks (recreation equipment, play structures, fields, bathroom facilities, buildings, ramadas, paths, trails, landscaping and related work, parking areas, driveways, lighting, grading, drainage, utilities) and all work necessary for the completion of the trail improvements (concrete, asphalt, landscaping, irrigation, inert materials, grading, drainage, etc.).

EXHIBIT C

FORM OF CONVEYANCE INSTRUMENT

(insert description of Project)

STATE OF ARIZONA)
COUNTY OF PIMA)
ROCKING K SOUTH COMMUNITY)
FACILITIES DISTRICT)

KNOW ALL MEN BY THESE PRESENTS THAT:

Rocking K Development Co. (the "Developer"), in consideration of the promise to pay *[INSERT ACQUISITION PRICE]* to the Developer by Rocking K South Community Facilities District, a community facilities district formed by Pima County (the "County") and duly organized and validly existing pursuant to the laws of the State of Arizona ("District"), such amount in accordance with the hereinafter described Agreement, does by these presents grant, bargain, sell and convey, at the request of the District, to the County, all right, title and interest in and to the following described property, being the subject of the Development and Intergovernmental Agreement for Rocking K South Community Facilities District (Pima County, Arizona), dated as of _____, 2017, by and among the County, the District and Rocking K, as amended from time to time (the "Agreement"), as follows:

[insert description of Project]

Together with any and all benefits, including warranties and performance and payment bonds, under the Project Contract(s) (as such term is defined in the Agreement) relating thereto, all of which are or shall be located within public rights-of-way, public utility or other public easements dedicated by map of dedication, plat, or otherwise, free and clear of any and all liens, easements, restrictions, conditions, or encumbrances affecting the same, but subject to all reservations in patents, and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations, leases, and liabilities or other matters as set forth on Schedule 1 hereto.

TO HAVE AND TO HOLD the above-described property, together with all and singular the rights and appurtenances thereunto in anywise belonging, including all necessary rights of ingress, egress, and regress, subject, however, to the above-described exception(s) and reservation(s), unto the County, its successors and assigns, forever; and the Developer does hereby bind itself, its successors and assigns to warrant and forever defend, all and singular, the above-described property, subject to such exception(s) and reservations unto the District or the County, its successors, and assigns, against the acts of the Developer and all others.

The Developer binds and obligates itself, its successors and assigns, to execute and deliver at the request of the District any other or additional instruments of transfer, bills of sale, conveyances, or other instruments or documents which may be necessary or desirable to evidence more completely or to perfect the transfer to the District of the above-described property, subject to the exception(s) and reservation(s) hereinabove provided.

This conveyance is made pursuant to the Agreement, and the Developer hereby agrees that the amounts specified above and paid or promised to be paid to the Developer hereunder satisfies in full the obligations of the District under such Agreement and hereby releases the District from any further responsibility to make payment to the Developer under the Agreement except as above provided.

The Developer, in addition to the other representations and warranties herein, specifically makes the following representations and warranties:

1. The Developer has the full legal right and authority to make the sale, transfer, and assignment herein provided.
2. The Developer is not a party to any written or oral contract that adversely affects this Conveyance.
3. The Developer is not subject to any bylaw, agreement, mortgage, lien, lease, instrument, order, judgment, decree, or other restriction of any kind or character that would prevent the execution of this Conveyance.
4. The Developer is not engaged in or threatened with any legal action or proceeding, nor is it under any investigation that prevents the execution of this Conveyance.
5. The person executing this Conveyance on behalf of the Developer has full authority to do so, and no further official action need be taken by the Developer to validate this Conveyance.
6. The facilities conveyed hereunder are all located within property owned by the Developer, public rights-of-way or public utility or other public easements dedicated by deed, map of dedication, plat or otherwise.

IN WITNESS WHEREOF, the Developer has caused this Conveyance to be executed and delivered this ____ day of _____, 20__.

By _____
Title _____

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, the _____ of _____, an Arizona corporation.

My commission expires:

Notary Public

EXHIBIT D

FORM OF ENGINEERS' CERTIFICATE

(insert description of project)

STATE OF ARIZONA)
COUNTY OF PIMA)
ROCKING K SOUTH COMMUNITY)
FACILITIES DISTRICT)

Capitalized terms used in this Certificate have the meanings assigned by the Agreement described below.

We the undersigned, being Registered Engineers in the State of Arizona and, respectively, the duly appointed District Engineer for the Rocking K South Community Facilities District (the "District") and the engineer employed by Rocking K Development Co. (the "Developer"), each hereby certify for purposes of the Development and Intergovernmental Agreement for Rocking K South Community Facilities District (Pima County, Arizona), dated as of _____, 2017, by and among Pima County (the "County"), the District and Rocking K, as amended from time to time (the "Agreement"), that:

1. The Project described above has been completed in accordance with plans and specifications approved by the County and the Project Contract(s) for such Project.
2. The Acquisition Price for such Project is \$ _____.
3. The Developer complied with the Procurement Requirements as required by the Agreement (including, particularly but not by way of limitation, Title 34, Arizona Revised Statutes, as amended) in connection with the award of the Project Contract(s) for such Project.
4. The Developer filed all construction plans, specifications, contract documents, and supporting engineering and cost data for the construction or installation of such Project with the District Engineer and the County.
5. The Developer obtained and has supplied to the District evidence of good and sufficient performance and payment bonds or other such equivalent payment and performance financial guarantees acceptable to the District Manager and the District Engineer in connection with such Project Contract(s).

DATED AND SEALED THIS _____ DAY OF _____, 20__.

By _____

District Engineer

[P.E. Seal]

By _____

Developer's Engineer

[P.E. Seal]