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**ACQUISITION AGREEMENT**

**by and between the**

**TEMECULA PUBLIC FINANCING AUTHORITY**

**and**

**SB ALTAIR, LLC**

**dated as of February 13, 2024**

**relating to:  
Temecula Public Financing Authority  
Community Facilities District No. 23-01  
(Altair)**

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THIS ACQUISITION AGREEMENT (the "Acquisition Agreement"), dated as of February 13, 2024, is by and between (i) the Temecula Public Financing Authority, a joint exercise of powers authority organized and existing under the laws of the State of California (the "Authority"), for and on behalf of the Authority's Community Facilities District No. 23-01 (Altair) (the "CFD"), and (ii) SB Altair, LLC, a Delaware limited liability company (the "Developer").

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** The following capitalized terms shall have the meanings given to them in this Section 1.01 for purposes of this Acquisition Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings given to them in the Fiscal Agent Agreement (as hereinafter defined), and as described in the last paragraph of Section 3.01.

"Acceptable Title" means title to land or interest therein, in form acceptable to the Director of Public Works, which title or interest is free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, but subject to any exceptions determined by the Director of Public Works as not interfering with the actual or intended use of the land or interest therein. Notwithstanding the foregoing, an irrevocable offer of dedication may constitute land with an "Acceptable Title" if: (i) such offer is necessary to satisfy a condition to a tentative or final parcel map, (ii) such offer is in a form acceptable to the Director of Public Works, (iii) the Director of Public Works has no reason to believe that such offer of dedication will not be accepted by the applicable public agency, and (iv) the Developer commits in writing not to allow any liens to be imposed on such property prior to its formal acceptance by the applicable public agency.

"Acceptance Date" means the date the City Council of the City (or other public entity which is to own a Facility) takes final action to accept dedication of or transfer of title to a Facility.

"Acquisition Agreement" means this Acquisition Agreement, together with any Supplement hereto.

"Act" means the Mello-Roos Community Facilities Act of 1982, Section 53311 et seq. of the California Government Code, as amended.

"Actual Cost" means the substantiated cost of a Facility, which costs may include: (i) the costs (evidenced by payments to parties unrelated to the Developer, or, in the event that the Developer avails itself of the provisions of Section 4.03(C), determined by reference to the written contract to be entered into with the Developer as referenced in said Section) incurred by the Developer for the construction of such Facility, (ii) the reasonable costs incurred by the Developer in preparing the Plans for such Facility and the related costs of design, engineering and environmental evaluations of the Facility, (iii) the fees paid to governmental agencies for

obtaining permits, licenses or other governmental approvals for such Facility, (iv) professional costs incurred by the Developer associated with such Facility, such as engineering, architecture, landscape architecture, legal, accounting, inspection, construction staking, materials testing and similar professional services; (v) costs directly related to the construction and/or acquisition of a Facility, such as costs of payment, performance and/or maintenance bonds, and insurance costs related to Facilities (including costs of any title insurance required hereunder, but not including the cost of any insurance described in Section 7.01 of this Acquisition Agreement); and (vi) the out-of-pocket cost to the Developer of any real property or interest therein that the Developer must acquire from one or more entities that are not Affiliates of the Developer and which acquisition is required for the construction of a Facility and which real property or interest therein is required to be conveyed to the public entity that will own or operate such Facility. Actual Cost may include an amount not in excess of five percent (5%) of the cost described in clause (i) of the preceding sentence in respect of any construction, project management or other similar fee payable to the Developer or any party related thereto. Actual Cost shall not include any financing fees, costs or charges, or any interest, cost of carry or other similar charges.

“Affiliate” means any entity with respect to which fifty percent (50%) or more of the ownership or voting power is held individually or collectively by the Developer and any other entity owned, controlled or under common ownership or control by or with, as applicable, the Developer, and includes the managing member of any entity that is a limited liability company, and includes all general partners of any entity which is a partnership. Control shall mean ownership of fifty percent (50%) or more of the voting power of or ownership interest in the respective entity.

“Authority” means the Temecula Public Financing Authority, a joint exercise of powers agency duly created and existing under the laws of the State.

“Bonds” means any bonds issued by the Authority under the Act for the CFD, proceeds of which are deposited to the Improvement Fund to be used to pay costs of the Facilities.

“Budgeted Cost” means the estimated cost of a Facility as shown on Exhibit B hereto, as such Exhibit may be amended, modified or supplemented from time to time as allowed by Section 10.12.

“CFD” means the Temecula Public Financing Authority Community Facilities District No. 23-01 (Altair), formed by the Board of Directors of the Authority under the Act.

“City” means the City of Temecula, California.

“City Attorney” means the attorney, or firm of attorneys, serving in the capacity of City Attorney for the City.

“Conditions of Approval” means the conditions of approvals and mitigation measures imposed in connection with the granting of the land use entitlements for the development of land in the CFD, and any subdivision improvement, development or other agreement with the City relating to the development of the land in the CFD or the installation of the Facilities.

“County” means the County of Riverside, California.

“Developer” means SB Altair, LLC, a Delaware limited liability company, and its successors and assigns to the extent permitted under Section 10.07 hereof.

“Director of Public Works” means the Director of Public Works of the City, or his written designee acting as such under this Acquisition Agreement.

“Facilities” means the public facilities described in Exhibit A hereto which are eligible to be financed by the CFD.

“Fiscal Agent” means an entity acting as fiscal agent under a Fiscal Agent Agreement, or any successor thereto acting as fiscal agent under a Fiscal Agent Agreement.

“Fiscal Agent Agreement” means any agreement by that name, between the Authority for the CFD and the Fiscal Agent, providing for, among other matters, the issuance of the Bonds and the establishment of the Improvement Fund, as executed and as it may thereafter amended and supplemented in accordance with its terms.

“Future Annexation Area” means the area described as such in the Resolution of Formation.

“Improvement Area No. 1” means Improvement Area No. 1 of the Temecula Public Financing Authority Community Facilities District No. 23-01 (Altair).

“Improvement Fund” means (a) prior to the date of issuance of any Bonds, a fund maintained by the Authority into which it will deposit Special Taxes in accordance with section 3.04 hereof; and (b) from and after the issuance of any Bonds, an Acquisition Account within the Improvement Fund established by a Fiscal Agent Agreement. During the period in which the Improvement Fund is to be maintained by the Authority, it may be maintained as a component of any other fund maintained by the Authority and funds therein may be commingled with other Authority funds for investment and safekeeping purposes, so long as the Authority maintains separate records for the amounts deposited thereto, any investment earnings thereon, and any amounts withdrawn therefrom.

“Payment Request” means a document, substantially in the form of Exhibit C hereto, to be used by the Developer in requesting payment of a Purchase Price.

“Plans” means the plans, specifications, schedules and related construction contracts for the Facilities approved pursuant to the applicable standards of the City or other entity that will own, operate or maintain the Facilities when completed and acquired. As of the date of this Acquisition Agreement, the City standards for construction incorporate those set forth in the Green Book, Standard Specifications for Public Works Construction (SSPWC), adopted by Public Works Standards, Inc., as modified by any applicable City Special Provisions.

“Purchase Price” means the amount paid by the Authority for a Facility determined in accordance with Article V hereof, being an amount equal to the Actual Cost of such Facility, but subject to the limitations and reductions provided for in Article V.

“Resolution of Formation” means Resolution No. TPFA 24-\_\_\_\_, providing for the formation of the CFD, designating Improvement Area No. 1 and identifying the Future Annexation Area.

“Risk Manager” shall mean the person acting in the capacity of Risk Manager for the City.

“Special Tax” when used in this Acquisition Agreement, means “Special Tax A” as defined in the Rate and Method of Apportionment.

“State” means the State of California.

“Supplement” means a written document amending, supplementing or otherwise modifying this Acquisition Agreement and any exhibit hereto, including any amendments to the list of Facilities in Exhibit B, and/or the addition to Exhibit B of additional Facilities to be financed with the proceeds of the Bonds deposited in the Improvement Fund.

## ARTICLE II

### RECITALS

**Section 2.01. The CFD.** The Board of Directors of the Authority is conducting proceedings to form the CFD under the Act for the financing of, among other things, the acquisition, construction and installation of public facilities identified in the proceedings to form the CFD, which include the Facilities listed in Exhibit A hereto.

**Section 2.02. The Development.** The Developer, together with other entities, is developing land located within the CFD.

**Section 2.03. The Facilities.** The Facilities are within or in the vicinity of the CFD, and the Authority and the Developer will benefit from a coordinated plan of design, engineering and construction of the Facilities and the development of the land that is located within the CFD. The Developer acknowledges that the inclusion of Facilities in Exhibit A hereto in no way, in itself, obligates the Authority to use any funds in the Improvement Fund to finance the Facilities or implies that the Authority has in any way engaged the Developer to construct the Facilities, except as specifically provided in this Acquisition Agreement. The Facilities which are the subject of acquisition from the Developer under this Acquisition Agreement are only the Facilities listed in Exhibit B hereto, as such Exhibit may be amended and/or supplemented by any Supplement; however, this Acquisition Agreement shall in no way, by itself, obligate the Developer to construct any of the Facilities.

**Section 2.04. The Financing.** The Developer and the Authority wish to finance the acquisition, construction and installation of some of the Facilities and the payment therefor by entering into this Acquisition Agreement for the acquisition of the Facilities and therefor as shown in Exhibit B hereto (as it may be amended and supplemented) with funds deposited to the Improvement Fund.

**Section 2.05. The Bonds.** The Authority is proceeding with the authorization and issuance of the first series of the Bonds for the CFD under the Act and the Fiscal Agent Agreement, the proceeds of which Bonds shall be used, in part, to finance the acquisition of all or a portion of the Facilities. The execution by the Authority of this Acquisition Agreement in no way obligates the Authority to form the CFD, to issue any Bonds, or the City to acquire any Facilities financed with proceeds of any Bonds issued; except, when and if the CFD is formed and the Bonds are issued, the Facilities listed in Exhibit B hereto which are to be acquired subject to the terms and conditions set forth in this Agreement.

**Section 2.06. No Advantage to Authority Construction.** The Authority, by its approval of this Acquisition Agreement, has determined that it will obtain no advantage from undertaking the construction by the Authority directly of the Facilities, and that the provisions of this Acquisition Agreement require that any Facilities to be constructed by the Developer be so constructed by the Developer as if they had been constructed under the direction and supervision of the Authority. The Developer hereby represents that it has experience in the supervision of the construction of public facilities of the character of the Facilities.

**Section 2.07. Agreements.** In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Authority and the Developer agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein.

### ARTICLE III

#### FUNDING

**Section 3.01. Authority Proceedings.** The Authority shall conduct all necessary proceedings under the Act for the issuance, sale and delivery of one or more of the Bonds for the CFD; provided, however, that nothing herein shall be construed as requiring the Authority to form the District or issue any of the Bonds for the CFD, as the Developer acknowledges that such formation is subject to public hearings by the Board of Directors of the Authority.

In any event, it is acknowledged that the Resolution of Formation designates Improvement Area No. 1 and identifies a Future Annexation Area for the CFD. The Authority agrees to process the annexations of property to the CFD, after and if the CFD has been formed, from the property in the Future Annexation Area upon receipt of one or more consents and ballots each in a form provided by the Authority's Bond Counsel, each of which shall identify the property to be so annexed to the CFD, any improvement area to be designated by the Authority for such property and the Tax Zone (as defined in the Rate and Method of Apportionment for Improvement Area No. 1) in which the property is to be included, or



specifying a new tax zone for the property; provided that the Developer is the sole owner of the property to be so annexed as of the date of the applicable consent and ballot.

It is hereby acknowledged and agreed that, when used in this Acquisition Agreement, the terms Special Tax, Special Taxes, Bonds and Rate and Method of Apportionment are intended to include such terms as are applicable to Improvement Area No. 1 and to any future improvement area identified when property in the Future Annexation Area is annexed to the District.

**Section 3.02. Bonds.** Upon the written request of the Developer, the Developer and the Authority staff shall meet regarding the amount, timing and other material aspects of the Bonds for the CFD, but the legal proceedings and the principal amount, interest rates, terms and conditions and timing of the sale of the Bonds for the CFD shall be in all respects subject to the approval of the Board of Directors of the Authority.

The Authority shall not be obligated to pay the Purchase Price of the Facilities except from amounts on deposit in the Improvement Fund. The Authority makes no warranty, express or implied, that the proceeds of the Bonds deposited and held in the Improvement Fund, and any investment earnings thereon deposited to the Improvement Fund, will be sufficient for payment of the Purchase Price of all of the Facilities.

The Developer agrees to assist the Authority in the preparation of any disclosure document or continuing disclosure agreement deemed necessary by the Authority to issue the Bonds, including but not limited to the submission of information reasonably requested by the Authority's disclosure counsel, any appraiser or any market absorption consultant in connection with the preparation of disclosure materials for the sale of the Bonds, and the provision of such continuing disclosure obligations, certifications and legal opinions as may be reasonably required by the underwriter of the Bonds.

**Section 3.03. Bond Proceeds.** The proceeds of each series of the Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. A portion of the proceeds of the Bonds will be set aside under the Fiscal Agent Agreement in the Improvement Fund. Moneys in the Improvement Fund shall be withdrawn therefrom in accordance with the provisions of the Fiscal Agent Agreement and the provisions hereof for payment of all or a portion of the costs of construction and/or acquisition of the Facilities, all as herein provided.

The Developer agrees that the Authority alone shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to the Fiscal Agent Agreement, including the Improvement Fund, and that the Developer has no right whatsoever to direct investments under the Fiscal Agent Agreement. The Authority shall have no responsibility whatsoever to the Developer with respect to any investment of funds made by the Fiscal Agent under the Fiscal Agent Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available in the Improvement Fund to pay the Purchase Price of Facilities hereunder. The Developer further acknowledges that the obligation of any owner of real property in the CFD, including the Developer to the extent it owns any real property in the CFD, to pay special

taxes levied in the CFD is not in any way dependent on: (i) the availability of amounts in the Improvement Fund to pay for all or any portion of the Facilities hereunder, or (ii) the alleged or actual misconduct of the Authority in the performance of its obligations under this Acquisition Agreement, the Fiscal Agent Agreement, any developer agreement or amendment thereto or any other agreement to which the Developer and the City or the Authority are signatories.

The Developer acknowledges that any lack of availability of amounts in the Improvement Fund to pay the Purchase Price of Facilities shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for public facilities required by this Acquisition Agreement, the Conditions of Approval or any development or other agreement to which the Developer is a party, or any governmental approval to which the Developer or any land within the CFD is subject.

**Section 3.04. Special Taxes.** The Authority agrees, when and if the CFD is formed, to levy the Special Taxes on property in the CFD in accordance with the Rate and Method of Apportionment; provided that prior to the issuance of Bonds Special Taxes shall be levied solely on Developed Property (as defined in the Rate and Method of Apportionment) pursuant to Step One in Section F of the Rate and Method of Apportionment. The Authority agrees to deposit any Special Taxes received by it prior to the issuance of any Bonds, after deducting any Administrative Expenses (as defined in the Rate and Method of Apportionment) theretofore incurred and expected to be incurred in the then Fiscal Year, in the Improvement Fund.

On the date of issuance of the first series of the Bonds, the Authority shall transfer all amounts then held by it in the Improvement Fund maintained by it as described in clause (a) of the definition of "Improvement Fund" in Section 1.01 hereof to the Fiscal Agent for deposit by the Fiscal Agent to the Improvement Fund established under the Fiscal Agent Agreement for such Bonds. Proceeds of Bonds in any Improvement Fund shall be used for payments to the Developer hereunder prior to the use of Special Taxes deposited thereto, except as may otherwise be provided in any Fiscal Agent Agreement pursuant to which the Bonds were issued.

**Section 3.05. Refunding Bonds.** The Authority may, in its sole and absolute discretion, determine at any time to issue bonds the net proceeds of which are used to refund any outstanding Bonds (the term "refund" as used in this sentence, and the term "refunding" as used in the next sentence, includes any purchase in lieu of redemption of any Bonds). The Developer shall have no right whatsoever in connection with any such refunding bond issue, including but not limited to any right to any reduction in special taxes levied or to be levied by the CFD, or to any additional funds whether pursuant to this Acquisition Agreement or otherwise as a consequence of any such refunding.

**Section 3.06. Fee Credits.** The Authority and the City are parties to a Joint Community Facilities Agreement - City, dated as of March 1, 2021 (the "City JCFA"), with respect to certain matters pertaining to the CFD. The Authority hereby acknowledges the provisions of the third and fourth paragraphs of Section 1 of the City JCFA and agrees with the provisions thereof.

## ARTICLE IV

### CONSTRUCTION OF FACILITIES

**Section 4.01. Plans.** The Developer shall obtain the written approval of the Plans to be prepared for the Facilities listed in Exhibit B in accordance with applicable ordinances and regulations of the City and/or the public entity that will own and operate the Facilities. Copies of all Plans shall be provided by the Developer to the Director of Public Works upon request therefor, and, in any event, as built drawings and a written assignment of the Plans for any Facility listed in Exhibit B shall be provided to the City prior to its acceptance of the Facility.

**Section 4.02. Construction of Facilities.** All Facilities to be acquired hereunder specified in Exhibit B hereto, as amended from time to time, shall be constructed by or at the direction of the Developer in accordance with the approved Plans and the Conditions of Approval. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of Facilities in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their best efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall require that each general contractor performing work in connection with the Facilities employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Facilities to be acquired from the Developer hereunder. The Developer shall at all times have adequate staff or consultants with the requisite experience and licenses to discharge its obligations under this Acquisition Agreement.

As a condition to the acquisition of the Facilities to be completed by the Developer, the Developer shall: (i) construct and cause conveyance to the City (or other applicable governmental agency) all Facilities listed in Exhibit B hereto in accordance with the provisions of this Acquisition Agreement and the Conditions of Approval, and (ii) use its own funds to pay all costs thereof in excess of the Purchase Prices thereof to be paid therefor hereunder, except as may otherwise expressly provided in the Conditions of Approval.

The Developer hereby acknowledges that (i) because of the limitations imposed by Section 5.06 hereof, the Purchase Price for any Facility may be less than the Actual Cost, or cost to the Developer, of such Facility, and (ii) there may be insufficient funds in the Improvement Fund to pay the Purchase Prices of all of the Facilities listed in Exhibit B, and, in any event, this Acquisition Agreement shall not affect any obligation of any owner of land in the CFD under the Conditions of Approval with respect to the public improvements required in connection with the development of the land within the CFD.

**Section 4.03. Relationship to Public Works; Bidding Requirements.** The following shall apply to all contracts applicable to the Facilities acquired with funds withdrawn from the Improvement Fund:

A. General. This Acquisition Agreement is for the acquisition of the Facilities listed in Exhibit B hereto from moneys in the Improvement Fund and is not intended to be a public works contract. The Authority and the Developer agree that the Facilities are of local, and not state-wide concern, and that the provisions of the California Public Contract Code shall not apply to the construction of the Facilities. The Authority and the Developer agree that the Developer shall award all contracts for the construction of the Facilities listed in Exhibit B hereto and that this Acquisition Agreement is necessary to assure the timely and satisfactory completion of such Facilities and that compliance with the Public Contract Code with respect to such Facilities would work an incongruity and would not produce an advantage to the Authority or the CFD. The Developer acknowledges that State prevailing wage laws apply to any contracts and any subcontracts for the construction of the Facilities, and that it shall at all times assure compliance with Section 8.01 G. hereof.

B. Bidding Procedures. Notwithstanding the foregoing, the Developer shall award all contracts for construction of the Facilities listed in Exhibit B, and materials related thereto, by means of a bid process consistent with this Section 4.03 B. or otherwise acceptable to the Director of Public Works, in each case consistent with applicable City regulations. The Developer shall establish a list of written criteria acceptable to the Director of Public Works (including experience, ability to perform on schedule and financial ability) to determine qualified contractors for any contract. Such general contractors shall comply with any applicable City regulations. Formal bids shall be requested from those entities on the list of qualified contractors.

The Developer shall prepare bid packages, including engineering reports and estimates, for each of the Facilities, and shall submit such packages to the Director of Public Works, reasonably in advance of the anticipated bid, for review. Upon agreement by the Director of Public Works and the Developer on the content of such bid packages and a schedule of bid prices, plus an acceptable margin of variance, the Developer may proceed to take bids on the applicable Facilities. At the reasonable request of the Developer, the Director of Public Works shall also meet with the qualified general contractors to discuss the requirements of the particular contract to be bid.

Bids for each Facility shall be submitted to the Director of Public Works prior to the time and date prescribed for bid opening. If a bid is within the constraints of the approved bid package, the Developer shall award the applicable contract to the lowest responsible bidder; provided, however, that the Developer shall have the right to reject all bids and to rebid the work for any Facility. If all bids are in excess of the bid parameters, the Developer shall obtain the consent of the Director of Public Works prior to awarding the contract. Upon written request of the Director of Public Works, the Developer shall provide an analysis of bids for construction and materials for the Facilities, indicating how the winning bid was determined and how it was consistent with the applicable bid package. The Developer shall promptly publish notice of the award of any contract in such paper as the Director of Public Works shall specify.

C. Scheduling. The Developer shall develop or cause to be developed and shall maintain or cause to be maintained a schedule, using the critical path method, for

the construction of the Facilities to be acquired hereunder. The Developer shall provide the Director of Public Works with a complete copy of the schedule and with each update to the schedule for the review by the Director of Public Works.

D. Periodic Meetings. From time to time (expected to be at least every two weeks) at the request of the Director of Public Works, representatives of the Developer shall meet and confer with City staff, consultants and contractors regarding matters arising hereunder with respect to the Facilities, and the progress in constructing and acquiring the same, and as to any other matter related to the Facilities or this Acquisition Agreement. The Developer shall advise the Director of Public Works in advance of any coordination and scheduling meetings to be held with contractors relating to the Facilities, in the ordinary course of performance of an individual contract. The Director of Public Works or the Director of Public Work's designated representative shall have the right to be present at such meetings, and to meet and confer with individual contractors if deemed advisable by the Director of Public Works to resolve disputes and/or ensure the proper completion of the Facilities.

**Section 4.04. Independent Contractor; No Joint Venture.** In performing this Acquisition Agreement, the Developer is an independent contractor and not the agent or employee of the Authority, the City or the CFD. None of the Authority, the City or the CFD shall be responsible for making any payments directly or otherwise to any contractor, subcontractor, agent, consultant, employee or supplier of the Developer.

The Developer hereby acknowledges and agrees that the City, the Authority and the CFD, on the one hand, and the Developer, on the other, are not joint venturers or partners in the construction, acquisition, and/or installation of the Facilities, and nothing in this Acquisition Agreement shall be construed as implying any sort of joint venture or partnership relationship between the City, Authority and/or the CFD, and the Developer or any other entity involved in the construction, acquisition and/or installation of any of the Facilities.

**Section 4.05. Performance and Payment Bonds.** The Developer agrees to comply with all applicable performance and payment bonding requirements of the Authority (and other applicable public entities and/or public utilities) with respect to the construction of the Facilities listed in Exhibit B hereto. Performance and payment bonds shall not be required of the Developer to the extent moneys are available in the Improvement Fund to pay the Purchase Price of a Facility (and consistent with the Budgeted Costs therefore shown in Exhibit B and the limitations expressed in Section 5.06 hereof); provided that all contractors and/or subcontractors employed by the Developer in connection with the construction of Facilities shall provide a labor and materials and performance bonds which name the Authority and the City as additional insureds.

**Section 4.06. Contracts and Change Orders.** The Developer shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as "change orders") required for the construction of the Facilities listed in Exhibit B hereto, as amended from time to time, and all such contracts and supplemental agreements shall be submitted to the Director of Public Works. Prior approval of supplemental agreements by the Director of Public Works shall only be required for such change orders which in any way materially alter the

quality or character of the subject Facilities, or which involve an amount greater than \$25,000.00. The Authority expects that such contracts and supplemental agreements needing prior approval by the Director of Public Works will be approved or denied (any such denial to be in writing, stating the reasons for denial and the actions, if any, that can be taken to obtain later approval) within ten (10) business days of receipt by the Director of Public Works thereof. Any approval by the Director of Public Works of a supplemental agreement shall in no way affect the Budgeted Costs listed in Exhibit B for any related Facility, but to the extent that it increases the Actual Cost of a Facility, such increased cost may be payable as part of the Purchase Price of the related Facility as provided in Section 5.06A. hereof.

**Section 4.07. Time for Completion.** The Developer agrees that this Acquisition Agreement is for the benefit of the Authority and the Developer and, therefore, the Developer represents that it expects to complete the Facilities and to have requested payment for the Facilities under this Acquisition Agreement within thirty-six (36) months of the date of issuance of any of the Bonds. Any failure to complete the Facilities within such time period shall not, however, in itself, constitute a breach by the Developer of the terms of this Acquisition Agreement.

## ARTICLE V

### ACQUISITION AND PAYMENT

**Section 5.01. Inspection.** No payment hereunder shall be made by the Authority to the Developer for a Facility until the Facility has been inspected and found to be completed in accordance with the approved Plans by the City or other applicable public entity or utility. The Authority shall cause the City to make periodic site inspections of the Facilities to be acquired hereunder; provided that in no event shall the Authority incur any liability for any delay in the inspection of any Facilities. For Facilities to be acquired by other public entities or utilities, the Developer shall be responsible for obtaining such inspections and providing written evidence thereof to the Director of Public Works. The Developer agrees to pay all inspection, permit and other similar fees of the City applicable to construction of the Facilities, subject to reimbursement therefor as an Actual Cost of the related Facility.

**Section 5.02. Agreement to Sell and Purchase Facilities.** The Developer hereby agrees to sell the Facilities listed in Exhibit B hereto to the City (or other applicable public agency that will own a Facility), and the Authority hereby agrees to use amounts in the Improvement Fund to pay the Purchase Prices thereof to the Developer, subject to the terms and conditions hereof. The Authority shall not be obligated to finance the purchase of any Facility until the Facility is completed and the Acceptance Date for such Facility has occurred. In any event, the Authority shall not be obligated to pay the Purchase Price for any Facility except from the moneys in the Improvement Fund.

**Section 5.03. Payment Requests.** In order to receive the Purchase Price for a completed Facility, inspection thereof under Section 5.01 shall have been made and the Developer shall deliver to the Director of Public Works: (i) a Payment Request in the form of Exhibit C hereto for such Facility, together with all attachments and exhibits required by Exhibit C and this Section

5.03 to be included therewith (including, but not limited to Attachments 1 and 2 to Exhibit C), and (ii) if payment is requested for a completed Facility, (a) if the property on which the Facility is located is not owned by the City (or other applicable public agency that will own the Facility) at the time of the request, a copy of the recorded documents conveying to the City (or other applicable public agency that will own the Facility) Acceptable Title to the real property on, in or over which such Facility is located, as described in Section 6.01 hereof, (b) a copy of the recorded notice of completion of such Facility (if applicable), (c) to the extent paid for with the proceeds of the Bonds, an assignment to the CFD of any reimbursements that may be payable with respect to the Facility, such as public or private utility reimbursements, and (d) an assignment of the warranties and guaranties for such Facility, as described in Section 6.05 hereof, in a form acceptable to the Authority.

**Section 5.04. Processing Payment Requests.** Upon receipt of a Payment Request (and all accompanying documentation), the Director of Public Works shall conduct a review in order to confirm that such request is complete, that such Facility identified therein was constructed in accordance with the Plans therefor, and to verify and approve the Actual Cost of such Facility specified in such Payment Request. The Director of Public Works shall also conduct such review as is required in his discretion to confirm the matters certified in the Payment Request. The Developer agrees to cooperate with the Director of Public Works in conducting each such review and to provide the Director of Public Works with such additional information and documentation as is reasonably necessary for the Director of Public Works to conclude each such review. For any Facilities to be acquired by another public entity or utility, the Developer shall provide evidence acceptable to the Director of Public Works that such Facilities are acceptable to such entity or utility. Within ten (10) business days of receipt of any Payment Request, the Director of Public Works expects to review the request for completeness and notify the Developer whether such Payment Request is complete, and, if not, what additional documentation must be provided. If such Payment Request is complete, the Director of Public Works expects to provide a written approval or denial (specifying the reason for any denial) of the request within 30 days of its submittal. If a Payment Request seeking reimbursement for more than one Facility is denied, the Director of Public Works shall state whether the Payment Request is nevertheless approved and complete for any one or more Facilities and any such Facilities shall be processed for payment under Section 5.05 notwithstanding such partial denial. If multiple payment requests are submitted simultaneously, the Developer shall designate the order in which they are to be reviewed.

**Section 5.05. Payment.** Upon approval of the Payment Request by the Director of Public Works, the Director of Public Works shall sign the Payment Request and forward the same to the City's Finance Director. Upon receipt of the reviewed and fully signed Payment Request, the City's Finance Director shall, within the then current City financial accounting payment cycle but in any event within thirty (30) days of receipt of the approved Payment Request, cause the same to be paid by the Fiscal Agent to the extent of funds then on deposit in the Improvement Fund. Any approved Payment Request not paid due to an insufficiency of funds in the Improvement Fund, shall be paid promptly following the deposit into the Improvement Fund of proceeds of any investment earnings or other amounts transferred to an Improvement Fund under the terms of the Fiscal Agent Agreement.

The parties hereto acknowledge that (i) the Developer may be constructing Facilities prior to the issuance of Bonds for the CFD, (ii) the Developer may be submitting Payment Requests to the City in advance of such an issuance of Bonds for the CFD, with knowledge that, other than as described in Section 3.04, there will not be funds available in the Improvement Fund for reimbursement until the Bonds for the CFD are issued, (iii) the Facilities that are the subject of the Payment Requests submitted when there are no funds or insufficient funds in the Improvement Fund will be inspected and reviewed by the Director of Public Works as set forth in this Article V and that such Payment Requests will be reviewed by the Director of Public Works and, if appropriate, submitted in the manner set forth in Sections 5.03, 5.04 and 5.05, and (iv) the payment for any Payment Requests approved in the preceding manner will be deferred until the date, if any, on which there are sufficient amounts in the Improvement Fund to make such payment, at which time the Director of Public Works will forward the approved Payment Requests to the City's Finance Director, who will then arrange for payment from the Improvement Fund in the manner set forth above.

The Purchase Price paid hereunder for any Facility shall constitute payment in full for such Facility, including, without limitation, payment for all labor, materials, equipment, tools and services used or incorporated in the work, supervision, administration, overhead, expenses and any and all other things required, furnished or incurred for completion of such Facility, as specified in the Plans.

**Section 5.06. Restrictions on Payments.** Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Developer under Sections 5.02 and 5.05 hereof:

A. Amounts of Payments. Subject to the following paragraphs of this Section 5.06, payments for each Facility will be made only in the amount of the Purchase Price for the respective Facility; however, if the Actual Cost exceeds the Budgeted Cost for a Facility, the excess shall be borne by the Developer until such time as a Budgeted Cost for another Facility is greater than the Actual Cost therefore, in which event the savings shall be applied to reduce any excess of Actual Cost over Budgeted Cost previously paid for any Facility by the Developer. Any savings attributable to the Actual Cost being less than Budgeted Cost which are not disbursed under the previous sentence to cover unreimbursed Actual Costs or as otherwise consented to by the Developer shall be carried forward to be credited against future cost overruns, or costs related to supplemental agreements (change orders), or if not needed for either of the foregoing purposes, to be disposed of as provided in the Fiscal Agent Agreement for excess monies in the Improvement Fund.

Nothing herein shall require the Authority in any event (i) to pay more than the Actual Cost of a Facility, (ii) to make any payment beyond the available funds in the Improvement Fund, or (iii) to pay for any roadway improvements that are not generally accessible to the public (i.e. behind gates that impede the free flow of traffic). The parties hereto acknowledge and agree that all payments to the Developer for the Purchase Prices of Facilities are intended to be reimbursements to the Developer for monies already expended or for immediate payment by the Developer (or directly by the Authority) to third parties in respect of such Facilities.



No payment shall be made for the Purchase Price of any Facility if (i) the Developer fails to fully provide any information requested pursuant to the second sentence of Section 8.01G. related thereto, or (ii) if the Authority or the City determines that the provisions of Section 8.01G. hereof were violated in connection with the work related to such Facility and such violation has not been remedied to the satisfaction of the City Attorney.

B. Joint or Third Party Payments. The Authority may make any payment jointly to the Developer and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Developer so requests the same in writing (including, but not limited to, any financial institution providing financing to the Developer or any Affiliate thereof) or as the Authority otherwise determines such joint or third party payment is necessary to obtain lien releases.

Notwithstanding the foregoing, in the event that the City, the CFD and/or the Authority has been in any way threatened with legal action or named in any legal action by any contractor, subcontractor, supplier or other entity that has, or allegedly has, provided any labor or materials for any Facility for which the Developer has submitted a payment request, unless and until the Developer provides an unqualified lien release from each such entity in a form acceptable to the City Attorney, the Authority, at its sole and exclusive option, may either: (i) require the filing of an interpleader or similar action in Superior Court with respect to payments for such Facility and make payment to an escrow subject to approval of disbursement by the Court; or (ii) make payments directly to the entity or entities that have filed liens or as otherwise demonstrated to the reasonable satisfaction of the City Attorney that they are owed amounts in respect of the respective Facility or District Components, up to the amount of such lien or amount owed.

The provisions of this Section 5.06C. shall prevail over any assignment, or purported assignment, by the Developer of its rights to payment under this Acquisition Agreement.

C. Withholding Payments. The Authority shall be entitled, but shall not be required, to withhold any payment hereunder for a Facility if the Developer or any Affiliate is delinquent in the payment of ad valorem real property taxes, special assessments or taxes, or special taxes in each case as levied on property located in the CFD. In the event of any such delinquency, the Authority shall only make payments hereunder, should any be made at the Authority's sole discretion, directly to contractors or other third parties employed in connection with the construction of the Facilities or to any assignee of the Developer's interests in this Acquisition Agreement (and not to the Developer or any Affiliate), until such time as the Developer provides the Director of Public Works with evidence that all such delinquent taxes and assessments have been paid.

The Authority shall be entitled to withhold any payment hereunder for a Facility that is the subject of a Payment Request until it is satisfied that any and all claims for labor and materials have been paid by the Developer for the Facility that is the subject of a Payment Request, or conditional lien releases have been provided by the Developer for such Facility. The Authority, in its discretion, may waive this limitation upon the provision by the Developer of sureties, undertakings, securities and/or bonds of the Developer or appropriate contractors or subcontractors and deemed satisfactory by the Director of Public Works to assure payment of such claims.

The Authority shall be entitled to withhold payment for any Facility hereunder to be owned by the City until: (i) the Director of Public Works determines that the Facility is ready for its intended use, (ii) the Acceptance Date for the Facility has occurred and the requirements of Section 6.01, if applicable to such Facility, have been satisfied, and (iii) a Notice of Completion executed by the Developer, in a form acceptable to the Director of Public Works, has been recorded for the Facility and general lien releases conditioned solely upon payment from the proceeds of the Bonds to be used to acquire such Facility have been submitted to the Director of Public Works for the Facility. The Authority hereby agrees that the Developer shall have the right to post or cause the appropriate contractor or subcontractor to post a bond with the City to indemnify it for any losses sustained by the City or the Authority because of any liens that may exist at the time of acceptance of such a Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works. The Authority shall be entitled to withhold payment for any Facility to be owned by other governmental entities, until the Developer provides the Director of Public Works with evidence that the governmental entity has accepted dedication of and/or title to the Facility. If the Director of Public Works determines that a Facility is not ready for intended use under (i) above, the Director of Public Works shall so notify the Developer as soon as reasonably practicable in writing specifying the reason(s) therefor.

Nothing in this Acquisition Agreement shall be deemed to prohibit the Developer from contesting in good faith the validity or amount of any mechanics or materialmans lien nor limit the remedies available to the Developer with respect thereto so long as such delay in performance shall not subject the Facilities to foreclosure, forfeiture or sale. In the event that any such lien is contested, the Developer shall only be required to post or cause the delivery of a bond in an amount equal to twice the amount in dispute with respect to any such contested lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works.

D. Retention. The Authority shall withhold in the Improvement Fund an amount equal to ten percent (10%) of the Purchase Price of each Facility to be paid hereunder. Any such retention will be released to the Developer upon final completion and acceptance of the related Facility and the expiration of a maintenance period consistent with applicable City policy thereafter (currently a one year warranty period for any landscaping, and upon receipt of a maintenance bond acceptable to the Director of Public Works to remain in effect for one year as to other Facilities).

Notwithstanding the foregoing, the Developer shall be entitled to payment of any such retention upon the completion and acceptance of a Facility, if a maintenance or warranty bond is posted in lieu thereof in accordance with Section 6.06 hereof. Payment of any retention shall also be contingent upon the availability of monies in the Improvement Fund therefor. No retention shall apply if the Developer proves to the Director of Public Work's satisfaction that the Developer's contracts for the Facilities provide for the same retention as herein provided, so that the Purchase Price paid for the Facility is at all times net of the required retention.

E. Frequency. Unless otherwise agreed to by the Director of Public Works, no more than one Payment Request shall be submitted by the Developer in any calendar month.

F. Right-of-Way. Payments for any right-of-way described in Exhibit B hereto shall be based upon appraisals of the respective land to be acquired in a form acceptable to the Director of Public Works, or upon such other basis as the Director of Public Works shall, in his sole and absolute discretion, determine is appropriate in the circumstances.

**Section 5.07. Acquisition of Additional Facilities.** If the construction and acquisition of all the Facilities theretofore listed in Exhibit B have been completed and the Purchase Prices (including any retentions described in 5.06D. above) with respect thereto have been paid, and funds remain on deposit in any of the Improvement Fund, the Authority shall notify the Developer in writing of the amount of funds remaining in the Improvement Fund and shall allow the Developer thirty (30) calendar days to submit a proposed amendment to Exhibit B to this Acquisition Agreement to include Facilities not theretofore funded by the CFD. If such amendment is approved by the Director of Public Works, the Authority shall retain the excess funds in the Improvement Fund as necessary to pay the Purchase Prices of the Facilities so added to Exhibit B, subject to the provisions of this Acquisition Agreement. If such proposed amendment is not so approved, or if the remaining funds are in excess of what is needed to pay the Actual Costs of such Facilities added to Exhibit B, such excess funds will be disposed of as provided in the Fiscal Agent Agreement.

**Section 5.08. Defective or Nonconforming Work.** If any of the work done or materials furnished for a Facility listed in Exhibit B are found by the Director of Public Works to be defective or not in accordance with the applicable Plans: (i) and such finding is made prior to payment for the Purchase Price of such Facility hereunder, the Authority may withhold payment therefor until such defect or nonconformance is corrected to the satisfaction of the Director of Public Works, or (ii) and such finding is made after payment of the Purchase Price of such Facility, the Authority and the Developer shall act in accordance with the City's standard specification for public works construction (which are set forth in the Green Book, Standard Specifications for Public Works Construction (SSPWC), by Public Works Standards, Inc., as modified by applicable City Special Provisions.

**Section 5.09. Right of City to Make Withdrawals From Improvement Fund.** The Developer acknowledges that the City may withdraw or cause to be withdrawn amounts from the Improvement Fund for payment to the City as necessary to pay costs of the City, the Authority or the CFD (i) in the event that the construction of the Facilities is substantially

delayed, (ii) in the event that the plans for or any other aspect of such construction are substantially altered without the consent of the City, (iii) as provided in the last paragraph of Section 8.02, or (iv) otherwise in the amount of any costs that the Director of Public Works determines that the City has incurred or reasonably expects to incur in connection with the performance of the obligations of the City (including the Director of Public Works) under this Acquisition Agreement. The City shall give written notice of the amount of any such expected withdrawal from the Improvement Fund for a purpose described in any of clauses (i), (ii), (iii) or (iv) of the preceding sentence and the purpose(s) thereof to the Developer, prior to implementing a withdrawal from the Improvement Fund for such a purpose. The Developer acknowledges that any transfer described in the first sentence of this Section 5.09 will reduce the amount available to pay the Purchase Prices of the Facilities hereunder.

## **ARTICLE VI**

### **OWNERSHIP AND TRANSFER OF FACILITIES**

**Section 6.01. Facilities to be Owned by the City - Conveyance of Land and Easements to City.** Acceptable Title to all property on, in or over which each Facility to be acquired by the City will be located, shall be deeded over to the City by way of grant deed, quitclaim, or dedication of such property, or easement thereon, if such conveyance of interest is approved by the City as being a sufficient interest therein to permit the City to properly own, operate and maintain such Facility located therein, thereon or thereover, and to permit the Developer to perform its obligations as set forth in this Acquisition Agreement. The Developer agrees to assist the City in obtaining such documents as are required to obtain Acceptable Title. Completion of the transfer of title to land shall be accomplished prior to the payment of the Purchase Price for a Facility and shall be evidenced by recordation of the acceptance thereof by the City Council or the designee thereof.

**Section 6.02. Facilities to be Owned by the City - Title Evidence.** Upon the request of the City, the Developer shall furnish to the City, with respect to Facilities to be acquired by the City and not previously dedicated or otherwise conveyed to the City: (i) a preliminary title report for land for review and approval at least fifteen (15) calendar days prior to the transfer of Acceptable Title to a Facility to the City, and (ii) a written certification to the effect that the Developer is not aware of any promises or other arrangements with or for the benefit of the owner or any previous owner of the respective land to be conveyed, and there are no known impediments to the conveyance of such land to the City. The Director of Public Works shall approve the preliminary title report unless it reveals a matter which, in the judgment of the City, could materially affect the City's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the City does not approve the preliminary title report, the City shall not be obligated to accept title to such Facility and the Authority shall not be obligated to pay the Purchase Price for such Facility until the Developer has cured such objections to title to the satisfaction of the City.

**Section 6.03. Facilities Constructed on Private Lands.** If any Facilities to be acquired are located on privately-owned land, the owner thereof shall retain title to the land and the completed Facilities until acquisition of the Facilities under Article V hereof. Pending the

completion of such transfer, the Developer shall not be entitled to receive any payment for any such Facility.

**Section 6.04. Facilities Constructed on City Land.** If the Facilities to be acquired are on land owned by the Authority, the Authority shall cause the City to grant to the Developer a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the Facilities. The provisions for inspection and acceptance of such Facilities otherwise provided herein shall apply.

**Section 6.05. Facilities to be Acquired by Other Public Agencies.** With respect to any Facility to be acquired by a public entity other than the City, the Developer shall comply with such entities rules and regulations regarding title and conveyance of property, and provide the Director of Public Works with evidence of such compliance, prior to the payment of the Purchase Price for any such Facility.

**Section 6.06. Maintenance and Warranties.** The Developer shall maintain each Facility in good and safe condition until the Acceptance Date of the Facility. Prior to the Acceptance Date, the Developer shall be responsible for performing any required maintenance on any completed Facility. On or before the Acceptance Date of the Facility, the Developer shall assign to the Authority all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Facility. The Developer shall maintain or cause to be maintained each Facility to be owned by the City (including the repair or replacement thereof) for a period of one year from the Acceptance Date thereof, or, alternatively, shall provide a bond reasonably acceptable in form and substance to the Director of Public Works for such period and for such purpose (specifically, a one-year maintenance period for landscaping improvements, and for the posting of a warranty bond to remain in effect for one year as to other Facilities), to insure that defects, which appear within said period will be repaired, replaced, or corrected by the Developer, at its own cost and expense, to the satisfaction of the Director of Public Works. During any such one-year period, the Developer shall commence to repair, replace or correct any such defects within thirty (30) days after written notice thereof by the Authority, the City or other public entity that took ownership of the respective Facility to the Developer, and shall complete such repairs, replacement or correction as soon as practicable. After such one-year period, the City (or other public entity that has accepted title to the Facility) shall be responsible for maintaining such Facility. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Facilities to be acquired by the City shall be delivered to the Director of Public Works as part of the transfer of title.

## ARTICLE VII

### INSURANCE; RESPONSIBILITY FOR DAMAGE

**Section 7.01. Liability Insurance Requirements.** The Developer shall provide to the Director of Public Works evidence of insurance and endorsements thereto on forms acceptable to the Risk Manager within 10 working days of execution by it of this Acquisition Agreement and prior to any physical work on the Facilities being performed.

The Developer shall procure and maintain for the duration of this Acquisition Agreement the following minimum insurance coverage and limits against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work covered by this Acquisition Agreement by the Developer, its agents, representatives, employees or subcontractors:

- (a) Premises, operation and mobile equipment.
- (b) Products and completed operations.
- (c) Explosion, collapse and underground hazards.
- (d) Personal injury.
- (e) Contractual liability.
- (f) Errors and omissions for work performed by design professionals.

<u>COVERAGE PER OCCURRENCE</u>	<u>ISO FORM</u>	
Commercial General	CG 00 0111 85 or 88 Rev.	
Liability (Primary)		\$2,000,000
Umbrella Liability	GL 00 0111 85 or 88 Rev.	
(Over Primary, if required)		\$1,000,000
Business Auto	CA 00 01 06 92	\$1,000,000
Workers' Compensation		Statutory
Employers' Liability		\$1,000,000
Errors and Omissions		\$1,000,000

Combined single limit per occurrence shall include coverage for bodily injury, personal injury, and property damage for each accident and a five million dollar (\$5,000,000) general aggregate. Insurance shall be placed with insurers that are admitted to the State of California and with an AM Best's Rating of no less than A:VII.

The Developer shall furnish to the Risk Manager certificates of insurance and endorsements on forms specified by the Risk Manager, duly authenticated, giving evidence of the insurance coverage required in this contract and other evidence of coverage or copies of policies as may be reasonably required by the Risk Manager from time to time. Each required insurance policy coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after fifteen (15) days written notice by certified mail, return receipt requested, has been given to the Risk Manager.

Liability coverage shall not be limited to the vicarious liability or supervising role of any additional insured nor shall there be any limitation with the severability clause. Coverage shall contain no limitation endorsements and there shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or employment related practices.

Any umbrella liability coverage shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies not covered by the umbrella policy. Coverage shall be following form to any

other underlying coverage. Coverage shall be on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross policy exclusion and no limitation endorsement. The policy shall have starting and ending dates concurrent with the underlying coverage.

All liability insurance shall be on an occurrence basis. Insurance on a claims made basis will be rejected. Any deductibles or self-insured retentions shall be declared to and approved by the Risk Manager. The insurer shall provide an endorsement to the City eliminating such deductibles or self-insured retentions as respects the Authority, and its consultants, and each of its Boardmembers, officials, employees and volunteers.

All subcontractors employed on the work referred to in this Acquisition Agreement shall meet the insurance requirements set forth in this Section 7.01 for the Developer. The Developer shall furnish certificates of insurance and endorsements for each subcontractor at least five days prior to the subcontractor entering the job site, or the Developer shall furnish the Risk Manager an endorsement including all subcontractors as insureds under its policies.

Neither the City nor the Authority shall be liable for any accident, loss, or damage to the work prior to its completion and acceptance, and the Developer shall save, keep and hold harmless the Authority, the City and their consultants, and each of their Boardmembers, Councilmembers, officers, officials, employees, agents and volunteers from all damages, costs or expenses in law or equity that may at any time arise or be claimed because of damages to property, or personal injury received by reason of or in the course of performing work, which may be caused by any willful or negligent act or omission by the Developer or any of the Developer’s employees, or any subcontractor.

The cost of insurance required by this subsection shall be borne by the Developer and its subcontractors and no compensation for purchasing insurance or additional coverage needed to meet these requirements will be paid for by the Authority.

In the event that any required insurance is reduced in coverage, canceled for any reason, voided or suspended, the Developer agrees that the Authority may arrange for insurance coverage as specified, and the Developer further agrees that administrative and premium costs may be deducted from any deposits or bonds the Authority may have, or from the Improvement Fund. A reduction or cancellation will be grounds for termination of this Acquisition Agreement and will cause a halt to payment for any work on the Facilities until the insurance is reestablished.

Liability policies shall contain, or be endorsed to contain the following provisions:

(a) General Liability and Automobile Liability: The Authority, the City and their respective consultants, and each of their Boardmembers, Councilmembers, officers, officials, employees and volunteers shall be covered as additional insureds using ISO form CG 00 01 11 85 or 88 as it respects: liability arising out of activities performed by or on behalf of the Developer; products and completed operations of the Developer’ premises owned, occupied or used by the Developer; or automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain no special limitations

on the scope or protection afforded to the Authority, the City and their respective consultants, and each of their respective Boardmembers, Councilmembers, officers, officials, employees, or volunteers.

The Developer's insurance coverage shall be primary insurance with respect to the Authority, the City and their respective consultants, and each of their respective Boardmembers, Councilmembers, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Authority, the City and their respective consultants, and each of their respective Boardmembers, Councilmembers, officers, officials, employees and volunteers shall be excess of the Developer's insurance and shall not contribute to it.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Authority, the City, and their respective consultants, and each of their respective Boardmembers, Councilmembers, officers, officials, employees, and volunteers.

The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) **Workers' Compensation and Employer's Liability:** The Developer and all subcontractors shall have workers' compensation for all employees in conformance with the requirements in Section 3700 of the Labor Code.

(c) **Error and Omissions Liability:** The Developer and all subcontractors who are design professionals shall have and maintain errors and omissions insurance.

**Section 7.02. Responsibility for Damage.** The Developer shall take and assume all responsibility for the work performed as part of the Facilities constructed pursuant to this Acquisition Agreement. The Developer shall bear all losses and damages directly or indirectly resulting to it, to the Authority, to the City, and their respective consultants, and their respective Boardmembers, Councilmembers, officers, employees and agents, or to others on account of the performance or character of the work, unforeseen difficulties, accidents of any other causes whatsoever.

The Developer shall assume the defense of and indemnify and save harmless the Authority, the City, and their respective consultants, their respective Boardmembers, Councilmembers, officers, employees, and agents, from and against any and all claims, losses, damage, expenses and liability of every kind, nature, and description, directly or indirectly arising from the performance of the work, and from any and all claims, losses, damage, expenses, and liability, howsoever the same may be caused, resulting directly, or indirectly from the nature of the work covered by this Acquisition Agreement, to the fullest extent permitted by law and regardless (except as provided in the next sentence) of responsibility for any negligence. In accordance with Civil Code section 2782, nothing in this Section 7.02 shall require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the Authority, the



City, and their respective consultants, and their respective Boardmembers, Councilmembers, agents, servants or independent contractors who are directly responsible to the Authority or the City, or for defects in design furnished by such persons. Moreover, nothing in this Section 7.02 shall apply to impose on the Developer, or to relieve the Authority or the City from, liability for active negligence of the Authority, the City, or their respective consultants or their respective Boardmembers, Councilmembers, officers, employees or agents as delineated in Civil Code Section 2782. Any relief for determining the Authority's or the City's sole or active negligence shall be determined by a court of law.

The Authority does not, and shall not, waive any rights against the Developer which it may have by reason of the aforesaid hold harmless agreements because of the acceptance by the Authority or the City, or deposit with the Authority by the Developer of any insurance policies described in Section 7.01. The aforesaid hold harmless agreement by the Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered by reasons of any of the aforesaid operations of the Developer, or any subcontractor, regardless of whether or not such insurance policies are determined to be applicable to any of such damages or claims for damages.

No act by the City, or its representatives in processing or accepting any plans, in releasing any bond, in inspecting or accepting any work, or of any other nature, shall in any respect relieve the Developer or anyone else from any legal responsibility, obligation or liability it might otherwise have.

## ARTICLE VIII

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 8.01. Representations, Covenants and Warranties of the Developer.** The Developer represents and warrants for the benefit of the Authority as follows:

A. Organization. The Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is in compliance with all applicable laws of the State, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as contemplated in this Acquisition Agreement.

B. Authority. The Developer has the power and authority to enter into this Acquisition Agreement, and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered by the Developer.

C. Binding Obligation. This Acquisition Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

D. Compliance with Laws. The Developer shall not with knowledge commit, suffer or permit any act to be done in, upon or to the lands of the Developer in the CFD or the Facilities in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the CFD or the Facilities.

E. Requests for Payment. The Developer represents and warrants that (i) it will not request payment from the Authority for the acquisition of any improvements that are not part of the Facilities, and (ii) it will diligently follow all procedures set forth in this Acquisition Agreement with respect to the Payment Requests.

F. Financial Records. Until the date which is one year following the date of the final acceptance of the Facilities, the Developer covenants to maintain proper books of record and account for the construction of the Facilities and all costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the Authority or its agent at any reasonable time during regular business hours on reasonable notice.

G. Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities listed in Exhibit B to be acquired from the Developer hereunder, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages. The Developer shall provide, at the written request of the Director of Public Works, evidence satisfactory to the Director of Public Works that the Developer has complied with the provisions of this Section 8.01G. with respect to any Facilities to be funded under this Acquisition Agreement.

H. Plans. The Developer represents that it has obtained or will obtain approval of the Plans for the Facilities listed in Exhibit B to be acquired from the Developer hereunder from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained. The Developer further agrees that the Facilities listed in Exhibit B to be acquired from the Developer hereunder have been or will be constructed in full compliance with such approved plans and specifications and any supplemental agreements (change orders) thereto, as approved in the same manner.

I. Land Owners. The Developer agrees that in the event that it sells any land owned by it within the boundaries of the CFD other than to an individual prospective homeowner, the Developer will (i) notify the Authority within 30 days of the sale, in writing, identifying the legal name of and mailing address for the purchaser, the applicable County Assessor's parcel number or numbers for the land sold and the acreage of the land sold, (ii) notify the purchaser in writing prior to the closing of any such sale of the existence of this Acquisition Agreement and, in general, the Developer's rights and obligations hereunder with respect to the construction of and payment for the Facilities, and (iii) notify the purchaser (including for purposes of this clause (iii) any prospective homeowner buying property from the Developer) in writing of the existence

of the CFD and the special tax lien in connection therewith, and otherwise comply with any applicable provision of Section 53341.5 of the Act.

J. Additional Information. The Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the original purchasers of the Bonds or the Authority related to the status of construction of improvements required by the Conditions of Approval, the anticipated completion dates for future improvements, and any other matter material to the investment quality of the Bonds.

K. Continuing Disclosure. The Developer agrees to comply with all of its obligations under any continuing disclosure agreement executed by it in connection with the offering and sale of any of the Bonds for the CFD.

L. Ownership By Affiliates. The Developer agrees to provide to the City's Finance Director on the date of issuance of the Bonds, on (or within five (5) business days of) July 1 of each year so long as the Bonds are outstanding and the Developer or any Affiliate thereof owns property in the CFD, and on any other date upon three business days notice from the City's Finance Director, a written list of all Affiliates of the Developer which own or control the ownership of land located within the CFD, or which have options on land within the CFD, indicating the parcels of land by County Assessor's Parcel number of all such land so owned or optioned.

M. Allocation of Sales Taxes to Authority. The Developer shall use reasonable efforts, with respect to any construction contract for a contract price of \$5,000,000 or more and related to any construction by the Developer within the geographical boundaries of the City, to have the installing contractor obtain a sub-permit from the California Board of Equalization under the Bradley-Burns Uniform Local Sales and Use Tax law for the job site on which the work is to be performed.

**Section 8.02. Indemnification and Hold Harmless.** The Developer shall assume the defense of, indemnify and save harmless the Authority, the City and the CFD, the members of the Authority, the members of the Board of Directors of the Authority and of the City Council of the City, their respective officers, officials, employees and agents and each of them, from and against all actions, damages, claims, losses or expense of every type and description to which they may be subjected or put, by reason of, or resulting from (i) the breach of any provision of this Acquisition Agreement by the Developer; (ii) the Developer's or any other entity's design, engineering and/or construction of any of the Facilities acquired from the Developer hereunder; (iii) the Developer's non-payment under contracts between the Developer and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of the Facilities, including but not limited to any claim, lien or action by any such entity against the City, the Authority or the CFD for money or damages; or (iv) any claims of persons employed by the Developer or its agents to construct the Facilities. Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the intentional acts or negligence of the Authority, the CFD or the City, or their respective Boardmembers, Councilmembers, officers, officials, directors, employees or agents hereunder.

No provision of this Acquisition Agreement shall in any way limit the Developer's responsibility for payment of damages resulting from the operations of the Developer, its agents, employees or its contractors.

The Developer shall assume the defense of (with counsel satisfactory to the Authority), indemnify and save harmless the Authority, the City and the CFD, members of the governing board of the Authority and of the City Council of the City, their officers, officials, employees and agents and each of them, from and against all actions, damages, claims, losses or expense of every type and description to which they may be subjected or put, by reason of, or resulting from, any alleged or actual material misstatements or omissions of facts necessary to make the statements with respect to the development by the Developer of the land in the CFD, or the Developer, not misleading under the circumstances made in any disclosure materials published in connection with the Bonds. Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the intentional misstatements of material facts or material omissions in any such disclosure materials with respect to the Authority or the City.

In the event that the Developer fails to discharge its obligations under any of the foregoing provisions of this Section 8.02, the Authority shall be entitled, following prior written notice of such failure to the Developer, to draw upon funds in the Improvement Fund as it deems necessary for the defense, indemnity or hold harmless otherwise to be provided by the Developer hereunder.

## ARTICLE IX

### TERMINATION

**Section 9.01. Termination of Funding Obligations.** Unless otherwise agreed to in writing by the parties hereto, this Acquisition Agreement shall terminate on December 31, 2035, if the Bonds have not been issued by that date. If Bonds are issued before such date, this Acquisition Agreement shall terminate on the date that no funds remain in the Improvement Fund and the Authority has determined that no further Bonds will be issued for the CFD (other than possible refunding bonds as described in Section 3.05). From and after the date of termination of this Acquisition Agreement, the Authority shall have no further obligation to pay the Purchase Price of any Facilities hereunder.

**Section 9.02. Mutual Consent.** This Acquisition Agreement may be terminated by the mutual, written consent of the Authority and the Developer, in which event the Authority may let contracts for any remaining work related to the Facilities not theretofore acquired from the Developer hereunder, and use all or any portion of the monies in the Improvement Fund to pay for same, and the Developer shall have no claim or right to any further payments for the Purchase Price of Facilities hereunder, except as otherwise may be provided in such written consent.

**Section 9.03. Authority Election for Cause.** The following events shall constitute grounds for the Authority, at its option, to suspend payments to the Developer hereunder as

provided in the second succeeding paragraph, or terminate this Acquisition Agreement as described in the succeeding paragraph, in each case without the consent of the Developer:

(a) The Developer shall voluntarily file for reorganization or other relief under any Federal or State bankruptcy or insolvency law.

(b) The Developer shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of the Developer, or shall suffer an attachment or levy of execution made against the property it owns within the CFD unless, in any of such cases, such circumstance shall have been terminated or released within thirty (30) days thereafter.

(c) The Developer shall abandon construction of the Facilities. Failure for a period of ninety (90) consecutive days to undertake substantial work related to the construction of the Facilities, other than for a reason specified in Section 9.04 hereof, shall constitute a noninclusive example of such abandonment.

(d) The Developer shall breach any material covenant or default in the performance of any material obligation hereunder.

(e) The Developer shall transfer any of its rights or obligations under this Acquisition Agreement without the prior written consent of the Authority.

(f) The Developer shall have made any material misrepresentation or omission in any written materials furnished in connection with any preliminary official statement, official statement or bond purchase contract used in connection with the sale of the Bonds for the CFD.

(g) The Developer or any of its Affiliates shall at any time challenge the validity of the CFD, or any of the Bonds, or the levy of special taxes within the CFD, other than on the grounds that such levy was not made in accordance with the terms of the Rate and Method of Apportionment of the Special Taxes for the CFD.

If any such event occurs, the Authority shall give written notice of its knowledge thereof to the Developer, and the Developer agrees to meet and confer with the Director of Public Works and other appropriate City staff and consultants within thirty (30) days of receipt of such notice as to options available to assure timely completion of the Facilities listed in Exhibit B. Such options may include, but not be limited to the termination of this Acquisition Agreement by the Authority. If the Authority elects to terminate this Acquisition Agreement, the Authority shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the Authority to receive such notice) of the grounds for such termination and allow the Developer a minimum of thirty (30) days to eliminate or mitigate to the satisfaction of the Director of Public Works the grounds for such termination. Such period may be extended, at the sole discretion of the Authority, if the Developer, to the satisfaction of the Authority, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined solely by

the Authority, the Developer has not eliminated or completely mitigated such grounds, to the satisfaction of the Authority, the Authority may then terminate this Acquisition Agreement. Notwithstanding the foregoing provisions of this paragraph, if an event described in clause (a) or (b) of the preceding paragraph occurs, the Authority need not comply with any of the foregoing provisions of this paragraph and may, in its sole and absolute discretion, terminate this Acquisition Agreement upon twenty (20) days prior written notice to the Developer of such termination.

Notwithstanding the foregoing paragraph, so long as any event listed in any of clauses (a) through and including (g) above has occurred, notice of which has been given by the Authority to the Developer, and such event has not been cured or otherwise eliminated by the Developer, the Authority may in its discretion cease making payments for the Purchase Price of Facilities under Article V hereof.

Nothing in this Section 9.03 shall in any way prohibit the Authority, the City or the CFD from drawing funds from the Improvement Fund for any of the purposes described in Section 5.09.

**Section 9.04. Force Majeure.** Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, pandemic, terrorist attacks, civil commotion, riots, strikes, picketing, or other labor disputes, damage to work in progress by casualty, or by other cause beyond the reasonable control of the party (financial inability excepted), then the specified time for performance shall be extended by the amount of the delay actually so caused.

**Section 9.05. Survival of Certain Provisions.** The provisions of Sections 7.02, 8.02 and 10.01 of this Acquisition Agreement shall survive the termination of this Acquisition Agreement, and the obligations of the Developer under said Sections shall remain in effect following any such termination.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01. Limited Liability of Authority.** The Developer agrees that any and all obligations of the Authority arising out of or related to this Acquisition Agreement are special and limited obligations of the Authority and the Authority's obligations to make any payments hereunder are restricted entirely to the moneys, if any, in the Improvement Fund and from no other source. No member of the Authority's Board of Directors, or Authority staff member, employee or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

**Section 10.02. Excess Costs.** The Developer will be responsible for any and all costs of the Facilities that it is obligated to construct pursuant to the Conditions of Approval in excess of the moneys available therefor in the Improvement Fund.

**Section 10.03. Audit.** The Director of Public Works and/or the City's Finance Director shall have the right, during normal business hours and upon the giving of two (2) business days prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in to any of the Facilities, and any bids taken or received for the construction thereof or materials therefor.

**Section 10.04. Attorney's Fees.** In the event that any action or suit is instituted by either party against the other arising out of this Acquisition Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

**Section 10.05. Notices.** Any notice, payment or instrument required or permitted by this Acquisition Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered, or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within twenty-four hours after such transmission), or seventy-two hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

Authority or CFD:	Temecula Public Financing Authority 41000 Main Street Temecula, California 92589-9033 Attention: Director of Public Works
Developer:	SB Altair, LLC c/o Brookfield Properties 3200 Park Center Drive, Suite 1000 Costa Mesa, CA 92626 Attention: Colin Koch

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

**Section 10.06. Severability.** If any part of this Acquisition Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Acquisition Agreement shall be given effect to the fullest extent possible.

**Section 10.07. Successors and Assigns.** This Acquisition Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Acquisition Agreement shall not be assigned by the Developer, except in whole to an Affiliate, without the prior written consent of the Authority, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of the Authority, the Authority may condition its consent upon the acceptability of the relevant experience and financial condition of the proposed assignee, the assignee's express assumption of all obligations of the Developer hereunder, and/or upon any other factor which the Authority deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the

scope of the rights and/or obligations assigned, and shall not be effective until approved in writing by the Authority. No assignment, whether or not consented to by the Authority, shall release the Developer from its obligations and liabilities under this Acquisition Agreement.

Notwithstanding the foregoing, the Developer may assign its rights to payment hereunder, without the prior consent of the Authority, to any financial institution providing financing to the Developer or an Affiliate of the Developer.

**Section 10.08. Other Agreements.** The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the CFD. Nothing herein shall be construed as affecting the Authority's or the Developer's rights, or duties to perform their respective obligations, under other agreements, use regulations or subdivision requirements relating to the development of the land in the CFD. This Acquisition Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

**Section 10.09. Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this Acquisition Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Acquisition Agreement thereafter.

**Section 10.10. Merger.** No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Acquisition Agreement shall be binding.

**Section 10.11. Parties in Interest.** Nothing in this Acquisition Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the Authority, the CFD, the City, and the Developer any rights, remedies or claims under or by reason of this Acquisition Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Acquisition Agreement contained by or on behalf of the Authority or the Developer shall be for the sole and exclusive benefit of the Authority, the CFD, the City, and the Developer. The City is an intended third party beneficiary of this Agreement.

No provision of this Acquisition Agreement shall in any way be construed to provide any right whatsoever to any contractor, subcontractor, supplier or other party involved in the acquisition, construction or maintenance of any of the Facilities against the Authority, the City or the CFD, including but not limited to any right to payment or damages of any nature, in law or in equity.

**Section 10.12. Amendment.** This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by both the Authority and the Developer.

Notwithstanding any other provisions of this Acquisition Agreement, the Director of Public Works, acting alone and without the need for approval by the Board of Directors of the



Authority, may approve and execute from time to time Supplements on behalf of the Authority and the CFD, that amend, modify or supplement Exhibit B to this Acquisition Agreement.

**Section 10.13. Counterparts.** This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 10.14. Governing Law.** The provisions of this Acquisition Agreement shall be governed by the laws of the State applicable to contracts made and performed in the State.

**IN WITNESS WHEREOF**, the parties hereto have executed this Acquisition Agreement as of the day and year first-above written.

TEMECULA PUBLIC FINANCING  
AUTHORITY, for and on behalf of the  
TEMECULA PUBLIC FINANCING  
AUTHORITY COMMUNITY FACILITIES  
DISTRICT NO. 23-01 (ALTAIR)

By: \_\_\_\_\_  
Aaron Adams,  
Executive Director

SB ALTAIR, LLC,  
a Delaware limited liability company

By: Brookfield Temecula, LLC, a  
Delaware limited liability company,  
its Operations Manager

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

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

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

20009.23;J19367

## **EXHIBIT A**

### **DESCRIPTION OF FACILITIES ELIGIBLE FOR ACQUISITION FROM THE DEVELOPER**

- The acquisition and construction of: streets (including paving, aggregate base, striping and traffic marking, sidewalks, curbs, gutters and driveways), and traffic signals within and in the vicinity of the CFD; stormwater drainage systems (including storm drain lines, inlets, outlets, channels, structures, junctions, manholes, catch basins and related dewatering); street light improvements (including light fixtures, substructures, conduits and service points of connection); and street signage (including traffic, stop and street name signs).

The foregoing are to include the acquisition of any related right-of-way and other land needed for the installation of any such improvements, demolition of existing structures and site leveling needed for the installation of any such improvements, erosion control, and other appurtenances.

- Landscaping improvements in the public right of way, including related appurtenances.

**EXHIBIT B**

**FACILITIES ELIGIBLE FOR ACQUISITION FROM THE DEVELOPER AND  
RELATED BUDGETED COSTS**

<b>Facility No.</b>	<b>Description</b>	<b>Budgeted Cost</b>
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## EXHIBIT C

### FORM OF PAYMENT REQUEST

PAYMENT REQUEST NO. \_\_\_\_\_

The undersigned ("the Developer"), hereby requests payment in the total amount of \$\_\_\_\_\_ for the Facilities (as defined in the Acquisition Agreement, dated as of February 13, 2024, between (a) the Temecula Public Financing Authority (the "Authority"), for and on behalf of the Temecula Public Financing Authority Community Facilities District No. 23-01 (Altair), and (b) the Developer), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby represents and warrants to the Authority as follows:

1. He/she is a duly authorized officer of the Developer, qualified to execute this Payment Request for payment on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. To the extent that this payment request is with respect to a completed Facility, the Developer has submitted or submits herewith to the City of Temecula (the "City") as-built drawings or similar plans and specifications for the items to be paid for as listed in Attachment 1 hereto with respect to any such completed Facility, and such drawings or plans and specifications, as applicable, are true, correct and complete.

3. All costs of the Facilities for which payment is requested hereby are Actual Costs (as defined in the Agreement referenced above) and have not been inflated in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the Authority.

4. Supporting documentation (such as third party invoices) is attached with respect to each cost for which payment is requested.

5. There has been compliance with applicable laws relating to prevailing wages for the work to construct the Facilities for which payment is requested.

6. The Facilities for which payment is requested were constructed in accordance with all applicable City or other governmental standards, and in accordance with the as-built drawings or plans and specifications, as applicable, referenced in paragraph 2 above.

7. The Developer is in compliance with the terms and provisions of the Acquisition Agreement and no portion of the amount being requested to be paid was previously paid.

8. The Purchase Price for each Facility (a detailed calculation of which is shown in an Attachment 2 hereto for each such Facility), has been calculated in conformance with the terms of Section 5.06 of the Acquisition Agreement.

9. Neither the Developer nor any Affiliate (as defined in the Acquisition Agreement) is in default in the payment of ad valorem real property taxes or special taxes or special assessments levied in the CFD (as defined in the Acquisition Agreement), except as follows: \_\_\_\_\_.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

**DEVELOPER:**

SB ALTAIR, LLC

By: \_\_\_\_\_  
Authorized Representative of the Developer

Date: \_\_\_\_\_

**AUTHORITY:**

Payment Request Approved for Submission  
to the Finance Director of the City of Temecula

By: \_\_\_\_\_  
Director of Public Works

Date: \_\_\_\_\_

**ATTACHMENT 1**  
**EXHIBIT C**

*[list here all Facilities for which payment is requested,  
and attach support documentation]*

**ATTACHMENT 2  
EXHIBIT C**

**CALCULATION OF PURCHASE PRICE**

[Use a separate sheet for each Facility  
for which payment is being requested]

1. Description (by reference to Exhibit B to the Acquisition Agreement) of the Facility \_\_\_\_\_
2. Actual Cost (list here total of supporting invoices and/or other documentation supporting determination of Actual Cost): \$ \_\_\_\_\_
3. Budgeted Cost: \$ \_\_\_\_\_
4. Permitted Addition to Budgeted Cost (to the extent, and only to the extent, that Actual Cost exceeds Budgeted Cost), consisting of Savings (Actual Costs less than Budgeted Cost) carried forward from prior acquired Facilities (see first paragraph of Section 5.06A) and not previously applied to cover cost overruns (Actual Costs greater than Budgeted Cost) on previously acquired Facilities: \$ \_\_\_\_\_
5. Subtractions from Purchase Price:
  - A. Holdback for Lien releases (see Section 5.06(C) of the Acquisition Agreement) \$ \_\_\_\_\_
  - B. Retention (see Section 5.06(D) of the Acquisition Agreement) \$ \_\_\_\_\_
6. Total disbursement requested (amount listed in 3, plus amount, if any, listed in 4 (total of amounts in 3 and 4 not to exceed amount listed in 2), less amounts, if any, listed in 5) \$ \_\_\_\_\_