

TEMECULA PUBLIC FINANCING AUTHORITY

RELEASE NO. 34

Dated: August 25, 2009

Relating to

**\$51,250,000 Temecula Public Financing Authority
Community Facilities District No. 03-02 (Roripaugh Ranch), 2006 Special Tax Bonds (the "Bonds")**

<u>Maturity (September 1)</u>	<u>CUSIP No.</u>	<u>Maturity (September 1)</u>	<u>CUSIP No.</u>	<u>Maturity (September 1)</u>	<u>CUSIP No.</u>
2009	87972Y BX3	2013	87972Y CB0	2026	87972Y CM6
2010	87972Y BY1	2014	87972Y CC8	2036	87972Y CN4
2011	87972Y BZ8	2015	87972Y CD6		
2012	87972Y CA2	2016	87972Y CE4		

The Temecula Public Financing Authority (the "Authority") has previously issued its Releases Nos. 1 through 33. In addition, on February 25, 2009, the Authority issued its Annual Continuing Disclosure Report (the "Report"). This Release No. 34 does not purport to include every item that may be important to owners of the Bonds, nor does it purport to present "full and fair disclosure" with respect to the Bonds within the meaning of applicable federal and state securities laws. Capitalized terms used but not defined in this Release No. 34 have the meanings given those terms in the official statement dated April 13, 2006 relating to the Bonds (the "Official Statement").

Amended and Restated Acquisition Agreement and Disbursement of Funds from the Acquisition Account of the Improvement Fund

In July 2009, the Authority and Ashby USA, LLC (the "Developer") entered into an Amended and Restated Acquisition Agreement (the "Amended Acquisition Agreement"), which amends and restates the Acquisition Agreement entered into in connection with the issuance of the Bonds as amended on March 6, 2007 by Supplement No. 1 to Acquisition Agreement. Among other things, the Amended Acquisition Agreement materially changes (a) the rights and responsibilities of the City of Temecula (the "City") and the Authority, on one hand, and the Developer, on the other hand, to construct public infrastructure improvements eligible to be funded by the Community Facilities District (the "Eligible Facilities") and (b) the rights of the Developer to obtain amounts held in the Acquisition Account (the "Acquisition Account") of the Improvement Fund under the Fiscal Agent Agreement. A copy of the Amended Acquisition Agreement is attached to this Release No. 34 as Exhibit A.

Impact of Amended Acquisition Agreement on the Construction of Eligible Facilities.

Under the Amended Acquisition Agreement, the City advised the Authority that it will construct, or finish the construction of, three of the major Eligible Facilities: the construction of a portion of Murrieta Hot Springs Road, a portion of Butterfield Stage Road and a portion of Calle Chapos. The City has the right, but not the obligation, to elect to construct any other Eligible Facilities. These three major Eligible Facilities and any other Eligible Facilities that the City elects to construct are collectively referred to in this Release No. 34 as the "City Improvements." In addition, the Amended Acquisition Agreement prohibits the Developer from undertaking any further construction activities with respect to any City

Improvements. Under the terms of the original Acquisition Agreement, the Developer had the sole right to construct the Eligible Facilities.

The City currently estimates that it will take approximately 12 to 18 months to complete the three City Improvements described above. Before the City can complete the portion of Butterfield Stage Road south of the Community Facilities District, the City will need to resolve, to its satisfaction, some rights-of-way issues with landowners adjacent to that portion of Butterfield Stage Road. The City plans to solicit public bids from contractors to construct these City Improvements. The City currently estimates that the cost of constructing the three City Improvements described above will be approximately \$22.8 million. As discussed below, the City expects to fund the full cost of the City Improvements from amounts held in the Acquisition Account.

Upon completion of the three City Improvements described above, all of the major public infrastructure improvements required by the Development Agreement to allow the issuance of all 515 building permits in Phase I of the Roripaugh Ranch project (the "Project") will be complete. However, before the City will issue these building permits, some minor public infrastructure improvements will need to be completed and merchant-builders will still be required to satisfy other requirements of the Project's specific plan, such as design approvals and other approvals related to the construction of homes. Some of the Project's original merchant-builders had previously received design approvals but those have since expired. Even after completion of the three City Improvements described above, the construction of additional significant public infrastructure improvements, including the construction of certain roads and flood control improvements, will be required before the City will issue any building permits in Phase II of the Project.

Impact of Amended Acquisition Agreement on the Acquisition Account of the Improvement Fund

The original terms of the Acquisition Agreement provided that the Authority would use amounts in the Acquisition Account to acquire from the Developer discrete components of the Eligible Facilities as the Developer completed those components. Before the execution and delivery of the Amended Acquisition Agreement, except for a disbursement of approximately \$350,000 from the Acquisition Account on the date the Bonds were issued, the Authority had not disbursed any amounts from the Acquisition Account and the Developer had ceased constructing the Eligible Facilities. In addition, several contractors that had performed work on Eligible Facilities and other Project improvements asserted claims seeking compensation for that work.

To address the current state of the Project, the Amended Acquisition Agreement restructured how the Authority will disburse amounts in the Acquisition Account in four respects: first, it provided for the Authority to disburse approximately \$13.6 million from the Acquisition Account to reimburse the Developer for work done to date on the Eligible Facilities, which disbursement occurred on July 31, 2009; second, it provides for the Authority to make additional disbursements from the Acquisition Account of up to approximately \$4.5 million to reimburse the Developer for work done to date on Eligible Facilities if the Developer satisfies several conditions; third, it provides for the Authority to reserve approximately \$22.8 million of amounts in the Acquisition Account to pay costs of the City Improvements, and allows the City to increase or decrease that amount if the City determines that the cost of the City Improvements has changed; and, fourth, it provides for the manner in which the Authority will disburse amounts in the Acquisition Account remaining after the payment of costs of the City Improvements. The following describes each of these in more detail.

Disbursement from Acquisition Account on July 31, 2009. The Amended Acquisition Agreement required the Authority to disburse amounts from the Acquisition Account if the Developer satisfied several conditions, including that the Developer pay its delinquent Special

Taxes and that the Developer file its annual continuing disclosure report. On July 31, 2009, the Developer satisfied all of these conditions and the Authority disbursed approximately \$13.6 million from the Acquisition Account. The Amended Acquisition Agreement required that these amounts first be used to satisfy contractor claims. Together with approximately \$2.3 million relating to the foreclosure by the Bank of the West of some of the property previously owned by the Developer in the Community Facilities District, the amounts disbursed from the Acquisition Account were sufficient to satisfy the settlement amounts in connection with all contractor claims related to the Project known to the Authority. The Authority is not aware of any existing claims for payment by contractors or others who performed work on the Eligible Facilities or otherwise on the Project. A portion of the disbursed amounts were paid to the City Attorney of the City for his firm's work related to the contractor claims and related matters. The remaining amount from this disbursement, equal to approximately \$1.53 million, was paid to AmTrust Bank in respect of obligations of the Developer to AmTrust Bank.

Possible Further Disbursements to the Developer. The Amended Acquisition Agreement provides for the Authority to make up to four additional disbursements from the Acquisition Account, in an aggregate amount of approximately \$4.5 million, to reimburse the Developer for work done to date on the Eligible Facilities if the Developer satisfies several conditions. These conditions include the confirmation of certain contractor payments, the acceptance by another public agency of an Eligible Facility, and the completion of remedial work by the Developer with respect to certain of the Eligible Facilities. The Authority understands that the Developer assigned to AmTrust Bank any such disbursements, if and when made. The Authority does not know if the Developer will satisfy the conditions to the disbursement of these amounts, but the Authority does expect that it will disburse at least some of these amounts to the Developer.

Priority of Amounts in Acquisition Account to Fund the City Improvements. The Amended Acquisition Agreement provides that the Authority will reserve approximately \$22.8 million in the Acquisition Account to fund City Improvements. In addition, the Amended Acquisition Agreement provides that the Authority will increase or decrease the amount the Authority so reserves in the Acquisition Account for the City Improvements if the City determines that the cost of the City Improvements has changed, or if the City elects to construct additional Eligible Facilities in the City's sole and absolute judgment. Any such amounts the Authority reserves in the Acquisition Account will only be available to pay costs of City Improvements until all of the City Improvements have been completed.

Other Disbursements from the Acquisition Account. If the Developer constructs Eligible Facilities (other than the City Improvements), the Authority may disburse amounts from the Acquisition Account to reimburse the Developer for that work if amounts in the Acquisition Account remain after the amounts the Authority reserves to pay the costs of the City Improvements.

Payment of Delinquent Special Taxes

The Developer previously failed to pay, when due, the two most recent installments of property taxes levied on the parcels that it owns within the Community Facilities District, including the Special Taxes that the Community Facilities District levied on such parcels. The aggregate amount of these delinquent Special Taxes was approximately \$2.36 million. In connection with, and as a condition precedent to, the disbursement of amounts from the Acquisition Account on July 31, 2009, AmTrust Bank, on behalf of the Developer, paid all of these delinquent Special Taxes. As of the date hereof, there are no remaining delinquencies relating to Special Tax levies within the Community Facilities District.

Reimbursement of AmTrust Bank from Letter of Credit Reserve Fund Account

Contemporaneously with the issuance of the Bonds, AmTrust Bank issued a letter of credit (the “Special Taxes Letter of Credit”) to secure debt service payments on the Bonds in the event of delinquencies in the payment of Special Taxes relating to parcels within the Community Facilities District owned by the Developer and the Tanamera/Roripaugh Entities. In accordance with the terms of the Fiscal Agent Agreement on March 25, 2008, the Fiscal Agent drew on the then-remaining stated amount of the Special Taxes Letter of Credit (approximately \$3.4 million) because it was scheduled to expire on April 4, 2008. The Fiscal Agent deposited these amounts into a separate account in the Reserve Fund under the Fiscal Agent Agreement herein called the “Letter of Credit Reserve Fund Account.”

As a result of the Developer’s most recent delinquencies in the payment of Special Taxes, there were insufficient amounts on deposit in the Special Tax Fund to make the scheduled payment of debt service on the Bonds on March 1, 2009. As required by the Fiscal Agent Agreement, the Fiscal Agent drew an amount equal to \$671,158.00 from the Letter of Credit Reserve Fund Account to ensure it had sufficient amounts to make this debt service payment. Since the Developer’s then delinquent Special Taxes were paid on July 31, 2009, the Fiscal Agent Agreement now requires the Authority to transfer to AmTrust Bank the amount so drawn from the Letter of Credit Reserve Fund Account to reimburse AmTrust Bank as issuer of the Special Taxes Letter of Credit.

Balances in the Funds and Accounts of the Fiscal Agent Agreement

As of July 31, 2009, the balances in the following funds and accounts under the Fiscal Agent Agreement were as follows:

Fund or Account	Balance
Administrative Expense Fund	\$ 731,158.05 ⁽¹⁾
Special Tax Fund	2,295,871.04
Roripaugh Ranch Program Fund	865,027.45 ⁽²⁾
Reserve Fund	3,581,316.84
Letter of Credit Reserve Fund Account	2,833,666.91
City Account of the Improvement Fund	1,196,945.75
EMWD Account of the Improvement Fund	1,555,464.67
Public Works Administration Account of the Improvement Fund	537,113.40
Acquisition Account of the Improvement Fund	\$29,210,506.24

(1) The Authority will transfer an amount equal to \$671,158.05 to AmTrust Bank as a reimbursement for an amount withdrawn from the Letter of Credit Reserve Fund Account. See “Reimbursement of AmTrust Bank from Letter of Credit Reserve Fund Account” above.

(2) Amounts in this fund represent penalties collected with payments of delinquent Special Taxes. Amounts in this fund may be used to pay costs related to the Community Facilities District.

Steps by Beneficial Owners to Augment Transmission of Notices

Owners of the Bonds should be aware of steps that they can take to augment the transmission of notices with respect to the Bonds. In order to be assured of receiving notice, beneficial owners of the Bonds may wish to ascertain that the nominee who holds the Bonds for their benefit has agreed to obtain and transmit notices to the beneficial owners, or in the alternative, beneficial owners may wish to provide their names and addresses to the Authority and request that copies of future notices be provided directly to them. Such requests should be sent to:

Temecula Public Financing Authority
c/o Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071
Attn: Peter Thorson

or may be sent by e-mail to pthorson@rwglaw.com. Any requests to receive any prior Releases by the Authority should be made to the same address or e-mail.

Concluding Matters.

ANY SUBSEQUENT STATEMENTS REGARDING THE BONDS, OTHER THAN A STATEMENT MADE BY THE AUTHORITY IN AN OFFICIAL RELEASE OR SUBSEQUENT NOTICE AND FILED WITH THE MUNICIPAL SECURITIES RULEMAKING BOARD, ARE NOT AUTHORIZED BY THE AUTHORITY. THE AUTHORITY SHALL NOT BE RESPONSIBLE FOR THE ACCURACY, COMPLETENESS OR FAIRNESS OF ANY SUCH UNAUTHORIZED STATEMENT.

THIS OFFICIAL RELEASE MAY CONTAIN INFORMATION MATERIAL TO BONDOWNERS AND DOES NOT PURPORT TO CONTAIN ALL MATERIAL INFORMATION WITH RESPECT TO THE BONDS OR THE FINANCIAL CONDITION OF THE COMMUNITY FACILITIES DISTRICT. THE INFORMATION CONTAINED IN THIS OFFICIAL RELEASE IS NOT GUARANTEED AS TO ACCURACY OR COMPLETENESS.

EXHIBIT A

AMENDED AND RESTATED ACQUISITION AGREEMENT

AMENDED AND RESTATED ACQUISITION AGREEMENT

by and between the

TEMECULA PUBLIC FINANCING AUTHORITY

and

ASHBY USA, LLC

Dated as of July 21, 2009

**Relating to:
Temecula Public Financing Authority
Community Facilities District No. 03-02
(Roripaugh Ranch)**

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THIS AMENDED AND RESTATED ACQUISITION AGREEMENT (the "Acquisition Agreement"), dated as of July 21, 2009, 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 the Authority's Community Facilities District No. 03-02 (Roripaugh Ranch) (the "CFD"); and (ii) Ashby USA, LLC, a California limited liability company (the "Developer"), and amends and restates the Prior Acquisition Agreement and Supplement No. 1 thereto (as such terms are defined herein).

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms shall have the meanings ascribed 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 ascribed to them in the Fiscal Agent Agreement (as hereinafter defined).

"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.

"Account Party" means the property owner that provides a Letter of Credit to secure the payment of Special Taxes on property the Account Party or its affiliates own in the CFD.

"Acquisition Agreement" means this Amended and Restated 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 or a Discrete Component, 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 or Discrete Component, (ii) the reasonable costs incurred by the Developer in preparing the Plans for such Facility or Discrete Component and the related costs of design, engineering and environmental evaluations of the Facility or Discrete Component, (iii) the fees paid to governmental agencies for obtaining permits, licenses or other governmental approvals for such Facility or Discrete Component, (iv) professional costs incurred by the Developer associated

with such Facility or Discrete Component, such as engineering, architecture, landscape architecture, legal, accounting, inspection, construction staking, materials testing and similar professional services; and (v) costs directly related to the construction and/or acquisition of a Facility or Discrete Component, 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 7.02 of this Acquisition Agreement). Actual Cost may include an amount not in excess of five percent (5%) of the cost described in clause (i) of the preceding paragraph 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 any of 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 the Temecula Public Financing Authority Community Facilities District No. 03-02 (Roripaugh Ranch) 2006 Special Tax Bonds, issued by the Authority under the provisions of the Act and the Fiscal Agent Agreement.

“Budgeted Cost” means the estimated cost of a Facility or Discrete Component as shown on Exhibit B hereto.

“Build-Out” means, when making calculations pursuant to Section 3.05 as to one or more parcels of property, or otherwise for purposes of clause (viii) in the definition of “Letter of Credit” in Section 1.01, the assumption that the property contains the number, size and type of homes projected in the development plans used by the Tax Consultant in connection with its email regarding “Letter of Credit Calculations” dated February 14, 2006, which report was used to calculate the initial stated amounts of the Letters of Credit to be delivered to the Fiscal Agent on the Closing Date by the Developer and another landowner in the CFD, which assumption may be adjusted from time to time based upon actual completed construction of homes in the District (as reported in connection with requests to reduce the amount of any Letter of Credit by or on behalf of an Account Party or as otherwise known by the Tax Consultant).

“CFD” means the Temecula Public Financing Authority Community Facilities District No. 03-02 (Roripaugh Ranch), created 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.

“City Improvements” shall mean those Facilities identified in Exhibit E hereto, and any additional Facilities designated in a notice to the Authority and the Developer as described in Section 3.03A. of this Acquisition Agreement.

“City Manager” means the person acting in the capacity as City Manager of the City.

“Closing Date” means April 27, 2006, being the date of issuance of the Bonds.

“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; and including, but not limited, to the Roripaugh Ranch Specific Plan, approved by the City on November 26, 2002, as adopted and as thereafter amended, and the Preannexation and Development Agreement, entered into as of December 17, 2002, between the City and the Developer, and all operating memorandum thereunder and all amendments thereto.

“County” means the County of Riverside, California.

“Developer” means Ashby USA, LLC, a California 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.

“Discrete Component” means a functional segment or component of a Facility that the Director of Public Works has agreed can be separately identified, inspected and completed, and be the subject of a Payment Request hereunder. The Discrete Components of the Phase 1 Facilities are shown on Exhibit B hereto. Notwithstanding the foregoing, the Discrete Components shall include work done or costs expended by the Developer relative to a City Improvement for which the Director of Public Works has approved payment, as described in Section 3.03B.

“District-wide Maximum Special Taxes” means the maximum Special Taxes that can be levied on all property in the District assuming Build-Out of all property.

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

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

“Fiscal Agent Agreement” means the agreement by that name, dated as of March 1, 2006, between the Authority and the Fiscal Agent, providing for, among other matters, the issuance of the Bonds and the establishment of an Improvement Fund, as amended and supplemented by Supplemental Agreement No. 1 to Fiscal Agent Agreement, dated as of May 1, 2008, between the Authority and the Fiscal Agent, and as it may be further amended or supplemented from time to time in accordance with its terms.

“Fiscal Year” means the twelve-month period extending from July 1 in a calendar year to June 30 of the succeeding year, both dates inclusive.

“Improvement Fund” means the acquisition account within the fund by that name established by Section 4.02(A) of the Fiscal Agent Agreement.

“Letter of Credit” means a standby letter of credit, which is: (i) irrevocable during its term; (ii) in a form and with draw provisions satisfactory to the Treasurer of the Authority and the initial purchaser of the Bonds; (iii) for the benefit of the Fiscal Agent; (iv) issued by a federal or state chartered bank or other financial institution reasonably acceptable to the Treasurer of the Authority and the initial purchaser of the Bonds, which bank’s or institution’s unsecured debt obligations are rated at least “A-” or better by Moody’s or S&P; (v) at the time of delivery thereof to the Fiscal Agent for purposes of this Acquisition Agreement, accompanied by one or more opinions addressed to the Fiscal Agent and the Authority to the effect, singly or together, that the Letter of Credit is a legal, valid and binding obligation of the provider thereof, enforceable against the provider thereof in accordance with its terms, except as limited by applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of rights of creditors generally as such laws may be applied in the event of a reorganization, insolvency, liquidation, readjustment of debt or other similar proceeding of or moratorium applicable to the provider thereof and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); (vi) for a term of at least one year, effective from no later than the date it is delivered to the Fiscal Agent, and any Letter of Credit provided in substitution for any then outstanding Letter of Credit shall be for a term of at least one year commencing not later than the expiration date of the term of the prior Letter of Credit; (vii) for the account of any entity other than the City, the Authority, the CFD or any other governmental entity; (viii) in a stated amount equal to two years estimated expected annual Special Taxes to be levied on the County Assessor’s parcels to which it pertains (assuming Build-Out of such parcels) and (ix) not secured, as to the reimbursement of any draws thereon, by any property located in the CFD, or if so secured, any such security shall be expressly subordinate to the lien of the Special Taxes. A standby letter of credit may be accompanied by a confirming letter of credit for the purposes of satisfying the requirements in clause (iv) above; and if a confirming letter of credit is provided, the legal opinion referred to in clause (v) above shall be with respect to the confirming letter of credit and not the related Letter of Credit.

“Parcel Liens” means, with respect to any parcel or parcels of real property in the CFD, sum of: (i) the aggregate principal amount of all Bonds of the CFD then outstanding allocable to such parcel or parcels based upon the portion of the debt service payable on the Bonds of the CFD from the special taxes levied (or that, but for capitalized interest on the Bonds, could be levied) on such parcel or parcels in the then annual Fiscal Year, plus (ii) the aggregate principal amount of any fixed assessment liens on the parcel or parcels, plus (iii) a portion of the aggregate principal amount of any and all other community facilities district bonds then outstanding and payable at least partially from special taxes to be levied on such parcel or parcels (the “Other District Bonds”) equal to the aggregate principal amount of the Other District Bonds multiplied by a fraction, the numerator of which is the amount of special taxes levied for the Other District Bonds on such parcel or parcels, and the denominator of which is the total amount of special taxes levied for the Other District Bonds on all parcels of land against which the special taxes are levied to pay the Other District Bonds (such fraction to be determined based upon the maximum special taxes which could be levied in the year in which maximum annual debt service on the Other District Bonds occurs), based upon information from the most recent available Fiscal Year.

“Parcel Value” means the market value, as of the date of the appraisal described below and/or the date of the most recent County real property tax roll, as applicable, of parcels of real property in the CFD identified by an Account Party (the “Identified Parcels”), which Identified Parcels are (i) owned by the applicable Account Party or its Affiliates, (ii) are subject to the levy of the special taxes in the CFD, and (iii) are not delinquent in the payment of any special taxes then due and owing, including with respect to the Identified Parcels the value of the then existing improvements and any facilities to be constructed or acquired with

any amounts then on deposit in the Improvement Fund, all as determined with respect to the Identified Parcels by reference to (A) an appraisal (or an update to a prior appraisal) performed within six (6) months of the date the Treasurer expects to submit documents to the Fiscal Agent under the Fiscal Agent Agreement with respect to a reduction of a Letter of Credit by reason of an increase in the Parcel Value by an MAI appraiser (the "Appraiser") selected by the Authority, or (B), in the alternative, the assessed value of all the Identified Parcels and improvements thereon as shown on the then current County real property tax roll available to the Treasurer of the Authority. It is expressly acknowledged that, in determining a Parcel Value, the Authority may rely on an appraisal to determine the value of some or all of the Identified Parcels and/or the most recent County real property tax roll as to the value of some or all of the Identified Parcels. Neither the Authority nor the Treasurer of the Authority shall be liable to any other person or entity in respect of any appraisal provided for purposes of this definition or by reason of any exercise of discretion made by any Appraiser pursuant to this definition.

"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.

"Phase 1 Facilities" means the Facilities shown in Exhibit B hereto proposed to be acquired with all or a portion of the proceeds of the Bonds.

"Plans" means the plans, specifications, schedules and related construction contracts for the Facilities and/or any Discrete Components thereof 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.

"Prior Acquisition Agreement" means the Acquisition Agreement, dated as of March 1, 2006, between the Authority, for the CFD, and the Developer.

"Purchase Price" means the amount paid by the Authority for a Facility and/or any Discrete Components thereof determined in accordance with Article V hereof, being an amount equal to the Actual Cost of such Facility or Discrete Component, but subject to the limitations and reductions provided for in Article V.

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

"State" means the State of California.

"Supplement" means a written document amending, supplementing or otherwise modifying this Acquisition Agreement and any exhibit hereto.

"Supplement No. 1" means Supplement No. 1 to Acquisition Agreement, dated as of March 6, 2007, between the Authority, for the CFD, and the Developer.

"Tax Consultant" means David Taussig & Associates, Inc. or another independent financial or tax consultant retained by the Authority or the City for the purpose of computing the Special Taxes.

ARTICLE II

RECITALS

Section 2.01. The CFD. The Board of Directors of the Authority has established 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 proceeds of the Bonds 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 (and otherwise described in Sections 3.02C. and E. hereof), as such Exhibit may be amended and/or supplemented by any Supplement, and this Acquisition Agreement shall in no way, by itself, obligate the Developer to construct the Facilities except for those Facilities listed in Exhibit B.

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 payment for Discrete Components thereof as shown in Exhibit B hereto (as it may be amended and supplemented) with a portion of the proceeds of the Bonds on deposit in the Improvement Fund.

Section 2.05. The Bonds. The Authority has issued 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 a portion of the Facilities as explicitly set forth in this Acquisition Agreement. The execution by the Authority of this Acquisition Agreement in no way obligates the City to acquire any Facilities from the Developer with proceeds of the Bonds, except the Facilities listed in Exhibit B hereto which are to be acquired subject to the terms and conditions set forth in this Acquisition 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 (other than the completion or construction, as applicable, of the City Improvements), and that the provisions of this Acquisition Agreement require that any Facilities or Discrete Components thereof 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. Actions Subsequent to the Issuance of the Bonds. Subsequent to the sale and issuance of the Bonds, the Authority was advised that some of the information regarding the Developer in the Official Statement used to market the Bonds may have been inaccurate

and incomplete, and the Authority, for the CFD, and the Developer entered Supplement No. 1 amending and supplementing the Prior Acquisition Agreement. Supplement No. 1 contemplated that the Bonds would be repurchased from the then owners of the Bonds and subsequently remarketed, either immediately, or at a later date, to new investors by means of a new disclosure document. The Authority and the Developer have now agreed that any such repurchase and remarketing is infeasible given the current status of the development of the land in the CFD and the financial markets generally, and now desire to enter into this Acquisition Agreement to provide for the acquisition with funds in the Improvement Fund of certain of the Facilities or Discrete Components thereof from the Developer, to allow for the City to construct the City Improvements and pay the costs thereof from amounts in the Improvement Fund, and to otherwise provide for matters related to the foregoing.

Section 2.08. 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. Bond Proceeds; Improvement Fund. On the Closing Date, a portion of the net proceeds of the Bonds were deposited to an Acquisition Account (defined and referred to herein as the Improvement Fund), and net proceeds of the Bonds were also deposited to a City Account, an EMWD Account and a Public Works Administration Account. Only amounts deposited to the Improvement Fund are subject to the provisions of this Acquisition Agreement. None of the Authority, the City or the CFD shall have any obligation whatsoever to the Developer except to use amounts, if any, available in the Improvement Fund to pay the costs of the acquisition of Facilities and Discrete Components thereof from the Developer, and then only upon the terms and subject to the provisions of this Acquisition Agreement.

Amounts in the Improvement Fund shall be held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. Moneys in the Improvement Fund shall be withdrawn therefrom in accordance with the provisions of the Fiscal Agent Agreement and the applicable provisions hereof for payment of all or a portion of the costs of construction and/or acquisition of the Facilities (including payment of the Purchase Price of Discrete Components thereof), all as herein provided.

The Developer agrees that the Authority alone shall direct the investment of the monies 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 under this Acquisition Agreement, the Prior Acquisition Agreement, any of the Conditions of Approval, or any otherwise applicable law, with respect to any investment of funds made 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 and Discrete Components 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 or Discrete Components thereof 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 or any Discrete Components thereof shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for public facilities required by the Conditions of Approval.

Section 3.02. Priority for Use of Amounts in the Improvement Fund. Amounts in the Improvement Fund shall be used for the following purposes, in the following order or priority:

A. Closing Disbursements. It is hereby acknowledged that, prior to the Closing Date, the Developer submitted to the Authority a Payment Request No. 1, and, on the Closing Date, the Authority withdrew \$348,435.46 from the Improvement Fund and remitted such amount to Ohio Savings Bank (now known as Amtrust Bank) on behalf of the Developer, which amount represented payment and satisfaction by the Authority of Payment Request No. 1

(being a reimbursement of costs of the Developer associated with Murrieta Hot Springs Road, being Facility 1a. and 1b. in Exhibit B). On the Closing Date, the City also remitted to Ohio Savings Bank, on behalf of the Developer, \$3,100,000.00 withdrawn from the City Account established under the Fiscal Agent Agreement, to reimburse the Developer for advances made by it for the cost of construction of a fire station.

B. Payment Request No. 2. On or about July 2, 2008, the Developer submitted to the Authority a Payment Request No. 2 for payment of the Discrete Components comprised of (a) the Bridge (Sta. Gertrudis Crossing) component of Facility 2b. in Exhibit B, and (b) the Bridge (Long Valley Crossing) component of Facility 2c. in Exhibit B. These two Discrete Components have Budgeted Costs of \$6,675,902.00 and \$1,724,569.00, respectively, for an aggregate Budgeted Cost of \$8,400,471.00. The Director of Public Works has reviewed Payment Request No. 2, and the Authority is willing to disburse the aggregate of the Budgeted Costs for these two Discrete Components in payment of the Purchase Price for such Discrete Components, upon satisfaction of the requirements, and subject to the provisions, set forth in Section 3.05A. and B. hereof.

C. Payment Request No. 8. On or about July 30, 2008, the Developer submitted to the Authority Payment Request No. 8 for the payment of certain costs related to the acquisition of right-of-way for Discrete Components 2c, 2d and 2e (as described in the Prior Agreement), for an aggregate request of \$1,229,566.65. The Director of Public Works has reviewed Payment Request No. 8, and the Authority is willing to disburse such amount in payment of the Purchase Price of the respective real property rights on parcels of land as contemplated by Payment Request No. 8, upon satisfaction of the requirements, and subject to the provisions, set forth in Section 3.05A. and C. hereof. The Authority hereby deems, for all purposes of this Acquisition Agreement, the real property rights on parcels of land contemplated by Payment Request No. 8 as "Discrete Components."

D. City Improvements. The City has advised the Developer and the Authority that it will undertake the completion of the Facilities listed in Exhibit E hereto, and referred to herein as the initial "City Improvements." The initial City Improvements include basic arterial roadway improvements necessary for the development of the land in the CFD, and various landowners, their lenders and current and prospective merchant builders have informed the Authority that coordination and funding of the construction of these City Improvements by such parties rather than by the Developer would be difficult and could adversely impact the time of issuance of certain blocks of building permits for development occurring in the CFD and adversely affect the ability of the property in the CFD to generate special taxes for the payment of the debt service on the Bonds; and these City Improvements include roads across the entire area of the CFD and outside of the boundaries of the CFD that can more efficiently be constructed by the City. Amounts in the Improvement Fund shall be withheld and disbursed to pay the costs of such City Improvements as described in Section 3.03 hereof. Pursuant to Section 3.03C., \$22,771,820.00 shall be withheld and disbursed for such City Improvements, subject to increases and/or decreases in such amount as described in Section 3.03C.

E. Payment Requests Nos. 3 through 7. The Developer has submitted to the Authority Payment Request Nos. 3, 4, 5, 6 and 7. The Director of Public Works has reviewed such Payment Requests and has determined that, while the work covered by the Payment Requests may have been completed, some of the work for which payment has been requested has deteriorated or is not in an acceptable condition, evidence of payment of certain contractors has not been provided, and evidence of acceptance of an Eastern Municipal Water District facility has not been provided. Accordingly, the Authority is willing to disburse, for each such Payment Request, an amount equal to the lesser of (i) the budgeted amount for the applicable Discrete Components as set forth in Exhibit B to the Prior Acquisition Agreement, or (ii) the

Actual Costs of the applicable Discrete Components that have been verified by the Director of Public Works; less (a) with respect to Payment Request No. 3, \$123,668.50 for which evidence of payment of contractors by the Developer has not been provided to the Director of Public Works, (b) with respect to Payment Request No. 5, \$228,985.98 for which evidence of payment of contractors by the Developer has not been provided to the Director of Public Works, (c) with respect to Payment Request No. 7, \$2,349,139.64 because evidence of acceptance of the Facility for which the work contemplated by such Payment Request by the Eastern Municipal Water District has not been provided to the Director of Public Works, and (d) with respect to all such Payment Request Nos. 3 through 7 \$840,000.00 (being an amount estimated by the Director of Public Works as necessary to provide security to the Authority that the work contemplated by such Payment Requests will be brought by the Developer into an acceptable condition. Based on the foregoing, the Authority is willing to disburse in respect of Payment Request Nos. 3 through 7, upon satisfaction of the requirements, and subject to the provisions, set forth in Section 3.05A., an aggregate of \$5,180,538.69 (said aggregate amount representing \$3,498,262.00 for Payment Request No. 3, \$450,069.58 for Payment Request No. 4, \$1,552,236.96 for Payment Request No. 5, \$643,638.65 for Payment Request No. 6 and \$2,349,139.64 for Payment Request No. 7; less \$123,668.50 withheld from Payment Request No. 3, \$2,349,139.64 withheld from Payment Request No. 7, and less a withhold amount of \$840,000.00 in respect of all such Payment Requests).

To the extent that the Developer submits to the Director of Public Works evidence of payment, in a form acceptable to the Director of Public Works in his sole discretion, by the Developer to contractors and/or suppliers of all amounts requested to be reimbursed to the Developer as set forth in Payment Request No. 3, the Authority is willing to disburse an additional \$123,668.50 in respect of Payment Request No. 3 from funds in the Improvement Fund. To the extent that the Developer submits to the Director of Public Works evidence that the Eastern Municipal Water District has accepted the Facility the work for which was included in Payment Request No. 7, the Authority is willing to disburse \$2,349,139.64 in respect of Payment Request No. 7, from amounts in the Improvement Fund.

To the extent that the Director of Public Works subsequently determines that the Developer has proceeded with reasonable diligence to take, and has taken, all necessary actions at its expense such that the work on the Discrete Components contemplated by Payment Request Nos. 3 through 7 is useable by the City in connection with its construction and/or completion of the City Improvements (as described in Section 3.03C.) or, with respect to grading work, the grading work has been returned to an acceptable condition, and only to the extent such work is so useable or has been so returned to an acceptable condition, the Director of Public Works shall so advise the Authority. The Authority, following receipt of the determination of the Director of Public Works, is willing to disburse the \$840,000.00 held back from Payment Request Nos. 3 through 7 as described above, funds from the Improvement Fund upon satisfaction of the requirements, and subject to the provisions, set forth in Section 3.05A. and D. hereof. If, however, the Director of Public Works determines that Developer has failed to use reasonable diligence to take, and/or has not taken, all necessary actions such that the work on the Discrete Components contemplated by Payment Request Nos. 3 through 7 was not fully useable by the City or was not returned to and is in an acceptable condition, the Director of Public Works will so advise the Developer and the Developer will have no right or claim to any of the \$840,000.00 withheld from Payment Request Nos. 3 through 7.

F. Additional City Improvements. Upon any designation by the City of any City Improvements pursuant Section 3.03A. in addition to those City Improvements described in Exhibit E hereto, amounts in the Improvement Fund shall be withheld and paid to or upon the order of the City for such additional City Improvements as described in Section 3.03.

G. Future Developer Payment Requests. Amounts in the Improvement Fund, after satisfaction of all of the demands described in subparagraphs A through F above, shall be used to pay costs of the Facilities indicated as Priority A in Exhibit D hereto. When all costs of the Priority A Facilities and all costs of any City Improvements have been paid in full, as determined by the Director of Public Works, any remaining amounts in the Improvement Fund may be used to pay the Purchase Prices of Facilities and Discrete Components thereof indicated as Priority B on Exhibit D hereto. The Authority hereby acknowledges that any amounts in the Improvement Fund to be used to satisfy any Payment Requests for payment for Facilities described in this Section 3.02G. will be subject to the AmTrust Assignment described in clause (i) of Section 3.05A. and in Section 10.19 below.

H. Other. Notwithstanding the foregoing provisions of this Section 3.02, the Authority, and/or the City, as applicable, may use amounts on deposit in the Improvement Fund for the purposes described in Section 5.11 and Section 8.02, on a basis senior to any use of such funds for the purposes described in subparagraphs D, E, F and G of the this Section 3.02.

Section 3.03. City Election to Construct Facilities. A. City Option to Construct. Notwithstanding any provision of this Acquisition Agreement to the contrary, the City has advised the Authority that it will construct, or finish the construction of, the Facilities described in Exhibit E, and referred to in this Acquisition Agreement as the "City Improvements." The City may, in its sole and absolute discretion, by written notice to the Authority and the Developer, determine that it will construct, or finish the construction of, any of the other Facilities (not presently included on Exhibit E) authorized to be funded by the CFD. Any Facilities described in any such notice shall constitute additional City Improvements under this Acquisition Agreement.

B. No Further Developer Activities; Payments to Developer. The Developer immediately shall cease any acquisition or construction activities related to the City Improvements listed in Exhibit E; and, as soon as practicable, following receipt of any written notice from the City described in the second sentence of Section 3.03A, any further acquisition or construction activities related to any Facilities in any such notice that the City has determined to construct or complete, except that the Developer shall promptly complete any work in progress subject to any contracts theretofore awarded for work related to such Facilities and the Developer shall complete any other tasks necessary for the City to obtain the value of the work performed (as directed by the Director of Public Works in writing to the Developer). The Authority shall process Payment Requests related to any City Improvements submitted by the Developer under the provisions of this Acquisition Agreement, for work completed prior to the effective date of this Acquisition Agreement (with respect to City Improvements described in Exhibit E) or prior to the termination of work as described in the preceding sentence (with respect to any City Improvements designated by the City following the effective date of this Acquisition Agreement). The Authority will pay the Purchase Price of any Facilities (and any related Discrete Components) that have become City Improvements in accordance with the provisions of this Acquisition Agreement (including, but not limited to, Sections 3.02 and 3.05 hereof), but payment will be made for any partially completed Facility or Discrete Component only to the extent that the Director of Public Works determines that the work done by the Developer provided value (or, with respect to grading work, the grading work has been returned to an acceptable condition), the Developer cooperates with the City as reasonably requested in connection with the construction of such City Improvement, and only in compliance with the provisions of Section 3.05D. below. For example, it is not expected that the Authority will pay for a "rough grading" Discrete Component if the work done has eroded to the point where significant remedial grading is necessary to place the land in the same condition as it was when the rough grading had initially been completed, unless such remedial grading has been completed by the Developer to the satisfaction of the Director of Public

Works. The Developer agrees to cooperate with the City in connection with the completion of the City Improvements, as reasonably requested by the City; and, at its own expense, to bring the Facilities or Discrete Components which it has previously completed (including grading) into a condition acceptable for acquisition as determined by the Director of Public Works. The City shall be entitled to use amounts in the Improvement Fund to bring any such Facilities and Discrete Components into an acceptable condition if the Developer fails to do so.

C. Reservation of Funds; Agreement for City Improvements. The Authority shall withhold in the Improvement Fund sufficient funds to pay the estimated costs of the City Improvements, as determined by the City from time to time. The City has determined, as of the effective date of this Acquisition Agreement, that the amounts shown in Exhibit E hereto are the estimated costs for the City Improvements listed in Exhibit E. The City, by written notice to the Authority and the Developer, may increase or decrease the amount to be withheld in the Improvement Fund for such City Improvements if it determines, in its sole and absolute judgment, that the costs of the City Improvements have changed, and the City may from time to time designate additional funds to be withheld in the Improvement Fund in connection with the designation of additional City Improvements as described in Section 3.03A. Any amount in the Improvement Fund to be withheld as described in this Section 3.03C shall not be available to pay the Purchase Price of Facilities or Discrete Components under the provisions of Article V of this Acquisition Agreement.

Upon receipt of a written request of the Director of Public Works requesting payment for costs related to a City Improvement, the Authority shall cause funds to be withdrawn from the Improvement Fund to satisfy such request, and the amount so withdrawn shall reduce any related withhold for the related City Improvement described in the preceding paragraph.

D. No Liability for City Improvements. While the City has advised the Authority that it expects to use reasonable diligence to complete the City Improvements, the City shall have no liability or obligation whatsoever to the Developer or any other person or entity with respect to the City Improvements or the construction thereof.

Section 3.04. Letters of Credit. Prior to the issuance of the Bonds, the Developer provided or cause to be provided to the Fiscal Agent for each owner of land and its Affiliates (a) that were projected by the Tax Consultant, on the Closing Date, to be subject to 10% or more of the expected annual special tax levy in the CFD (assuming Build-Out) following the issuance of the Bonds, and (b) that owned land in a planning area and either (i) the then Parcel Value of such land was less than three times the Parcel Liens for such land, or (ii) there were conditions precedent to the issuance of building permits for all lots to be developed in such planning area, as such conditions are set forth in the Preannexation and Development Agreement, dated as of December 17, 2002, by and between the City and the Developer as amended (the "Conditions").

A Letter of Credit provided to the Fiscal Agent is subject to draw by the Fiscal Agent (i) in the amount of any special taxes levied by the CFD on any of the "parcels in the CFD to which the Letter of Credit pertains" (as such phrase is defined in the next paragraph) which are delinquent; or (ii) in whole if the Letter of Credit (or the confirming letter of credit, if one is provided with a Letter of Credit) expires prior to the date on which it is eligible for release in whole as described below and a replacement Letter of Credit (which may include a confirming letter of credit) satisfying the criteria described in the definition "Letter of Credit" in Section 1.03 is not delivered to the Fiscal Agent at least 5 days prior to such expiration date; (iii) in whole, if the rating of the unsecured debt obligations of the provider of the Letter of Credit have been reduced to BBB or its equivalent or lower by Moody's Investor's Service or Standard & Poor's Ratings Group (if a confirming letter of credit has been delivered together with a

Letter of Credit, the foregoing rating criteria shall be applied to the ratings of the institution providing the confirming letter of credit). Amounts drawn on any Letter of Credit pursuant to the preceding clause (i) will be deposited to the special tax fund for the CFD Bonds and used for the purposes of such fund, and amounts drawn on any Letter of Credit pursuant to the preceding clause (ii) or (iii) will be held in the reserve fund for the CFD Bonds and drawn upon, with the proceeds of the draw deposited to the Special Tax Fund, for the CFD Bonds, in the amount of any delinquent special taxes levied in the CFD with respect to the parcels in the CFD to which the Letter of Credit pertains, or released or reduced to the same extent the corresponding Letter of Credit would have been released or reduced as described in the succeeding paragraph of this Section 3.05.

The Authority will cause the Fiscal Agent to reduce the amount available to be drawn on a letter of credit from time to time, but not more than once every six months (commencing no sooner than six months after the closing date for the initial series of the Bonds), upon the presentation to the Treasurer of the Authority of a written estimate as to the expected annual special taxes that may be levied on parcels in the CFD to which the Letter of Credit pertains, assuming Build-Out (the "Maximum Amount"). In calculating the Maximum Amount (and for purposes of the first and last sentences of the prior paragraph and clause (II) of the first sentence of the second following paragraph), the term "parcels in the CFD to which the Letter of Credit pertains" shall mean the parcels in the District which were initially identified by the applicable Account Party as being the subject of the respective Letter of Credit less any parcels that are, at the time of calculation, (a) owned by a party unaffiliated with the applicable Account Party, so long as the maximum Special Taxes levied on such parcels (assuming Build-Out) is less than 10% of the District-wide Maximum Special Taxes, (b) in a planning area whose Parcel Value is more than three times the Parcel Liens, and are not subject to Conditions which Conditions apply to all lots to be developed in the planning area in which the parcels are located; (c) subject to a separate Letter of Credit, as described below; or (d) owned by individual homeowners. If the Maximum Amount, multiplied by two (herein, the "Revised Stated Amount"), is less than the current stated amount of the applicable Letter of Credit, then the Treasurer of the Authority shall provide written direction to the Fiscal Agent to reduce the applicable Letter of Credit by the difference between the current stated amount of the Letter of Credit and the Revised Stated Amount of the Letter of Credit. Promptly following receipt of such written direction from the Treasurer of the Authority, the Fiscal Agent shall complete and deliver to the applicable Letter of Credit provider the appropriate certificates and annexes to the subject Letter of Credit to effectuate the reduction of the stated amount of such Letter of Credit. Notwithstanding the foregoing, a Letter of Credit shall not be reduced if the reason for the reduction is the sale of property to an owner (I) that will own, together with its Affiliates, property responsible for 10% or more of the expected annual Special Taxes that may be levied on such parcels in the CFD (assuming Build-Out), and (II) that will own land in a planning area and either (x) the then Parcel Value of such land is less than three times the Parcel Liens for such land, or (y) there are Conditions precedent to the issuance of building permits for all lots to be developed in such planning area; unless the new property owner provides evidence that the new owner has posted its own Letter of Credit securing the payment of special taxes to be levied by the CFD on such property. Notwithstanding any provision of this paragraph to the contrary, the word "Conditions" when used in this paragraph means the conditions precedent to the issuance of building permits for all lots to be developed in the applicable planning area, as such conditions are set forth in the Preannexation and Development Agreement, dated as of December 17, 2002, between the City and the Developer, as in effect on the date of issuance of the Bonds, whether or not the City later waived or deferred some of such conditions as a precedent to providing building permits, with the purpose and effect that a Letter of Credit will not be subject to release by reason of the provisions of clause (b) of the second sentence of this paragraph until the infrastructure improvements described in such Preannexation and Development Agreement as conditions precedent for the release of the applicable building permits have been completed. The

Authority hereby acknowledges that the provisions of clauses (a) and (c) of the second sentence of this paragraph allow that: (i) if a purchaser of property in the CFD provides a letter of credit of the character described in the preceding paragraph with respect to the property so purchased, any letter of credit then held by the Fiscal Agent pertaining in whole or in part to the property so purchased shall be subject to reduction by the amount available to be drawn on the letter of credit so provided by such purchaser; and (ii) if a purchaser of property in the CFD is unaffiliated with the Account Party for any letter of credit then held by the Fiscal Agent pertaining to the property so purchased, and the conditions described in clause (a) of the second sentence of this Section 3.05 are satisfied, the letter of credit so held by the Fiscal Agent shall be subject to reduction so that the remaining amount available to be drawn on such letter of credit is as required by clause (viii) of the definitions of "Letter of Credit" in Section 1.01 with the parcels so purchased not to be considered as parcels to which such Letter of Credit pertains.

The Authority will cause the Fiscal Agent to release any Letter of Credit or portion thereof upon receipt of a replacement letter of credit which satisfies the criteria in the definition of "Letter of Credit" in Section 1.03 and with a face amount equal to the amount of the Letter of Credit to be so released (as such face amount may be reduced pursuant to the preceding paragraph).

The Fiscal Agent has agreed in the Fiscal Agent Agreement to release, or reduce the amount available to be drawn on, a Letter of Credit upon receipt of written direction from the Treasurer of the Authority to the effect that (I)(a) the then aggregate Parcel Value of the parcels in a planning area of the CFD identified by an Account Party and described in such written direction (the "Identified Parcels"), to which the Letter of Credit pertains, is at least three times the Parcel Liens, and (I)(b) the Conditions (as defined in the first paragraph of this Section 3.05) to the issuance of building permits for all of the Identified Parcels have been satisfied; or (II) if the Identified Parcels are subject to less than 10% of the expected annual special tax levy in the CFD (assuming Build-Out). The Treasurer shall review appraisals (or updates to prior appraisals) submitted to the Treasurer of the Authority by or on behalf of an Account Party that are conducted by an appraiser and in a form acceptable to the Treasurer of the Authority to determine if any Letter of Credit is to be released or reduced and, if so, shall so advise the Fiscal Agent in writing. Promptly following receipt of written direction from the Treasurer of the Authority as to a Letter of Credit, the Fiscal Agent Agreement directs the Fiscal Agent to complete and deliver to the applicable Letter of Credit provider the appropriate certificates and annexes to the subject Letter of Credit to effectuate the release or reduction of such Letter of Credit. In connection with any such reduction, the amount available to be drawn on the applicable Letter of Credit shall be reduced by an amount equal to two times the expected annual Special Taxes that may be levied on the Identified Parcels (assuming Build-Out of such parcels) specified in the written direction of the Treasurer of the Authority described above (however, in any event, the Letter of Credit shall be released if the conditions referenced in clause (II) of the first sentence of this paragraph have been satisfied).

The Authority will cause to be remitted to the provider of any Letter of Credit which has been drawn upon in respect of delinquent special taxes levied by the CFD, the amount of any such delinquent special taxes, less any costs or administrative expenses incurred in connection with the delinquency or the related draw on the Letter of Credit, not to exceed in any event the amount so drawn on the Letter of Credit and received by the Fiscal Agent, when and if such delinquent special taxes are collected by the CFD.

Section 3.05. Procedure for Disbursement of Funds in Satisfaction of Payment Requests 2 Through 8 and Future Payment Requests. The Authority will withdraw amounts from the Improvement Fund to pay Payment Request Nos. 2 through 8 heretofore submitted

by the Developer (the "Pending Payment Requests"), or any future Payment Request submitted by the Developer, subject to the provisions of Section 3.02, and the conditions precedent and in the amounts described in Section 3.02 and below:

A. Conditions to Disbursement for any Payment Request. The Authority shall not be obligated to, and will not, disburse any funds in the Improvement Fund to satisfy any of the Pending Payment Requests or any other additional Payment Request submitted by the Developer until each of the following conditions have been satisfied, as determined by the City Manager following consultation with the City Attorney:

(i) Amtrust Bank (formerly known as Ohio Savings Bank) has expressly approved in writing this Acquisition Agreement, including but not limited to the provisions of this Section 3.05, and Amtrust Bank has agreed that to the extent the provisions of this Acquisition Agreement are in conflict with those contained in the Assignment and Agreement (Roripaugh Ranch) dated as of April 20, 2006 (the "AmTrust Assignment"), or any other agreement to which it and the Developer are parties, the provisions of this Acquisition Agreement shall prevail;

(ii) the Developer has filed all documents required of it under the Developer Continuing Disclosure Agreement, dated as of March 1, 2006, between the Developer, the Fiscal Agent and the Dissemination Agent named therein; and

(iii) the Developer has paid all special taxes levied by the CFD on property it owns in the CFD, and any penalties and interest due with respect to any delinquent special taxes levied by the CFD on property owned by the Developer in the CFD, or such amounts will be paid prior to any application of funds described in Section 3.05B. below.

B. Application of Funds in Payment of Payment Request No. 2. Upon satisfaction of the conditions set forth in Section 3.05A., the Authority will cause to be disbursed from the Improvement Fund, in full and complete satisfaction of Payment Request No. 2, \$8,400,471.00, with said amount (together with the \$5,180,538.69 described in Section 3.05D. below) to be disbursed in the following amounts and the following order of priority:

(i) to the parties, in the amounts and in accordance with the orders of the Court set forth in the Attachment Orders referenced in Exhibit F hereto or served on the City prior to the tender of a payment, as determined by the City Manager upon consultation with the City Attorney;

(ii) to the parties and in the amounts necessary to discharge the liens described in Exhibit F thereto, as determined by the City Manager upon consultation with the Director of Public Works and the City Attorney (the City to provide written notice to the Developer of any amount to be paid pursuant to this clause (ii) that is not already listed in Exhibit F, prior to making any such payment not listed in Exhibit F);

(iii) to any other party that has filed a claim upon the City, the Authority or the CFD for work performed on or about the property located in the CFD, to the extent such claim is valid and unsatisfied, as determined by the City Manager upon consultation with the Director of Public Works and the City Attorney (the City to provide written notice to the Developer of any such claim

and the amount thereof, prior to making a payment of such claim under the provisions of this clause (iii)); or, alternatively, in the discretion of the City Manager following consultation with the Director of Public Works and the City Attorney, any or all of such amounts may be paid (x) to Amtrust Bank to the extent it establishes that it has paid such claims and they have been released, or (y) to a Court established escrow under an interpleader action filed in the Superior Court to resolve such claims;

(iv) to the law firm of Richards Watson & Gershon, as required by Section 8.02B. below; and

(v) to Amtrust Bank, as required by the Assignment Agreement described in Section 3.05A. above.

The Authority agrees, upon submission by Amtrust Bank of a written request to the Authority, to remit any payment otherwise to be made to Amtrust Bank under clauses (iii)(x) or (v) above, to a single party identified by Amtrust Bank in such written request.

C. Application of Funds in Payment of Payment Request No. 8. Upon satisfaction of the conditions set forth in Section 3.05A., and provision by the Developer of evidence satisfactory to the Director of Public Works in his sole discretion to the effect that any and all promises made by the Developer, or any Affiliate of the Developer, or any representative or agent of the Developer or any such Affiliate to any owner of any interest in any of the parcels of land for which payment is to be made pursuant to Payment Request No. 8 have been fully and completely performed and satisfied, the Authority will cause to be disbursed from the Improvement Fund, in full and complete satisfaction of Payment Request No. 8, \$1,229,566.65, with said amount to be disbursed in the amounts and the order of priority described in clauses (i) through (v) of Section 3.05B. above.

D. Application of Funds in Payment of Payment Request Nos. 3 Through 7. Upon satisfaction of the conditions set forth in Section 3.05A., the Authority will cause to be disbursed from the Improvement Fund, in satisfaction of Payment Request Nos. 3 through 7, \$5,180,538.69, with said amount to be disbursed in the amounts and the order of priority described in clauses (i) through (iv) of Section 3.05B. above.

Upon satisfaction of the conditions set forth in Section 3.05A, and to the extent the Director of Public Works receives the evidence of payment and/or evidence of acceptance of the Eastern Municipal Water District described in the second paragraph of Section 3.02.E., the Authority will cause to be disbursed from the Improvement Fund the applicable amounts described in the second paragraph of Section 3.02.E.

Upon satisfaction of the conditions set forth in Section 3.05A., and to the extent that the Director of Public Works determines that the Discrete Components for which payment was requested in Payment Request Nos. 3 through 7 are in an acceptable condition (including any necessary remedial grading) and that the City will obtain the value of the work performed, the Authority will cause to be disbursed from the Improvement Fund an amount equal to \$840,000.00, said amount to be disbursed in the amounts and the order of priority described in clauses (i) through (v) of Section 3.05B. above.

E. Application of Funds in Payment of Future Payment Requests. Upon satisfaction of the conditions set forth in Section 3.05A., any Payment Request (other

than a Prior Payment Request, which is subject to the applicable provisions of paragraphs 3.05A. through 3.05D. above) shall be processed in accordance with the provisions of Article V of this Acquisition Agreement, and will be subject to all other applicable provisions of this Acquisition Agreement.

ARTICLE IV

CONSTRUCTION OF FACILITIES

Section 4.01. Plans. To the extent that it has not already done so, the Developer shall cause Plans to be prepared for the Facilities listed in Exhibit B. The Developer shall obtain the written approval of the Plans 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. Duty of Developer to Construct. 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 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 be obligated: (i) to construct and cause conveyance to the City (or other applicable governmental agency) all Facilities and Discrete Components thereof listed in Exhibit B hereto, and (ii) to 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 shall not be relieved of its obligation to construct each Facility and Discrete Component thereof listed in Exhibit B hereto and convey each such Facility to the City in accordance with the terms hereof, even if, (i) because of the limitations imposed by Section 5.06 hereof, the Purchase Price for such Discrete Component or Facility is less than the Actual Cost, or cost to the Developer, of such Discrete Component or Facility, or (ii) there are insufficient funds in the Improvement Fund to pay the Purchase Prices thereof, 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 and any Discrete Components thereof acquired with funds withdrawn from the Improvement Fund:

A. General. This Acquisition Agreement is for the acquisition of the Facilities and payment for Discrete Components thereof 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 and the Discrete Components thereof 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.

B. Bidding Procedures. Notwithstanding the foregoing, the Developer shall award all contracts for construction of the Facilities and any Discrete Components thereof 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 (or any specific Discrete Components thereof to be separately bid), 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 (or Discrete Components). 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 or Discrete Component 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. 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 or applicable Discrete Components, 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 complete copies of the schedule and each update to the schedule for the Director's review.

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, Discrete Components 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 or the Discrete Components, 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 of Discrete Components.

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. Although not otherwise required under applicable law, performance and payment bonds, in a form acceptable to the Director of Public Works which name the Authority and the City as obligees, shall be required of the Developer for any specific Facility or Discrete Component not completed as of the effective date of this Acquisition Agreement, at the time the Developer initiates construction activities related thereto.

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 \$5,000.00. 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 or Discrete Component, but to the extent that it increases the Actual Cost of a Facility or Discrete Component, such increased cost may be payable as part of the Purchase Price of the related Facility or Discrete Component as provided in Section 5.06A. hereof.

Section 4.07. Time for Completion. The Developer will use reasonable diligence to complete the Phase 1 Facilities that have not been completed as of the date 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 or Discrete Component thereof until the Facility or Discrete Component thereof 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 or Discrete Components. 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; provided that the Authority has agreed hereunder to make payments to the Developer for certain Discrete Components of Facilities expressly shown in Exhibit B hereto, as it may be supplemented by any Supplement. The Developer acknowledges that the Discrete Components have been identified for payment purposes only, and that the City (or other applicable public agency that will own a Facility) shall not accept a Facility of which a Discrete Component is a part until the entire Facility has been completed. The Authority acknowledges that the Discrete Components do not have to be accepted by the City (or other applicable public agency that will own a Facility) as a condition precedent to the payment of the Purchase Price therefor, but any such payment shall not be made until the Discrete Component has been completed in accordance with the Plans therefor, as determined by the Director of Public Works. In any event, the Authority shall not be obligated to pay the Purchase Price for any Facility or Discrete Component except from the moneys in the Improvement Fund.

Section 5.03. Payment Requests. In order to receive the Purchase Price for a completed Facility or Discrete Component, 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 or Discrete Component, 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 Discrete Component or Facility identified therein was constructed in accordance with the Plans therefor, and to verify and approve the Actual Cost of such Discrete Component or 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 or Discrete Component is denied, the Director of Public Works shall state whether the Payment Request is nevertheless approved and complete for any one or more Facilities or Discrete Components and any such Facilities or Discrete Components 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 Director of Finance. Upon receipt of the reviewed and fully signed Payment Request, the City's Director of Finance 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 under the applicable provisions of the Fiscal Agent Agreement, 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 the Improvement Fund under the terms of the Fiscal Agent Agreement.

The parties hereto acknowledge that the Facilities and Discrete Components that are the subject of the Payment Requests submitted when there are insufficient proceeds 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 (ii) 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 Director of Finance, who will then arrange for payment from the Fiscal Agent in the manner set forth above. At all times, the construction of the Facilities is made with the expectation that such Facilities will be purchased by the Authority (but solely from amounts available in the Improvement Fund), and that the conveyance of such Facilities to the City (or any other party that will own the same) prior to receipt of the Purchase Price for such Facilities shall not be construed as a dedication or gift, or a waiver of the obligation hereunder to pay the Purchase Price for such Facilities. Notwithstanding any other provisions of this Acquisition Agreement, no further payments of the Purchase Prices of Facilities will be made after March 1, 2016.

The Purchase Price paid hereunder for any Facility or Discrete Component shall constitute payment in full for such Facility or Discrete Component, 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 or Discrete Component, 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 Discrete Component or Facility will be made only in the amount of the Purchase Price for the respective Discrete Component or Facility; however, if the Actual Cost exceeds the Budgeted Cost for a Discrete Component or a Facility, the excess shall be borne by the Developer until such time as a Budgeted Cost for another Discrete Component or 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 or Discrete Component 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 or Discrete Component, (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 or Discrete Components 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 and/or Discrete Components.

No payment shall be made for the Purchase Price of any Discrete Component 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 Discrete Component 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 or Discrete Component 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 or Discrete Component 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 or under the Prior Acquisition Agreement, including any assignment to any lending institution, other than with respect to the payments described in Section 3.02B.

C. Withholding Payments. The Authority shall be entitled, but shall not be required, to withhold any payment hereunder for a Discrete Component or 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 withhold payment for any Discrete Component or Facility (i) constituting land or an interest in land, or (ii) constructed on land not previously dedicated or otherwise conveyed to the City, until Acceptable Title to such land is conveyed to the City or other public entity that will own the respective Facility, as described in Article VI hereof.

The Authority shall withhold payment for any Facility or Discrete Component identified as a Priority B item in Exhibit D hereto until the Director of Public Works has determined that all costs of (i) the City Improvements, and (ii) items identified as Priority A in Exhibit D, in each case have been paid in full.

The Authority shall be entitled to withhold any payment hereunder for a Discrete Component 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 Discrete Component that is the subject of a Payment Request, or conditional lien releases have been provided by the Developer for such Discrete Component. 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 (or the final Discrete Component of any such Facility) 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 (or final Discrete Component) 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 (or the final Discrete Component of any such 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 materialman's lien nor limit the remedies available to the Developer with respect thereto so long as such delay in performance shall not subject the Facilities or any Discrete Component thereof 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: (i) the amount determined by the Director of Public Works as necessary to complete any City Improvements, which amount, as of the date of execution of this Acquisition Agreement, is as shown in Exhibit E hereto, but may be adjusted from time to time by the Director of Public Works upon written notice to the Developer to the effect that the costs of the City Improvements have increased or decreased, as applicable, from what had previously been estimated by the Director of Public Works, and the amount of any such increase or decrease; or additional Facilities or Discrete Components have become City Improvements as described in Section 3.03, and the estimated costs of any such additional City Improvements; and (ii) an amount equal to ten percent (10%) of the Purchase Price of each Facility or Discrete Component (not constituting City Improvements) to be paid hereunder that is not the subject of a Pending Payment Request (as such term is defined in Section 3.05). No retention described in the preceding clause (ii) shall be required for Facilities or Discrete Components described in the Pending Payment Requests.

Any such retention described in clause (i) of the preceding sentence with respect to a specific City Improvement will be released, and the amount released will be available to make payments for Facilities and Discrete Components under this Acquisition Agreement, upon a determination by the Director of Public Works that all costs related to the respective City Improvement have been paid in full, with the amount so released to be the amount of the applicable retention less all costs related to the respective City Improvements. Any such retention described in clause (ii) of the

first sentence of this Section 5.06D 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 described in clause (ii) of the first sentence of this Section 5.06D upon the completion and acceptance of a Facility or Discrete Component, if a maintenance or warranty bond is posted in lieu thereof in accordance with Section 6.06 hereof. Also, no retention described in clause (ii) of the first sentence of this Section 5.06D shall apply if the Developer proves to the Director of Public Work's satisfaction that the Developer's contracts for the Facilities (or Discrete Components) provide for the same ten percent (10%) retention as herein provided, so that the Purchase Price paid for the Facility or Discrete Component is at all times net of the required retention.

Payment or release of any retention described in this Section 5.06D, in any event, shall also be contingent upon the availability of monies in the Improvement Fund therefor.

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.

G. Deductions From Payments. There shall be deducted from any payment otherwise due to the Developer hereunder any amount owing to Richards Watson & Gershon in accordance with the provisions of Section 8.02B.

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 the Improvement Fund, the Authority and the Developer may designate in a Supplement hereto, Facilities (and/or Discrete Components thereof) to be constructed and acquired with such remaining funds to be selected from the list of Facilities in Exhibit A.

Section 5.08. Defective or Nonconforming Work. If any of the work done or materials furnished for a Facility or Discrete Component 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 or Discrete Component 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 or Discrete Component, 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. Modification of Discrete Components. Upon written request of the Developer, the Director of Public Works shall consider modification of the description of any Discrete Component. Any such modification shall be subject to the written approval of the Director of Public Works, and shall not diminish the overall Facilities listed in Exhibit B to be provided by the Developer hereunder (in a material way such that the change invalidates any of the assumptions used in the appraisal conducted to sell the Bonds). It is expected that any such modification will be solely for purposes of dividing up the work included in any Discrete Component for purposes of acceptance and payment, for example: (i) separation of irrigation and landscaping from other components of a Discrete Component, (ii) modifications to allow for payment for roadway improvements prior to completion of the top course of paving, or (iii) division of utility construction by utility work orders. In most instances, the Director of Public Works will only approve modifications for payment purposes when there will be an unusual period of time between the completion and acceptance of such divided work or to better implement the phasing of the overall construction of the Facilities; but no such circumstances shall this Section in any way obligate the Director of Public Works to approve such modification.

Section 5.10. EMWD Acquisition Facilities. Notwithstanding any other provision of this Acquisition Agreement, the Purchase Price for any EMWD Acquisition Facility shall be the respective "value" of such Facility as determined pursuant to Section 7(b) of the Joint Community Facilities Agreement – EMWD, dated as of January 1, 2005 (the "EMWD Agreement"), among the Eastern Municipal Water District, the Authority and the Developer, and such Facilities shall be constructed and accepted in accordance with the EMWD Agreement.

The Developer agrees to notify the Authority in writing promptly following the date on which it will no longer submit any Payment Request relative to the EMWD Acquisition Facilities pursuant to the EMWD Agreement. Following receipt of such notice, the Authority shall direct the Fiscal Agent to close any EMWD Account established under the Fiscal Agent Agreement and to transfer any remaining amounts on deposit therein as provided in the Fiscal Agent Agreement.

Section 5.11. 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) for any City Improvement consistent with the provisions of Sections 3.02 and 3.03, (ii) in the event that the construction of the Facilities is substantially delayed, (iii) in the event that the plans for or any other aspect of such construction are substantially altered without the consent of the City, 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 that, in the case of the preceding clauses (ii), (iii) and (iv), were not funded at the time of issuance of the Bonds from the proceeds of the Bonds deposited to a Public Works Administration Account created under the Fiscal Agent Agreement and specifically to be used for such purpose. The City shall give written notice of the amount of any such expected transfer for a purpose described in any of clauses (ii), (iii) or (iv) of the preceding sentence and the purpose(s) thereof to the Developer, prior to implementing a transfer from the Improvement Fund to the Public Works Administration Account for such a purpose. The Developer acknowledges that any transfer described in the first sentence of this Section 5.11 will reduce the amount available to pay the Purchase Prices of the Facilities and Discrete Components thereof hereunder.

Notwithstanding the foregoing, subject to the provisions of Section 4.02 of the Fiscal Agent Agreement as originally executed or as it may thereafter be amended in accordance with its terms, amounts may be withdrawn from the Improvement Fund, at the written direction of an Authorized Officer (as defined in the Fiscal Agent Agreement) in the amount of any special taxes levied by the CFD which are delinquent, prior to any draw on any Letter of Credit in respect of such delinquency (as described in the second paragraph of Section 3.04), and prior to any draw on amounts in the Reserve Fund (as defined in the Fiscal Agent Agreement), and any amount so withdrawn from the Improvement Fund shall be deposited to the Bond Fund established under the Fiscal Agent Agreement and used to pay debt service on the Bonds. The Authority shall provide written notice to the Developer of any withdrawal from the Improvement Fund for the purpose described in the preceding sentence. Any use of funds in the Improvement Fund for purposes described in this paragraph shall be on a basis senior to any use of such funds for the purposes described in subparagraphs E and G of Section 3.02. The Developer acknowledges that any transfer of funds from the Improvement Fund described in this paragraph will reduce the amount available to pay the Purchase Prices of the Facilities and Discrete Components thereof hereunder.

Section 5.12. Additional Restrictions on Disbursements From Improvement Fund.

Notwithstanding any other provision of this Acquisition Agreement to the contrary, the Authority shall have no obligation whatsoever to use amounts in the Improvement Fund to honor Payment Requests until the conditions precedent described in Section 3.05A. have been satisfied. The provisions of this Section 5.12 shall in no way limit any withdrawals from the Improvement Fund for the purposes described in Sections 5.11, or to pay costs related to any City Improvements (as described in Sections 3.02 and 3.03).

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 (or the last Discrete Component thereof) 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 (or the last Discrete Component thereof) 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 or the last Discrete Component thereof. The Developer shall, however, be entitled to receive payment for Discrete Components (other than the last Discrete Component) upon making an irrevocable offer of dedication of such land in form and substance acceptable to the Director of Public Works. Notwithstanding the foregoing, upon written request of the Director of Public Works before payment for any Discrete Component of such a Facility, the Developer shall convey or cause to be conveyed Acceptable Title thereto in the manner described in Sections 6.01 and 6.02 hereof.

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 (or the last Discrete Component thereof).

Section 6.06. Maintenance and Warranties. The Developer shall maintain each Discrete Component in good and safe condition until the Acceptance Date of the Facility of which such Discrete Component is a part. Prior to the Acceptance Date, the Developer shall be responsible for performing any required maintenance on any completed Discrete Component or 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.

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 Liability (Primary)	CG 00 0111 85 or 88 Rev.	\$2,000,000
Umbrella Liability (Over Primary, if required)	GL 00 0111 85 or 88 Rev.	\$1,000,000
Business Auto	CA 00 01 06 92	\$1,000,000
Workers' Compensation/ Employers' Liability		Statutory \$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 born 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's 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 with 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 California, 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 now contemplated.

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. The Developer needed the consent of Amtrust Bank and consent from no other person or entity, before executing this Acquisition Agreement and the Developer has obtained such required consent.

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 or Discrete Components thereof 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 within the CFD, 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 arising from and after the execution of this Acquisition Agreement under the Continuing Disclosure Agreement executed by it (and referenced in Section 3.05A.(ii) hereof) in connection with the offering and sale of any of the Bonds.

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. A. In General. The Developer shall assume the defense of, indemnify and save harmless the Authority, the City and the District, 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 (i) the breach of any provision of this Acquisition Agreement by the Developer; (ii) the Developer's or any other entity's negligent

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 of the land in the CFD, the Developer or any merchant builders developing land in the CFD not misleading under the circumstances made in any disclosure materials published by the Developer 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.

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 (a) any material misstatements or omissions of material facts necessary to make the statements therein not misleading under the circumstances in which they were made in the section of the Official Statement dated April 13, 2006 with respect to the Bonds entitled "Property Ownership and Development;" (b) the omission from such Official Statement of the matters set forth in the Authority's Release No. 1 dated June 1, 2006 or in its Release No. 2 with respect to the Bonds dated June 23, 2006; and (c) any action, losses or damages arising out of or resulting from any claim, lawsuit or action by Ohio Savings Bank or any successor thereto or assignee thereof in any way related to the development of the land in the CFD, the Bonds, the Prior Acquisition Agreement, Supplement No. 1 or this Acquisition Agreement, other than any action, losses or damages directly attributable to the intentional acts or gross negligence of the Authority, the CFD or the City, or their respective Boardmembers, Councilmembers, officers, officials, or employees.

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.

B. Existing Litigation. The Developer has accepted the City's, the Authority's and the District's respective tenders of defense and indemnification for liabilities arising out lawsuits

filed against them prior to the execution of this Acquisition Agreement, including but not limited to the following:

On September 18, 2007, R.J. Noble Co., filed an action in the Riverside County Superior Court, *R.J. Noble. v. Ashby USA, LLC, etc. al.*, bearing case number RIC 480922;

On October 27, 2007, Riverside Construction filed an action in the Riverside County Superior Court, *Riverside Construction, Inc. v. Ashby USA, LLC, etc. al.*, bearing case number RIC 484179;

On November 21, 2007, Utah Pacific Construction Co., filed an action in the Riverside County Superior Court, *Utah Pacific Construction Co. v. Ashby USA, LLC, etc. al.*, bearing case number RIC 485802;

On April 22, 2008, Park West Landscape, Inc. filed an action in the Riverside County Superior Court, *Park West Construction, Inc. v. Ashby USA, LLC, etc., et al.*, bearing case number RIC 497856;

On August 13, 2008, Klaer Brittain, Inc. filed an action in the Riverside County Superior Court, entitled *Klaer Brittain, Inc. v. City of Temecula, etc., et al.*, bearing case number RIC 506084; and

On October 7, 2008, Pacific Utility Installation, Inc. filed an action in the Riverside County Superior Court, entitled *Pacific Utility Installation, Inc. v. City of Temecula, etc., et al.*, bearing case number RIC 510036 (collectively the "Contractor Actions").

The Developer has agreed to the City's, District's and Authority's appointment of the law firm of Richards, Watson & Gershon as independent counsel for their respective defense in the Contractor Actions.

The Developer further agrees that Richards, Watson & Gershon's incurring of all defense fees and costs in the Contractor Actions as of the date of execution of this Acquisition Agreement have been reasonably borne. As the City has paid for the defense of the Contractor Actions against the City, District and the Authority, the Developer agrees that those attorney's fees and costs incurred in the Contractor Actions as of the date of execution of this Acquisition Agreement and such future reasonably incurred attorney's fees and costs shall be deducted from any payments due to Developer under this Acquisition Agreement, or if there are no such payments or such payments are less than the full amount of such attorney's fees and costs, the unreimbursed amount may be drawn from funds in the Improvement Fund. [Richards, Watson & Gershon has advised the Authority that, as of March 25, 2009, it had incurred defense fees and costs of \$230,196.05]

ARTICLE IX

TERMINATION

Section 9.01. Termination of Funding Obligations. Unless otherwise agreed to in writing by the parties hereto, the provisions of Articles IV and V of this Acquisition Agreement shall terminate on December 1, 2013; and, from and after such date, the Authority shall have no further obligation to pay the Purchase Price of any Facilities or Discrete Components thereof 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 or Discrete Components 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 Developer, or shall suffer an attachment or levy of execution not described in clause 1 of the first paragraph of Exhibit F hereto to be 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) Following the completion of the construction of the City Improvements identified in Exhibit E hereto and any additional City Improvements identified in any notice by the City to the Authority and the Developer described in Section 3.03A., the Developer shall fail, for a period of one hundred twenty (120) consecutive days, to undertake substantial work related to the construction of the Facilities listed in Exhibit B that have not theretofore been completed, other than for a reason specified in Section 9.04 hereof.

(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 the Developer Continuing Disclosure Agreement, dated as of March 1, 2006, between the Developer, the Fiscal Agent and the Dissemination Agent named therein.

(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.

(h) The Developer elects to perform or have its agent perform work under the provisions of Section 4.03 C., but fails to continue the work with diligence to completion, as described in the second paragraph of Section 4.03 C.

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 ten (10) 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, immediately 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 (h) 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 or Discrete Components 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 5.11 or in the last paragraph of Section 8.02.

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, 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. The Developer hereby acknowledges and agrees that any alleged or actual misstatements or omissions in the Official Statement for the Bonds dated April 13, 2006, or any other events occurring between the date of issuance of the Bonds and March 6, 2007, do not constitute an event of the character described in the preceding sentence that would allow for any delay in any specified time for performance of any obligation of the Developer under this Acquisition Agreement.

Section 9.05. Survival of Certain Provisions. The provisions of Sections 3.04, 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 agrees to pay all costs of the Facilities that it is obligated to construct pursuant to Section 4.02 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 Director of Finance 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 43200 Business Park Drive Temecula, California 92590 Attention: Director of Public Works
Developer:	Ashby USA, LLC 470 E. Harrison Street Corona, California 92879-1314

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 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. Any assignment consented to by the Authority shall release the Developer from its obligations and liabilities under this Acquisition Agreement to the extent so assigned.

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 lands 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 or Discrete Components thereof, 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. No Obligation to Restructure or Refund Bonds. The provisions of this Acquisition Agreement shall in no way obligate the Authority to restructure or refund the Bonds, or to expend any of its own funds in connection with the CFD. Notwithstanding the foregoing, 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 to any reduction in special taxes levied or to be levied by the CFD, or to any additional funds made available, as a consequence of any such refunding.

Section 10.13. Release of Liability, Limitation on Future Actions. The Developer fully and completely releases the City, the Authority and the CFD, and their respective Boardmembers, Councilmembers, officers, employees, attorneys and agents, from any liability whatsoever for any and all actions or inaction, known or unknown, up to the date of execution by the Developer of this Acquisition Agreement, relating to the Bonds, any breach or alleged breach of any of the terms of the Fiscal Agent Agreement or the Prior Acquisition Agreement (as originally executed and as amended and supplemented by Supplement No. 1), or any other matter related to the Bonds. Any action by the Developer or any of its successors or assigns arising from the obligations of the Authority, the City or the CFD, or any actions or inaction or any breach or default or alleged breach or default, by any such entity, in any way related to this Acquisition Agreement, Supplement No. 1, the Original Agreement, the Fiscal Agent Agreement, or the Bonds, shall be limited to an action for specific performance, declaratory relief, writ of mandate, or similar remedies to compel Authority, City or CFD's compliance with the terms of this Acquisition Agreement and no monetary damages shall be incurred by any such entity in respect thereof; and in no event shall any Boardmember, Councilmember, officer or employee of the Authority, the City or the CFD be personally liable with respect to any such matters. Any such action shall be filed in the appropriate court within one (1) year from the date of the action by the Authority, the City or the CFD that is being challenged.

Section 10.14. Conflicts With Irrevocable Instructions or Assignment Agreement. In the event of any conflict between the provisions of Sections 3.02 or 3.05 of this Acquisition Agreement and the provisions of the Irrevocable Instructions of the Developer to the City and the Authority delivered in April of 2006 related to the payment of proceeds of the Bonds or of the Assignment Agreement referenced therein, the provisions of this Acquisition Agreement shall prevail.

Section 10.15. Amendment. This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by both the Authority and the Developer.

Section 10.16. Counterparts. This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 10.17. Governing Law. The provisions of this Acquisition Agreement shall be governed by the laws of the State of California applicable to contracts made and performed in such State.

Section 10.18. Effective Date. This Acquisition Agreement shall become effective, and the Prior Acquisition Agreement and Supplement No. 1 shall cease to be effective, on the date on which the Authority and the Developer have both executed this Acquisition Agreement.

Section 10.19. Continued Effect of AmTrust Assignment. The Authority and the Developer hereby acknowledge that, as of the date of this Acquisition Agreement, the AmTrust Assignment (referenced in Section 3.05A.(i)) is in full force and effect. The Authority and the Developer acknowledge and agree that, other than payments described in Section 4(a) and (b) of that certain Lien Release Escrow Agreement, dated as of the date of this Acquisition Agreement, by and among the Authority, for itself and the CFD, the Developer and First American Fund Control, Inc., payments from the Improvement Fund otherwise due to or for the benefit of the Developer under the terms of this Acquisition Agreement shall be payable to AmTrust Bank under the terms of the AmTrust Assignment.

IN WITNESS WHEREOF, the parties 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. 03-02 (RORIPAUGH RANCH)

By: _____
Executive Director

ASHBY USA, LLC

By: Ashby Development Company, Inc., a
California corporation, Managing Member

By: _____
Justin K. Ashby, President

The foregoing Amended and Restated Acquisition Agreement is hereby consented to, subject to the effect of Section 10.19. By its execution below, Amtrust Bank hereby agrees that, in the event of any conflict between the provisions of this Amended and Restated Acquisition Agreement and the provisions of the Assignment and Agreement, dated as of April 20, 2006, between Ashby USA, LLC and Ohio Savings Bank, the provisions of this Amended and Restated Acquisition Agreement shall prevail.

AMTRUST BANK

By: _____

Its: _____

Date of Execution: _____

AMENDED AND RESTATED ACQUISITION AGREEMENT

EXHIBIT A

DESCRIPTION OF FACILITIES ELIGIBLE FOR ACQUISITION FROM THE DEVELOPER

1. **Murrieta Hot Springs Road**

Murrieta Hot Springs Road (MHSR) from the Westerly Boundary Line of Tract 29661 (existing end of pavement) to Butterfield Stage Road:

Improvements include grading for full right-of-way with 2:1 slopes, paving, curb and gutter, median curb, sidewalk, street lights, signing and striping, traffic signal(s) landscaping, irrigation, storm drain, concrete slope protection, sewer and water pipelines, and other appurtenant improvements necessary to complete MHSR.

2. **Butterfield Stage Road**

Butterfield Stage Road (BSR) from the Northerly tract boundary to Rancho California Road:

Improvements include grading full right-of-way with 2:1 slopes, paving, curb and gutter, median curb, sidewalk, street lights, traffic signal(s), signing and striping, landscaping, irrigation, storm drain, concrete slope protection, bridges over Santa Gertrudis Creek, and Long Valley Channel, sewer and water pipelines, and other appurtenant improvements necessary to complete Butterfield Stage Road.

3. **Nicolas Road**

3a **Nicolas Road BSR to the Easterly Metropolitan Water District (MWD) R/W:**

Improvements include grading right-of-way with 2:1 slopes, paving, asphalt berms, curb and gutter, sidewalk, asphalt path, split rail fence, street lights, landscaping, irrigation, storm drain, underground sewer and water pipelines, and other appurtenant improvements necessary to complete Nicolas Road.

3b **Nicolas Road from the Easterly MWD R/W to Liefer Road including construction of Calle Garisol realignment to Nicolas Road:**

Improvements include grading partial right-of-way (40' travel way) with 2:1 slopes, paving, asphalt berms, curb and gutter, sidewalk, asphalt path, utility relocations, traffic detour, split rail fence, street lights, signing and striping, landscaping, irrigation, sewer, storm drain, bridge over Santa Gertrudis Creek (including channel lining and transition structure to bridge), access road, exit structure and other appurtenant improvements necessary to complete Nicolas Road.

3c **Nicolas Road Sewer Pipeline from Liefer Road to Joseph Road:**

Improvements include installing a 15" main line sewer including street re-pavement, traffic detour and other appurtenant improvements necessary to complete Nicolas Road Sewer pipeline.

3d Nicolas Road and North General Kearny Road intersection signalization:

Improvements include signalization of intersection, striping, traffic control and other appurtenant improvements necessary to complete the signalization.

3e Nicolas Road and Winchester Road intersection widening and signal modification:

Improvements include modifications to existing traffic signal, storm drain, paving, curb and gutter, median curb, bus turn-out, striping, traffic control and other appurtenant improvements necessary to complete the intersection and signal modifications.

4. Calle Chapos

Calle Chapos from BSR to Walcott Lane:

Improvements include grading half right-of-way width plus twelve feet with 2:1 slopes, paving, AC dike, storm drain and other appurtenant improvements necessary to complete Calle Chapos.

5. Long Valley Channel

Long Valley Channel from the Westerly R/W of BSR to the Easterly Project Boundary:

Improvements include grading of channel, flow-by detention basin, construction of drop structures, trapezoidal channel lining, transition structures to Butterfield Stage Road Bridge, rip-rap, grading and paving of access roads, fencing, and other appurtenant improvements necessary to complete Long Valley Channel.

6. Santa Gertrudis Creek

Santa Gertrudis Creek from the Habitat Area to the exit channel at MWD R/W:

Improvements include a flow-by detention basin, headwalls, trapezoidal channel lining and transition structures; grading, fencing and paving for access roads; desilting and detention basins, rip-rap protection, rip-rap dissipaters, berms, grading of exit structure and other appurtenant improvements necessary to complete Santa Gertrudis Creek.

7. Environmental Mitigation

Mitigation for the Long Valley Channel and Santa Gertrudis Creek improvements:

Creation of 8.2 acres of habitat within open space to include grading, access road, electrical service, irrigation, plant and seed installation and other appurtenant improvements necessary to complete resource agency conditioned environmental mitigation for the Long Valley Channel and Santa Gertrudis Creek improvements.

8. **Sports Park**

Sports Park at the SE corner of the intersection of North Loop Road and Butterfield Stage Road:

Construct 19.7-acre Sports Park including grading, parking, building, lighting landscaping, irrigation, playing fields, basketball courts, children's play area, equipment with a useful life of five (5) years or more and other appurtenant improvements necessary to complete the Sports Park.

9. **Fire Station Site Grading**

Roripaugh Ranch Fire Station site grading

Improvements include site grading and other appurtenant improvements necessary to provide a rough graded fire station site.

10. **North Loop Road**

North Loop Road from BSR to Gate House East of BSR (Public Section only):

Improvements include grading full right-of-way with 2:1 slopes, paving, curb and gutter, median curb, sidewalk, street lights, signing and striping, landscaping, irrigation, storm drain, sewer and water pipelines, North Loop Road Bridge and other appurtenant improvements necessary to complete the public segment of the North Loop Road East of BSR.

11. **South Loop Road**

South Loop Road from BSR to Gate House East of BSR (Public Section only):

Improvements include grading full right-of-way with 2:1 slopes, paving, curb and gutter, median curb, sidewalk, street lights, signing and striping, landscaping, irrigation, storm drain, sewer and water pipelines, and other appurtenant improvements necessary to complete the public segment of the South Loop Road East of BSR.

12. **Roripaugh Valley Road (A Street)**

Roripaugh Valley Road Grading and Street Improvements from Murrieta Hot Springs Road to Butterfield Stage Road:

Improvements include grading full right-of-way with 2:1 slopes, paving, curb and gutter, median curb, sidewalk, street lights, signing and striping, landscaping, irrigation, storm drain, sewer and water pipelines, and other appurtenant improvements necessary to complete Roripaugh Valley Road between Murrieta Hot Springs Road and Butterfield Stage Road.

13. **Fiesta Ranch Road (B Street)**

Fiesta Ranch Road Grading and Street Improvements from Roripaugh Valley Road to Nicolas Road:

Improvements include grading full right-of-way with 2:1 slopes, paving, curb and gutter, median curb, sidewalk, street lights, signing and striping, landscaping, irrigation, storm drain, sewer and water pipelines, and other appurtenant improvements necessary to complete Fiesta Ranch Road between Roripaugh Valley Road and Nicolas Road.

14. **Neighborhood Park**

Neighborhood Park at the SW corner of the intersection of Murrieta Hot Springs Road and Roripaugh Valley Road (A Street):

Construct 5.1-acre Neighborhood Park including grading, parking, restroom building, lighting, landscaping, irrigation, open grass area, basketball court, children's play area, equipment with a useful life of five (5) years or more and other appurtenant improvements necessary to complete the Neighborhood Park.

AMENDED AND RESTATED ACQUISITION AGREEMENT

EXHIBIT B

**DISCRETE COMPONENTS OF PHASE 1 FACILITIES AND
RELATED BUDGETED COSTS**

Facility No.	Segment	Description	Discrete Component	Discrete Component Budget	Segment Budget
1.	MURRIETA HOT SPRINGS ROAD*				
	1a.	Murrieta Hot Springs Rd from W. Bndry of Tr 29661 to N. Bndry of Tr 29661	Rough Grading	\$25,610	
			Finish Grading	\$7,876	
			Water	\$84,238	
			Streets	\$425,128	\$542,852
	1b.	Murrieta Hot Springs Rd from N. Bndry of Tr 29661 to Westside of MWD ROW- 2,300'	Rough Grading	\$602,129	
			Finish Grading	\$83,817	
			Storm Drain	\$284,593	
			Water	\$323,772	
			Streets	\$749,729	\$2,044,040
	1c.	Murrieta Hot Springs Rd from Westside of MWD ROW to Butterfield Stage Rd- 1,500'	Rough Grading	\$396,050	
			Finish Grading	\$64,973	
			Storm Drain	\$423,636	
			Sewer	\$23,810	
			Water	\$209,522	
			Streets	\$759,058	\$1,877,049
TOTAL FOR MURRIETA HOT SPRINGS ROAD:				\$4,463,941	

* A portion of the Discrete Component Budget for Streets for Segments 1a., 1b. and 1c., and all of the Discrete Component Budget for Landscaping/Irrigation for Segments 1b. and 1c., have been subsumed into City Improvement Segments 1a., 1b. and 1c.

2

BUTTERFIELD STAGE ROAD**

2a.	Butterfield Stage Rd from North R.O.W. of Murrieta Hot Springs Rd to North ROW of Nicolas Road-2,300'	Rough Grading	\$1,478,326	
		Fine Grading	\$177,095	
		Water	\$205,025	
				\$1,860,446
2b.	Butterfield Stage Rd from Nicolas Rd. to 550' South of Nicolas Rd-550'	Rough Grading	\$176,869	
		Fine Grading	\$21,744	
		Sewer	\$68,757	
		Water	\$134,109	
		Bridge(Sta. Gertrudis Crossing)	\$6,675,902	
				\$7,077,381
2c	Butterfield Stage Rd from 550'S/ of Nicolas Rd to Sly Bndry Line-1,910'	Rough Grading	\$950,554	
		Fine Grading	\$88,019	
		Sewer	\$176,054	
		Water	\$155,728	
		Bridge (Long Valley Crossing)	\$1,724,569	
				\$3,094,924
2d.	Butterfield Stage Rd from S/Bndry of Tract 29533 to 1230'N/of LaSerena Way-2,110' (50% within County)		\$0	
2e.	Butterfield Stage Rd from 1230'N/ of La Serena Way to 700'S/ of La Serena Way-1,930'		\$0	
2f.	Butterfield Stage Rd from 700'S/of LaSerena to Chemin Clinet 1/2 Width-2,620'	Rough Grading	\$777,529	
		Finish Grading	\$129,000	
		Storm Drain	\$160,768	
		Streets	\$1,822,880	
		Landscape/Irrigation	\$0	
				\$3,051,999

** All of the Discrete Component Budget for Segments 2a., 2b., 2c., 2d. and 2e., other than as shown above, has been subsumed into City Improvement Segments 2a., 2b., 2c., 2d. and 2e.

2g. Butterfield Stage Rd from Chemin to Rancho California Road from existing paving to easterly ROW-2600'

Rough Grading	\$167,221
Finish Grading	\$37,234
Storm Drain	\$0
Streets	\$980,200
Landscape/Irrigation	\$0
	\$1,184,655

TOTAL FOR BUTTERFIELD STAGE RD: \$16,269,405

3

NICOLAS ROAD

3a. Nicolas Road from Butterfield Stage Road to MWD ROW-1200'

Rough Grading	\$267,136
Finish Grading	\$32,677
Storm Drain	\$357,774
Sewer	\$143,684
Water	\$62,922
Streets	\$570,691
Landscape/Irrigation	\$59,298
	\$1,494,183

3b1. Nicolas Road from MWD ROW to 450' East of Calle Girasol-2,400'

Rough Grading	\$38,431
Finish Grading	\$71,009
Storm Drain	\$67,505
Sewer	\$502,112
Streets	\$446,715
Landscape/Irrigation	\$0
	\$1,125,772

3b2. Nicolas Road from 450' East of Calle Girasol to E. ROW Liefer Rd-1,180'

Rough Grading	\$113,498
Finish Grading	\$97,193
Storm Drain	\$0
Sewer	\$145,788
Streets	\$221,721
Bridge(Sta. Gertrudis Crossing)	\$2,854,797
Landscape/Irrigation	\$0
	\$3,432,998

SUBTOTAL FOR NICOLAS ROAD (new): \$6,600,708

3c	Nicolas Road Trunk Sewer from 190'E/ of Leifer Rd to Joseph Rd-2,770'	Sewer	\$547,757	
		Streets	\$0	\$547,757
3d	Nicolas Road @ North General Kearney Signalized Intersection	Signalization	\$219,896	\$219,896
3e	Nicolas Road @ Winchester Road Intersection Widening and Signal Modification	Intersection Mods	\$3,259,093	\$3,259,093
				TOTAL NICOLAS ROAD: \$10,627,454

4 **CALLE CHAPOS*****
 Calle Chapos from Butterfield Stage Rd to Walcott Lane-500'

TOTAL FOR CALLE CHAPOS: \$0

5 **LONG VALLEY CHANNEL**
 Long Valley Channel from MWD ROW to Easterly Project Boundary

TOTAL FOR LONG VALLEY CHANNEL \$7,685,939

6 **SANTA GERTRUDIS CREEK CHANNEL**
 6a. Santa Gertrudis Creek from Habitat Area to North Loop Road

Segment Subtotal \$1,736,244

 6b. Santa Gertrudis Creek from North Loop Road to MWD

Segment Subtotal \$1,406,978

TOTAL FOR SANTA GERTRUDIS CREEK: \$3,143,222

*** All of the Discrete Component Budget for Facility No. 4 has been subsumed into City Improvement Facility 4.

9 **FIRE STATION SITE GRADING**
Fire Station Site Grading PA32

TOTAL FOR FIRE STATION GRADING: \$144,638

12 **RORIPAUGH VALLEY ROAD (A Street)**

Roripaugh Valley Road Grading and Street	Rough Grading	\$707,311
Improvements from Murrieta Hot Springs	Finish Grading	\$56,692
Road to Butterfield Stage Road	Storm Drain	\$530,129
	Sewer	\$69,612
	Water	\$192,732
	Streets	\$460,665
	Landscape/Irrigation	\$22,082

TOTAL FOR RORIPAUGH VALLEY ROAD (A STREET): \$2,039,223

13 **FIESTA RANCH ROAD (B Street)**

Fiesta Ranch Road Grading and Street	Rough Grading	\$406,555
Improvements from Roripaugh Valley	Finish Grading	\$38,349
Road to Nicolas Road	Storm Drain	\$25,683
	Sewer	\$106,506
	Water	\$156,915
	Streets	\$326,280
	Landscape/Irrigation	\$44,118

TOTAL FOR FIESTA RANCH ROAD (B STREET): \$1,104,406

OVERALL TOTAL: \$42,926,692

AMENDED AND RESTATED ACQUISITION AGREEMENT

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 Amended and Restated Acquisition Agreement, dated as of July 21, 2009, between the Temecula Public Financing Authority (the "Authority"), for and on behalf of the Temecula Public Financing Authority Community Facilities District No. 03-02 (Roripaugh Ranch), and the Developer), or Discrete Components thereof (as described in Exhibit B to that Agreement), 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(he) 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. To the extent that this payment request is for a Discrete Component, the Developer has in its construction office a marked set of drawings or similar plans and specifications for the Discrete Components to be acquired as listed in Attachment 1 hereto, which drawings or plans and specifications, as applicable, are current and show all changes or modifications which have been made to date.

3. All costs of the Facilities or Discrete Components thereof 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 or Discrete Components thereof for which payment is requested.

6. The Facilities or Discrete Components thereof 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 or Discrete Component (a detailed calculation of which is shown in an Attachment 2 hereto for each such Facility or Discrete Component), 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:

ASHBY USA, LLC

By: _____
Authorized Representative
of the Developer

Date: _____

AUTHORITY:

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

By: _____
Director of Public Works

Date: _____

**ATTACHMENT 1
EXHIBIT C**

[list here all Facilities or Discrete Components thereof for which payment is requested, and attach support documentation]

**ATTACHMENT 2
EXHIBIT C**

CALCULATION OF PURCHASE PRICE

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

- | | | |
|----|--|----------|
| 1. | Description (by reference to Exhibit B to the Acquisition Agreement) of the Facility or Discrete Component | _____ |
| 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/Discrete Components (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) | \$ _____ |

AMENDED AND RESTATED ACQUISITION AGREEMENT

EXHIBIT D

PRIORITY FOR FUNDING OF FACILITIES⁽¹⁾

Priority A - funded by proceeds of the Bonds, subject to the priorities of Section 3.02 of the Amended and Restated Acquisition Agreement.

Priority B - Bond funding only available after all priority A facilities complete.

Facility No.	Description	Priority	A - Budget	B - Budget
1.	MURRIETA HOT SPRINGS ROAD	A	\$4,463,941	\$0
2	BUTTERFIELD STAGE ROAD	A	\$16,269,405	\$0
3	NICOLAS ROAD	B	\$0	\$10,627,454
4	CALLE CHAPOS	(2)	\$0	\$0
5	LONG VALLEY CHANNEL	A	\$7,685,939	\$0
6	SANTA GERTRUDIS CREEK CHANNEL	A	\$3,143,222	\$0
7	ENVIRONMENTAL MITIGATION	B	\$0	\$1,030,706
8	COMMUNITY SPORTS PARK	B	\$0	\$5,645,611
9	FIRE STATION SITE GRADING	A	\$144,638	\$0
10	NORTH LOOP ROAD	B	\$0	\$2,223,285
11	SOUTH LOOP ROAD	B	\$0	960,449
12	RORIPAUGH VALLEY ROAD (A Street)	B	\$0	2,039,223
13	FIESTA RANCH ROAD (B Street)	B	\$0	\$1,104,406
14	NEIGHBORHOOD PARK	B	\$0	\$1,516,655
OVERALL TOTAL: \$54,303,398			\$31,707,145	\$25,147,789

(1) Subject to the provisions of Section 3.02 of the Amended and Restated Acquisition Agreement, including the priority thereunder for City Improvements and the other requirements of Section 3.02.

(2) Subsumed into City Improvements.

AMENDED AND RESTATED ACQUISITION AGREEMENT

EXHIBIT E

CITY IMPROVEMENTS

Facility No.	Segment	Description	Estimated Cost to Complete
1.	<u>MURRIETA HOT SPRINGS ROAD</u>		
	1a.	Murrieta Hot Springs Rd from W. Bndry of Tr 29661 to N. Bndry of Tr 29661	\$69,000
	1b.	Murrieta Hot Springs Rd from N. Bndry of Tr 29661 to Westside of MWD ROW-2,300'	\$478,500
	1c.	Murrieta Hot Springs Rd from Westside of MWD ROW to Butterfield Stage Rd-1,500'	\$380,000
2.	<u>BUTTERFIELD STAGE ROAD</u>		
	2a.	Butterfield Stage Rd from North R.O.W. of Murrieta Hot Springs Rd to North ROW of Nicolas Road-2,300'	\$4,763,500
	2b.	Butterfield Stage Rd from Nicolas Rd. to 550' South of Nicolas Rd-550'	\$1,696,370
	2c.	Butterfield Stage Rd from 550'S/ of Nicolas Rd to Sly Bndry Line-1,910'	\$3,842,380
	2d.	Butterfield Stage Rd from S/Bndry of Tract 29533 to 1230'N/of LaSerena Way-2,110' (50% within County)	\$7,578,070
	2e.	Butterfield Stage Rd from 1230'N/ of La Serena Way to La Serena Way-1,930'	\$3,964,000
4.	<u>CALLE CHAPOS</u>		
		Calle Chapos from Butterfield Stage Rd to Walcott Lane-500'	\$786,500
Total estimated cost to complete the above-listed City Improvements			<u>\$22,771,820</u>

AMENDED AND RESTATED ACQUISITION AGREEMENT

EXHIBIT F

ATTACHMENT ORDERS AND PRIORITY LIEN CLAIMS

The following are the "Attachment Orders" referenced in Section 3.05 of the Amended and Restated Acquisition Agreement:

1. Parkwest claim for \$755,383.64 for work related to items not constituting Facilities; and
2. any other order of attachment of a court of relevant jurisdiction served upon the City, the Authority or the CFD in any way pertaining to work performed in, on or about, or of benefit to, the property located within the CFD, in addition to the foregoing.

The following are the "Priority Lien Claims" referenced in Section 3.05 of the Amended and Restated Acquisition Agreement:

1. Riverside Construction \$5,189,004.03*
for work and materials associated with the construction of the Butterfield Stage Road bridge crossings of Santa Gertrudis Creek & Long Valley Wash (Facilities 2b & 2c as described in Exhibit B);
2. RJ Noble Construction \$260,591.85
for work and materials associated with the construction of the street improvements of Murrieta Hot Springs Road (Facilities 1a, 1b, & 1c as described in Exhibit B);
3. Utah Pacific \$335,849.15
for work and materials associated with the sewer and water improvements for Murrieta Hot Springs Road, Butterfield Stage Road, & Nicolas Road (Facilities 1a, 1b, 1c, 2a, 2b, 2c, 3a, 3b1, 3b2, 3c);
4. KIP \$8,852.80
for work and materials associated with the City maintained storm drain improvements for Murrieta Hot Springs Road, Butterfield Stage Road, & Nicolas Road (Facilities 1b, 1c, 2a, 2b, 2c, 3a, 3b1);
5. Contech \$848,532.24
for furnishing materials associated with the construction of the Butterfield Stage Road bridge crossings of Santa Gertrudis Creek & Long Valley Wash. (Facilities 2b & 2c as described in Exhibit B);
6. John Byerly \$153,459.43
for furnishing geotechnical materials testing associated with the grading for Murrieta Hot Springs Road, Butterfield Stage Road and Nicolas Road (Facilities 1a, 1b, 1c, 2a, 2b, 2c, & 3a);
7. David Evans & Associates \$260,045.87
for furnishing engineering design services associated with the grading for Murrieta Hot Springs Road, Butterfield Stage Road and Nicolas Road (Facilities 1a, 1b, 1c, 2a, 2b, 2c, 2d, 2e, 2f, 2g, & 3a);

8. VA Consulting \$289,539.20
for furnishing engineering design and construction staking services associated with the grading for Murrieta Hot Springs Road, Butterfield Stage Road and Nicolas Road (Facilities 1a, 1b, 1c, 2a, 2b, 2c, 2d, 2e, 2f, 2g, & 3a);
9. Anderson Drilling \$106,870.55
for work and materials associated with the construction of Butterfield Stage Road bridge crossings of Santa Gertrudis Creek & Long Valley Wash (Facilities 2b & 2c as described in Exhibit B); and
10. any other lien filed with the City, the Authority or the CFD by any entity for work performed in respect of any Facilities or Discrete Components, or otherwise encumbering any Facilities or Discrete Components, in addition to the foregoing.

* Excludes legal fees and interest, which Riverside Construction is also claiming.