

RESOLUTION NUMBER 5538

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, CALIFORNIA, APPROVING AN AGREEMENT RELATED TO THE PREPAYMENT OF CERTAIN SPECIAL TAXES, REMOVAL OF CERTAIN PROPERTY, AND ANNEXATION OF CERTAIN PROPERTY TO COMMUNITY FACILITIES DISTRICT NO. 2007-2 (PACIFIC HERITAGE) OF THE CITY OF PERRIS AND CERTAIN RELATED MATTERS

WHEREAS, the City Council (the “Council”) of the City of Perris (the “City”), has previously undertaken proceedings (“Proceedings”) to form the Community Facilities District No. 2007-2 (Pacific Heritage) (the “District”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, (the “Act”) being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California; and

WHEREAS, pursuant to the Proceedings, including elections held in connection with the Proceedings on January 8, 2008 the District is authorized to levy a special tax within the District pursuant to the Rate and Method of Apportionment attached to the below referenced and defined CFD Agreement (“RMA”) in order to fund public improvements and fees; and

WHEREAS, owners of property within the District are affiliated with, and managed by, Pacific Communities Builder, Inc., a California Corporation (the “Developer”). Perris Homes, LLC is the owner of the undeveloped property within “Zone 1” of the District (the “Zone 1 Property”), and Magnolia, LP is the owner of all of the property currently within “Zone 2” of the District (the “Existing Zone 2 Property”); and

WHEREAS, Pelican Landing, LP is the owner of additional property in the City planned for 128 single family homes within Tentative Tract Map No. 32497 and proposed to be annexed into the District (the “Annexation Property”); and

WHEREAS, there has been filed with the City Clerk that certain “Deposit and Reimbursement Agreement,” (the “Deposit and Reimbursement Agreement”) by and between the City, for and behalf of the District, and the Developer, as developer of the property which includes the Zone 1 Property, the Annexation Property and the Existing Zone 2 Property (collectively, the “Property”); and

WHEREAS, the Deposit and Reimbursement Agreement, the form of which is attached hereto as Exhibit A and by this reference incorporated herein, provides for the deposit with City, on behalf of the District, of certain funds to cover City expenses in connection with the creation, annexation and modification of a community facilities district comprising said Property, and providing the means by which such deposit may be reimbursed to the Developer, such reimbursement to come from the proceeds from, and only from, the sale of special tax revenue bonds to be issued pursuant to the Act; and

WHEREAS, the Council finds that the approval and execution of the Deposit and Reimbursement Agreement is in the best interest of the City and does not put the general funds of the City at risk; and

WHEREAS, the Council desires that Wells Fargo Bank, National Association (“Wells Fargo”) hold and disburse such funds as agent for the City pursuant to the Deposit and Reimbursement Agreement;

WHEREAS, there has also been filed with the City Clerk that certain CFD Agreement (“CFD Agreement”), by and between the owners of the Property, the Developer and the City, on behalf of the District, that certain CFD Agreement, which is incorporated herein by this reference and attached hereto as Exhibit B; and

WHEREAS, the CFD Agreement describes the representations of the owners of the Property and Developer related to its requests to memorialize (i) the prepayment of special taxes and remaining special taxes which will be levied within the District due to the fact that certain property owners have been paying special taxes of the District over the prior period of 11 years since Fiscal Year 2008-09, (ii) that the Property owner desires that the Annexation Property will be annexed into Zone 2 of the District, (iii) the owner of the Existing Zone 2 Property and the Developer have requested to prepay the special taxes of the District for zero dollars and cancel the special tax lien for the Existing Zone 2 Property and remove the property from the District because the property is not expected to develop for many years and the Annexation Property essentially replaces the Existing Zone 2 Property, and (iv) memorialization of a maximum special tax reduction to meet the requirements of the RMA and the City’s policies; and

WHEREAS, this matter was duly noticed and agendized, and all written and oral testimony has been received in connection with this matter.

THE CITY COUNCIL OF THE CITY OF PERRIS HEREBY FINDS, DETERMINES, AND RESOLVES AS FOLLOWS:

Section 1. Recitals Incorporated. The foregoing Recitals are incorporated herein as if set forth in full.

Section 2. Deposit and Reimbursement Agreement. That the Deposit and Reimbursement Agreement is hereby approved in substantially the form thereof with such changes as may be approved by the City Manager, the execution thereof to be conclusive approval of any such changes. That the City Manager or Finance Director of the City is hereby authorized and directed to execute the Deposit and Reimbursement Agreement in substantially the form attached hereto for and on behalf of the City, with such changes as may be agreed to by the City Manager.

Section 3. CFD Agreement. That the CFD Agreement is hereby approved in substantially the form thereof with such changes as may be approved by the City Manager, the execution thereof to be conclusive approval of any such changes. That the City Manager or

Finance Director of the City is hereby authorized and directed to execute the CFD Agreement in substantially the form attached hereto for and on behalf of the City, with such changes as may be agreed to by the City Manager.

Section 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council hereby declares that it would have adopted this Resolution, and each section, subsection, subdivision, sentence, clause, phrase, or portions thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

Section 5. Effective Date. This Resolution shall be effective immediately.

Section 6. Certification. The City Clerk shall certify as to the passage and adoption of this Resolution and shall cause the same to be posted at the designated locations in the City of Perris.

ADOPTED, SIGNED and **APPROVED** this 30th day of July, 2019.

MAYOR, MICHAEL M. VARGAS

ATTEST:

CITY CLERK, NANCY SALAZAR

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, Nancy Salazar, CITY CLERK OF THE CITY OF PERRIS, DO HEREBY CERTIFY that the foregoing Resolution Number 5538 was duly adopted by the City Council of the City of Perris at a regular meeting of said Council on the 30th day of July, 2019, and that it was so adopted by the following vote:

AYES: ROGERS, CORONA, RABB, VARGAS
NOES: NONE
ABSENT: NONE
ABSTAIN: MAGAÑA

CITY CLERK, NANCY SALAZAR

EXHIBIT "A"

DEPOSIT AND REIMBURSEMENT AGREEMENT

[On Following Pages]

EXHIBIT "B"
CFD AGREEMENT

DEPOSIT AND REIMBURSEMENT AGREEMENT

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (this “Deposit Agreement”), dated _____, 2019, is by and between the City of Perris, California (the “City”), on behalf and acting for the Community Facilities District No. 2007-2 (Pacific Heritage) of the City of Perris (the “Community Facilities District” or “District”), and Pacific Communities Builder, Inc., a California corporation, on behalf of the owners of the property described herein (the “Owner”). The City, Community Facilities District and the Owner are sometimes referred to herein as “Parties”.

RECITALS

WHEREAS, the City Council of the City (the “City Council”) has undertaken proceedings to form Community Facilities District No. 2007-2 (Pacific Heritage) of the City of Perris, pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (constituting Sections 53311 et seq. of the California Government Code (the “Act”)); and

WHEREAS, on January 8, 2008 the City Council adopted the resolution of formation, ordering the formation of the Community Facilities District; and

WHEREAS, Owner is the current developer of certain real property identified on Exhibit C attached hereto and incorporated herein by this reference; and

WHEREAS, the Community Facilities District was initially established to encompass Tentative Tract Nos. 31225 and 31226; and

WHEREAS, Tract No. 31226 has been recorded and partially developed with 35 homes built and sold to individual owners, however, due to market forces, Tentative Tract No. 31225 has expired and is not expected to develop in the near future; and

WHEREAS, after the Community Facilities District was formed, Owner acquired additional property within the City identified as Tentative Tract No. 32497, which such property is expected to begin development at the end of 2019; and

WHEREAS, Owner has requested from the City to commence proceedings in order to annex the real property in Tentative Tract No. 32497 into the Community Facilities District and to prepay the special taxes for the property previously identified as Tentative Tract No. 31225 pursuant to the Rate and Method of Apportionment for the Community Facilities District because it is not likely to be developed for many years; and

WHEREAS, in accordance with the formation documents, the Community Facilities District may only levy special taxes through fiscal year 2047/48; and

WHEREAS, the Owner expects that the above modification of the Community Facilities District and Owner’s development in Tract Nos. 31226 and 32497 will be sufficient to, pursuant to City policies, allow the Community Facilities District to issue bonds; and

WHEREAS, the Parties wish to undertake a validation action to confirm the legality of the provisions of the modification and related actions thereto; and

WHEREAS, in accordance with City’s policy regarding use of the Act, the Owner is required to compensate the City for all costs incurred in the formation, annexation and other modifications to the Community Facilities District and issuance of bonds for the Community Facilities District; and

WHEREAS, Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in creating a community facilities district (including the issuance of bonds thereby); and

WHEREAS, Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, with or without interest under all of the following conditions: (a) the proposal to repay the funds is included in both the resolution of intention to establish a community facilities district adopted pursuant to Section 53321 of the Act and in the resolution of formation to establish the community facilities district pursuant to Section 53325.1 of the Act (including the issuance of bonds thereby), (b) any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and (c) any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds; and

WHEREAS, with respect to the original Community Facilities District, the qualified electors approved the special taxes at the time of the formation of the Community Facilities District; and

WHEREAS, with respect to the annexed property, the qualified voters will be required to approve the annexation; and

WHEREAS, the City and the Owner desire to enter into this Deposit Agreement in accordance with the Act in order to provide for the advancement of funds by the Owner to be used to pay costs incurred in connection with the modification and annexation of the Community Facilities District and issuance of special tax bonds for the Community Facilities District (the “Bonds”), and to provide for the reimbursement to the Owner of such funds advanced, without interest, from the proceeds of any Bonds.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the Parties hereto agree as follows:

Section 1. The Deposit and Application Thereof.

(a) Owner shall make a deposit in the amount of \$130,000 (the “Initial Deposit”). The City, by its execution hereof, acknowledges receipt of, and accepts, the Initial Deposit.

(b) Reserved.

(c) City hereby agrees and Owner hereby acknowledges that U.S. Bank National Association (“US Bank”) shall hold the Initial Deposit and any subsequent deposits pursuant to (d) hereof as agent for the City. City hereby instructs US Bank to establish a deposit account and concurrently with the execution hereof, deposit the Initial Deposit in a designated deposit account (“Deposit Account”) at US Bank, 633 W. Fifth Street, 24th Floor Los Angeles, CA 90071. Upon its receipt of the Initial Deposit, US Bank shall be entitled to deduct therefrom its fee for holding and disbursing the Initial Deposit and any subsequent deposits pursuant to the terms of the Deposit Agreement. Upon receipt thereof, US Bank shall deposit the Initial Deposit and any subsequent deposit in the Deposit Account.

(d) The Initial Deposit, together with the such additional amounts as may be requested by City and any subsequent deposit required to be made by the Owner pursuant to the terms hereof (collectively, the “Deposits”), are to be used to pay for any costs incurred for any authorized purpose in connection with the modification of the Community Facilities District and the issuance of the Bonds (other than costs, fees and expenses to be paid out of the proceeds of the Bonds), including, without limitation, (i) the fees and expenses of any consultants to the City employed in connection with the modification of the Community Facilities District and the issuance of the Bonds, including an engineer, special tax consultant, financial advisor, bond counsel and any other consultant deemed necessary or advisable by the City, (ii) the costs of appraisals, market absorption and feasibility studies and other reports deemed necessary or advisable by the City in connection with the modification/ annexation of the Community Facilities District and issuance of the Bonds, (iii) the costs of publication of notices, preparation and mailing of ballots and other costs related to any hearing, election or other action or proceeding undertaken in connection with the modification of the Community Facilities District and issuance of the Bonds, (iv) reasonable charges for City staff time incurred in connection with the modification of the Community Facilities District and the issuance of the Bonds by the Community Facilities District, including a reasonable allocation of City overhead expense related thereto, (v) the fees and expenses related to undertaking a validation action before the Superior Court of California to confirm the legality of the actions contemplated herein and any appeals thereof, including but not limited to, staff time, attorneys’ fees and consultant’s fees, if any, and (vi) any and all other actual costs and expenses incurred by the City in connection with the modification or validation action of the Community Facilities District and the issuance of the Bonds (collectively, the “Initial Costs”). The City may as provided in subsection (f) hereof draw upon the Deposits from time to time to pay the Initial Costs. US Bank shall have no duty or responsibility to confirm that amounts withdrawn at the direction of the City have been or will be spent on Initial Costs.

(e) If, at any time, the unexpended and unencumbered balance of the Deposits (then currently in the Deposit Account) is less than \$20,000, the City may request, in writing, that the Owner make an additional deposit in an amount estimated by the City to be sufficient, together with any such unexpended and unencumbered balance, to pay for all Initial Costs. The Owner shall make such additional deposit with the City within two weeks of the receipt by the Owner of the

City's written request therefor. If the Owner fails to make any such additional deposit within such two week period, the City may cease all work related to the issuance of the Bonds.

(f) The Deposits shall be kept separately at US Bank and shall be invested in US Bank Money Market Deposit Account identified in Exhibit B and the City shall at all times maintain records as to the expenditure of the Deposits.

(g) The City shall draw upon the Deposits to pay the Initial Costs by presentation of a disbursement request (the "Request") to US Bank in the form attached hereto as Exhibit A and by this reference incorporated herein. The City shall cause US Bank to pay such Initial Costs pursuant to the Request.

(h) The City shall provide the Owner with a written summary of expenditures made from the Deposits upon a reasonable request of Owner, and the unexpended balance thereof, within thirty business days of receipt of the City of a written request therefor submitted by the Owner. The cost of providing any such summary shall be charged to the Deposits.

(i) Notwithstanding anything herein to the contrary, City may limit reimbursement under this Agreement to \$75,000 in its sole discretion in order to limit the costs of issuance related to the Bonds. Such limitation does not permit the Developer to stop paying for the fees and costs to be paid pursuant to this Agreement or the District.

Section 2. Return of Deposits; Reimbursement.

(a) As provided in Section 53314.9 of the Act and this Agreement, the approval by the qualified electors of the Community Facilities District or annexed property thereto of the proposed special tax to be levied therein and the issuance of Bonds secured thereby is a condition to the repayment to the Owner of the funds advanced by the Owner pursuant hereto. Therefore, if the qualified electors of the Community Facilities District or the proposed annexed property do not approve the proposed special tax to be levied thereon, the City shall have no obligation to repay the Owner any portion of the Deposits expended or encumbered to pay Initial Costs. In accordance with Section 53314.9 of the Act, if the qualified electors of the Community Facilities District or annexed property thereto do not approve the proposed special tax to be levied therein, the City shall cause US Bank to return to the Owner any portion of the Deposits which have not been expended or encumbered to pay Initial Costs by the time of the election on said proposed special tax should the Owner so request.

(b) If proceedings for the issuance of the Bonds are terminated, the City shall, within thirty business days after official action by the City or the Community Facilities District to terminate said proceedings, cause US Bank to return the then unexpended and unencumbered portion of the Deposits to the Owner.

(c) If the Bonds are issued by the Community Facilities District, the City shall reimburse the Owner, without interest, for the portion of the Deposits that has been expended or encumbered, said reimbursement to be made within thirty business days after the issuance of such Bonds, solely from the proceeds of such Bonds and only to the extent otherwise permitted under the Act and subject to the limitations in this Deposit Agreement. The City shall, within ten business

days after the issuance of such Bonds, return the then unexpended and unencumbered portion of the Deposits to the Owner, from the Deposit Account.

Section 3. Abandonment of Proceedings. The Owner acknowledges and agrees that the issuance of the Bonds shall be in the sole discretion of the Community Facilities District. No provision of this Deposit Agreement shall be construed as an agreement, promise or warranty of the City to issue the Bonds or take any other particular action.

Section 4. Deposit Agreement Not Debt or Liability of City. As provided in Section 53314.9(b) of the Act, this Deposit Agreement does not constitute a debt or liability of the City, but shall constitute a debt and liability of the Community Facilities District. The City shall not be obligated to advance any of its own funds to pay Initial Costs or any other costs incurred in connection with the issuance of the Bonds. No member of the City Council of the City and no officer, employee or agent of the City shall to any extent be personally liable hereunder.

Section 5. Outcome of the Validation Action. Because of the importance of the modifications contemplated herein, City requires and conditions that a validation action be undertaken before the Superior Court of California to establish the validity and enforceability under color of law of the modifications and related actions. If the validation action results in a final non-appealable judgement that the modifications and proposed actions contemplated comply with California law, then the City has the right, but not the obligation, to move forward with the proceedings contemplated herein. Subject to the limitations in Section 1(i), if the Superior Court of California determines that modifications is not allowed under California law, then the City shall have no obligation to move forward with the disallowed actions contemplated herein, between the Owner and the City, and shall have no obligation to repay the Owner any portion of the Deposits expended or encumbered to pay Initial Costs related to the disallowed actions.

Section 6. Notices. Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Deposit Agreement from one Party to another (collectively, "Notices") may be personally delivered, transmitted by facsimile (FAX) transmission, or deposit with the United States Postal Service for mailing, postage prepaid, to the address of the other Party as stated in this Section. Notices shall be sent as follows:

If to City:	City of Perris Attn: City Manager 101 N. "D" Street Perris, California 92570 Telephone: (951) 943-6100 Fax No. (951) 943-4246
With a copy to:	Aleshire and Wynder LLP Attn: Eric Dunn, City Attorney 3880 Lemon Street Suite 520 Riverside, California 92501 Telephone: (951) 241-7338 Fax: (951) 300-0985

If to Owner:

Pacific Communities
Attn: Nelson Chung
1000 Dove St., Suite 300
Newport Beach, CA 92660
Telephone: (949) 660-8988
Fax:

With a copy to Owner's Financial
Consultant:

Zimmerman Group
Attn: Jim Zimmerman
28202 Cabot Road, Suite 620
Laguna Niguel, CA 92677
Telephone: (949) 542-7070
Fax: (949) 542-7076

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether by e-mail, telex, telegram or telecopier upon the sender's receipt of an appropriate answerback or other written acknowledgement, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 7. California Law. This Deposit Agreement shall be governed and construed in accordance with the laws of the State of California. The Parties shall be entitled to seek any remedy available at law and in equity. All legal actions must be instituted in the Superior Court of the County of Riverside, State of California, in an appropriate municipal court in Riverside County, or in the United States District Court for the Central District of California.

Section 8. Successors and Assigns. This Deposit Agreement shall be binding upon and insure to the benefit of the successors and assigns of the Parties hereto.

Section 9. Counterparts. This Deposit Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

Section 10. Other Agreements. The obligations of the Owner hereunder shall be that of a party hereto. Nothing herein shall be construed as affecting the City's or Owner's rights, or duties to perform their respective obligations, under other agreements, use regulations or subdivision requirements relating to the development. This Deposit 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 11. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Deposit Agreement or of any

of its terms. References to section numbers are to sections in this Deposit Agreement, unless expressly stated otherwise.

Section 12. Interpretation. As used in this Deposit Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Deposit Agreement shall be interpreted as though prepared jointly by both Parties.

Section 13. No Waiver. A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Deposit Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Deposit Agreement.

Section 14. Modifications. Any alteration, change or modification of or to this Deposit Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

Section 15. Severability. If any term, provision, condition or covenant of this Deposit Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Deposit Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

Section 16. Computation of Time. The time in which any act is to be done under this Deposit Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

Section 17. Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Deposit Agreement, and in signing this Deposit Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Deposit Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Deposit Agreement; and, they have freely signed this Deposit Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Deposit Agreement, and without duress or coercion, whether economic or otherwise.

Section 18. Cooperation. Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Deposit Agreement including, but not limited to, releases or additional agreements.

Section 19. Conflicts of Interest. No member, official or employee of City shall have any personal interest, direct or indirect, in this Deposit Agreement, nor shall any such member, official or employee participate in any decision relating to the Deposit Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

Section 20. Indemnification. The City, its successors and the Owner shall indemnify and hold US Bank harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees, including allocated costs of in-house counsel and disbursements that may be imposed on or incurred by the US Bank in connection with its duties, including but not limited to any litigation. This provision shall survive the termination of any other agreement.

Section 21. Patriot Act Compliance. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity the US Bank will ask for documentation to verify its formation and existence as a legal entity. The US Bank may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. Each person agrees to provide all such information and documentation as to themselves as requested by US Bank to ensure compliance with federal law.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Deposit Agreement as of the respective dates set forth below.

“CITY”

CITY OF PERRIS, a municipal corporation

By: _____
City Manager

ATTEST:

CITY CLERK

By: _____
Nancy Salazar, City Clerk

“OWNER”

PACIFIC COMMUNITIES BUILDER, INC.

By: _____

Name: _____

Title: _____

**U.S. BANK, NATIONAL
ASSOCIATION, depository**

By: _____
Authorized Officer

EXHIBIT A

Community Facilities District No. 2007-2 (Pacific Heritage) of the City of Perris

WRITTEN REQUEST NO. 1 FOR DISBURSEMENTS PURSUANT TO THE DEPOSIT AND REIMBURSEMENT AGREEMENT

The undersigned hereby states and certifies:

(i) That they are the duly qualified City Manager/Finance Director of the City of Perris, a municipal corporation duly organized and existing under the laws of the State of California (the “City”) and as such, is familiar with the facts herein certified and is authorized and qualified to execute and deliver this certificate;

(ii) That they are authorized pursuant to the Deposit and Reimbursement Agreement, dated as of _____, 2019 (the “Agreement”), by and between the City of Perris and Pacific Communities Builders, Inc. relating to Community Facilities District No. 2007-2 (Pacific Heritage) of the City of Perris (the “CFD”);

(iii) That pursuant to Section 1 (g) of the Agreement, US Bank National Association is hereby directed to disburse this date from Account No. _____ (the “Account”) to the payees, designated on Exhibit A attached hereto and by this reference incorporated herein, the respective sums set forth opposite such payees, in payment of certain expenses related to the CFD;

(iv) That each obligation shown on Exhibit A has been properly incurred and is a proper charge against the Account;

(v) That no item to be paid pursuant to this Written Request has been previously paid or reimbursed from the Account; and

(vi) That capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Agreement.

Dated: _____

CITY OF PERRIS

City Manager

[Written Request for Disbursements from
Deposit and Reimbursement Agreement]

EXHIBIT A

Payee	Purpose	Amount
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EXHIBIT B

U.S. BANK NATIONAL ASSOCIATION MONEY MARKET ACCOUNT AUTHORIZATION FORM DESCRIPTION AND TERMS

The U.S. Bank Money Market account is a U.S. Bank National Association (“U.S. Bank”) interest-bearing money market deposit account designed to meet the needs of U.S. Bank’s Corporate Trust Services Escrow Group and other Corporate Trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit and invest with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank’s discretion, and may be tiered by customer deposit amount.

The owner of the account is U.S. Bank as Agent for its trust customers. U.S. Bank’s trust department performs all account deposits and withdrawals. Deposit accounts are FDIC Insured per depositor, as determined under FDIC Regulations, up to applicable FDIC limits.

U.S. BANK, WHEN ACTING AS AN INDENTURE TRUSTEE OR IN A SIMILAR CAPACITY, IS NOT REQUIRED TO REGISTER AS A MUNICIPAL ADVISOR WITH THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF COMPLYING WITH THE DODD-FRANK WALL STREET REFORM & CONSUMER PROTECTION ACT. INVESTMENT ADVICE, IF NEEDED, SHOULD BE OBTAINED FROM YOUR FINANCIAL ADVISOR.

AUTOMATIC AUTHORIZATION

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Account. The U.S. Bank Money Market Account is a permitted investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of alternate instructions.

Company Name

Signature of Authorized Directing Party

Trust Account Number – includes existing
and future sub-accounts unless otherwise directed

Title / Date

EXHIBIT C

Owner's Property

Zone 1 Property – Recorded Tract Map No. 31226 in the City of Perris

Existing Zone 2 Property – Expired Tentative Tract Map No. 31225 in the City of Perris consisting of Riverside County Assessor's Parcel Numbers 311-030-012 and 311-030-013

Annexation Property – Tentative Tract Map No. 32497 in the City of Perris consisting of the following Riverside County Assessor's Parcel Numbers:

- 306-010-013 through 021
- 306-050-006 through 010

CFD Agreement

THIS CFD AGREEMENT (this "Agreement") dated as of August 1, 2019, is made by and between the CITY OF PERRIS (the "City"), acting for COMMUNITY FACILITIES DISTRICT NO. 2007-2 (PACIFIC LEGACY) OF THE CITY OF PERRIS, a duly organized community facilities district (the "District"), and PERRIS HOMES, LLC, a California limited liability company, MAGNOLIA, LP, a California limited partnership and PELICAN LANDING, LP, a California limited partnership (collectively, the "Owner") and Pacific Communities Builder, Inc. ("Developer"), with reference to the following facts.

RECITALS:

WHEREAS, the City Council (the "Council") of the City, has previously undertaken proceedings ("Proceedings") to form the District pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, (the "Act") being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California; and

WHEREAS, pursuant to the Proceedings, including elections held in connection with the Proceedings on January 8, 2008 the District is authorized to levy a special tax within the District pursuant to the Rate and Method of Apportionment on Exhibit A hereto ("RMA") in order to fund public improvements and fees; and

WHEREAS, Owner is affiliated with, and managed by, the Developer. Perris Homes, LLC is the owner of the undeveloped property within "Zone 1" of the District (the "Zone 1 Property"), and Magnolia, LP is the owner of all of the property currently within "Zone 2" of the District (the "Existing Zone 2 Property") all as described and depicted on Exhibit B attached hereto; and

WHEREAS, Pelican Landing, LP is the owner of additional property in the City planned for 128 single family homes within Tentative Tract Map No. 32497 (the "Annexation Property"). The Annexation Property is also described and depicted on Exhibit B; and

WHEREAS, Owner and Developer hereby represent that the Existing Zone 2 Property is currently unentitled, and based on their significant industry experience and expertise, the Existing Zone 2 Property has experienced significant development delays and is not expected to develop for many years due to the expense of developing the property and the amount of undeveloped property necessary to develop in order to defray the costs of its development, and therefore, the property will likely never be subject to the special taxes of the District; and

WHEREAS, and the Annexation Property is expected to start construction activities in August of 2019; and

WHEREAS, Developer, Owner and City desire to remove the Existing Zone 2 Property from the District and annex the Annexation Property into Zone 2 of the District; and

WHEREAS, in connection with the Proceedings, Developer entered into agreements with the City and Eastern Municipal Water District regarding the funding of fees and improvements from the proceeds of bonds to be issued by the District (the “Bonds”); and

WHEREAS, the Developer developed 35 units on the Zone 1 Property but due to development delays and other reasons, the remaining property has not yet been developed; and

WHEREAS, Owner has requested that the District enter into this Agreement to memorialize the terms on which (i) special taxes will be levied within the District due to the fact that certain property owners have been paying taxes (“Current Unit Owners”) over the prior period of 11 years since Fiscal Year 2008-09, (ii) the Annexation Property will be annexed into Zone 2 of the District and (iii) the Owner has elected to prepay and cancel the special tax lien for the Existing Zone 2 Property in accordance with the terms of the RMA; and

WHEREAS, the Owner, Developer and City have elected to partially prepay the special taxes obligation of the Current Unit Owners in the amount of the special taxes said Current Unit Owners have paid since Fiscal Year 2008-09; and

WHEREAS, the Owner and Developer have requested that the City remove the Existing Zone 2 Property from the District by applying the prepayment formula to Undeveloped Property (as defined in the RMA) which is unlikely to be developed for many years and, hence, is not expected to be taxed pursuant to the RMA; and

WHEREAS, Owner, Developer and City (based on the representations of the Owner and the Developer) have elected to prepay and remove the special taxes on the Existing Zone 2 property for zero dollars as further described herein; and

WHEREAS, the Annexation Property essentially replaces the Existing Zone 2 Property in terms of size and units with respect to the security for the Bonds to be issued by the District; and

WHEREAS, Owner represents that they have no present intention to sell the Existing Zone 2 Property; and

WHEREAS, the Owner and Developer have also requested a Maximum Special Tax Reduction, as described in the RMA; and

WHEREAS, the District is authorized to issue Bonds to finance fees and public improvements related to development in the District pursuant to an election held in the District; and

WHEREAS, this Agreement will memorialize the understanding related to the above described; and

NOW, THEREFORE, the parties hereto agree as follows:

1. The recitals hereto are true and correct and incorporated herein by this reference.
2. Pursuant to Section 8 of the RMA, the Owner hereby requests a Mandatory Maximum Special Tax Reduction, because taxes in the District have exceeded the amount in the City's policies. Based on information provided by Developer and Owner, the City has determined to apply a Maximum Special Tax Reduction as provided in the RMA. The resulting Maximum Special Taxes for the District with respect to Zone 1 (the "Zone 1 Rate Reduction") and Zone 2 shall be determined by the CFD Administrator pursuant to the RMA. The reduced Maximum Special Taxes for Zone 2 shall be based on the Annexation Property. The City Clerk and/or CFD Administrator pursuant to the RMA is hereby authorized to record a suitable notice for the Mandatory Maximum Special Tax Reduction pursuant to Section 8 the RMA.
3. Pursuant to the Proceedings, the District is authorized to issue Bonds in an amount not to exceed \$7,000,000 secured by special taxes authorized to be levied in the District and to be paid over a period of not to exceed fiscal year 2047/2048. The Current Unit Owners have paid special taxes within the District from fiscal year 2008-09 to fiscal year 2018/2019 (the "Prepaid Funds"). The amount of the Prepaid Funds is \$736,963 as of February 5, 2019. The District and the Owner desire to memorialize the treatment of the Prepaid Funds such that all property owners in the District are treated fairly over the period of the Bonds to be issued by the District.
4. Willdan Financial Services, LLC, the City's special tax consultant has calculated or will calculate (i) the amount of the partial prepayment of the special taxes for Current Unit Owners, (ii) the proposed special taxes to be levied in the future on Current Unit Owners as a result of the partial prepayment, and (iii) the proposed special taxes on future property owners in Zone 1. The calculation of the aforementioned figures will be based on the following assumptions: (i) at the time Bonds are issued by the District, the Prepaid Funds will be allocated to the 35 existing units proportionally, based on the amount of Prepaid Funds collected from each unit, (ii) the amount allocated to each of the 35 existing units will be applied to make a partial prepayment under the terms of the RMA, (iii) in the fiscal year following the date of the partial prepayments, the special tax for those 35 units is expected to be lower than the flat rate that has been levied thus far and which is expected to be levied until the time the partial prepayments are made, (iv) the special tax levy will escalate by 2% per year for all units after the partial prepayments as provided by the RMA for the purpose of sizing the initial new money bond issue, although the final amount of the bond issue shall be in the City's discretion; and (v) the Zone 1 Rate Reduction is in effect. The City agrees to begin levying the reduced special tax rates pursuant to the Zone 1 Rate Reduction in Fiscal Year 2019-20.
5. Upon request and petition to be filed by the owner of the Annexation Property, the City agrees to work with Developer and Owner to take the necessary steps to annex the Annexation Property into Zone 2 of the District. All costs associated with the annexation process shall be the responsibility of Developer and shall be advanced to the City following the City's written request for such advance. Nothing in this Agreement shall limit the discretion of the City Council to approve or disapprove the annexation of the Annexation Property into the District.

6. As a result of lengthy delays in development of the Existing Zone 2 Property, the parties agree that it is in the best interest of the City, the Owner and the District to remove the Existing Zone 2 Property from the District which will provide better security for the issuance of the Bonds because the Bonds will be secured by property with a significant amount of development completed rather than unentitled undeveloped property. The parties agree to take the necessary steps to remove the special tax lien of the District from the Existing Zone 2 Property. The parties intend to accomplish the removal of the Existing Zone 2 Property from the District at approximately the same time as the Annexation Property is annexed into the District. The parties agree that the removal of the Existing Zone 2 Property from the District will require a prepayment of the special taxes on Existing Zone 2 Property. Due to the fact that the Existing Zone 2 Property is unlikely to be developed for many years, the Existing Zone 2 Property is not expected to be subject to taxation as Developed Property under the RMA. Therefore, based on the representations of the Developer, the fact that the annexation of the Annexation Property into Zone 2 will essentially replace the Existing Zone 2 Property and not further burden the Current Unit Owners, the fact that undeveloped parcels have no value in the CFD and do not constitute Developed Property or Undeveloped Property for which a prepayment amount is required, the parties have determined that the prepayment amount for the Existing Zone 2 Property is zero. In connection with the prepayment, the City will record a Notice of Cancellation of Special Tax Lien against the Existing Zone 2 Property and the Existing Zone 2 Property shall thereafter no longer be subject to special taxes of the District. The parties agree to effectuate the prepayment under this Section 7 concurrently with the annexation of the Annexation Property into the District.

7. The Owner, Developer and City shall negotiate in good faith on future agreements, provided, however that this Agreement does not obligate the City to enter into such acquisition agreements, joint community facilities agreements or other agreements. It also shall not bind the City Council to any actions which are normally discretionary in nature. This Agreement does not obligate the City to consent to, accept or enter into any assignments to any such agreements. City, and Owner or Developer may negotiate in good faith to enter into such agreements or assignments which shall require the approval of all parties. This Agreement simply sets forth an understanding of the parties with respect to the subject matter herein. It does not set the final rate under which the City will agree to levy special taxes within the District.

8. Developer, Owner and City agree that City will file a validation action with respect to some or all of the actions contemplated herein or future actions related hereto and Developer agrees to pay for the all fees, expenses, and costs (including but not limited legal, financial, and special tax expertise determined by City and costs of city staff calculated at \$_____ per hour) associated with such validation action, including any appeals thereof. Concurrently with the execution hereof, Developer will forward to City a check for \$60,000 for the validation action. Developer shall forward additional amounts as requested by City when balance falls below \$10,000. Such costs may be included as part of the Deposit/ Reimbursement Agreement of the City and the City may but shall not be required to reimburse all or part of the costs notwithstanding any agreement to the contrary. The parties acknowledge that, if the Superior Court of California and any appeals thereof determine that all or some of the modifications is not allowed under California law, then the City shall have no obligation to move forward with the contemplated actions herein but shall work with Developer and Owner in good faith on a solution.

9. Owner and Developer hereby agree to, and shall defend, save, indemnify and hold harmless City, the District and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, which may arise, directly or indirectly, from the actions contemplated herein and resulting herefrom. The obligations of this Section survive termination of the Agreement or completion of the acts contemplated by the Agreement.

10. This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the parties and no representations have been made by either party to the other as an inducement to enter into this Agreement, except as expressly set forth herein. All prior negotiations, written or oral, between the parties are superseded by this Agreement. This Agreement may not be altered, amended or modified except by a writing executed by all parties. This Agreement is only binding on the Developer, Owner and City and for the benefit of any Developer transferee. Notwithstanding anything provided herein to the contrary, whether express or implied, the parties shall have no obligation to enter into future contracts, and neither the City nor the District nor their respective members, officers, staff or agents have made any promises to Owner or Developer. No statements of the City or its respective officers, members, staff or agents as to future obligations shall be binding upon the City unless and until the proper legal contract is approved by the City.

11. This Agreement shall be construed and interpreted under, and governed and enforced according to the laws of, the State of California.

12. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

[signatures on following page]

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

CITY:			
			CITY OF PERRIS _____ Mayor
Attest:	_____ City Clerk		
		By:	Perris Homes, LLC Pacific Communities Builder, Inc. Its: Manager By: _____ Nelson Chung Its: President
		By:	Magnolia, LP PacHome, LLC Its: General Partner By: _____ Nelson Chung Its: Manager
		By:	Pelican Landing, LP Nelson Chung & Associates, Inc. Its: General Partner By: _____ Nelson Chung Its: Secretary
		By:	Perris Community Builders, Inc. _____

		By: _____ Nelson Chung Its: President
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EXHIBIT A
[Rate and Method of Apportionment]

EXHIBIT B
Property Description

