

FUNDING, CONSTRUCTION AND ACQUISITION AGREEMENT

DATED AS OF AUGUST, 1999

Executed by the

CITY OF ROSEVILLE

and by

HIGHLAND RESERVE NORTH, L.P.

HIGHLAND RESERVE NORTH COMMUNITY FACILITIES DISTRICT NO. 1

CITY OF ROSEVILLE  
PLACER COUNTY, CALIFORNIA

**FILED**  
OCT 02 2000  
CITY OF ROSEVILLE  
BY \_\_\_\_\_

0900 0000 0046 0001

TABLE OF CONTENTS

RECITALS ..... 1

AGREEMENTS..... 2

Section 1. Establishment of District..... 2

Section 2. Sale of Bonds ..... 2

Section 3. Tax Requirements ..... 3

Section 4. Amounts to be Included in Bonds..... 3

Section 5. Design ..... 3

Section 6. Construction for Acquisition..... 4

Section 7. Payment; Cost Overruns; Shortfalls..... 5

Section 8. Inspection and Approval of Construction ..... 6

Section 9. Liens..... 6

Section 10. Acquisition; Maintenance ..... 6

Section 11. Indemnification; Insurance ..... 7

Section 12. Ownership of Facilities ..... 8

Section 13. Improvement Security..... 8

Section 14. Failure to Complete Construction..... 9

Section 15. Owner Responsibility for Satisfaction of Improvements Required by Conditions of Approval ..... 10

Section 16. Construction of Other Facilities..... 11

Section 17. Development Schedule ..... 11

Section 18. Termination..... 11

Section 19. Binding on Community Facilities District..... 11

Section 20. Assignment ..... 11

Section 21. Prompt Action..... 11

Section 22. General ..... 11

FUNDING CONSTRUCTION AND ACQUISITION AGREEMENT  
HIGHLAND RESERVE NORTH COMMUNITY FACILITIES DISTRICT NO. 1

THIS AGREEMENT is entered into as of the 13<sup>th</sup> day of Sept., 2000, by and between the CITY OF ROSEVILLE, a California chartered municipal corporation (the "City"), and Highland Reserve North, L.P., a Delaware limited partnership ("Owner").

R E C I T A L S

(A) Owner owns the real property described in Exhibit "A" attached hereto, and shown on the map attached hereto as Exhibit "B" (the "Property"). The Property is located within the corporate limits of the City.

(B) Owner proposes to make improvement to the Property (the development of the Property is defined herein as the "Project") as required by the Project Approvals (as defined below). The City Council of the City approved a Specific Plan for the development of the Property (and properties owned by others) on May 28, 1997, the "Highland Reserve North Specific Plan" (the "Specific Plan"). The Specific Plan sets forth a comprehensive land use plan and establishes detailed regulations, conditions and programs for development of the Property. On June 23, 1997, the City Council of the City adopted Ordinance No. 3109 approving a development agreement between the City and Owner pursuant to the provisions of Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 of Title 7 of the California Government Code with respect to the permitted uses of the Property, and said agreement has been entered into and is dated September 19, 1997 (the "Development Agreement"). The Specific Plan, Development Agreement, including conditions of approval, and other existing and subsequent approvals granted by City and agreements between Owner and City in implementation of the Project, as the same may be amended from time to time, including amendments thereto, are herein collectively referred to as the "Project Approvals."

(C) Owner has requested that the City commence and complete proceedings for the establishment of a community facilities district pursuant to the provisions of Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982," ("the Act"), over and including the Property for the purpose of paying for certain public facilities which are necessary to the development of the Property and the provision of municipal services to the Property within the proposed community facilities district, including the issuance of special tax bonds. Said community facilities district is to be known as "Highland Reserve North Community Facilities District No. 1, of the City of Roseville, County of Placer, State of California" (the "District").

(D) Section 53313.5 of the California Government Code provides that a community facilities district may finance the purchase of facilities completed after the adoption of the resolution of formation establishing the community facilities district if the facilities have been constructed as if they had been constructed under the direction and supervision, or under the

authority of, the local agency whose governing body is conducting proceedings for the establishment of the district.

(E) The purpose of this Agreement is to provide for the establishment of the District, the acquisition of such public facilities, the issuance and sale of the bonds for the District to finance the design and acquisition of such public facilities and expenses incidental thereto and to provide the terms of any reimbursement to the Owner.

## AGREEMENTS

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties agree as follows:

Section 1. Establishment of District. The City shall initiate and prosecute proceedings pursuant to the Act for the establishment of the District. Such proceedings shall include but not be limited to, elections pursuant to Sections 53326 and 53327 of the California Government Code on (i) the question of the issuance of bonds for the District to finance the construction or acquisition of the aforementioned public facilities, (ii) the issue of annual levy of special taxes on all taxable property within the District for the payment of principal and interest on the bonds of the District and the annual administrative expenses of the City and the District in levying and collecting such special taxes, paying the principal and interest on such bonds and providing for the registration, exchange and transfer of such bonds, including the fees of fiscal agents and paying agents, and any necessary replenishment for the reserve fund for such bonds, accumulation of funds for future bond payments, or the acquisition of public facilities from the proceeds of such special taxes, and (iii) the question of the establishment of an appropriations limit for the District. Owner shall cooperate with City in its conduct of the proceedings for and the establishment of the District.

Section 2. Sale of Bonds. Upon the completion of the proceedings for the establishment of the District as provided in Section 1 hereof, the City shall proceed, as hereinafter provided, with the sale of bonds for the District in an aggregate principal amount not to exceed \$35,000,000.00 (the "Bonds") for the purpose of raising an amount to pay for the design and construction or acquisition of the aforementioned public facilities. Said authorized public facilities (the "Public Facilities") and the estimated costs thereof are generally described in Exhibit "C" attached hereto. The timing of the issuance and sale of the Bonds, aggregate principal amount thereof, and the terms and conditions upon which they shall be sold shall be determined by the City. If bonds are not sold within six (6) months of this Agreement, neither the City nor the Owner shall have any obligation hereunder, and this Agreement shall terminate without the requirement for any further notice or action by any party.

Section 3. Tax Requirements. The City shall take all actions which, in the opinion of City's bond counsel, are necessary in order to avoid classification of the bonds as "arbitrage bonds" or the loss of tax exemption for the bonds for any other reason.

Section 4. Amounts to be Included in Bonds. The aggregate principal amount of the Bonds shall include an amount needed to fund a reserve fund for the payment of principal of and interest of the Bonds as is determined by the City to be necessary and appropriate, capitalized interest on the Bonds for such period as the City shall determine is appropriate, the amount of the discount of the underwriter who purchases the Bonds, and other expenses incurred by the City in connection with the issuance and sale of the Bonds, including bond counsel fees, legal fees, fees of the bank which will act as transfer agent, registrar and paying or fiscal agent for the Bonds, other fees and costs normally incidental to the sale of Bonds, and such other fees and costs enumerated in Section 53345.3 of the California Code as the City determines are necessary and appropriate. The City may also include within the aggregate principal amount of the Bonds an amount determined by the City to equitably reimburse owner for costs and expenses incurred by it which are related to the establishment of the District and the design and construction of the Public Facilities; provided that the City shall determine the amount to be so reimbursed on the basis of detailed itemizations of costs provided by Owner and the decision of the City shall be final. In no event shall Owner be reimbursed from Bond proceeds for (i) in-house administrative overhead (except that Owner shall be entitled to payment equal to four percent (4%) of actual construction costs as and for project and construction management services), (ii) interest expense incurred by Owner on moneys advanced during the proceedings for formation of the District and issuance of Bonds, and during construction of the Public Facilities (provided, that Owner shall be entitled to interest on acquisition proceeds as provided in Section 15 hereof); and (iii) any other costs and expenses incurred by Owner which are not authorized by the Act.

Section 5. Design. Public Facilities to be acquired by the City shall be designed in conformance with all applicable City standards, requirements and the Development agreement. Upon completion of the design of each such Public Facility to the satisfaction of the City and when Owner has paid to the City all applicable plan checking and other fees, the City shall notify Owner that the design of the Public Facility is completed and acceptable to the City. It shall be the responsibility of Owner, not the City, to determine the requirements for design and construction of Public Facilities to be acquired by or dedicated to other public agencies, and City's acceptance of Owner's design shall not relieve Owner of this responsibility.

Owner has been authorized by the City to commence the design of the Public Facilities, and the City has approved Owner's retention of MacKay & Soms to design streets, traffic signals, water, sewer and storm drainage facilities, and Land Architecture, landscape architects, to plan and design street and open space landscaping. Owner may, after obtaining approval of the City, retain the services of additional consultants to design other portions of the Public Facilities.

Owner shall be reimbursed out of the proceeds of the sale of the Bonds for Owner's expenses incurred in designing those Public Facilities set forth in Exhibit "C", hereto, including all applicable plan checking and other fees paid by Owner as provided above in this Section, subject to the City's determination of the amount to be so reimbursed pursuant to the terms hereof, and subject to the limitation that reimbursement in all cases is to be made from available bond proceeds and special tax revenues of the District and from no other source. Reimbursement for design and plan check services shall be made in one or more lump sum payments only after City has received and approved all invoices for such services associated with any particular Public Facility.

Notwithstanding the preceding provisions of this Section, if the City determines that Owner is not proceeding with the design of the Public Facilities on a reasonable schedule which will enable the City to insure that construction of all of the Public Facilities can be completed within the time specified in Section 6 hereof, the City may take over the design of the Public Facilities by giving Owner written notice thereof. Upon receipt of such a notice, Owner shall surrender to the City all plans and specifications which have then been completed or which are in progress.

If the City takes over the design of the Public Facilities as provided above, the City shall reimburse Owner from the proceeds of the sale of the Bonds a reasonable amount, reasonably determined by the City, for the expenses incurred by Owner in connection with the design of the Public Facilities which have not previously been reimbursed, provided there are sufficient funds remaining, after payment for the Public Facilities, to do so.

Section 6. Construction for Acquisition. The City shall only be required to acquire from Owner those public facilities which will ultimately be owned by the City. Owner shall proceed with the construction of the Public Facilities in accordance with the approved plans and specifications (either prior to or following the formation and confirmation of the authority of the District.)

For construction of Public Facilities under this Section the Owner shall comply with all of the following requirements to insure that the Public Facilities will be constructed as if they had been constructed under the direction and supervision, or under the authority of the City:

(a) The plans and specifications, the bidding and contract award procedures, and the bidding and contract documents shall be approved by the City Engineer for conformance with City Codes and policy.

(b) Based on qualifications submitted by the contractors, the Owner, in consultation with the City Engineer shall select a list of qualified bidders for each element of work. If the Owner determines that the nature of a particular element of the construction does not require a pre-qualified bid list, the Owner may allow a particular element of the work to be publicly bid without a pre-qualified bid list.

(c) Owner shall receive and open bids and report the results to the City Engineer. On elements of work with a pre-qualified bid list, bids will only be accepted from pre-qualified bidders. Any value engineering proposals shall be submitted to the City Engineer for approval. The City Engineer may, after consulting with Owner, require changes to the work. Owner shall promptly order such changes. The City Engineer shall be consulted with respect to any proposed change to the originally approved design. The contract or contracts for the construction of the Public Facilities shall be awarded to the responsible bidder(s) submitting the lowest responsible bid(s) for the construction of the Public Facilities, as determined by the Owner.

(d) Owner shall require, and the specifications and bid and contract documents shall require, all such contractors to pay prevailing wages and to otherwise comply with applicable provisions of the California Labor Code, Government Code and Public Contracts Code relating to public works projects of cities and as required by the procedures and standards of the City with respect to the construction of its public works projects.

(e) All such contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the Public Facilities which they will construct in conformance with the City's standard procedures and requirements.

Owner shall cause the Public Facilities to be constructed in an expeditious manner so that construction of all such Public Facilities shall be completed by December 31, 2001, or such other date as the City and Owner may agree to; provided, however, that the construction of the Public Facilities shall proceed and be completed so that the proceeds of the Bonds may be expended for the construction or acquisition of the Public Facilities within three (3) years from the date of their issuance.

Section 7. Payment; Cost Overruns; Shortfalls. The City and Owner agree that it is in their mutual best interest for Owner to construct the Public Facilities with the understanding that the City shall acquire those portions of the Public Facilities constructed by Owner as may be paid for with the proceeds of the sale of the Bonds and, for Gap Shortfall amounts as set forth in Section 15 hereof and City approved change orders, from special tax revenues. All portions of the Public Facilities not acquired with the proceeds of the Bonds and from special tax revenues, shall nonetheless be constructed by the Owner, as required by the Project Approvals. All cost overruns in the construction of the Public Facilities shall be the responsibility of the Owner, except that those cost overruns due to unforeseeable construction conditions encountered in the field for which a City-approved change order has been issued, or due to change orders for additional or changed work required in writing by the City, shall be eligible for reimbursement from the proceeds of excess special taxes as provided in Section 15 hereof. Any cost savings achieved in an element of any of the Public Facilities constructed in whole or in part with the proceeds of the sale of the Bonds shall be aggregated with all other such savings achieved throughout the District, and shall be disbursed to Owner upon the satisfactory completion of all Public Facilities.

Section 8. Inspection and Approval of Construction. The City shall provide such level of inspection of the progress of construction of the Public Facilities to be constructed by Owner for acquisition by the City as it deems necessary, and its inspectors shall have access to the construction sites at all times for the purpose of conducting their inspection. Owner and its contractors shall cooperate in every way with the City and its inspectors to ensure that they are afforded an adequate opportunity to inspect each and every phase of the progress of construction of each and every such Public Facility. Upon completion of the construction of a Public Facility (either in its entirety, or a segment or phase as shown on Exhibit "D", attached hereto and incorporated herein by this reference), constructed by Owner, and upon receipt of written notification from City's inspectors that construction thereof has been completed in accordance with the plans and specifications thereof and the City's standard requirements, and upon receipt of satisfactory proof, based on the records of Owner and the City and such certifications as the City may require, that the requirements of Section 6 hereof have been satisfied, the City shall notify Owner in writing that the construction of the Public Facility, segment or phase has been satisfactorily completed; provided, however, that Owner, not the City, shall be responsible for determining satisfaction of requirements of other public agencies with respect to the Public Facilities. Upon receiving such notification of a completed Public Facility, Owner shall forthwith file with the County Recorder of the County of Placer a Notice of Completion pursuant to the provision of Section 3093 of the California Civil Code. Owner shall furnish to the City a duplicate copy of each such Notice of Completion showing thereon the date of filing with the County Records. The costs incurred by the City in inspecting and approving the construction of the bond financed Public Facilities shall be paid or reimbursed from the proceeds of the sale of the bonds for the District.

Section 9. Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Section 3115 and 3116 of the California Civil Code, Owner shall provide to the City such evidence or proof as the City shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the Public Facilities (or approved segment or phase thereof, as shown on Exhibit "D" hereof) constructed by Owner for acquisition by the City have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation.

Section 10. Acquisition; Maintenance. Upon completion of the construction of each Public Facility, segment or phase constructed by Owner for acquisition by the City, the City shall determine the acquisition price to be paid by the City for the acquisition of the completed Public Facility, segment or phase from Owner. The acquisition price as to each Public Facility, segment or phase shall include the actual cost of construction thereof as determined by the contract prices as set forth in contracts and purchase orders entered into by Owner with its contractors, and suppliers, in accordance with standards and procedures therefor as prescribed by the City. Owner shall furnish to the City such proof of the amounts which Owner contends should be included in the acquisition price for a completed Public Facility, segment or phase as the City shall require, together with lien releases from all contractors and suppliers providing work and materials for the completed Public Facility, segment or phase in form satisfactory to the City.

The City shall have seven (7) days to determine the acquisition price. The determination of the City as to the acquisition price for a completed Public Facility, segment or phase shall be final.

Upon determining the acquisition price for a completed Public Facility, segment or phase, the City shall promptly notify Owner in writing of such acquisition price. Upon presentation by Owner to the City of such documents, including lien releases, as the City shall require as to the completed Public Facility, segment or phase, the City shall, within seven (7) days thereafter, pay from the proceeds of the sale of the Bonds (or, if bond proceeds have been exhausted, from excess Special Tax Revenues in the manner provided in Section 15 hereof) the amount of the acquisition price for the completed Public Facility, segment or phase, but in the case of a completed Public Facility less a retention of 150% of the value of "Punch List" work not completed. Upon payment and acceptance of the acquisition price for each completed Public Facility, segment or phase, Owner shall have no further claim for payment from the City with respect to the retentions. The City shall hold the retention amount on all Facilities acquired until the Punch List work is completed and accepted by the City.

Notwithstanding the preceding provisions of this Section, the City will not pay for the acquisition of any Public Facilities, segment or phase unless and until the street, drainage or other utility rights of way where they are located have been irrevocably offered to the City for dedication.

Until a Public Facility is acquired by the City, Owner shall maintain it, and shall transfer it to the City free of any liens and in good operating condition. Upon the acquisition of a Public Facility by the City, the City shall, except as otherwise provided in the Project Approvals, become responsible for its maintenance, subject to any contractor's warranty or maintenance provisions of bonds required under the Final Map.

Section 11. Indemnification; Insurance. Owner shall defend, indemnify and hold harmless the City, the District, and their officers, agents and employees from any and all liability, cost and expense in connection with the construction of the Public Facilities to be constructed by Owner for acquisition by the City, including, but not limited to, liability, costs, expense and claims arising, under the procedures set forth in Section 6 of this Agreement. Owner shall also defend, indemnify and hold harmless the City, the District, and their officers, agents and employees from any and all liability, cost and expense in connection with the ownership of the Public Facilities to be construction by Owner for acquisition by the City prior to the time the City accepts the Public Facilities, whether or not such Public Facilities are to be acquired with bond proceeds. Owner shall procure and provide, until construction of all of the Public Facilities to be constructed by Owner is completed and acceptance thereof by the City has occurred, a broad form comprehensive general liability policy of insurance, in a form acceptable to the City, naming the City, the District and their officers, agents and employees as additional insureds, having a single aggregate liability limit as to all coverages provided thereby in the amount of \$2,000,000. Before commencing the construction of any Public Facility, Owner shall provide the City with a certification of insurance and endorsement as to such insurance, in a form

acceptable to the City, and Owner shall upon each renewal of such insurance policy provide the City with a new certificate of insurance with respect thereto.

Owner shall also furnish to the City, prior to commencing the construction of any Public Facility to be constructed by Owner for acquisition by the City, a certificate of insurance evidencing that Owner has procured and has in force a current policy of workers' compensation insurance in compliance with California law as to all workers to be employed by Owner in connection with the design and construction of the Public Facilities. Owner shall require each person, firm or corporation with whom it contracts in connection with the design and construction of the Public Facilities to provide and maintain such workers' compensation insurance and a broad form, comprehensive general liability insurance policy in the amount hereinabove specified and in a form acceptable to the City. Owner shall provide to the City proof, in such form and at such intervals as set forth below, that each contractor with whom it contracts has procured and is maintaining such insurance.

Upon the execution of each contract with each person, firm or corporation with whom Owner contracts in connection with the design and construction of the Public Facilities, and prior to permitting any such person, firm or corporation to commence work under such contract, Owner shall provide to the City a certificate from the insurance provider for each such contractor that the contractor has in force the insurance policies required of it under this Section 11, that the City is named as an additional insured on the broad form comprehensive general liability insurance policy of such contractor, and that the policies will not be canceled or allowed to lapse without 30 days written notice to the City.

The premiums paid by Owner for the insurance required by this Section may be included in the acquisition price to be paid by the City for the Public Facilities to be constructed by Owner as an incidental cost.

Section 12. Ownership of Facilities. Notwithstanding the fact that some of the Public Facilities, segments or phases to be constructed by Owner for acquisition by the City may be constructed in dedicated street rights-of-way or on property which has been or will be dedicated or offered for dedication to the City, District or Public Utility, such Public Facilities, segments or phases shall be and remain the property of Owner, and Owner shall be responsible for any loss or damage thereto or liability arising therefrom, until they are acquired by the City or other agencies as provided in the preceding Sections of this Agreement. Such ownership by Owner shall likewise not be affected by any agreement which Owner may enter into with the City pursuant to the provisions of the Subdivision Map Act, Section 66410 et seq. of the California Government Code, which may contain or include provisions with respect to the construction and ownership of public facilities which may seem to be contradictory to the provision of this Agreement, and the provisions of this Section shall control.

Section 13. Improvement Security. Notwithstanding the provisions of this Agreement, Owner shall be required to agree to construct and to secure the construction and completion of construction of the Public Facilities, or portions thereof, as a condition precedent to the approval

of final subdivision or parcel maps for portions of the Property as required by the City pursuant to Section 66462 and Sections 66499 through 66499.10 of the Government Code.

The aggregate principal amount of the improvement bonds or other security provided by Owner pursuant to this Section shall be reduced by such amount as the City shall determine is appropriate upon receipt of the proceeds from the sale of the Bonds. The amount of the reduction of such aggregate principal amount shall be determined by the City based on the amount of each such improvement bond or other security which relates to the Public Facilities to be constructed or acquired with the proceeds of the sale of the Bonds.

All subdivisions and performance bonds shall provide, inter alia, that the principal thereof, whether that be Owner or its contractor(s), guarantees that the completed Public Facilities shall be free from defects resulting from faulty workmanship and materials for a period of one (1) year from the date of acceptance by the City, and the obligation of the surety shall extend to the fulfilling of that guarantee. At the end of said one year period, and subject to certification from the City Engineer that any defects have been corrected, the obligation of the principal and surety named therein shall cease.

Section 14. Failure to Complete Construction. Notwithstanding the preceding provisions of this Agreement, if Owner fails to expeditiously prosecute the construction of the Public Facilities to be constructed by Owner for acquisition by the City, the City shall have the right and may elect to take over the construction of such Public Facilities, or any part thereof, if it determines it is necessary for it to so proceed in order to protect the City's interests. If the City elects to so proceed, it shall notify Owner in writing that if Owner does not satisfy the City that construction is proceeding expeditiously on the construction of a Public Facility within 30 days after receipt of such notice, the City will take over the construction of such Public Facilities. If after receiving such a written notification Owner does not satisfy the City that it is proceeding expeditiously to construct that portion of the Public Facilities identified in the written notification to the satisfaction of the City, within 30 days from the date of receipt thereof, Owner shall relinquish to the City all design documents, and shall cooperate with the City in every way to ensure that the construction of the Public Facilities will be completed expeditiously.

Notwithstanding the provisions of this Section, the only sources of funds to be utilized by the City for the construction of any such Public Facilities shall be (i) the proceeds of the sale of the Bonds, (ii) the proceeds of applicable City development fees collected pursuant to the applicable codes, ordinances and policies of the City, (iii) proceeds from the sale of the bonds of another community facilities district or assessment district established over and including property in the City, (iv) interest earnings on the reserve fund for the Bonds, to the extent such earnings are determined by the City to be available for construction of the Public Facilities, (v) the Owner's subdivision bond or bonds to the extent applicable, (vi) any other performance security that may have been provided by the Owner, and (vii) the Owner's and/or contractors' performance bonds. To the extent that the proceeds of the sale of the Bonds and such other funds may be insufficient to pay for the construction of a Public Facility which will be constructed by the City pursuant to this Section, the City may either construct only those Public Facilities which

can be constructed within the total of the amounts of the proceeds from the sale of the Bonds and such other funds which are available therefor, or the City may proceed to complete the Public Facilities and charge the Owner, the Owner's bond or any contractor's bond for the costs thereof.

Section 15. Owner Responsibility for Satisfaction of Improvements Required by Conditions of Approval. If the bonds are not sold in an aggregate principal amount sufficient to construct and acquire all of the Public Facilities, Owner shall nevertheless construct and dedicate to the City the Public Facilities required by the Specific Plan Development Agreement, and the City may require such assurances of performance as the City deems appropriate. The parties acknowledge that a shortfall may occur between: (a) the cost of the Public Facilities and (b) the amount of acquisition funds generated from the sale of bonds (hereafter referred to as the "Gap Shortfall.") If a Gap Shortfall is anticipated, Owner may elect to reduce its maximum special tax prior to the sale of bonds by either an upfront cash payment or commitment to fund an amount of Public Facilities, without payment of an acquisition price by the District. Should such an election be made, the Gap Shortfall shall be adjusted accordingly. To cover any Gap Shortfall that does occur, Owner agrees with the City to: (1) waive its right to payment from the Bond proceeds for the portion of Public Facilities cost incurred by Owner equal to the actual Gap Shortfall ("Owner's Gap Payment"), and (2) defer such payment until the District can impose and collect special taxes in excess of the amounts required to pay required debt service and City administration costs associated therewith. In consideration of such deferral of payment of the acquisition price, City covenants to assess the special tax against all properties within the District at the maximum rate permitted under the District, commencing with the levy of special taxes required to service the bonds after the planned interest reserve therefore has been exhausted, and to pay to Owner on an annual basis, (commencing on the first day of the next succeeding month following the satisfactory completion of all Public Facilities) payments towards such deferred acquisition price until Owner's actual Gap Payment plus accrued interest is paid in full. The payment of the Owner's Gap Payment hereunder shall be personal to Owner, shall not run with the land, and shall not be assigned by Owner without the written consent of the City, which shall not be unreasonably withheld. Payment of that portion of the acquisition price which represents cost overruns incurred pursuant to an approved change order as described in Section 7 above, shall be paid to the Owner from excess special tax proceeds prior to the payment of the Owner's Gap Payment. The Owner's Gap Payment and the portion of the acquisition price which represents cost overruns incurred pursuant to approved change orders as described in Section 7 above, shall accrue interest calculated from the first day of the next succeeding month following the date of each payment by Owner for costs related to the Public Facilities for which payment otherwise would have been made from bond proceeds in the absence of such Gap Shortfall. Provided, the parties agree that Bond proceeds shall first be exhausted prior to payment by Owner for any such costs. Upon the first payment by Owner (after exhaustion of available Bond proceeds) the rate of interest to be paid for purposes of all deferred payments described above shall be fixed as of the date of such first payment by Owner, at the prime rate in effect as of said date as published in the Money Rates Section of the Wall Street Journal plus two percent (2%) per annum.

As an alternative to use of the maximum permitted tax rate to fund the Owner's Gap Payment and cost overruns as described above, the District may issue additional bonds to fund

0900 0000 0046 0012

any such Gap Shortfall or cost overruns provided that City and Owner agree that an additional sale of bonds is economically prudent and feasible and that such sale is in accordance with the Resolutions of Intent, Formation and Issuance for the District.

Section 16. Construction of Other Facilities. Owner shall also proceed expeditiously with the design and construction of the other improvements and facilities, other than the Public Facilities, which are necessary to the development of the Property and the provision of municipal services within the District and to the residents therein. Such other public improvements and facilities shall be designed and constructed on a schedule which will not delay or interfere in any way with the design and construction of the Public Facilities. The provisions of this Section shall not supersede those of any other agreement between Owner and the City.

Section 17. Development Schedule. Owner shall also proceed with the development of the Property with all reasonable diligence to ensure that such development is completed in a reasonable time. If Owner does not so proceed with the development of the Property, the City may take action as specified in Section 14 hereof and, in addition, may withhold payment of acquisition costs hereunder.

Section 18. Termination. If for any reason the City is unable to sell the Bonds, this Agreement shall not become effective.

Section 19. Binding on Community Facilities District. The District shall automatically become a party to this Agreement to the extent permitted by California law, and all provisions hereof which apply to the City shall so apply to the District. The City Council of the City, acting for the District, shall perform all parts of this Agreement which require performance on the part of the District.

Section 20. Assignment. Owner may not assign this Agreement or any right or duty hereunder without the express written approval of the City. The City may condition any such approval on proof of the financial responsibility and experience of a proposed assignee to undertake and perform the duties and responsibilities of Owner under this Agreement. The City's approval of an assignment of this Agreement and the rights and duties of Owner hereunder shall not be unreasonably withheld.

Section 21. Prompt Action. All consents, approvals and determinations required of either the City or Owner pursuant to this Agreement shall be promptly given or made, and shall not be unreasonably withheld.

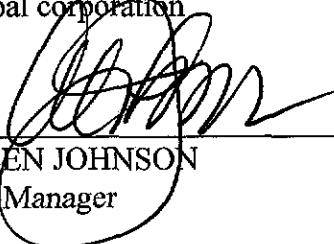
Section 22. General. This Agreement contains the entire agreement between the parties with respect to the matters herein provided for, and may be amended by a subsequent written agreement signed on behalf of both parties. This Agreement is for the exclusive benefit of the parties and shall not be construed to confer any rights or benefits upon any persons other than the City and the Owner. This Agreement shall, however, inure to the benefit of and be binding upon

the successors and assigns of the parties. This Agreement shall be construed and governed by the Constitution and laws of the State of California. Should either party to this Agreement commence a court action or proceeding against the other party with respect to this Agreement or the design and acquisition or construction of the Public Facilities, the party prevailing in such action or proceeding shall be entitled to receive from the losing party its attorney's fees, expert witness' fees, court costs, and other costs incurred by it in prosecuting or defending such action or proceeding. The captions of the sections of this Agreement are provided for convenience only, and shall not have any bearing on the interpretation of any section hereof. This Agreement may be executed in several counterparts, each of which shall be an original of the same Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the date first above written.

CITY OF ROSEVILLE  
a municipal corporation

HIGHLAND RESERVE NORTH, L.P., a  
Delaware Limited Partnership

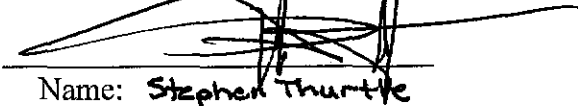
By:   
ALLEN JOHNSON  
City Manager

By Richland Norcal, Ltd., a Florida Limited  
Partnership, General Partner


ATTEST:

By Richland Ventures, Inc., a Florida  
Corporation, General Partner

By:   
CAROLYN PARKINSON  
City Clerk

By:   
Name: Stephen Thurtell  
Its: Vice President

APPROVED AS TO FORM:

By:   
MARK J. DOANE  
City Attorney

RESOLUTION NO. 00-424

APPROVING AN AGREEMENT BETWEEN THE CITY OF ROSEVILLE AND  
HIGHLAND RESERVE NORTH, L.P., AND AUTHORIZING THE CITY MANAGER TO  
EXECUTE  
IT ON BEHALF OF THE CITY OF ROSEVILLE

WHEREAS, a funding, construction and acquisition agreement regarding the Highland Reserve North Community Facilities District No. 1, between the City of Roseville and Highland Reserve North, L.P., has been reviewed by the Council; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Roseville that said agreement is approved and that the City Manager is authorized to execute it on behalf of the City of Roseville.

PASSED AND ADOPTED by the Council of the City of Roseville this 13th day of September, 2000, by the following vote on roll call:

AYES COUNCILMEMBERS: Earl Rush, Dan Goodhall, Claudia Gamar, Randolph Graham, Harry Crabb

NOES COUNCILMEMBERS: None

ABSENT COUNCILMEMBERS: None

  
MAYOR

ATTEST:

  
City Clerk