

FIRST AMENDMENT TO FUNDING AND ACQUISITION AGREEMENT

This First Amendment to Funding and Acquisition Agreement (the “Amendment”) is entered into as of _____, 2023, by and between the City of Corona (the “City”) acting on behalf of itself and as the legislative body of Community Facilities District No. 2018-1 (Bedford) of the City of Corona (“Community Facilities District”), and Arantine Hills Holdings L.P., a Delaware limited partnership (“Owner”).

RECITALS

WHEREAS, the City established the Community Facilities District pursuant to the Mello-Roos Community Facilities Act of 1982, being Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code (the “Mello-Roos Act”); and

WHEREAS, in connection therewith, the City, acting on behalf of the Community Facilities District, and Owner entered into that certain Funding and Acquisition Agreement, dated as of July 1, 2018 (the “Original Agreement”), with respect to the Community Facilities District; and

WHEREAS, in July, 2021, Owner acquired an additional thirty-one (31) acres of land adjacent to Phase 3 of the Property; and

WHEREAS, the Owner has sent a petition to the City to annex certain property into Improvement Area No. 3 and Improvement Area No. 4 of the Community Facilities District. The Owner has also sent a petition requesting that the Community Facilities District and the City, as applicable, undertake proceedings pursuant to the pertinent provisions of the Mello-Roos Act to (i) amend the initial Rate and Method of Apportionment of Special Taxes for Improvement Area No. 3 of the Community Facilities District, (ii) increase the authorized amount of bonded indebtedness which may be issued by the Community Facilities District with respect to Improvement Area No. 3 to an amount not to exceed \$37,000,000 for the purpose of financing the authorized facilities in order to address current development plans of the property within the Community Facilities District, and (iii) amend the initial Rate and Method of Apportionment of Special Taxes for Improvement Area No. 4 of the Community Facilities District (collectively, the “Change Proceedings”); and

WHEREAS, the extension of the flood control channel improvements by approximately 1,400 feet adjacent to development Phase 4 of the Property (the “Phase 4 Bedford Channel Facilities”) is now being added to the channel facilities to be financed by the Community Facilities District; and

WHEREAS, the Owner and City, on behalf of the Community Facilities District, now desire to enter into this Amendment in order to amend certain provisions and exhibits of the Original Agreement pursuant to Sections 10(j) and 23 of the Original Agreement in order to account for additions to the storm drain facilities and the increased size of the flood channel for the acquisition thereof by the Flood Control District using proceeds of the bonds of the Improvement Areas.

NOW, THEREFORE, in consideration of the execution and performance of this Amendment, and the Change Proceedings with respect to the Community Facilities District, and for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

AGREEMENT

Section 1. Incorporation of Recitals. All of the foregoing Recitals are correct and are incorporated in this Amendment by reference.

Section 2. Amendment to Definitions in Original Agreement. The following definition of “Phase 4 Bedford Channel Facilities” is hereby added to Exhibit B of the Original Agreement:

“Phase 4 Bedford Channel Facilities” means the facilities described as such in Exhibit A to the Agreement.”

Section 3. Amendment of Section 6(b)(3). Section 6(b)(3) of the Original Agreement is hereby deleted and replaced with the following:

“(3) third, to pay or reimburse the Owner the costs of the Phase 1 Bedford Channel Facility, the Phase 4 Bedford Channel Facilities, and the City Acquisition Facilities in the order requested by Owner but subject to the terms of this Agreement.”

Section 4. Amendment of Section 7. Section 7 to the Original Agreement is hereby deleted and replaced with the following:

“Section 7. Construction, Acquisition and Payment of the Phase 1 Bedford Channel Facility, Phase 4 Bedford Channel Facilities, and the Storm Drain Facilities. The Phase 1 Bedford Channel Facility will be constructed and completed by Owner, as determined by the City and the County pursuant to Section 53313.5 of the Act, prior to adoption of the resolution establishing the District. The Storm Drain Facility and the Phase 4 Bedford Channel Facilities will be constructed and completed by Owner in the manner described in the Joint Community Facilities Agreement (the “JCFA”), by and among the City, the County and the Owner.”

Section 5. Amendment to Section 10(h)(c). The following shall be added to the third paragraph of Section 10(h)(c) of the Original Agreement:

“The City shall be entitled to withhold payment of the Phase 4 Bedford Channel Facilities (or the Final Discrete Component thereof) to be owned by the County, until Owner provides the City Manager with evidence that the County has accepted dedication and/or title to the Phase 4 Bedford Channel Facilities, provided, however, that any payment to Owner for the Phase 4 Bedford Channel Facilities shall be governed by the JCFA.”

Section 6. Amendment to Section 11(e). Section 11(e) of the Original Agreement is hereby deleted and replaced with the following:

“(e) Public Facilities to be Acquired by the County. The City has, or will, execute the JCFA. The JCFA shall allow the financing of the acquisition or construction of the Phase 1 Bedford Channel Facility, the Phase 4 Bedford Channel Facilities and the Storm Drain Facilities, as described in and pursuant to the JCFA. Accordingly, the proceeds of the Special Taxes and Bonds for any Improvement Area may be used to construct or acquire such Phase 1 Bedford Channel Facility, Phase 4 Bedford Channel Facilities or the Storm Drain Facilities at any time following Owner’s execution and submission of payment request in the requisite form required by the JCFA (the “JCFA Facilities Payment Request”). Upon receipt of such JCFA Facilities Payment Request, the City shall review the request and if determined to be an item eligible to be paid from the proceeds of the Bonds direct the Fiscal Agent to wire transfer (or pay in another mutually acceptable manner) to the payee identified in such JCFA Facilities Payment Request such requested funds to the extent of funds on deposit in the Improvement Fund or Special Fund designated by Owner. The provisions of Section 10(g) apply to the Phase 1 Bedford Channel Facility, Phase 4 Bedford Channel Facilities and the Storm Drain Facilities. Nothing in this Agreement shall be construed as a promise or representation by Owner regarding the provisions to be contained in the JCFA. The Phase 1 Bedford Channel Facility, Phase 4 Bedford Channel Facilities and the Storm Drain Facilities eligible to be financed under the JCFA, remain an obligation of the Owner and are not an obligation of the City or the District.”

Section 7. Amendment to Section 11(f). The last sentence of Section 11(f) of the Original Agreement is hereby deleted and replaced with the following:

“Owner shall maintain or cause to be maintained the Phase 1 Bedford Channel Facility and Discrete Components thereof and the Phase 4 Bedford Channel Facilities and Discrete Components thereof to be owned by the County (including the repair and replacement thereof) prior to the Acceptance Date thereof and for the period of time and in the form specified in the JCFA, if any, or as otherwise required by the applicable regulations of the County.”

Section 8. Amendment of Exhibit A to the Original Agreement. Exhibit A to the Original Agreement is hereby deleted and replaced with Exhibit A to this Amendment.

Section 9. Binding on Successors; No Third-Party Beneficiaries. This Amendment shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Amendment is entered into solely for the benefit of the parties and the successors, transferees and assigns of all parties. Other than City and Community Facilities District, and Owner, and their successors, transferees, and assigns, no third person shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this Amendment.

Section 10. Interpretation Guides. In interpreting this Amendment, it shall be

deemed that it was prepared by the parties jointly and no ambiguity shall be resolved against any party on the premise that it or its attorneys were responsible for drafting this Amendment or any provision thereof. Headings used in this Amendment are for convenience and ease of reference only and are not intended nor may be construed as a guide to interpret any provision of this Amendment.

Section 11. Due Authority of Signatories to Execute Agreement. Each individual signing this Amendment warrants and represents that he or she has been authorized by appropriate action of the party which he or she represents to enter into this Amendment on behalf of the party.

Section 12. California Law Governs. This Amendment and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California.

Section 13. Counterparts. This Amendment may be signed and executed in one or more counterparts which, taken together, shall constitute one original document.

Section 14. Original Agreement to Remain in Effect. Save and except as amended and supplemented by this Amendment, the Original Agreement shall remain in full force and effect. All of the remaining provisions of the Original Agreement shall apply to this Amendment.

(signature page follows)

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

CITY OF CORONA

By: _____
Jacob Ellis,
City Manager

ATTEST:

By: _____
Sylvia Edwards,
City Clerk

DEVELOPER

**ARANTINE HILLS HOLDINGS L.P.,
a Delaware limited partnership**

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT A
DESCRIPTION OF PUBLIC FACILITIES