
**JOINT COMMUNITY FACILITIES AND
SCHOOL FACILITIES FUNDING AGREEMENT**

by and among

**THE CITY OF LAKE ELSINORE,
LAKE ELSINORE UNIFIED SCHOOL DISTRICT**

AND

VISTA EMERALD, LLC

RELATING TO

**COMMUNITY FACILITIES DISTRICT NO. 2023-2
OF THE CITY OF LAKE ELSINORE**

Dated _____, 2023

**JOINT COMMUNITY FACILITIES AND
SCHOOL FACILITIES FUNDING AGREEMENT
BY AND AMONG
THE CITY OF LAKE ELSINORE,
LAKE ELSINORE UNIFIED SCHOOL DISTRICT
AND
VISTA EMERALD, LLC**

**(Relating to Community Facilities District
No. 2023-2 of the City of Lake Elsinore)**

THIS JOINT COMMUNITY FACILITIES AND SCHOOL FACILITIES FUNDING AGREEMENT (“Agreement”) is made and entered into by and among **THE CITY OF LAKE ELSINORE**, a general law city organized and operating under the laws of the State of California (“City”), the **LAKE ELSINORE UNIFIED SCHOOL DISTRICT**, a California public school district organized and existing pursuant to California law (“School District”), and **VISTA EMERALD, LLC**, a California limited liability company (“Owner” or “Property Owner”).

RECITALS:

A. Owner owns certain real property located within the boundaries of both the City and the School District and designated as Riverside County Tract Map No. 38378 (“Property”). The boundaries of the Property are depicted in Exhibit “A” attached hereto. The Property Owner has obtained entitlements to develop the Property with approximately 191 attached dwelling units (collectively, the “Project”).

B. The development of the Project will require that the School District provide additional School Facilities (defined below) to accommodate the students who will be generated by the development of the Project. The Property Owner and the School District have agreed that, in lieu of the Property Owner paying School Fees (as defined herein) at the time a Certificate of Compliance is issued to the School District, the School District shall receive Mitigation Amounts (as defined herein) at the time a Certificate of Compliance is issued, in accordance with the terms of this Agreement. The Parties anticipate that some or all of the Mitigation Amounts shall be payable from Bond Proceeds (as defined herein) of the hereinafter described Community Facilities District (“CFD”). The City Facilities (as defined herein) and School Facilities are in certain instances herein collectively referred to herein as the “Facilities.”

C. Pursuant to actions of the City, the City has formed the CFD pursuant to the provisions of the Act (as defined herein). The Parties herein have acknowledged and agreed that the City shall be solely responsible for the formation and administration of the CFD including the costs thereof.

D. In accordance with Sections 53313.5 and 53316.2 of the Act, the CFD may finance facilities to be owned or operated by the School District. It is the intention of the Parties that this Agreement shall constitute a “joint community facilities agreement” (“JCFA”) within the meaning of

Section 53316.2 of the Act by and among the City, School District and the Property Owner pursuant to which the CFD will be authorized to provide financing for the School Facilities. Pursuant to Section 53316.2(b) of the Act, a JCFA may be approved by two or more public agencies prior to the adoption of a resolution authorizing the issuance of bonds. As provided by Section 53316.6 of the Act, the City shall be responsible for constructing or otherwise acquiring, maintaining and operating the City Facilities, and the School District shall be responsible for constructing or otherwise acquiring, maintaining and operating the School Facilities.

E. The provision of the City Facilities and the School Facilities is necessitated by the Project, and the Parties find and determine that the residents of the City, School District and CFD will be benefited by the financing of the City Facilities and School Facilities as set forth herein, and that this Agreement is beneficial to the interests of such residents.

ARTICLE I

GENERAL PROVISIONS

Section 1.1 Recitals.

The above recitals are true and correct and are hereby incorporated as effective and operative provisions of this Agreement.

Section 1.2 Definitions.

Unless the context clearly otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement, have the meanings herein specified.

(a) “Act” means the Mello-Roos Community Facilities Act of 1982, as amended, commencing with California Government Code Section 53311, *et seq.*

(b) “Agreement” means this Joint Communities Facilities and School Facilities Funding Agreement.

(c) “Amount per Square Foot” means an amount equal to (a) 130% of the School District’s applicable Level I Fees or Level II Fees then in effect (or comparable provisions of Statutory Fees, if Level II Fees or Level I Fees are no longer in effect due to a change in State law) or

(b) 100% of the School District’s Level III Fees then in effect if the School District is authorized to charge Level III Fees (or comparable provisions of Statutory Fees, if Level III Fees are no longer in effect due to a change in State law). The Amount per Square Foot is \$6.23 as the date hereof.

(d) “Assessable Square Feet” means, for each residential dwelling unit within the Project, the total square feet of assessable internal living space for such unit, exclusive of any carports, walkways, garages, overhangs, patios, enclosed patios, detached accessory structures (i.e., uninhabitable storage structures), other structures not used as living space or any other square footage excluded under California Government Code Section 65995.

(e) “Bond Proceeds” shall mean those net funds generated by the sale of Bonds.

(f) “Bond Resolution” means that Resolution, Resolution Supplement, Fiscal Agent Agreement, Indenture of Trust and/or other equivalent document(s) providing for the issuance of Bonds.

(g) “Bonds” shall mean those bonds, or other securities, issued by, or on behalf of, the CFD, as authorized by the qualified electors within the CFD.

(h) “Certificate of Compliance” means a certificate issued by School District pursuant to California Education Code Section 17620(b) for purposes of certifying that Property Owner has paid or satisfied the applicable Deposit or Mitigation Amount needed to obtain a one or more building permits for development to occur within the Property.

(i) “CFD” means Community Facilities District No. No. 2023-2 of the City.

(j) “City Facilities” means the facilities which may be financed by the CFD to be constructed, acquired, owned and/or operated by the City as described in the formation proceedings of the CFD.

(k) “Credit Account” means a fund, account or sub-account, regardless of how designated, held by, or on behalf of, the School District and applied and accounted for as set out in Section 2.5 hereof.

(l) “Deposit” means, in each case, the funds advanced to School District by Property Owner, in accordance with Section 2.2 herein, as a condition to issuance by the School District of a Certificate of Compliance.

(m) “Disbursement Request” means a request for payment relating to School Facilities in the form attached hereto as Exhibit “B.”

(n) “Lake Elsinore School Facilities Account” means the fund(s), account(s) or sub-account(s) of the CFD (regardless of its designation within the Bond Resolution) into which a portion of the Bond Proceeds may be deposited in accordance with the Bond Resolution in order to finance the School Facilities in satisfaction of the Mitigation Amount(s).

(o) “Mitigation Amount” means the contractual obligation of Property Owner, as set forth herein, to provide funding through the CFD, or as otherwise set forth herein, to mitigate the school facilities impact(s) of each residential dwelling unit within the Project in an amount equal to the Amount per Square Foot multiplied by the Assessable Square Feet of such residential dwelling unit.

(p) “Party” shall mean any one of the parties to this Agreement, and “Parties” shall mean, collectively, all of the parties to this Agreement.

(q) “Property Owner” means Vista Emerald, LLC, a California limited liability company, and its successors and assigns, excluding individual homeowners.

(r) “Rate and Method” means the Rate and Method of Apportionment of the Special Tax authorizing the levy and collection of special taxes pursuant to proceedings undertaken for the formation of the CFD pursuant to the Act.

(s) “School Facilities” means interim and permanent school facilities of the School District including classrooms, multi-purpose facilities, administration and auxiliary space at school facilities, athletic fields, playgrounds and recreational facilities and improvements thereto, landscaping, access roadways, drainage, sidewalks and gutters and utility lines, furniture, equipment and technology, including technology upgrades and mobile devices and infrastructure therefore, with a useful life of at least five (5) years at such school facilities.

(t) “School Fees” means fees and charges that may be levied pursuant to Education Code Section 17620 *et seq.* and Government Code Sections 65995 *et seq.*

(u) “Special Taxes” means the special taxes authorized to be levied by the School District and collected by the CFD pursuant to the Rate and Method.

(v) “State” means the State of California.

Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate. Headings of sections herein are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

All references herein to “Sections” and other subdivisions are to the corresponding Sections or subdivisions of this Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section or subdivision hereof.

ARTICLE II

FORMATION OF THE CFD AND ISSUANCE OF BONDS

Section 2.1 Formation of the CFD.

The City has undertaken proceedings pursuant to the Act for the formation of the CFD, the authorization of the Special Taxes and the authorization of Bonds on behalf of the CFD, with the qualified electors having approved such Special Taxes and the authorization of bonded indebtedness as provided for under the Act and related State law. The Parties expressly acknowledge and agree that the School District shall have no responsibility or liability for any costs or expenses of forming or administering the CFD. The Parties expressly agree that for purposes of this Agreement the School District may presume that the proceedings for the formation of the CFD, actions for approval of the levy and collection of the Special Taxes and authorization for the CFD to incur bonded indebtedness

were validly undertaken and completed.

Section 2.2 Mitigation Amount Payments/Deposits.

Prior to School District's receipt of Bond Proceeds, as described in this Section, Property Owner may obtain Certificates of Compliance for lots/parcels within the Project only by providing Deposits to the School District that in each case are equal to the Mitigation Amount(s) attributable to those lots/parcels which are developed for residential purposes. The School District may commingle any or all Deposits with other capital facilities funds of the School District for purposes of investment and safekeeping, and the School District may use such Deposits for any or all purposes as authorized by law, but, for purposes of this Agreement, the School District shall at all times maintain records sufficient to track the amount and disposition of each Deposit.

(a) Deposits provided to the School District prior to receipt by the School District of Bond Proceeds, which Bond Proceeds supplant such Deposits, will be refunded by the School District to Property Owner, or other Party, as applicable, that paid such Deposit(s) upon deposit of such supplanting Bond Proceeds into the Lake Elsinore School Facilities Account.

(b) Bond Proceeds deposited into the Lake Elsinore School Facilities Account shall supplant Deposits on a first-in first-supplanted basis. After the issuance of the last series of Bonds (other than Bonds issued for refunding purposes only), and to the extent that the Bond Proceeds deposited into the Lake Elsinore School Facilities Account are not sufficient to supplant the Mitigation Amounts attributable to lots for which the Property Owner has provided a Deposit, the portion of the Deposits not supplanted by Bond Proceeds shall be retained and used by School District as permitted by law and this Agreement.

(c) If the Bond Proceeds are not sufficient to make all future Mitigation Amounts for the Property, then once the Property Owner begins making payments of Mitigation Amounts, such amounts shall constitute Deposits that are capable of reimbursement in the manner described above upon the receipt of additional Bond Proceeds.

(d) After the issuance of the last series of Bonds (other than Bonds issued for refunding purposes only), if after the application of all Bond Proceeds deposited into the Lake Elsinore School Facilities Account, including interest earnings thereon, and taking into account any Deposits retained by the School District (as provided for above), there remains a balance due, Property Owner shall be required to pay all Mitigation Amount(s) for units/parcels before Certificates of Compliance shall be issued by the School District.

(e) The City and the CFD shall not be responsible, or liable, for funding of School Facilities, payment of Deposits or payment of Mitigation Amounts from any source of funds other than Bond Proceeds allocated and deposited for such purpose.

Section 2.3 Issuance and Sale of Bonds.

(a) The City Council, acting as the legislative body of the CFD, may, in its sole discretion, in accordance with its adopted policies, adopt one or more Bond Resolutions and issue Bonds. Prior to the City Council adopting a Bond Resolution, Property Owner shall notify, or cause to be notified, the School District, in writing, of: (i) the estimated issuance date for the corresponding series of Bonds

and (ii) the estimated amount of Bond Proceeds to be deposited in the Lake Elsinore School Facilities Account from such series of Bonds.

(b) School District shall have no obligation, responsibility, or authority with respect to the issuance and sale of the Bonds, the Bond Proceeds available to finance School Facilities, the payment of the principal and interest on the Bonds, or for the levy of the Special Taxes to provide for the payment of principal and interest thereon. The City and the CFD shall have the sole authority and responsibility for all such matters.

The Parties hereto specifically agree that, except as provided in Section 2.4, the liabilities of the CFD, including liabilities, if any, of the CFD pursuant to the documents providing for the issuance of Bonds, including, but not limited to, the Bond Resolution, shall not be or become liabilities of School District.

Section 2.4 Use of Bond Proceeds to Finance School Facilities.

(a) In the event that Bonds are issued, the City, or the CFD (as may be applicable), shall determine the amount of Bond Proceeds to be deposited into the Lake Elsinore School Facilities Account or any applicable accounts or subaccounts thereof. As Bond Proceeds are transferred to School District, Property Owner shall receive a credit in the amount transferred against the payment of Mitigation Amounts. Nothing herein shall supersede the obligation of the Property Owner and/or its successors in interest with respect to the Property to pay School Fees to School District, when due, on account of commercial, industrial, age-restricted or other development not within the scope of this Agreement. The purpose of this Agreement is to provide a mechanism by which the CFD may levy and collect Special Taxes and issue Bonds to provide a source of funds to finance School Facilities for residential development occurring within the Project through the payment of the Mitigation Amounts in lieu of the payment of School Fees. In the event that Bond Proceeds, including investment earnings thereon, are not available or sufficient to satisfy the obligation to pay the Mitigation Amounts, then the Property Owner shall remain obligated to pay the Mitigation Amounts to the School District as provided for under the terms of this Agreement.

(b) In connection with the issuance of any Bonds, a portion of the proceeds of which are to be made available pursuant to this Agreement to finance the acquisition, construction and installation of School Facilities, School District agrees to execute and deliver such certifications concerning the School District and/or the School District's use of Bond Proceeds deposited into the Lake Elsinore School Facilities Account as may be reasonably required in order for City bond counsel to conclude, at the time of Bond issuance, that interest on such Bonds will be excludable from gross income under Section 103 of the Internal Revenue Code of 1986 and any amendments thereto. If expressly requested by the City, the CFD or City bond counsel, the School District shall confirm that the Bond Proceeds shall be, or have been, expended on School Facilities which have a direct or indirect benefit to the property within the CFD.

Section 2.5 Mitigation Credit Account.

(a) After being notified by the fiscal agent for the Bonds, or equivalent City or CFD consultant, officer or agent that Bond Proceeds have been deposited into the Lake Elsinore School Facilities Account, School District will establish a Credit Account in the amount of Assessable Square Feet for which the obligation to pay Mitigation Amounts has been satisfied. Such determination shall be made by dividing the amount(s) deposited in the Lake Elsinore School Facilities Account by the Amount per Square Foot then in effect pursuant to Section 2.2 herein.

(b) Once established and upon receipt of funds into the Credit Account, School District shall deduct from the Credit Account the square footage of units for which Deposits had been made pursuant to Section 2.2 and return the corresponding Deposits to the Property Owner. If such deduction would result in a negative balance within the Credit Account, School District shall retain a portion of the Deposits such that when added to the Bond Proceeds deposited in the Lake Elsinore School Facilities Account would result in a balance of zero (0) square feet within the Credit Account. Such retained Deposits may then be used by School District as permitted by law and this Agreement.

(c) Property Owner may obtain Certificates of Compliance for lots/parcels within the Project by requesting that School District deduct from the Credit Account the assessable space of the unit for which the Certificate of Compliance is being sought. In the event that there is an insufficient balance in the Credit Account to cover a request for a Certificate of Compliance, Property Owner may obtain the Certificate of Compliance only by paying cash to the School District equal to the shortfall in the Mitigation Amount payable in connection with that Certificate of Compliance.

Section 2.6 Disbursements of Funds for School Facilities.

(a) From time to time following the deposit of Bond Proceeds into the Lake Elsinore School Facilities Account, the School District may notify the City in writing and request a disbursement from the Lake Elsinore School Facilities Account into the Credit Account to fund School Facilities by executing and submitting a Disbursement Request to the City, the CFD or to the Bonds fiscal agent, as the Bond Resolution shall provide. Upon receipt of such Disbursement Request, completed and executed in accordance with the terms of this Agreement, the CFD or the Bonds fiscal agent shall wire transfer, or otherwise pay, to School District such requested funds to the extent that Bond Proceeds are available in the Lake Elsinore School Facilities Account for such purpose.

(b) School District agrees that prior to submitting a Disbursement Request requesting payment from the CFD, it shall review and approve all costs included in its request and will have already paid or incurred such costs of School Facilities from its own funds subsequent to the date of this Agreement, or will disburse such amounts to pay the costs of School Facilities following receipt of such funds from the CFD. In the event that School District does not disburse any Bond Proceeds received by it to third parties within five banking days of receipt, it will trace and report to the CFD all earnings, if any, earned by School District, from the date of receipt of such Bond Proceeds by School District to the date of expenditure by School District for costs of the School Facilities as defined herein.

Section 2.7 Responsibility for Mitigation Amounts.

(a) The Parties hereto acknowledge and agree that, absent Mitigation Amounts being funded using Bond Proceeds, the Property Owner shall be responsible for the payment of the Mitigation Amounts.

(b) If the amounts derived from Bond Proceeds for School Facilities deposited in the Lake Elsinore School Facilities Account, including investment earnings thereon, if any, are not sufficient to fund all Mitigation Amounts attributable to the Property, the Parties hereto agree that all responsibility and liability for the amount of such shortfall shall be and remain with the Property Owner, and shall not lie with the CFD, School District or the City.

(c) School District agrees to utilize or apply Bond Proceeds provided to it by the CFD, in

accordance with the Act, the Local Agency Special Tax and Bond Accountability Act (described in Section 4.1 hereof), the requirements of federal tax law compliance with which is necessary in order for interest on the Bonds to be excluded from the gross income of the recipients for federal income tax purposes and other applicable law, and as set forth herein.

Section 2.8 Indemnification.

(a) Indemnification by the City. The City shall assume the defense of, indemnify and save harmless, the School District, the Property Owner, their respective officers, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses, and/or expenses of any and every type and description (each a “Liability” and collectively, “Liabilities”) to which they may be subjected or put, by reason of, or resulting from, any negligent act or omission or willful misconduct of the City or the CFD with respect to this Agreement; provided, however, that the City shall not be obligated in accordance with the foregoing to the extent any Liability is attributable to the negligence or willful misconduct of any other Party or its officers, agents or employees, in which event the Parties shall be responsible and liable on a comparative basis.

(b) Indemnification by Property Owner. The Property Owner shall assume the defense of, indemnify and save harmless, the School District, the City and the CFD, their respective officers, employees and agents, and each and every one of them, from and against all Liabilities to which they may be subjected or put, by reason of, or resulting from, any negligent act or omission or willful misconduct of the Property Owner with respect to this Agreement provided, however, that the Property Owner shall not be obligated in accordance with the foregoing to the extent any Liability is attributable to the negligence or willful misconduct of any other Party or its officers, agents or employees, in which event the Parties shall be responsible and liable on a comparative basis.

(c) Indemnification by School District. The School District shall assume the defense of, indemnify and save harmless, the City, the CFD and the Property Owner, their respective officers, employees and agents, and each and every one of them, from and against all Liabilities to which they may be subjected or put, by reason of, or resulting from, any negligent act or omission or willful misconduct of the School District with respect to this Agreement; provided, however, that the School District shall not be obligated in accordance with the foregoing to the extent any Liability is attributable to the negligence or willful misconduct of any other Party or its officers, agents or employees, in which event the Parties shall be responsible and liable on a comparative basis.

(d) Comparative Liability. Notwithstanding anything to the contrary, in the event a court of competent jurisdiction, or an arbitrator if the Parties have agreed to arbitration, determines that more than one of the Parties are, to some extent, responsible for the existence of any Liability, those Parties shall request that the court or arbitrator determine their comparative liability with respect to that Liability. Thereafter, those Parties shall be responsible for any damages payable on account of such Liability consistent with such comparative liability determination, and a Party shall be entitled to reimbursement, for damages that it has paid in excess of its share of damages based on such comparative liability determination, from the other responsible Party or Parties.

(e) Statutory Liability. Notwithstanding anything to the contrary, in the event a final judgment issued by a court of competent jurisdiction, or an arbitrator if the Parties have agreed to arbitration, determines that this Agreement is an agreement within the scope of Government Code Section 895 and, in connection therewith, imposes liability on either the City or the School District

solely by virtue of Government Code Section 895.2, then the City or School District, as applicable, shall be entitled to contribution as provided by Government Code Section 895.6. In the event Government Code Sections 895, 895.2 and/or 895.6 are amended or repealed, the requirements of this Subsection shall apply with respect to any similar, successor or superseding law that imposes liability on either the City or the School District consistent with provisions of Government Code Sections 895.2 and 895.6 in effect as of the Effective Date.

Section 2.9 Mitigation of School Facilities Obligations with Respect to the Project.

The Property Owner and the School District agree that, with respect to development of the Property, the payment of the Mitigation Amounts to School District, whether with Bond Proceeds, Deposits or otherwise, as set forth herein, shall constitute the full extent of the obligation of the Property Owner to mitigate the impacts on the School Facilities of the School District arising from development of the Property.

Subject to compliance with the terms hereof, the School District shall not oppose development of the Project or any request by the Property Owner for a land use or other governmental approval, whether legislative, administrative, discretionary or ministerial, sought for the development of the Project. No development, change of development, governmental approval or change in any governmental approval with respect to the Project shall constitute the basis for any amendment or termination of this Agreement.

Section 2.10 Waiver of State and Local Funding Credits and Right to Protest.

In consideration of School District's agreement with respect to the Project to accept the Mitigation Amounts as full mitigation of the impact on the School Facilities of the School District resulting from development of the Project, the Property Owner hereby waives, on behalf of itself and all of its successors in interest with respect to the Property (including future Property Owners), any and all past, present, and future rights any of them may have to credit against, or fair share reduction in, Mitigation Amounts based upon State matching funding provided to School District or the proceeds from a School District-wide special tax or general obligation bond authorization, or School Facilities Improvement District ("SFID") bond authorization for school facilities. Nothing in the foregoing or elsewhere in this Agreement shall be deemed or construed to constitute an acknowledgement or agreement by the School District that the Property Owner or its successors have or would be entitled to any such credit or reduction. In addition, the Property Owner knowingly waives its right of protest as may be afforded by Government Code Section 66020 or any other provision of law; provided that nothing in this Agreement shall be deemed or construed to preclude the Property Owner from asserting that the School District has breached any obligation it may have pursuant to this Agreement.

Section 2.11 Owner Advance.

The Property Owner has previously deposited with School District the amount of Fifteen Thousand Dollars (\$15,000) to be used to advance fund the School District's costs associated with negotiating, entering into and administering this Agreement. Such advance may be reimbursed to the Property Owner, subject to the approval of the City and/or the CFD, solely from Bond Proceeds, but under no circumstances shall School District be obligated to refund, reimburse, or otherwise repay the advance, or any portion thereof, to the Property Owner from any source of funds of the School District. Notwithstanding the foregoing, should the City, for any reason, not approve this Agreement, any then unexpended and uncommitted balance of the funds advanced pursuant to this Section shall be refunded to Property Owner within fourteen (14) business days after School District is notified in writing by the City that this Agreement has not been and will not be, approved by the City.

Section 2.12 Administration of the CFD.

The City shall have the power, duty and responsibility to provide for the administration of the CFD, subject to the terms hereof and the Bond Resolution, including employing and compensating all consultants and providing for the various other administration duties set forth in this Agreement. It is understood and agreed by Parties that School District was not or will not be considered a participant in the proceedings relative to formation of the CFD or the issuance of the Bonds, other than as a Party to this Agreement. For avoidance of doubt, all proceeds of the Special Taxes levied by the CFD shall, as and when collected, be allocated and distributed for use by the City and/or the CFD, not any other Party or any third party.

Section 2.13 Construction, Ownership and Maintenance of School District Facilities. The City shall have no responsibility for the acquisition, construction and installation of the School Facilities. The School Facilities shall be and remain the sole and separate property of the School District and shall be operated, maintained and utilized by the School District. The City shall not have any ownership interest in, or responsibility for the operation, maintenance or utilization of, the School Facilities.

Section 2.14 Construction, Ownership and Maintenance of City Facilities. The School District shall have no responsibility for the acquisition, construction and installation of the City Facilities. The City Facilities shall be and remain the sole and separate property of the City and shall be operated, maintained and utilized by the City. The School District shall not have any ownership interest in the City Facilities, and the School District shall have no responsibility for the operation, maintenance or utilization of the City Facilities.

ARTICLE III

TERM AND TERMINATION

Section 3.1 Effective Date.

This Agreement shall become effective and of full force and effect as of the date (“Effective Date”) that both of the following occur: (1) this Agreement is approved and executed by the last of the School District, the Property Owner and the City, to be confirmed upon execution of this Agreement by the authorized representatives of the Parties; and (2) the CFD has been formed, as evidenced by the recordation of a Notice of Special Tax Lien against the Property.

Section 3.2 Termination.

If the CFD is terminated for any reason or is unable to complete the sale of the Bonds prior to January 1, 2035, any obligation of the Parties, if any, to finance all or any portion of the Mitigation Amounts with Bond Proceeds pursuant to this Agreement shall automatically terminate and be of no further force or effect. In such event, this Agreement shall remain in effect as between the School District and the Property Owner, the School District shall retain any and all Deposits in full satisfaction of the mitigation obligation attributable to the lots within the Project for which Certificates of Compliance were issued based upon the posting of such Deposits and, thereafter, in order to obtain an additional Certificate of Compliance for construction within the Project, Property Owner shall be required to pay to the School District the School Fees, or other amount(s) as required by state law, applicable to such construction.

ARTICLE IV

ADDITIONAL GENERAL PROVISIONS

Section 4.1 Recordkeeping; Inspection of Records.

(a) School District hereby agrees to keep and maintain full and accurate records of all Bond Proceeds, if any, paid to School District for application against Mitigation Amounts due under the terms of this Agreement and investment earnings thereon, and the City or the CFD, or the Bonds fiscal agent on their behalf, hereby agrees to keep and maintain full and accurate records of all Bond Proceeds and investment earnings, if any, disbursed to School District from the Lake Elsinore School Facilities Account. Each Party further agrees to make such records available to any other Party hereto, including the Property Owner, during normal business hours upon reasonable prior notice. All such records shall be kept and maintained by the appropriate Party as provided by applicable law and their respective policies. The School District and the Property Owner agree that they will cooperate with the CFD and the City in providing documentation, reports or other data reasonably required and requested by the City or the CFD in meeting the reporting requirements of the CFD under Sections 50075.1, 50075.3, and 50075.5 and Article 1.5 (commencing with Section 53410) of Chapter 3 of Part 1 of Division 2 of Title 5 of, the Government Code (collectively, the “Local Agency Special Tax and Bond Accountability Act”).

(b) School District’s reporting obligations pursuant to this Section shall be limited to providing reports or other data detailing the following: (A) the amount of Bond Proceeds received by School District to fund School Facilities, (B) the amount of such Bond Proceeds deposited in separate funds or accounts of School District reflecting Mitigation Amounts and the number of dwelling units for which such Mitigation Amounts apply, and (C) School Facilities that have been acquired, installed and/or constructed, in whole or in part, using Bond Proceeds. If no Bond Proceeds have been received by School District or used to finance School Facilities since the previous report, no report shall be required and the City may rely upon the previous reports.

Section 4.2 Partial Invalidity.

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

Section 4.3 Successors and Assigns.

Property Owner may assign its rights pursuant to this Agreement to a purchaser/developer of the Property, or any portion thereof, and such purchaser and assignee shall expressly assume the obligations of Property Owner pursuant to this Agreement and to be bound thereby. No such assignment by the Property Owner shall be valid or binding on any other Party unless and until written notice of the assignment and assumption has been provided to all Parties. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties.

Section 4.4 Notice.

Any notice, payment, or instrument required or permitted by this Agreement to be given or delivered to any Party shall be deemed to have been received only upon actual receipt by that Party. Such notices, payments, or instruments may be delivered by: (i) personal delivery, delivery charges prepaid and signature on delivery receipt requested; (ii) registered or certified U.S. Mail, postage prepaid and return receipt requested; or (iii) FedEx, UPS, or other reliable private delivery service, delivery charges prepaid and signature on electronic or other delivery receipt requested. A copy of each notice and other instrument sent to the City shall be sent to the City's legal counsel, and a copy of each notice and other instrument sent to the School District shall be sent to the School District's legal counsel. No Party may unreasonably refuse to accept delivery of any communications sent in accordance with this Section in an attempt to avoid the giving or service of the communication, and any such refusal by a Party shall be deemed and construed as a material breach of such Party's obligations pursuant to this Agreement. For avoidance of doubt, this Section shall not be deemed or construed to apply to service of process in accordance with any applicable law or rule of court. Subject to the foregoing, written communications shall, as applicable, be addressed as follows:

City:	City of Lake Elsinore 23873 Clinton Keith Road Lake Elsinore, CA 92595 Attention: Assistant City Manager/PW Director
City Legal Counsel:	Stradling Yocca Carlson & Rauth 660 Newport Center Drive, Suite 1600 Newport Beach, CA 92660 Attention: Brian Forbath Esq. Lawrence Chan Stradling Yocca Carlson & Rauth 660 Newport Center Drive, Suite 1600 Newport Beach, CA 92660
School District:	Lake Elsinore Unified School District Attention: Chief Business Official 545 Chaney Street Lake Elsinore, CA 92530
School District Legal Counsel:	Atkinson, Andelson, Loya, Ruud & Romo Attention: Robert E. Anslow 20 Pacifica, Suite 1100 Irvine, CA 92618
Property Owner:	Vista Emerald, LLC 1020 2 nd Street, Suite C Encinitas, CA 92024 Attention: Project Manager

Each Party can change its address for delivery of notice by delivering written notice of such change of address to the other Parties. A Party that incurs a change of address shall endeavor to provide such notice within ten (10) calendar days prior to the change taking effect.

Section 4.5 Captions.

The captions to Sections used herein are for convenience purposes only and, therefore, shall not be deemed or construed to qualify, circumscribe, or otherwise limit the respective meanings of the provisions set forth in this Agreement.

Section 4.6 Governing Law.

Notwithstanding any conflict-of-law, choice-of-law, or other provision of any federal or state law, this Agreement shall be governed by, and construed in accordance with, the laws of the State applicable to contracts made and performed in said State. Each and every claim, demand, action, arbitration (if the affected Parties agree to arbitrate), and other proceeding arising from this Agreement shall be initiated and conducted solely in the County of Riverside, California; provided that a court of competent jurisdiction in its discretion may determine that it is necessary, in order to ensure fundamental fairness, that venue be located outside the boundaries of the City.

Section 4.7 Entire Agreement.

This Agreement contains the entire agreement of the Parties with respect to the matters provided for herein and supersedes all prior and contemporaneous agreements, negotiations, and discussions (whether written or oral) among any of the Parties relating to the subject matter of this Agreement.

Section 4.8 Amendments.

This Agreement may be amended or modified only in writing duly approved by each of the Parties and executed by the authorized representative(s) of each of the Parties hereto.

Section 4.9 Waiver.

The failure of any Party hereto to insist on compliance within any of the terms, covenants or conditions of this Agreement by any other Party hereto shall not be deemed to constitute a waiver of such terms, covenants or conditions of this Agreement by the failing Party. In order to be valid and binding, a waiver must be set forth in writing and must be signed by the authorized representative of the waiving Party. Except as expressly set forth in a written waiver, no waiver shall constitute a relinquishment of any other right or power for all or any other times.

Section 4.10 Cooperation and Execution of Documents.

Each Party agrees to complete and execute any further or additional documents that reasonably are necessary to complete the terms of, or secure the express benefits to another Party of, this Agreement.

Section 4.11 Exhibits.

The following exhibits attached hereto are incorporated into this Agreement by reference.

Exhibit
“A”
“B”

Description
Depiction/Description of Property Boundaries
Disbursement Request Form

Section 4.12 Interpretation.

This Agreement shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against a Party solely because it or its attorney(s) were primarily responsible for drafting this Agreement or any particular provision herein.

Section 4.13 No Termination Due to Changes in Law.

The provisions of this Agreement shall not be affected by: (i) any change to applicable law that occurs on or after the Effective Date; (ii) any legislation enacted, whether through the legislative or initiative process, on or after the Effective Date; or (iii) any judicial decisions issued on or after the Effective Date that otherwise would affect the matters addressed in this Agreement, except for decisions specifically pertaining to this Agreement.

Section 4.14 Signatories.

Each person who has signed this Agreement on behalf of a Party thereby represents and warrants that he, she, or they has been appropriately authorized that Party to sign, and thereby bind such Party to, this Agreement.

Section 4.15 Execution in Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original and the same instrument. Signature pages may be detached from counterpart originals and combined to form one or more copies of this Agreement having original signatures of all Parties.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Community Facilities and School Facilities Funding Agreement as of the day and year written above.

LAKE ELSINORE UNIFIED SCHOOL DISTRICT

By: _____

Title: _____

Date Signed: _____

Approved by Governing Board: _____,
2023

City:

CITY OF LAKE ELSINORE

By: _____

Name: _____

Date Signed: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

Developer:

VISTA EMERALD, LLC
a California limited liability company

By: _____

Name: _____

Date Signed: _____

EXHIBIT “A”

PROPERTY DESCRIPTION/DEPICTION

Property Description

<u>Owner</u>	<u>Description</u>
Vista Emerald, LLC, a California limited liability company	Riverside County APN 370-050-019
Vista Emerald, LLC, a California limited liability company	Riverside County APN 370-050-020
Vista Emerald, LLC, a California limited liability company	Riverside County APN 370-050-032

EXHIBIT “B”

DISBURSEMENT REQUEST FORM

1. Community Facilities District No. 2023-2 of the City of Lake Elsinore (“CFD No. 2023-2”) is hereby requested to pay from the Lake Elsinore School Facilities Account, or any applicable account or subaccount thereof, established by or on behalf of the City of Lake Elsinore or CFD No. 2023-2 in connection with its Special Tax Bonds (the “Bonds”) or pursuant to the terms of the JCFA (defined below) to Lake Elsinore Unified School District (“School District”), as payee, the sum set forth below:

\$_____ (the “Requested Amount”)

2. The Requested Amount is due and payable, no portion of the Requested Amount has been included in any prior disbursement to the School District from the Lake Elsinore School Facilities Account, and the Requested Amount is payable in satisfaction of the Property Owner’s obligation pursuant to the JCFA to pay Mitigation Amounts to the School District.

3. The Requested Amount is authorized and payable pursuant to the terms of that certain Joint Community Facilities and School Facilities Funding Agreement, dated as of _____, 2023, by and among the School District, Vista Emerald, LLC, a California limited liability company, and the City (the “JCFA”). By requisitioning and/or receiving Bond Proceeds pursuant to this request, the School District is not passing upon, determining, or assuming the tax-exempt status of the Bonds for federal or California income tax purposes.

4. Capitalized undefined terms used herein, and not otherwise defined, shall have the meaning(s) ascribed to them in the JCFA.

Date: _____

LAKE ELSINORE UNIFIED SCHOOL DISTRICT

By: _____