

9) **Approval of Assignment of Funding Agreement and Joint Community Facilities Agreement for Community Facilities District No. 2019-2 of the City of Lake Elsinore (Nichols Ranch)**

Approve the forms of the assignment agreements relating to the Funding Agreement and Joint Community Facilities Agreement for Community Facilities District No. 2019-2 of the City of Lake Elsinore (Nichols Ranch) and authorize the City Manager to execute the agreement.



## REPORT TO CITY COUNCIL

**To:** Honorable Mayor or Members of the City Council

**From:** Jason Simpson, City Manager

**Prepared by:** Shannon Buckley, Assistant City Manager

**Date:** March 14, 2023

**Subject:** **Approval of Assignment of Funding Agreement and Joint Community Facilities Agreement for Community Facilities District No. 2019-2 of the City of Lake Elsinore (Nichols Ranch)**

### **Recommendation**

Approve the forms of the assignment agreements relating to the Funding Agreement and Joint Community Facilities Agreement for Community Facilities District No. 2019-2 of the City of Lake Elsinore (Nichols Ranch) and authorize the City Manager to execute the agreement.

### **Background**

The City Council originally approved the agreements for the prior owner and developer. The assignment of the agreements is due to the property selling to Meritage Homes of California, Inc. The Developer and Meritage now desire to assign the Funding Agreement and the Joint Community Facilities Agreement to Meritage as the current owner of the property in the District.

### **Discussion**

The City of Lake Elsinore (the "City") formed the Community Facilities District No. 2019-2 of the City of Lake Elsinore (Nichols Ranch) (the "District") in 2019 pursuant to the Mello-Roos Community Facilities District Act of 1982. The District is approximately 58 acres planned for 168 residential lots within the City. Such property is located to the east of Interstate 15 and is bordered by Nichols Road to the south. Nichols Rd. Partners, LLC (the "Prior Owner"), the previous owner of the property in the District, has sold the property in the District to Meritage Homes of California, Inc. ("Meritage").

In connection with the formation of the District, the City entered into a Funding Agreement with the Prior Owner relating to the manner in which the District will fund certain City facilities. The City, Elsinore Valley Municipal Water District (the "Water District") and the Prior Owner also

entered into a Joint Community Facilities Agreement pursuant to which the District may also finance facilities of the Water District. The Developer and Meritage now desire to assign the Funding Agreement and the Joint Community Facilities Agreement to Meritage, as the current owner of the property in the District.

**Fiscal Impact**

None

**Attachments**

Attachment 1 - Assignment and Assumption Agreement (Funding Agreement)

Attachment 2 - Assignment and Assumption Agreement (JCFA)

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is made and entered into as of \_\_\_\_\_, 2023, by and between NICHOLS RD. PARTNERS, LLC, a California limited liability company ("Assignor"), and MERITAGE HOMES OF CALIFORNIA, INC., a California corporation (the "Assignee").

1. Assignment of Amended And Restated Funding Agreement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby assigns, conveys and transfers to Assignee all of Assignor's rights, title, interest and obligations pursuant to that certain Amended and Restated Funding Agreement related to Community Facilities District No. 2019-2 of the City of Lake Elsinore (Nichols Ranch) ("CFD") originally entered into between the City of Lake Elsinore, acting for and on behalf of itself and City of Lake Elsinore Community Facilities District No. 2019-2 and Nichols Rd. Partners, LLC, a California limited liability company, dated December 10, 2019 ("Funding Agreement"). Such assignment shall apply to all land within the CFD (the "Land"), which Land Assignee has acquired from Assignor. Assignor and Assignee agree that Assignee shall be deemed the Developer (as defined in the Funding Agreement) for all purposes set forth in the Funding Agreement including, but not be limited to, Assignee being reimbursed all Developer advances, and Assignee being authorized to execute and submit disbursement request forms and receive payment and/or reimbursements for all City Fees, City Improvements and Miscellaneous Improvements (each as defined in the Funding Agreement).

2. Assumption. Assignee assumes and agrees to pay and perform all the obligations of Assignor under the Funding Agreement to the extent arising after the date of this Assignment and relating to the Land.

3. Applicable Law. This Assignment shall be construed under and enforced in accordance with the laws of the State of California.

4. Binding. This Assignment and all its terms and provisions shall be binding upon and inure to the benefit of each of Assignor and Assignee and their successors and assigns.

5. Counterparts. This Assignment may be executed in any number of counterparts, each to be an original, but all of which shall constitute one instrument. and it shall be sufficient if any party hereto signs any such counterpart, so long as each of the parties hereto executes at least one such counterpart.

6. Further Assurances. Each party agrees that it will execute and deliver such other documents and take such other action, whether prior or subsequent to the date hereof, as may be reasonably requested by the other party to consummate the assignment contemplated by this Assignment.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

“ASSIGNOR”

NICHOLS RD. PARTNERS, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Eric L. Werner, Member and Manager

By: \_\_\_\_\_  
Patrick Broyles, Member and Manager

“ASSIGNEE”

MERITAGE HOMES OF CALIFORNIA, INC.,  
a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF LAKE ELSINORE, a political  
subdivision of the State of California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is made and entered into as of \_\_\_\_\_, 2023, by and between NICHOLS RD. PARTNERS, LLC, a California limited liability company ("Assignor"), and MERITAGE HOMES OF CALIFORNIA, INC., a California corporation (the "Assignee").

1. Assignment of JCFA. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby assigns, conveys and transfers to Assignee all of Assignor's right, title and interest pursuant to that certain Joint Community Facilities Agreement dated as of April 9, 2020 by and among Elsinore Valley Municipal Water District, a municipal water district, City of Lake Elsinore, a municipal corporation, and Nichols Rd. Partners, LLC, a California limited liability company (the "JCFA"). This Assignment applies to all property within Community Facilities District No. 2019-2 of the City of Lake Elsinore (Nichols Ranch), which property is described in Exhibit "A" to the JCFA (the "Property").

2. Assumption. Assignee assumes and agrees to pay and perform all the obligations of Assignor under the JCFA to the extent arising after the date of this Assignment and relating to the Property. Assignor and Assignee agree that Assignee shall be deemed the Property Owner (as defined in the JCFA) for all purposes set forth in the JCFA including, but not be limited to, Assignee being authorized to execute and submit disbursement request forms and receive reimbursements for all Advances and payment of the Acquisition Price of all Acquisition Facilities (each as defined in the JCFA).

3. Applicable Law. This Assignment shall be construed under and enforced in accordance with the laws of the State of California.

4. Binding. This Assignment and all of its terms and provisions shall be binding upon and inure to the benefit of each of Assignor and Assignee and their successors and assigns.

5. Counterparts. This Assignment may be executed in any number of counterparts, each to be an original, but all of which shall constitute one instrument. and it shall be sufficient if any party hereto signs any such counterpart, so long as each of the parties hereto executes at least one such counterpart.

6. Further Assurances. Each party agrees that it will execute and deliver such other documents and take such other action, whether prior or subsequent to the date hereof, as may be reasonably requested by the other party to consummate the assignment contemplated by this Assignment.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

“ASSIGNOR”

NICHOLS RD. PARTNERS, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Eric L. Werner, Member and Manager

By: \_\_\_\_\_  
Patrick Broyles, Member and Manager

“ASSIGNEE”

MERITAGE HOMES OF CALIFORNIA, INC.,  
a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_