

**JOINT COMMUNITY FACILITIES AGREEMENT BETWEEN
EASTERN MUNICIPAL WATER DISTRICT,
VALLEY-WIDE RECREATION AND PARK DISTRICT AND KB HOME COASTAL
INC.
(COMMUNITY FACILITIES DISTRICT NO. 2012-61)**

THIS AGREEMENT, effective on the 1st day of _____, 2019, is between the EASTERN MUNICIPAL WATER DISTRICT, a public agency (“EMWD”), VALLEY-WIDE RECREATION AND PARK DISTRICT, a park district of the State of California (the “Park District”), and KB HOME COASTAL INC., a California corporation (the “Developer”).

RECITALS

- A. EMWD previously conducted proceedings to establish Community Facilities District No. 2012-61 of Eastern Municipal Water District (the “Community Facilities District”) pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code (the “Mello-Roos Act”) to include the property described in Exhibit “A” attached hereto (the “Property”) for the purpose of financing the design, construction and acquisition of certain master plan water system facilities and sewer system facilities of EMWD (the “EMWD Facilities”). The Property is included within Tract No. 30322-1 and is expected to be developed with 141 dwelling units.
- B. The Developer has submitted a petition to EMWD requesting certain amendments to the list of facilities authorized to be financed by the Community Facilities District and the rate and method of apportionment to levy special taxes therein.
- C. In such petition, the Developer has requested that EMWD authorize the Community Facilities District to finance certain fees required under California Government Code Section 66477 et. seq. (the “Park Fees”) with respect to the development of the Property to be used for the acquisition of land and the design, construction and acquisition of improvements for regional and community parks of Park District (the “Park Facilities”). The Park Fees consist of a base fee in the amount of \$4,992 per dwelling unit (the “Base Fee”) that is due and payable prior to the issuance of an occupancy permit for the dwelling unit in accordance with an “Agreement between [the Park District] and [Developer] for the Collection of Park Development Fees” dated 29 September 2018, as amended (the “Park Fee Agreement”) and a supplemental fee in the amount of \$250 per dwelling unit (the “Supplemental Fee”) that is to be funded from the proceeds of bonds of the Community Facilities District in accordance with this Agreement.

- D. Pursuant to Sections 53316.2, 53316.4 and 53316.6 of the Government Code, (i) a community facilities district may finance facilities to be owned or operated by an entity other than the agency that created the community facilities district pursuant to a joint community facilities agreement or a joint exercise of powers agreement adopted pursuant to such sections; (ii) a party to such an agreement may use the proceeds of any bonds or other indebtedness issued pursuant to the Mello-Roos Act to provide facilities which that party is otherwise authorized by law to provide even though another party to the agreement does not have the power to provide those facilities; and (iii) no local agency which is a party to a joint community facilities agreement shall have primary responsibility for formation of a community facilities district unless it is reasonably expected to have responsibility for providing facilities to be financed by a larger share of the proceeds of bonds of the community facilities district created pursuant to the agreement than any other local agency. Pursuant to subdivision (b) of Section 53316.2 of the Government Code, a joint community facilities agreement may be entered into prior to the adoption of the resolution of formation creating a community facilities district or a resolution of change to alter a district or a resolution or resolutions authorizing issuance of bonds pursuant to Section 53356 of the Government Code.
- E. The purpose of this Agreement is to set forth the understandings of the parties with respect to the sale of bonds of the Community Facilities District and the allocation of the proceeds of the sale of such bonds between EMWD and the Park District for the financing of the EMWD Facilities and Park Facilities (collectively, the "Public Facilities"). The Public Facilities are generally described in Exhibit "B" attached hereto.

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

TERMS AND CONDITIONS

Section 1. Issuance of Bonds.

- 1.1 EMWD shall proceed to issue and sell bonds of the Community Facilities District in an aggregate principal amount which shall be sufficient (but which shall not exceed \$4,000,000.00) to provide an estimated net amount of \$2,005,020.00 to EMWD for financing of the EMWD Facilities and an estimated net amount to the Park District of \$739,122.00 (141 (the number of dwelling units) x \$4,992.00 (the Base Fee) + 141 dus x \$250.00 (the Supplemental Fee)) for financing the Park Facilities in satisfaction of the Park Fees. EMWD shall proceed with the issuance and sale of such bonds when it is determined, in the sole discretion of EMWD, that all of the conditions which must be satisfied in connection with the issuance and sale of bonds of a community facilities district such as the Community Facilities District have been satisfied. In making such determination, EMWD shall be guided by the advice of its bond counsel and financial

advisor and the underwriter of the bonds. EMWD shall consult the Park District prior to the issuance of the Bonds to determine if the Park District has a reasonable expectation to expend its share of proceeds of the Bonds within three years of the date of issuance. If the Park District does not believe it can meet such expectations, the Park District's portion of the Bonds shall be issued on a taxable basis and Park District shall not be required to comply with Sections 3 and 4 herein.

- 1.2 The Bonds shall be issued only if, in its sole discretion, the Board of Directors of EMWD determines that all requirements of State and Federal law and all EMWD policies have been satisfied or have been waived by EMWD. Nothing in this Agreement confers upon the Park District or upon any owner of the Property, including the Developer, a right to compel the issuance of the Bonds or the disbursement of Bond proceeds to fund Park Facilities except in accordance with the terms of this Agreement.

Section 2. Allocation of Construction Funds. Upon the issuance and sale of the bonds of the Community Facilities District, the fiscal agent agreement or bond indenture with respect to such bonds shall provide for the creation of separate accounts in the construction or improvement fund for the EMWD Facilities (the "EMWD District Facilities Account") and the Park Facilities (the "Park District Facilities Account") and for the deposit in each such account of the appropriate net amount of the proceeds of the sale of the Bonds. Such agreement or indenture shall also provide for the Park District drawing directly on the Park District Facilities Account, by requisition presented to the fiscal agent.

Section 3. Funding of Park Facilities in Satisfaction of Park Fees.

- 3.1 Prior to the issuance of Bonds, the Developer shall pay to the Park District the Base Fees for dwelling units constructed before the funding of the Park District Facilities Account (described below) in conjunction with the issuance of occupancy permits for the construction of dwelling units on the Property, the Developer will pay Base Fees to the Park District (the "Advances"). In such case, the Developer shall be entitled to reimbursement of such Advances from the proceeds upon the issuance of Bonds as further described below.
- 3.2 Upon the funding of the Park District Facilities Account, the Developer shall notify the Park District of the amount deposited in such Account.
 - (A) Of such amount, \$35,250 (\$250 x 141 DUs) shall be reserved for the Park District to fund Park Facilities in full satisfaction of all Supplemental Fees applicable to the Property.
 - (B) Of the remaining proceeds deposited in the Park District Facilities Account,

- (1) an amount equal to the total Advances shall be disbursed to the Park District and, within five (5) business days of such disbursement, the Park District shall reimburse the Developer for all prior Advances and
- (2) the final remaining amount in the Park District Facilities Account shall be available to the Park District to fund Park Facilities and the Developer shall be deemed to have fully satisfied the Base Fee obligation for a number of remaining dwelling units within the Property equal to such final remaining amount divided by the Base Fee amount per dwelling unit.
- (3) If proceeds of the Bonds are insufficient to finance the Park Fees for each dwelling unit within the Property, the Developer shall have no further claim on Bond proceeds or reimbursement from the Park District, regardless of whether the Developer remain responsible to pay such Park Fees in full prior to obtaining occupancy permits for such dwelling units.

3.3 Park District agrees that prior to submitting a disbursement request requesting payment from the Community Facilities District, it shall review and approve all costs included in its request and will have already paid contractually or incurred such costs of Park Facilities from its own funds subsequent to the date of this Agreement or will disburse such amounts to pay the costs of the Park Facilities following receipt of funds from the Community Facilities District. In the event that Park 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 Community Facilities District all earnings, if any, earned by Park District, from the date of receipt of such Bond proceeds by Park District to the date of expenditure by Park District for capital costs of the Park Facilities. Such report shall be delivered at least semiannually until all Bond proceeds are expended by Park District.

Section 4. Investment Earnings. If the Park District's portion of the Bonds are issued on a tax-exempt basis, the Park District shall assist EMWD in complying with the arbitrage rebate requirements of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations which relate thereto, by keeping accurate records of the investment earnings on any and all investments which the Park District may make with amounts drawn on the Park District Facilities Account and at the end of each fiscal year shall provide to EMWD and its consultants such records and documents as they may reasonably request to enable them to determine the nature of any such investments and the interest earnings thereon for purposes of

determining whether any portion thereof must be rebated to the United States of America as rebateable arbitrage earnings.

Section 5. Governmental Use of Park Facilities. If Park District's portion of the Bonds are issued on a tax-exempt basis, the Park District shall not use or permit the Park Facilities to be used for any activity that would constitute a "Private Use" within the meaning of Section 141 of the Internal Revenue Code. The Park District understands (a) that the term "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than governmental entities; (b) that the leasing of the Park Facilities or access by persons or entities other than a governmental unit to the Park Facilities on a basis other than as a member of the general public ("General Public Use") would constitute a Private Use; and (c) that the use of the Park Facilities in a trade or business would constitute a General Public Use only if the Park Facilities are intended to be available and are in fact reasonably available for use on the same basis by natural persons not engaged in a trade or business.

Section 6. Responsibility and Indemnification. EMWD shall have sole responsibility for the design, construction and acquisition of the EMWD Facilities and the Park District shall have sole responsibility for the design, construction and acquisition of the Park Facilities. EMWD agrees to indemnify and hold the Park District harmless from any and all liability of any nature whatsoever, including attorneys' fees and costs, with respect to the design, construction and acquisition of the EMWD Facilities. The Park District agrees to indemnify and hold EMWD harmless from any and all liability of any nature whatsoever, including attorneys' fees and costs with respect to the design, construction and acquisition of the Park Facilities, provided, however, that neither EMWD nor the Park District shall be required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their officers, agents, or employees.

Section 7. Indemnification by Developer. Developer shall assume the defense of, indemnify and hold harmless EMWD, the Community Facilities District, and the Park District, their respective officers, employees, and agents, and each and every one of them, from and against all actions, damages, claims, losses, or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of the Developer with respect to this Agreement; provided, however, that the Developer shall not be required to indemnify any person or entity as to damages resulting from willful misconduct of such person or entity or their officers, agents, or employees.

Section 8. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters provided for herein and

supersedes all prior agreements and negotiations between the parties with respect to the subject matter of this Agreement.

Section 9. Amendment. This Agreement may be amended at any time by a subsequent written agreement signed on behalf of all parties.

Section 10. Beneficiaries. No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer on any person or entity other than EMWD and the Park District any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute but one agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written.

EASTERN MUNICIPAL WATER DISTRICT

By: _____
General Manager

ATTEST:

Secretary of the Board of Directors

VALLEY-WIDE RECREATION AND PARK DISTRICT

By: _____
General Manager

ATTEST:

Secretary of the Board of Directors

KB HOME COASTAL INC., a California corporation

By: _____

Its: _____

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

All of the property in the County of Riverside, State of California, which is located within, is the subject of and is shown on the tentative and final subdivision maps for Tract No. 30222-1 in said county.

A copy of the recorded final map for Tract No. 30322-1 is attached following this page.

EXHIBIT "B"
DESCRIPTION OF PUBLIC FACILITIES
[TO COME]