

JOINT COMMUNITY FACILITIES AGREEMENT BETWEEN
RIVERSIDE UNIFIED SCHOOL DISTRICT
(COMMUNITY FACILITIES DISTRICT NO. 37),
THE CITY OF RIVERSIDE,
AND COASTAL COMMERCIAL PROPERTIES

THIS AGREEMENT is entered into as of the ____ day of _____, 2019, by and between RIVERSIDE UNIFIED SCHOOL DISTRICT, a school district of the State of California (the “School District”), THE CITY OF RIVERSIDE, a municipal corporation and chartered city (the “City”), and COASTAL COMMERCIAL PROPERTIES, a California corporation (“Developer”).

RECITALS:

A. The Developer is developing the property in the City of Riverside described in Exhibit “A” attached hereto (the “Property”). The Developer has requested that the School District establish a community facilities district (the “CFD”) 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, for the purpose of financing, with the proceeds of the special taxes of the CFD and the sale of the bonds of the CFD, (i) the design, construction and/or acquisition of certain school facilities of the School District (the “School Facilities”), in satisfaction of the obligation of the Property and the Developer for the payment of school mitigation fees to the School District, (ii) the design, construction and/or acquisition of certain public facilities of the City (the “City Facilities”), and (iii) the design, construction and/or acquisition of certain public facilities of Western Municipal Water District (“Water District Facilities”) in satisfaction of the obligation of the Property and the Developer, in whole or in part, for the payment of certain fees to the Water District with respect to the 90 dwelling units expected to be built within the Property (“Water District Fees”). The City Facilities are described in Exhibit “B” attached hereto. It is estimated and expected that the proceeds of the sale of the bonds of the community facilities district which will be received by the City for financing the City Facilities will be approximately \$759,048.

B. 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 that section; (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

(other than a city or a county) 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 the special taxes and bonds of the CFD created pursuant to the agreement than any other local agency.

C. It is estimated, as provided in paragraph E below, that between the School District, the City, and the Water District, the School District will receive the largest share of the proceeds of the special taxes and sale of the bonds of the proposed CFD, and the School District is, therefore, the appropriate agency to have primary responsibility for formation of the proposed CFD.

D. The purpose of this Agreement is to set forth the understandings of the School District, the City and the Developer with respect to the formation of the proposed CFD, if it is established, the authorization of bonded indebtedness and the sale of bonds for the CFD, the allocation of the proceeds of the special taxes and sale of such bonds between the School District and the City for the design, construction and acquisition of the School Facilities and the City Facilities.

E. The Developer and the School District will also enter into a School Facilities Mitigation Agreement (the "Mitigation Agreement"). The Developer has requested pursuant to the Mitigation Agreement, and it is anticipated that, bonds of the CFD will be issued in an aggregate principal amount of approximately \$4,635,029 for the purposes of providing through the sale of such bonds (i) a total amount to the School District of approximately \$1,938,490 for the School Facilities, (ii) a total amount to the City of approximately \$759,048 for the City Facilities, and (iii) a total amount to the Water District of approximately \$1,937,490.

F. The maximum aggregate principal amount of the bonded indebtedness of the CFD which will be incurred is \$7,000,000.

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

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.

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. **"Acceptable Title"** means title to land or interest therein, in form acceptable to the Director, free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, but subject to any exceptions determined by the Director as not interfering with the actual or intended use of the land or interest therein. Notwithstanding the foregoing, an irrevocable offer of dedication may constitute land with an "Acceptable Title" if: (i) such offer is necessary to satisfy a condition to a tentative or final parcel map, (ii) such offer is in a form acceptable to the Director, (iii) the Director has no reason to believe that such offer of dedication

will not be accepted by the applicable public agency, and (iv) the Owner commits in writing not to allow any liens to be imposed on such property prior to its acceptance.

b. **“Acceptance Date”** means the date the City Council takes final action to accept dedication of or transfer of title to a City Facility.

c. **“Acquisition Facility”** or **“Acquisition Facilities”** means those City Facilities listed on Exhibit “C” hereto, which are eligible to be constructed by the Developer, acquired by the City and paid for with CFD Proceeds.

d. **“Acquisition Price”** means the amount to be paid out of CFD Proceeds for an Acquisition Facility.

e. **“Actual Costs”** means the following costs with respect to an Acquisition Facility as approved by the City: (i) the actual hard construction costs including labor, materials and equipment costs; (ii) the costs incurred in design, engineering and preparation of plans and specifications; (iii) the fees paid to consultants and government agencies in connection with and for obtaining permits, licenses or other required governmental approvals; (iv) construction management fee of not to exceed 5% of the costs described in clause (i) above; (v) professional costs such as engineering, legal, accounting, inspection, construction staking, materials testing and similar professional services; (vi) costs of payment, performance of maintenance bonds, and insurance costs (including the costs of any title insurance); and (vii) the value of any real property or interests therein that (1) are required for the construction of the Acquisition Facility such as temporary construction easements, haul roads, etc. and (2) are required to be conveyed with such Acquisition Facility in an amount equal to the fair market value of such real property or interests therein.

f. **“Agreed-Upon Allocation”** shall have the meaning given such term in Section 8(d) herein.

g. **“Agreement”** means this Joint Community Facilities Agreement, dated _____, 2019, by and among the City, the District, and the Developer.

h. **“Bond Proceeds”** shall mean those net funds generated by the sale of the Bonds and investment earnings thereon.

i. **“CFD Proceeds”** shall mean one or more of the following sources of funds: (i) Bond Proceeds; (ii) special taxes levied in the CFD for the direct payment of City Facilities; and (iii) any prepayments of special taxes in the CFD that are to be applied to authorized facilities of the CFD, including City Facilities, pursuant to the Rate and Method.

j. **“City Facilities Allocation”** shall have the meaning given such term in Section 8(d) herein.

k. **“City Representative”** means the City Manager or designee, or Chief Financial Officer/Treasurer or designee.

1. **"City Rules and Regulations"** means the rules and regulations of the City governing the construction of Acquisition Facilities.

m. **"Contractors"** shall have the meaning given such term in Section 8(a)(ii) herein.

n. **"Director"** means the Director of Public Works of the City, or his or her written designee acting as such under this Agreement.

o. **"Disbursement Request"** means a request for payment relating to City Facilities in the form attached hereto as Exhibit "D."

p. **"Party"** or **"Parties"** shall mean anyone or all of the parties to this Agreement.

q. **"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 Mello-Roos Act.

r. **"Special Taxes"** means the special taxes authorized to be levied and collected within the CFD pursuant to the Rate and Method.

s. **"State"** means the State of California.

t. **"Substantially Complete"** or **"Substantial Completion"** with respect to an Acquisition Facility means that such Acquisition Facility is substantially complete in accordance with its Plans and Specifications and is available for use by the public for its intended purpose, notwithstanding any final "punch list" items still required to be completed, unless such items are required for the safe operation of such Acquisition Facility, and shall be based upon approval of City's inspectors, which shall not be unreasonably withheld.

3. Formation Proceedings. The Board of Education of the School District shall conduct proceedings pursuant to the Mello-Roos Act for the formation of the proposed community facilities district which shall be designated "Community Facilities District No. 37 (Wood & Lurin) of Riverside Unified School District, County of Riverside, State of California" ("CFD No. 37) as shown on the map attached hereto as Exhibit "C." The Board of Education shall also conduct proceedings pursuant to the Mello-Roos Act to authorize CFD No. 37 to incur a bonded indebtedness in an amount not to exceed \$7,000,000 for the purpose of financing the School Facilities, City Facilities, and the Water District Facilities. The Board of Education shall commence such proceedings as soon as is reasonably possible and shall thereafter conduct and complete such proceedings in a timely manner.

4. Fee Deposit with City for Preparation and Implementation of this Joint Community Facilities Agreement. The Developer shall cause to be deposited with the City Representative, or his/her designee, an aggregate amount of \$4,000 for the City's costs in connection with the preparation of this Agreement, of which \$4,000 has been deposited by Developer to be held in a trust account to cover all costs incurred in drafting, preparing and

implementing this Agreement. The City Representative will prepare an accounting of the costs incurred and provide an accounting to the Developer. If the amount deposited is insufficient to cover such costs, the Developer will cause an additional amount to be deposited with the City Representative within thirty (30) calendar days of being provided a written request for the additional funds. The amounts deposited with the City Representative that have not been used will be returned to the Developer. Any portion of the amounts deposited with the City Representative that are used for the purposes identified above shall be reimbursable to the Developer from the proceeds of the Bonds earmarked for costs of issuance.

5. Issuance of Bonds. Upon completion of the proceedings for the formation of CFD No. 37 and the authorization of bonded indebtedness, the School District shall proceed to issue and sell one or more series of bonds of CFD No. 37 (the “Bonds”) in an aggregate principal amount which shall not exceed \$7,000,000 for the purpose of providing a total amount of approximately \$1,938,490 to the School District for financing the design, construction and acquisition of School Facilities, a total amount to the City of approximately \$759,048 for financing the City Facilities, and a total amount to the Water District of approximately \$1,937,490. The School District shall proceed with the issuance and sale of each series of such bonds when it is determined, in the sole discretion of the School District, 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 CFD No. 37, including the requirements of Section 53345.8 of the Government Code, have been satisfied. In making such determination, the School District shall be guided by the advice of its bond counsel and municipal advisor and the underwriter of the bonds.

6. Allocation of Construction Funds. The fiscal agent agreement or indenture for the Bonds shall provide for the creation of separate accounts for the School District, the City, and the Water District into which proportionate amounts of the net proceeds of the sale of the Bonds shall be deposited to finance the construction and acquisition of the School Facilities (the “School Facilities Account”), the City Facilities (the “City Facilities Account”), and the Water District Facilities (“Water District Account”). No part of the funds on deposit in the School Facilities Account or Water District Account will be available to pay for the City Facilities, and no part of the funds on deposit in the City Facilities Account will be available to the School District Account or Water District Account. Upon the sale of the Bonds, the School District shall provide for the deposit of net proceeds from the sale of the Bonds in the School Facilities Account, the City Facilities Account, and the Water District Account. The amounts to be deposited in each of the School Facilities Account, the City Facilities Account, and the Water District Account shall be determined in accordance with the Mitigation Agreement. Upon the issuance and sale of the Bonds, or a separate series thereof, the School District shall determine the amounts to be deposited in each such account, in consultation with the Developer and the determination of the School District shall be final and binding on the City. The fiscal agent agreement or bond indenture for

the bonds shall provide that earnings from the investment of the amount on deposit in the City Facilities Account shall be retained in such account.

7. City Facilities. The Parties acknowledge that the City may require the Developer, pursuant to the City rules and regulations, to design, construct and dedicate to the City the City Facilities. The following provisions of this Section 7 shall apply solely with respect to those City Facilities to be constructed by Developer and acquired by the City with CFD Proceeds.

a. **Construction of City Facilities.**

i) The Developer will complete the plans and specifications for such City Facilities. The Plans and Specifications shall include the City's standard specifications and shall be subject to City approval, which shall not be unreasonably withheld. City agrees to process any Plans and Specifications for approval with reasonable diligence and in a timely manner. The Developer may proceed with the construction of any such City Facilities in accordance with the provisions of Section 7(b) hereof.

ii) The cost of all surveying, compaction testing and report costs associated with such City Facilities furnished and constructed by any contractors or sub-contractors (collectively, "**Contractors**") shall be included among the Actual Costs which are eligible to be paid from the City Facilities Accounts upon City approval.

iii) The City shall not be responsible for conducting any environmental, archaeological, biological, or cultural studies or any mitigation requirements related to the City Facilities to be constructed by Developer that may be requested by appropriate Federal, State, and/or local agencies. Any such work shall be paid for and such work shall be conducted by, or on behalf of Developer and the Actual Costs of such work shall be eligible to be paid from the City Facilities Account.

b. **Public Works Requirements.** In order to insure that the City Facilities to be constructed by the Developer and acquired with CFD Proceeds will be constructed as if they had been constructed under the direction and supervision, or under the authority of, the City, so that they may be acquired by the City pursuant to Government Code Section 53313.5, the Developer shall comply with all of the following requirements:

i) The Developer shall solicit a minimum of three (3) bids from firms reasonably determined to be qualified to construct the City Facilities in conformance with the Plans and Specifications; and

ii) The contract or contracts for the construction of such City Facilities shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of such City Facilities; and

iii) The Developer 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 Labor Code, Government Code and Public Contract Code

relating to public works projects to the extent expressly applicable to a non-governmental entity constructing infrastructure to be acquired by a public entity; and

iv) Said Contractors shall be required to furnish labor and material payment bonds and contract performance bonds in an amount equal to 100 percent of the contract price naming the Developer and the City as obligees and issued by insurance or surety companies reasonably approved by the City. All such bonds shall be in a form approved by the City Representative. Rather than requiring its Contractors to provide such bonds, the Developer may elect to provide the same for the benefit of its Contractors; and

v) All such Contractors shall be required to provide proof of insurance coverage throughout the term of the construction of such City Facilities which they will construct in conformance with the approved Plans and Specifications; and

vi) The Developer and all such Contractors shall comply with such other requirements relating to the construction of such City Facilities which the City may impose by written notification delivered to the Developer and each such Contractor at any time either prior to the receipt of bids by the Developer for the construction of such City Facilities or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof. In accordance with this Section 7(b), the Developer shall be deemed the awarding body and shall be solely responsible for compliance and enforcement of the provisions of the Labor Code, Government Code, and Public Contract Code to the extent expressly applicable to a non-governmental entity constructing infrastructure to be acquired by a public entity.

c. Inspection; Completion of Construction.

i) The City shall have primary responsibility for providing inspection of the construction of the City Facilities constructed by the Developer to ensure that the construction is accomplished in accordance with the Plans and Specifications. City's personnel shall have access to the site of the work at all reasonable times for the purpose of accomplishing such inspection. Upon Substantial Completion of the construction of such City Facilities by Developer, the Developer shall notify the City in writing that the construction of such City Facilities has been Substantially Completed.

ii) Upon receiving such written notification from the Developer, and upon receipt of written notification from its inspectors that construction of any of the City Facilities by Developer has been Substantially Completed, the City shall within 15 business days notify the Developer in writing that the construction of such City Facilities has been satisfactorily completed. Upon receiving such notification, the Developer shall forthwith file with the County Recorder of the County of Riverside a Notice of Completion pursuant to the provisions of Section 3093 of the Civil Code. The Developer shall furnish to the City a duplicate copy of each such Notice of Completion showing thereon the date of filing with the County Recorder. Any actual costs reasonably incurred by the City in inspecting and approving the construction of any

City Facilities by Developer not previously paid by the Developer shall be an Actual Cost eligible to be reimbursed from the City Facilities Account or paid directly by Developer.

d. **Allocation of Costs.** If Developer incurs costs that (1) apply to more than one City Facility (e.g., soft costs) or (2) apply to both City Facilities and improvements other than the City Facilities (e.g., grading), Developer shall allocate, or cause the contractor to reasonably allocate, such costs between the City Facilities (in the case of clause (1)) or between the City Facilities and the improvements other than the City Facilities (in the case of clause (2)) (the “**City Facilities Allocation**”). The City Facilities Allocation shall be presumed to be reasonable and shall be accepted for all purposes of this Agreement unless the City notifies Developer of its good-faith reasonable disapproval of the allocation within ten (10) business days of submittal of the Disbursement Request. If the City has properly disapproved the City Facilities Allocation, then the City and Developer shall promptly allocate such costs, on a reasonable basis, between the City Facilities (in the case of clause (1)) or between the City Facilities and the improvements other than the City Facilities (in the case of clause (2)) (the “**Agreed-Upon Allocation**”). Based on the City Facilities Allocation or the Agreed-Upon Allocation, as applicable, the City shall include the costs allocated to a specific City Facility as part of the Actual Costs of such City Facility when such City Facility is subject to a Disbursement Request.

e. **Liens.**

i) Upon the expiration of the time for the recording of claim of liens as prescribed by Sections 3115 and 3116 of the Civil Code, the Developer 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 on behalf of Developer for the construction of any City Facilities have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation.

f. **Acquisition, Acquisition Price; Source of Funds.**

i) Provided the Developer has complied with the requirements of this Agreement, the City agrees to acquire the City Facilities from the Developer. Notwithstanding the above, nothing herein shall be construed as requiring Developer to construct and deliver any City Facility. The price to be paid by the CFD for the acquisition of such City Facilities by the City (the "Acquisition Price") shall be the lesser of (i) the value of the City Facilities or (ii) the total of the Actual Costs of the City Facilities as approved by the City. The Developer shall transfer ownership of the City Facilities to the City by grant deed, bill of sale or such other documentation as the City may require. Upon the transfer of ownership of the City Facilities or any portion thereof from the Developer to the City, the City shall be responsible for the maintenance of the City Facilities or the portion transferred.

ii) For purposes of determining the Acquisition Price to be paid by the CFD for the acquisition of the City Facilities by the City, the value of such improvements

shall be presumed to be the amount determined by the City engineer to be the value of the City Facilities based on the Actual Costs submitted by the Developer, as hereinbefore specified; provided, however, that if the City engineer determines that such Actual Costs, or any of them, are excessive and that the value of the City Facilities is less than the total amount of such Actual Costs, the Acquisition Price to be paid by the CFD for the acquisition of the City Facilities shall be the value thereof as determined by the City engineer.

iii) Upon completion of the construction of any City Facilities by Developer, the Developer shall deliver to the City copies of the contract(s) with the Contractor(s) who have constructed the City Facilities or other relevant documentation with regard to the payments made to such Contractor(s) and each of them for the construction of such City Facilities, and shall also provide to the City copies of all invoices and purchase orders with respect to all supplies and materials purchased for the construction of such City Facilities. The City shall require the City engineer to complete its determination of the value of the City Facilities as promptly as is reasonably possible.

iv) To the extent funds are available therein, the Acquisition Price of any City Facilities may be determined and paid out of the City Facilities Account prior to transfer of ownership of the City Facilities to the City upon a determination of Substantial Completion of such City Facility. Developer shall submit a Disbursement Request form to the District or the CFD which must also contain therewith approval of the City, which approval shall not be unreasonably withheld.

v) Notwithstanding the preceding provisions of this section, the sole source of funds for the acquisition by the City of the City Facilities or any portion thereof shall be the CFD Proceeds. If for any reason beyond the City's control, the proceedings for the formation of the CFD are not completed or CFD Proceeds are not available, the City shall not be required to acquire any City Facilities from the Developer. In such event, the Developer shall complete the design and construction and offer to the City ownership of such portions of the City Facilities as are required to be constructed by the Developer as a condition to recordation of subdivision maps for the Property or any other agreement between Developer and the City, but need not construct any portion of the City Facilities which it is not so required to construct.

vi) The City shall withhold payment for any City Facility constructed on land not already owned by the City or other public entity, until Acceptable Title to such land is conveyed to the City.

vii) The City shall be entitled to withhold any payment hereunder for a City Facility that is the subject of a Disbursement Request until it is satisfied that any and all claims for labor and materials have been paid by the Owner for the City Facility that is the subject of a Disbursement Request, or conditional lien releases (and/or unconditional lien releases) have been provided by the Owner for such City Facility. The City, in its discretion, may

waive this limitation upon the provision by the Owner of sureties, undertakings, securities and/or bonds of the Owner or appropriate contractors or subcontractors and deemed satisfactory by the Director to assure payment of such claims.

viii) The City shall be entitled to withhold payment for any City Facility hereunder to be owned by the City until: (i) the Director determines that the City Facility is ready for its intended use, and (ii) the Acceptance Date for the City Facility has occurred and the requirements of [Section 7. g.], if applicable to such City Facility, have been satisfied. The City hereby agrees that the Owner shall have the right to post or cause the appropriate contractor or subcontractor to post a bond with the City to indemnify it for any losses sustained by the City because of any liens that may exist at the time of acceptance of such a City Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director.

g. **Defective or Nonconforming Work.** If any of the work done or materials furnished for a City Facility are found by the Director to be defective or not in accordance with the applicable Plans: (i) and such finding is made prior to payment for the Purchase Price of such City Facility hereunder, the City may withhold payment therefor until such defect or nonconformance is corrected to the satisfaction of the Director, or (ii) and such finding is made after payment of the Purchase Price of such City Facility, the City and the Owner shall act in accordance with the City's standard specification for public works construction.

OWNERSHIP AND TRANSFER OF CITY FACILITIES

h. **City Facilities to be Owned by the City; Conveyance of Land and Easements to City.** Acceptable Title to all property on, in or over which each City Facility to be acquired by the City will be located, shall be deeded over to the City by way of grant deed, or dedication of such property, or easement thereon, if such conveyance of interest is approved by the City as being a sufficient interest therein to permit the City to properly own, operate and maintain such City Facility located therein, thereon or thereover, and to permit the Owner to perform its obligations as set forth in this Agreement. The Owner agrees to assist the City in obtaining such documents as are required to obtain Acceptable Title. Completion of the transfer of title to land shall be accomplished prior to the payment of the Purchase Price for a City Facility and shall be evidenced by recordation of the acceptance thereof by the City Council or the designee thereof.

i. **City Facilities to be Owned by the City; Title Evidence.** The Owner shall furnish to the City a preliminary title report for land with respect to City Facilities to be acquired by the City and not previously dedicated or otherwise conveyed to the City, for review and approval at least thirty (30) business days prior to the transfer of the Acceptable Title to a City Facility to the City. The City shall approve the preliminary title report unless it reveals a matter which, in the judgment of the City, could materially affect the City's use and enjoyment of any

part of the property or easement covered by the preliminary title report. In the event the City does not approve the preliminary title report, the City shall not be obligated to accept title to the land with respect to such City Facility or pay the Purchase Price for such City Facility until the Owner has cured such objections to title to the reasonable satisfaction of the City and caused a standard title insurance policy to be issued to the City with respect to such land in the amount of the Purchase Price. In the event the Owner cannot cure such objections to title, City agrees to consider the use of eminent domain pursuant to [Section 4.3] hereof for such purpose.

j. **City Facilities Constructed on Private Lands.** If any City Facilities to be acquired are located on privately-owned land, the owner thereof shall retain title to the land and the completed City Facilities until acquisition of the City Facilities. Pending the completion of such transfer, the Owner shall not be entitled to receive any payment for any such City Facility.

It shall be the responsibility of the Owner to acquire all property rights on property which is not owned by the City or the Owner which is necessary for the construction of any of the City Facilities, if any. In the event, despite its exercise of best efforts to do so, the Owner is unable to acquire such property rights, the City shall in good faith consider the undertaking of proceedings to acquire such property rights through its exercise of the power of eminent domain, and the costs of such proceedings and acquisition shall be the responsibility of the Owner and shall comprise part of the Purchase Price of the related City Facility.

k. **City Facilities Constructed on City Land.** If the City Facilities to be acquired are on land owned by the City, including land as to which the City has acquired sufficient property rights, the City hereby grants to the Owner a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the City Facilities. The provisions for inspection and acceptance of such City Facilities otherwise provided herein shall apply.

l. **Maintenance and Warranties.** The Owner shall maintain or cause to be maintained the City Facilities in good and safe condition until the Acceptance Date of each City Facility. Prior to the Acceptance Date, the Owner shall be responsible for performing any required maintenance on such City Facility. On or before the Acceptance Date of the City Facility, the Owner shall assign to the City all of the Owner's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such City Facility. For each City Facility to be owned by the City, the Owner shall provide a warranty bond reasonably acceptable in form and substance to the Director to remain in effect for a period of one year from the date of acceptance of each City Facility. The City shall be responsible for maintenance of each City Facility from and after the Acceptance Date thereof, except that with respect to landscaping improvements, the Owner shall maintain or cause to be maintained such landscape improvements for a period of one year following the Acceptance Date thereof or shall

provide a bond reasonably acceptable in form and substance to the Director for such period and for such purpose (for landscaping improvements only, and for the posting of a warranty bond to remain in effect for one year as to other City Facilities), to insure that defects, which appear within said period will be repaired, replaced, or corrected by the Owner, at its own cost and expense, to the satisfaction of the Director. The Owner shall commence to repair, replace or correct any such defects within thirty (30) days after written notice thereof by the City to the Owner, and shall complete such repairs, replacement or correction as soon as practicable. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the City Facilities to be acquired by the City shall be delivered to the Director as part of the transfer of title.

m. **Responsibility for Acquisition Facilities.** The Parties acknowledge and agree that all responsibility and obligation for the design, construction and dedication of such Acquisition Facilities to the City, in accordance with all applicable statutes and the City Rules and Regulations, shall be and remain the responsibility of the Developer.

8. Requisition of Funds. The fiscal agent agreement or the bond indenture for the Bonds shall provide that the fiscal agent or trustee for the Bonds shall make payments of funds from the City Facilities Account directly to the City or its designated payees, without any involvement by the School District or the Developer, upon receipt by the fiscal agent from the City of written requisitions that satisfy conditions, that shall be set forth in the fiscal agent agreement or bond indenture, and which are usual for the payment of funds by a fiscal agent or trustee for bonds of funds which are held in a construction fund under a fiscal agent agreement or bond indenture.

INSURANCE

9. Insurance Requirements. The Owner shall, at all times prior to the final Acceptance Date of all City Facilities, maintain and deliver to the City evidence of and keep in full force and effect, not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policies satisfactory to the Director: (i) Workers Compensation and Employer's Liability - Workers' Compensation - coverage as required by law; Employer's Liability - limits of at least \$1,000,000.00 per occurrence; (ii) Comprehensive General Liability - Combined Single Limit - \$2,000,000.00; (iii) Automobile Liability - Combined Single Limit - \$1,000,000.00; and (iv) Errors and Omissions Insurance - Combined Single Limit - \$2,000,000.00.

All of the Owner's insurance policies shall contain an endorsement providing that written notice shall be given to the City at least 30 calendar days prior to termination or cancellation of coverage of the policy.

The Comprehensive General Liability and Bodily Injury and Property Damage Liability policies shall contain the following:

(a) An endorsement extending coverage to the City and its agents as an additional insured, as respects liabilities arising out of the performance of any work related to the City Facilities. Which insurance shall be primary insurance as respects the interest of the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the insurance required hereunder.

(b) Severability of interest clause.

(c) Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to contractual liability assumed by the Owner.

Promptly on execution of this Agreement by the Owner, the Owner shall deliver to the Director copies of all required certificates of insurance and endorsements thereto on forms which are acceptable to the Director and the City Attorney.

The Owner shall require and verify similar insurance on the part of its contractors and subcontractors.

The foregoing requirements as to the types, limits and City approval of insurance coverage to be maintained by the Owner are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Owner under this Agreement.

Any policy or policies of insurance that the Owner or its contractors or subcontractors elect to carry as insurance (i) against loss or damage to their construction equipment and tools or other personal property used in fulfillment of this Agreement or a contract related to the City Facilities shall include a provision waiving the insurer's right of subrogation against the City, and (ii) in fulfillment of this Agreement involving a dual obligee bond may contain a clause to the effect that: "provided that Principal and Surety shall not be liable to the Obligees or any of them unless the Obligees or any of them have performed the obligations to the Principal in accordance with the terms of said contract; and provided, further, that Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated."

10. Standards Applicable. The Owner may effect such coverage under blanket insurance policies, provided, however, that (i) such policies are written on a per occurrence basis, (ii) such policies comply in all other respects with the provisions of Section 5.1, and (iii) the protection afforded the City under any such policy shall be no less than that which would be available under a separate, policy relating only to this Agreement. All policies of insurance shall be with companies licensed or approved by the State of California Insurance Commissioner and rated (i) A or better with respect to primary levels of coverage, and (ii) B+12 or better with respect to excess levels of coverage, in the most recent edition of Best's Insurance Guide and shall be issued and delivered in accordance with State law and regulations.

11. Evidence of Insurance. Prior to the Acceptance Date, the Owner shall furnish to the City, from time to time upon request of the Director, a certificate of insurance regarding each insurance policy required to be maintained by the Owner hereunder.

12. Governmental Use of City Facilities. The City shall not use or permit the City 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 City 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 City Facilities or access by persons or entities other than a governmental unit to the City 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 City Facilities in a trade or business would constitute a General Public Use only if the City 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.

13. Responsibility and Indemnification. The School District shall have sole responsibility for the design, construction and acquisition of the School Facilities and the City shall have sole responsibility for the design, construction and acquisition of the City Facilities. The School District agrees to indemnify and hold the City 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 School Facilities. The City agrees to indemnify and hold the School 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 City Facilities and the expenditure of the amounts of the proceeds of the bonds which are deposited in the City Facilities Account pursuant to Section 4 above. The School District further agrees to defend, indemnify and hold the City harmless from any responsibility or liability, including attorneys’ fees and costs, in the event of any challenge by any person regarding (i) the School District’s authority to issue and sell the bonds of CFD No. 37, (ii) the legal sufficiency of the proceedings for the formation of CFD No. 37 or (iii) the authority of the School District to levy special taxes on the land in CFD No. 37 to pay the principal of and interest on such bonds.

14. Indemnification and Hold Harmless. The Owner shall assume the defense of, indemnify and save harmless the City, members of the City Council, their officers, officials, employees and agents and each of them, the School District, members of the Board of Education, their officers, officials, employees and agents and each of them, and the Water District, members of the Board of Directors, their officers, officials, employees and agents and each of them, from and against all actions, damages, claims, losses or expense of every type and description to which they may be subjected or put, by reason of, or resulting from the breach of any provision of this Agreement by the Owner, the Owner’s or any other entity’s negligent design, engineering and/or construction of any of the City Facilities acquired from the Owner hereunder, the Owner’s non-

payment under contracts between the Owner and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of the City Facilities, any claims of persons employed by the Owner or its agents to construct the City Facilities, claims for damages to persons or property related to the actions of Owner contemplated by this Agreement or any claims arising out of any alleged misstatement of a material fact or omission of a material fact with respect to provisions in any Official Statement for the Bonds for which the Owner certifies in a customary certificate executed in connection with the printing of the Official Statement for such Bonds. Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable solely to the intentional acts or negligence of the City, or its officers, directors, employees or agents hereunder.

No provision of this Agreement shall in any way limit the Owner's responsibility for payment of damages resulting from the operations of the Owner, its agents, employees or its contractors.

15. 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.

16. Independent Contractor. In performing this Agreement, the Owner is an independent contractor and not the agent or employee of the City, the School District or the Water District. The City, the School District and the Water District shall not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Owner.

17. Amendment and Assignment. This Agreement may be amended at any time by a subsequent written agreement signed on behalf of all parties to this Agreement. This Agreement may be assigned, in whole or in part, by the Developer to the purchaser of any parcel of land within the Property, provided, however, such assignment shall not be effective unless and until the City and the School District have been notified, in writing, of such assignment.

18. 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 upon any person or entity, other than the School District and the City, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

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

[SIGNATURE PAGES FOLLOW]

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

RIVERSIDE UNIFIED SCHOOL DISTRICT

By: _____
President of the Board of Education

ATTEST:

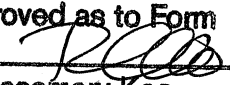
Clerk of the Board of Education

THE CITY OF RIVERSIDE

By: _____
City Manager

ATTEST:

City Clerk

Approved as to Form
By:  _____
Rosemary Koo
Senior Deputy City Attorney

COASTAL COMMERCIAL PROPERTIES, a
California corporation

By: _____
Brett Crowder

Title: _____

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

The property located in the City of Riverside, County of Riverside, State of California, comprised of the following Riverside County Assessor Parcel Numbers: 266-100-010, 266-100-011, and 266-140-001.

EXHIBIT “B”

DESCRIPTION OF CITY FACILITIES

The facilities eligible to be financed by the CFD under the Mello-Roos Act shall consist of improvements to Wood Road and Lurin Avenue and storm drain improvements required by the conditions of approval of Tract 37593 including, without limitation, all costs of site acquisition, planning, design, engineering, City legal services, materials testing, coordination, surveying, construction staking, construction inspection and any and all appurtenant facilities to the foregoing improvements. Detailed scope and limits of the City Facilities will be determined by the Developer and the City, as appropriate, consistent with the standards of the City.

MAP SHOWING TRACT
IN THE CITY OF RIVERSIDE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
TENTATIVE TRACT NO. 37593



EXHIBIT "D"

DISBURSEMENT REQUEST FORM

(City Facilities)

1. Riverside Unified School District Community Facilities District No. 37 ("CFD") is hereby requested to pay from the CFD Proceeds to the City of Riverside ("City") or its designee, as Payee, the sum set forth in 3 below.

2. The undersigned certifies that the amount requested for City Facilities has not formed the basis of any prior request or payment, and is being made with respect to the City Facilities described below: _____ (insert description).

3. City Facilities amount requested: \$ _____

4. The amount set forth in 3 above is authorized and payable pursuant to the terms of the Joint Community Facilities Agreement by and among Riverside Unified School District, the City, and Coastal Commercial Properties, dated _____ (the "**Agreement**"). Capitalized terms not defined herein shall have the meaning set forth in the Agreement. By requisitioning CFD Proceeds as described above, the City is not passing upon, determining or assuming the tax-exempt status of the Bonds for federal or California income tax purposes.

**COASTAL COMMERCIAL PROPERTIES,
a California corporation**

By: _____

Name: _____

Title: _____

Date: _____

CITY OF RIVERSIDE

By: _____

Name: _____

Title: _____

Date: _____