

**ADVANCE FUNDING AGREEMENT
REGARDING COSTS PERTAINING TO FACILITIES DEVELOPMENT PLAN FOR
THE _____ TENTATIVE MAP**

THIS ADVANCE FUNDING AGREEMENT (the "Agreement") dated as of _____, 2008 is entered into by and between the Groveland Community Services District, a community services district and a political subdivision of the State of California, formed and acting pursuant to Government Code Section 61000 et seq., (the "District"), and _____, a _____ corporation, ("Developer"). District and Developer are hereinafter sometimes referred to collectively herein as the "Parties."

RECITALS:

A. Developer owns certain real property (the "Property") either within the District or proposed to be annexed to the District which it intends to develop as a _____ (residential/commercial) community to be known as _____ (the "Project"). A map depicting the location of the Property is attached hereto as Exhibit "A" and is incorporated herein by this reference.

B. The Property is located within the County of Tuolumne (the "County").

C. District is the public agency responsible for the development, operation, maintenance, repair, and improvement of water supply, water treatment, water conveyance, sewer collection, sewer treatment, recycled water, fire suppression services, park and recreation facilities and services, and community buildings located within its jurisdictional boundaries. District's Facilities Development Policies located at Section 600 of the District's Operational Policies requires Developer to plan, design, fund, construct, and warrant all water supply, distribution and treatment facilities (the "Water System Improvements"), all sewer collection and treatment facilities (the "Sewer System Improvements"), all recycled water system improvements ("Recycled Water System Improvements"), all fire suppression facilities and services (the "Fire Suppression Facilities and Services"), all park and recreation improvements and facilities (the "Park and Recreation Improvements and Services"), and community buildings (the "Community Building Facilities") to serve the residents of the Project. County has designated District as the public agency responsible for providing water, sewer, fire suppression, park and recreational facilities and services, and community buildings to the Project and its residents. It is therefore necessary that District and Developer agree on the nature, location, size, amenities, plans and specifications for the Water System Improvements, Sewer System Improvements, Recycled Water System Improvements, Fire Suppression Facilities and Services, Park and Recreation Improvements and Services, and Community Building Facilities to be constructed within the Project dedicated to District. Upon acceptance of all such improvement projects and dedication to District, District shall be responsible for all operation and maintenance of such Water System Improvements, Sewer System Improvements, Recycled Water System Improvements, Fire Suppression Facilities and Services, Park and Recreation Improvements and Services, Community Building Facilities (hereinafter the "Improvements") within the Project.

D. District has adopted by Ordinance its Facilities Development Policies which require Developer to enter into this Advance Funding Agreement and a Development Agreement with the District specifying the obligations of the Developer and the needs of the District with respect to planning, constructing, operating and maintaining the Improvements to serve the residents of the Project. Said Facilities Development Policies also enact a fee program by which fees are charged to each Developer to cover the administrative, engineering, legal, environmental and consulting costs incurred by District in the planning, design, financing and construction of the Improvements to serve the Project (the "Fee Program").

E. In order to comply with the Fee Program, Developer hereby agrees to advance funds to District to reimburse the administrative, engineering, legal, environmental and other consulting costs incurred by the District for those services and in those amounts as specified in the Scope of Work attached hereto as Exhibit "B."

F. In consideration of Developer's advance funding of such administrative, engineering, legal, environmental and other consulting costs incurred by District, District agrees to undertake and complete the work described in the Scope of Work.

G. District has established the Project Development Trust Fund (hereinafter the "Fund") for the purpose of accepting advances of funds by Developer to District to be used by District to pay those costs and expenses incurred by District in performing the activities described in the Scope of Work.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. **Recitals.** Each of the above recitals is incorporated herein and is true and correct.
2. **Scope of Work.** The Parties agree that the Scope of Work attached hereto contains the summary of the primary tasks to be performed by District and its staff in reviewing, revising, modifying, approving, inspecting, and accepting the Improvements to be constructed by Developer to serve the Project; estimating the costs of planning, designing and constructing such Improvements and providing such services; and developing a financing plan to provide for the design, planning, construction, operation and maintenance of the Improvements constructed within the Project to serve its residents.

District will retain, at Developer's expense, the necessary consultants to perform the tasks outlined in the Scope of Work, including, but not limited to engineers, special tax consultants, attorneys, architects, environmental consultants and any other consultants deemed necessary by District.

3. **Advance Funding.** In order to begin performing the tasks outlined in the Scope of Work, Developer will advance to District the sum of _____ (\$_____) within fifteen (15) days after full execution of this Agreement. From time to time, Developer shall make additional advances to the District within fifteen (15) days following receipt from District of a written notice which will request an additional advance to cover the costs of District to perform the tasks outlined in the Scope of Work. Developer shall make such subsequent advances as requested by District up to a total of \$_____. If Developer does not deliver the requested funding amount to

District within such fifteen (15) day period, District will have no obligation to proceed with the tasks outlined in the Scope of Work unless or until such additional advances are received. Should Developer decide to abandon the Project, Developer shall be responsible to pay all costs and expenses incurred by the District or any District consultant or advisor relating to the tasks outlined in the Scope of Work until work with respect to the tasks outlined in the Scope of Work ceases following the receipt of Developer's notice of abandonment. In the event of Developer's decision to abandon the Project or otherwise refuse to deliver the requested additional funding amount to District as requested by District within the applicable 15-day period, Developer hereby consents to, and hereby waives, any protest it may have to the following remedies to be exercised by District: (1) recording in the office of the County Recorder a Certificate declaring the amount of the charges and penalties unpaid and due from Developer, which, from the time of recordation, shall constitute a lien against all real property of Developer owned in Tuolumne County; and (2) to the preparation and filing of a report with the County Auditor of Tuolumne County requesting that the amount of charges and penalties unpaid by Developer be collected on the Property Tax Roll by the Tuolumne County Tax Collector in the same manner as property taxes, all as provided in Government Code Section 61115(b) and (c).

The District will provide written notice to Developer when the balance of remaining advances is reduced to Five Thousand Dollars (\$5,000.00). District will provide to Developer upon request the summary of how the advances have been spent and the unexpended balance remaining.

The District shall give Developer thirty (30) days written notice in the event that the funds required to pay the costs and expenses of District exceed the total amount set forth above. Prior to such notice District shall be available to meet with the Developer to discuss the need for additional advances, including amounts, timing, and tasks to be completed. At such time the District shall provide the Developer with an estimate of additional costs and expenses to be incurred by the District to complete the tasks outlined in the Scope of Work. The Developer shall, within fifteen (15) days following receipt from District of such estimate, advance additional funds to pay such estimate costs and expenditures of the District. If the District does not receive additional advances for such costs and expenditures within such 15-day period, the District shall cease all work and effort related to the tasks outlined in the Scope of Work until such time as the Developer has advanced additional funds to pay such estimated costs and expenditures.

4. Deposit and Expenditure. District shall immediately deposit all advances from Developer into the Fund upon receipt from Developer. As District incurs the direct and indirect costs and expenses associated with the tasks specified in the Scope of Work, District shall disburse from the Fund the sums required to pay said costs and expenses. The General Manager of District shall have sole discretion as to the disbursement of said Funds, limited only by the provisions of this Agreement.

5. Reimbursement. If, for any reason, the Developer abandons the Project, and Developer delivers notice thereof to District pursuant to Paragraph 6 hereof, and in the manner described in Paragraph 7 hereof, District shall promptly return to Developer any funds advanced by Developer for those particular tasks outlined in the Scope of Work which will not be implemented to the extent such funds have not been expended or committed under contract for any authorized purpose by the time such tasks are either not implemented or abandoned.

6. Indemnification. Developer shall assume the defense of, and indemnify and save harmless, the District, its officers, employees and agents, and each and every one of them, from and against all actions, liability, damages, claims, losses, or expenses of every type and description to which they may be subjected or put to by reason of or resulting from: (1) performance of, or failure to perform, the work or any other obligations of this Agreement by Developer, any subcontractor or

Developer's agents or employees; (2) any negligent act or omission of Developer, any subcontractor, Developer's agents or employees, in connection with any acts performed or required to be performed pursuant to this Agreement; (3) any dangerous or defective condition arising or resulting from any of the actions or omissions of Developer, Developer's agents or employees carrying out the provisions of this Agreement. This indemnification is effective and shall apply whether or not any such action is alleged to have been caused in part by the District as the party indemnified hereunder. This indemnification shall not include any claim arising from the sole negligence or willful misconduct of the District or its employees.

Developer further agrees to indemnify, defend and hold harmless the District, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of this Agreement, or otherwise arising out of or stemming from this Agreement, its approval, and/or the process relating thereto, including, but not limited to, any legal proceeding alleging that the District has failed to comply with the California Environmental Quality Act ("CEQA") with respect to this Agreement or the Project.

7. Notices. Any notice to be provided pursuant to this Agreement shall be delivered to the following addresses:

Developer: _____

Attention: _____
Telephone: _____
Facsimile: _____

District: Groveland Community Services District
18966 Ferretti Road
Groveland, CA 95321-0350
Attention: General Manager
Telephone: (209) 962-7161
Facsimile: (209) 962-4943

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party.

8. Assignment. Developer may not assign its interest in this Agreement without the prior written consent of the District, which consent shall not be unreasonably withheld.

9. Severability. Each provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Agreement.

10. Entire Agreement. This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings, written or oral, with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by both Parties hereto.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

12. Attorneys' Fees. In the event any action is initiated by either party seeking to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to an award of its reasonable attorneys' fees and costs from the other party hereto. The prevailing party will be entitled to an award of attorneys' fees in an amount sufficient to compensate the prevailing party for all attorneys' fees incurred in good faith.

13. No Third Party 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 District and Developer, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

14. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

15. Term. This Agreement shall remain in full force and effect for a period of _____ (__) years from the date of full execution hereof, provided that the Agreement is subject to early termination by Developer, should Developer elect to abandon the Project pursuant to notice to the District as described in said Paragraph 3.

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

DISTRICT:

GROVELAND COMMUNITY
SERVICES DISTRICT, a political
subdivision of the
State of California

By:

Chairperson

By:

General Manager

DEVELOPER:

a _____ corporation

By:

Name:

Title:

EXHIBIT “A”

MAP DEPICTING THE PROPERTY

[To be attached]

EXHIBIT “B”

SCOPE OF WORK

Description of Services

Estimated Costs

For all District activities involved in Step 1 of the District’s Facilities Development Policies outlined in Section 603.2 of said Policies including, but not limited to the following: Review Developer’s Preliminary Application; negotiate, prepare and approve this Advance Funding Agreement; determine the Scope of Work to be provided by District personnel and consultants in reviewing the Developer’s Preliminary Application; estimate the amount of administrative, legal, engineering, environmental and other consultant costs to be incurred by District in reviewing the application; produce applicable maps, models, and reports to assist Developer in preparing a Sub-Area Master Plan (SAMP) and environmental documentation required by the California Environmental Quality Act (“CEQA Documentation”); assemble and provide to Developer information regarding District Water System improvement capacities, Sewer System improvement capacities, Fire Suppression capacities, nature and extent of Park and Recreational services and facilities, and other latent powers which may be exercised by the District from time to time; assemble and provide information to Developer regarding future planning activities contemplated by the District with respect to its Water System Improvements, Sewer System Improvements, Recycled Water System Improvements, Fire Suppression Facilities and Services, and Park and Recreational Improvements and Services; review, analyze and report on the implications of annexation of all or a part of the Project into the jurisdictional boundaries of the District if required by the parameters of the Project as proposed by Developer. \$ _____

All of those activities described in Step 2 of the Development Process as outlined in the District’s Facility Development Policies Section 603.3: Assist Developer in preparation, revision, and finalization of the Sub-Area Master Plan (SAMP) and appropriate environmental documentation pursuant to CEQA for the proposed Project; provide for review and approval of the SAMP by the District Board of Directors; interface with County with respect to the details of the SAMP; prepare for and perform all functions required of a Lead Agency under CEQA regarding approval of the SAMP; work with the designated Environmental Consultants regarding appropriate and comprehensive CEQA Documentation for the SAMP; meet with and coordinate with County officials regarding CEQA Documentation and approval of SAMP; review and analyze the Developer Information Form and perform due diligence regarding information provided by

Developer in Developer Information Form; review Developer's Request of District Services to Subdivision; establish and monitor a Trust Fund for deposit of funds by Developer pursuant to this Agreement; review, analyze, comment upon and revise as necessary CEQA Documentation prepared by Developer and the Environmental Consultant for the SAMP; review and analysis of the SAMP regarding present system capacities, future system capacities with planned build-out of the Project, impact of the Project on present and future capacities, discussion of alternative infrastructure improvement methods for the Project; evaluation of alternatives presented in the SAMP for capital and analyze long-term operations and maintenance costs as well as impacts on fire and rescue services and park and recreational services provided by District; review and analysis of detailed financial impact analysis as part of the SAMP including long-term financial impacts on existing District customers for providing water, wastewater, fire suppression and park and recreational services to the Project; a discussion of the short-term and long-term financial impacts on existing customers stemming from the Project; review, analysis and revision of the proposed mitigation efforts to minimize the impacts of the Project on the District's existing customer base; review, revision and negotiation regarding elements of the SAMP between Developer and the District's Board of Directors; review, analysis, comments upon and suggested revisions to CEQA Documentation regarding the SAMP and the Project in general; meet and confer with the Environmental Consultant when selected by Developer, and/or meet and confer with the Environmental Consultant by Developer and the Environmental Consultant selected by District for peer review purposes regarding the CEQA Documentation for the Project and the SAMP; pursuant to District Facilities Development Policies Section 603.3.2 I.1.

\$ _____

Perform all activities listed in Step 3 of the District's Facilities Development Policies, including, but not limited to, all of those activities described in Section 603.4 of said Policies as follows: Negotiate, prepare, present to Board of Directors for approval and execution of a Development Agreement between Developer and District for the Project; if all or any part of the Project is required to be annexed into the District, negotiation, preparation, Board review and approval of an Annexation Agreement between Developer and District; review, revision, and negotiation of Developer's Project, Design by District Staff and Consultants in order to insure compliance with District's Development Improvement Standards; all construction administration and inspection required for construction of the Improvements to comply with District standards; review, revision and approval of all security facilities required of Developer for construction of the Improvements whether performance bonds, payment bonds, irrevocable letters of credit, cash deposits, or otherwise; review and inspection of the construction of the Improvements upon completion in order to recommend final Project approval; revision and due diligence of any warranty security provided by Developer pursuant to the District's Facilities Development Policies Section 603.4.2 E and Section 603.5.

\$ _____

Compliance with all the terms and conditions of Step 4 of the District's Facilities Development Policies set forth in Section 603.5 of said Policies as follows: Analyze and inspect the Improvements for the two-year warranty period to ensure that all warranty obligations of Developer are satisfied; review, renew and update as possible any performance warranty bonds or irrevocable letters of credit offered by Developer to satisfy its warranty obligation; if necessary for the Project, comply with all the requirements of the annexation process including conducting public hearings and board meetings regarding annexation; negotiations with and meetings with Developer and the Local Agency Formation Commission (LAFCO) regarding terms and conditions of the annexation; reviewing any and all LAFCO documentation and attending all LAFCO hearings regarding annexation; reviewing and revising any terms or conditions of annexation assigned by LAFCO to any proposed annexation; analysis of all easements and rights of way for the maintenance, repair and replacement of all Improvements constructed by Developer pursuant to this Agreement; take all steps necessary to form a Community Facilities District pursuant to the Mello-Roos Community Facilities District Act (Gov. Code § 53311) for the purpose of levying a special tax upon owners of the property to finance the cost of continuing maintenance, repair and replacement of park and recreational improvements constructed to serve the Project, and/or to finance the cost of providing fire suppression services to the Project; in the alternative, take all steps necessary to form a Landscape and Lighting Improvement District pursuant to the Landscaping and Lighting Assessment District Act of 1972 (Streets & Highways Code § 22500 et seq.) for the purpose of levying a special assessment upon owners of property within the Project to finance the costs of continuing maintenance, repair and replacement of park and recreational improvements constructed within the Project and/or fire suppression facilities and services to serve the Project; process all requests for easements to be granted by the District on District property, including, but not limited to, review of all applicable Preliminary Title Reports on the affected property, field inspection and investigation of proposed easement locations, negotiation of the terms and conditions of each easement in an Easement Agreement, negotiate, prepare, and record any and all necessary grants of easements or other rights of way upon District property necessary for the development of the Project.

\$ _____

Estimated administrative costs of District personnel, consultants, engineers, and attorneys in providing the services specified in the Scope of Work:

TOTAL \$ _____