

DEPOSIT AND REIMBURSEMENT AGREEMENT

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (the “Deposit Agreement”), dated as of July __, 2017 for identification purposes only, is by and between the City of Rialto, California (the “City”) and El Rancho Verde Golf, LLC, a Delaware limited liability company (the “Owner”).

RECITALS

WHEREAS, the Owner has approached the City to consider the formation of a community facilities district with respect to certain property located within the City (the “Community Facilities District”) under the Mello-Roos Community Facilities Act of 1982 (the “Act”); and

WHEREAS, a description of that certain real property located within the City (the “Property”) is attached as Exhibit “A” hereto and incorporated herein; and

WHEREAS, the Owner is the owner of the Property within the proposed Community Facilities District; and

WHEREAS, the Owner intends to develop the Property for residential purposes and has obtained or intends to obtain the necessary development approvals to construct approximately 673 residential units on the Property, as such development may be modified from time to time; and

WHEREAS, the City and the Owner desire to form a Community Facilities District; and

WHEREAS, in accordance with the City’s policy regarding use of the Act, the Owner is required to advance funds to the City for all costs incurred for the formation of the Community Facilities District and the issuance of bonds for the proposed Community Facilities District; and

WHEREAS, Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in issuing bonds related to the Community Facilities District; and

WHEREAS, Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, with or without interest under all of the following conditions: (a) the proposal to repay the funds is included in both the resolution of intention to establish a community facilities district adopted

pursuant to Section 53521 of the Act and in the resolution of formation to establish the community facilities district pursuant to Section 53325.1 of the Act, (b) any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and (c) any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds; and

WHEREAS, the City and the Owner desire to enter into this Deposit Agreement in accordance with Section 53314.9 of the Act in order to provide for the advancement of funds by the Owner to be used to pay costs incurred in connection with the formation of a Community Facilities District and/or the issuance of special tax bonds (the “Bonds”) for the Community Facilities District, and to provide for the reimbursement to the Owner of such funds advanced, without interest, from special taxes levied or from the proceeds of the potential Bonds issued by the Community Facilities District; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

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

Section 2. Proposed Formation of the CFD. The City will undertake to analyze the appropriateness of forming the Community Facilities District. The City will retain, at the expense of the Owner, the necessary consultants to analyze the proposed formation of the Community Facilities District.

Section 3. The Deposits and Application Thereof.

(a) The Owner shall deposit herewith the amount of \$80,000 (the “Initial Deposit”). The City, by its execution hereof, acknowledges receipt of, and accepts, the Initial Deposit.

(b) The Initial Deposit, together with any subsequent deposit required to be made by the Owner pursuant to the terms hereof (collectively, the “Deposits”), are to be used to pay for any costs incurred for any authorized purpose in connection with the Community Facilities District and the issuance of the Bonds (other than costs, fees and expenses to be paid out of the proceeds of the Bonds), including, without limitation, (i) the fees and expenses of any consultants to the City employed in connection with the Community Facilities District and the issuance of the Bonds, including an engineer, special tax consultant, financial advisor, bond counsel and any other consultant deemed necessary or advisable by the City, (ii) the costs of appraisals, market absorption and feasibility studies and other reports deemed necessary or advisable by the City in connection with the Community Facilities District and issuance of the Bonds, (iii) the costs of publication of notices, preparation and mailing of ballots and other costs related to any hearing, election or other action or proceeding undertaken in connection with the Community Facilities District and issuance of the Bonds, (iv) reasonable charges for City staff time incurred in connection with the Community Facilities District and the issuance of the

Bonds, including a reasonable allocation of City overhead expense related thereto, and (v) any and all other actual costs and expenses incurred by the City in connection with the Community Facilities District and the issuance of the Bonds (collectively, the “Initial Costs”). The City may draw upon the Deposits from time to time to pay the Initial Costs.

(c) If, at any time, the unexpended and unencumbered balance of the Deposits is less than \$15,000, the City may request, in writing, that the Owner make an additional deposit in an amount estimated to be sufficient, together with any such unexpended and unencumbered balance, to pay for all Initial Costs. The Owner shall make such additional deposit with the City within three weeks of the receipt by the Owner of the City’s written request. If the Owner fails to make any such additional deposit within such three week period, the City may cease all work related to the formation of the Community Facilities District and/or the issuance of the Bonds.

(d) The Deposits may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain records as to the expenditure of the Deposits.

(e) The City shall provide the Owner with a written monthly summary of expenditures made from and the unexpended balance of the Deposits within ten business days of receipt of the City of a written request submitted by the Owner. The cost of providing any such summary shall be charged to the Deposits.

Section 4. Return of Deposits; Reimbursement.

(a) As provided in Section 53314.9 of the Act, the approval by the qualified electors of the Community Facilities District of the proposed special tax to be levied therein is a condition to the repayment to the Owner of the funds advanced by the Owner pursuant hereto. Therefore, if the qualified electors of the Community Facilities District do not approve the proposed special tax to be levied thereon, the City shall have no obligation to repay the Owner any portion of the Deposits expended or encumbered to pay Initial Costs. In accordance with Section 53314.9 of the Act, if the qualified electors of the Community Facilities District do not approve the proposed special tax to be levied therein, the City shall return to the Owner any portion of the Deposits which have not been expended or encumbered to pay Initial Costs by the time of the election on said proposed special tax.

(b) If proceedings for the issuance of the Bonds are terminated, the City shall, within ten business days after official action by the City or the Community Facilities District to terminate said proceedings, return the then unexpended and unencumbered portion of the Deposits to the Owner, without interest.

(c) If special taxes are levied and the Bonds are issued by the Community Facilities District, the City shall reimburse the Owner, without interest, for the portion of the Deposits that has been expended or encumbered, upon the earlier of (i) ten business days after the issuance of such Bonds, solely from the proceeds of such Bonds and only to the extent otherwise permitted under the Act or (ii) receipt of special taxes levied and collected by the Community Facilities District in an amount equal to such Deposits. The City shall, within ten

business days after the issuance of such Bonds, return the then unexpended and unencumbered portion of the Deposits to the Owner, without interest.

Section 5. Abandonment of Proceedings. The Owner acknowledges and agrees that the issuance of the Bonds shall be in the sole discretion of the Community Facilities District. No provision of this Deposit Agreement shall be construed as an agreement, promise or warranty of the City to issue the Bonds.

Section 6. Deposit Agreement Not Debt or Liability of City. As provided in Section 53314.9(b) of the Act, this Deposit Agreement does not constitute a debt or liability of the City. The City shall not be obligated to advance any of its own funds to pay Initial Costs or any other costs incurred in connection with the issuance of the Bonds. No member of the City Council of the City and no officer, employee or agent of the City shall to any extent be personally liable hereunder.

Section 7. Notices. Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Deposit Agreement from one Party to another (collectively, “Notices”) may be personally delivered, transmitted by facsimile (FAX) transmission, or deposited with the United States Postal Service for mailing, postage prepaid, to the address of the other Party as stated in this Section, and shall be deemed to have been given or sent at the time of personal delivery or FAX transmission or, if mailed, on the third day following the date of deposit in the course of transmission with the United States Postal Service. Additionally, copies of all Notices shall be sent by email to each Party. Notices shall be sent as follows:

If to City:

City of Rialto
Attn: Robb R. Steel Asst. City Manager/Dir. of Development Services
150 So. Palm Avenue
Rialto, CA 92376
FAX No. (909) 873-4814
Email: rsteel@rialtoca.gov

City of Rialto
Attn: Kyle Johnson, Finance Manager
150 So. Palm Avenue
Rialto, CA 92376
Email: kjohnson@rialtoca.gov

City of Rialto
Attn: Gina Gibson-Williams, Planning Manager
150 So. Palm Avenue
Rialto, CA 92376
FAX No. (909) 873-4814
Email: ggibson@rialtoca.gov

If to Owner:

Lytle Development Company
Attn: Ron Pharris, President
2050 Main St., Suite 250
Irvine, CA 92614
FAX No. (909) 874-1963
Email: ronpharris@LytleDC.com

Lytle Development Company
Attn: Kevin Lynch, Vice President of Development
2050 Main St., Suite 250
Irvine, CA 92614
FAX No. (909) 874-1963
Email: KLynch@LytleDC.com

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether by e-mail, telex, telegram or telecopier upon the sender's receipt of an appropriate answerback or other written acknowledgement, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 8. California Law. This Deposit Agreement shall be governed and construed in accordance with the laws of the State of California. The Parties shall be entitled to seek any remedy available at law and in equity. All legal actions must be instituted in the Superior Court of the County of San Bernardino, State of California, in an appropriate municipal court in San Bernardino County, or in the United States District Court for the District of California in which San Bernardino County is located.

Section 9. Successors and Assigns. This Deposit Agreement shall be binding upon and insure to the benefit of the successors and assigns of the parties hereto.

Section 10. Counterparts. This Deposit Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

Section 11. Other Agreements. The obligations of the Owner hereunder shall be that of a party hereto. Nothing herein shall be construed as affecting the City's or Owner's rights, or duties to perform their respective obligations, under other agreements, use regulations or subdivision requirements relating to the development. This Deposit Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

Section 12. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Deposit Agreement or of any of its terms. Reference to section numbers are to sections in this Deposit Agreement, unless expressly stated otherwise.

Section 13. Interpretation. As used in this Deposit Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Deposit Agreement shall be interpreted as though prepared jointly by both Parties.

Section 14. No Waiver. A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Deposit Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Deposit Agreement.

Section 15. Modifications. Any alteration, change or modification of or to this Deposit Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

Section 16. Severability. If any term, provision, condition or covenant of this Deposit Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Deposit Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

Section 17. Computation of Time. The time in which any act is to be done under this Deposit Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

Section 18. Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Deposit Agreement, and in signing this Deposit Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matter set forth in this Deposit Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Deposit Agreement; and, they have freely signed this Deposit Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Deposit Agreement, and without duress or coercion, whether economic or otherwise.

Section 19. Cooperation. Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Deposit Agreement including, but not limited to, releases or additional agreements.

Section 20. Conflicts of Interest. No member, official or employee of City shall have any personal interest, direct or indirect, in this Deposit Agreement, nor shall any such member, official or employee participate in any decision relating to the Deposit Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Deposit Agreement as of the respective dates set forth below.

“CITY”

CITY OF RIALTO, a municipal corporation

Dated: _____, 2017

By: _____
Deborah Robertson, Mayor

ATTEST:

By: _____
Barbara A. McGee, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP
City Attorney

By: _____
Fred Galante

“OWNER”

EL RANCHO VERDE GOLF, LLC,
a Delaware limited liability company

Dated: _____, 2017

By: _____
Its: _____

By: _____
Its: _____

Exhibit "A"

Description of Property

Real property in the City of Rialto, County of San Bernardino, State of California, described as the following Assessor Parcel Nos.:

0264-011-19
0264-011-22
0264-421-12
0264-421-20
0264-421-21
0264-421-29
0264-421-30
0264-421-31
0264-482-12
0264-482-13
0264-631-08