

**CITY OF CHULA VISTA
REIMBURSEMENT AGREEMENT
WITH SUN CHULA VISTA BAYFRONT RV LLC
TO CONSTRUCT SPECIFIED BAYFRONT DEVELOPMENT IMPACT FEE
AND SEWER IMPROVEMENTS**

This REIMBURSEMENT AGREEMENT (“Agreement”) is entered into as of this _____ day of _____, 2019 (the “Effective Date”) by and among the City of Chula Vista, a chartered municipal corporation (“City”) and SUN CHULA VISTA BAYFRONT RV LLC a a Michigan Limited Liability Company (“Developer”) (collectively, the “Parties” and, individually, a “Party”) with reference to the following Recitals:

RECITALS

A. WHEREAS, Developer has secured lease rights to certain real property held by the San Diego Unified Port District (the “District”) for the development of two hundred and forty-seven (247) recreational vehicle stalls, together with related amenities, to be located in the Chula Vista Bayfront Master Plan Area (the “Private Improvements”); and

B. WHEREAS, as part of the consideration for the District to enter into the Lease, Developer agreed to develop and maintain certain real property located adjacent to the Private Improvements; and

C. WHEREAS, Developer and the District entered into a Development and Maintenance Agreement, effective _____, 2019 (the “Development and Maintenance Agreement”); and

D. WHEREAS, Section 4 of the Development and Maintenance Agreement provides that the Developer shall construct certain roadway improvements, consisting of E Street from Bay Boulevard to F Street, F Street from Bay Boulevard to E Street, and F Street from E Street to Gunpowder Point Drive (together the “Project Improvements” or “Project”); and

E. WHEREAS, pursuant to Chula Vista Municipal Code (“CVMC”) Section 3.54.010 (Transportation Development Impact Fees – General Intent), the City Council of the City of Chula Vista has determined that (i) new development will create adverse impacts on the City’s existing public facilities, which must be mitigated by the financing and construction of certain transportation facilities that are the subject of CVMC Chapter 3.54; and (ii) a reasonable means of financing the impacted transportation facilities is to charge a fee on all developments located within the following subareas of the City of Chula Vista: the Eastern Area, the Western Area, and the Bayfront Area, as defined in CVMC Section 3.54.020 (Transportation Development Impact Fees – Definitions); and

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F. WHEREAS, pursuant to CVMC Section 3.54.140 (Transportation Development Impact Fees – Developer Construction of Facilities), developers may construct or finance Transportation Facilities, subject to the provisions of CVMC Chapter 3.54 and CVMC Section 2.56.160(H); and

G. WHEREAS, CVMC Section 3.54.150 (Transportation Development Impact Fees – Procedure for Issuance of Credits or Tender of Reimbursement Offer) establishes certain terms and conditions for the award of credit or the tender of a reimbursement offer for developer construction of transportation facilities; and

H. WHEREAS, the Private Improvements are located in the Bayfront Area and will be subject to payment of the Bayfront Transportation Development Impact Fee (BFDIF) to the City upon building permit issuance; and

I. WHEREAS, certain portions of the Project Improvements are transportation facilities of the BFDIF, as identified in CVMC Section 3.54.030 (the “Developer’s BFDIF Improvements”); and

J. WHEREAS, pursuant to CVMC Section 3.54.110 (Transportation Development Impact Fees – Authority for Accounting and Expenditures), all BFDIF funds collected shall be deposited into a Bayfront Transportation Development Impact Fee fund (the “BFDIF Fund”); and

K. WHEREAS, CVMC Section 3.54.080 (Transportation Development Impact Fees – Purpose and Use of Fee) provides that fees collected pursuant to CVMC Chapter 3.54 shall be used by the City for the following purposes, in such order and at such time as determined by the City Council: (i) to pay for such of the Transportation Facilities that the City Council determines shall be constructed, installed or purchased at that time, or to reimburse the City for Transportation Facilities funded by the City from other sources; (ii) to reimburse developers who have been required or permitted by CVMC Section 3.54.140 to construct, install or purchase approved Transportation Facilities identified in the Engineer’s Reports, in such amounts as the City Council deems appropriate; and (iii) to pay for costs associated with the administration of the fees; and

L. WHEREAS, Developer’s BFDIF Improvements are eligible for a combination of credits against Developer’s future BFDIF obligation and cash reimbursements from the BFDIF Fund; and

M. WHEREAS, upon contract award for Developer’s BFDIF Improvements, Developer will be eligible for credits against a future BFDIF obligation pursuant to CVMC Section 3.54.150 (Transportation Development Impact Fees – Procedure for Issuance of Credits or Tender of Reimbursement Offer) in an amount not to exceed Developer’s BFDIF obligation for the Private Improvements, estimated to total approximately \$1.3 million (“Developer’s BFDIF Credits”); and

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N. WHEREAS, in the future, the City will have sufficient funds in the BFDIF Fund to reimburse Developer for the design and construction of Developer’s BFDIF Improvements, less Developer’s BFDIF Credits (the “Developer’s BFDIF Reimbursement”); and

O. WHEREAS, pursuant to CVMC Section 13.14.030.B (Connection to Public Sewer – Fee), any person desiring to connect, directly or indirectly, any parcel or any building thereon to any public sewer which has been constructed at no cost to the parcel to be connected shall pay the one-time required fee for sewer connection to the City, with all revenue derived from such fees to be deposited into the Sewer Income Fund; and

P. WHEREAS, pursuant to CVMC Chapter 3.16 (Sewer Income Fund), all revenues collected under CVMC Section 13.14.030.B shall be deposited into the “Sewer Income Fund” and may be used, in the discretion of the City Council (as defined below) and pursuant to a written contract, to reimburse any person who has constructed sewer facilities to the extent, as determined by the City Council, that such sewer facilities have benefited other properties; and

Q. WHEREAS, certain in-road sewer facilities included in the Project Improvements (the “Developer’s Sewer Improvements”) are eligible for reimbursement from the Sewer Income Fund; and

R. WHEREAS, the City has sufficient funds in the Sewer Income Fund to reimburse Developer for the design and construction of Developer’s Sewer Improvements; and

S. WHEREAS, certain portions of the Project Improvements are neither transportation facilities of the BFDIF, nor eligible for reimbursement from the Sewer Income Fund (the “Developer’s Public Improvement Contribution”); and

T. WHEREAS, Developer desires to enter into this Agreement with the City, so that it may obtain reimbursement for the eligible costs of designing and constructing the Project Improvements, excluding Developer’s Public Improvement Contribution.

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and Developer agree as follows:

ARTICLE I. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following terms and phrases shall have the following meanings:

1.1. Acceptance. “Acceptance” means all of the Project Improvement acceptance in accordance with the following procedures. Upon completion of Project Improvements in accordance with the City’s written policies, Developer shall notify the City by sending the

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City Notice of Completion. Within ten (10) Working Days of the delivery of the Notice of Completion, the City shall conduct a final inspection to confirm that the Project Improvements covered by the Notice of Completion are complete (“Final Site Inspection”), the City shall within ten (10) Working Days thereafter send an Acceptance Letter (as defined below) or a reasonably specific list of any deficiencies. If the City determines during the Final Site Inspection that the work is complete, in its reasonable discretion, the City shall deliver a letter of acceptance to Developer within ten (10) Working Days of the approval confirming that the Project Improvements are complete and accepted by the City (the “Acceptance Letter”). Notwithstanding Developer’s receipt of an Acceptance Letter, Developer shall provide warranties pursuant to Article XI and maintenance pursuant to Article ##, commencing upon City issuance of the Acceptance Letter.

- 1.2. Agreement. “Agreement” means this Reimbursement Agreement between the City and the Developer. The term “Agreement” shall include any amendment to the Agreement properly approved and executed pursuant to the terms of this Agreement.
- 1.3. Approved Drawings and Specifications. “Approved Drawings and Specifications” means the drawings and specifications for the Project Improvements as approved and permitted by the City.
- 1.4. BFDIF. “BFDIF” has the meaning given to such term in the Recitals.
- 1.5. BFDIF Fund. “BFDIF Fund” has the meaning given to such term in the Recitals.
- 1.6. BFDIF Fund Eligible Expenses. “BFDIF Fund Eligible Expenses” means costs for which the City shall reimburse Developer from the BFDIF Fund for the design, development, and construction of the Developer’s BFDIF Improvements, not to exceed the Estimated Cost of BFDIF Improvements.
- 1.7. CEQA. “CEQA” means the California Environmental Quality Act.
- 1.8. City. “City” means the City of Chula Vista. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the City representative designated by the Agreement.
- 1.9. City Attorney. “City Attorney means that position established pursuant to and in accordance with CVMC Chapter 2.11.
- 1.10. City Council. “City Council” means the governing body of the City.
- 1.11. City Engineer. “City Engineer” means that position established pursuant to and in accordance with CVMC Chapter 2.06.

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- 1.12. City Manager. “City Manager” means the City Manager of City or his or her designee.
- 1.13. City’s Project Administration Costs. “City’s Project Administration Costs” means the charges that the City incurs to: (i) review and approve the plans and specifications for the Project Improvements and (ii) inspect the Project Improvements during construction, until completion and Acceptance of the Project Improvements.
- 1.14. Competitive Bid or Solicitation Process. “Competitive Bid or Solicitation Process” has the meaning given to such term in Section 6.1.
- 1.15. Contested Charge. “Contested Charge” has the meaning given to such term in Section 9.1.8.3.
- 1.16. Contract Documents. “Contract Documents” includes, but is not limited to: the prime construction contract(s), prime construction contract(s) exhibits and addenda, subcontract(s), subcontract(s) exhibits and addenda, and any of the following: notice inviting bids, instructions to bidders, bid (including documentation accompanying bid and any post-bid documentation submitted prior to notice of award), the bonds, the general conditions, permits from City or other agencies, the special provisions, the plans, standard plans, standard specifications, reference specifications, the Approved Drawings and Specifications, and all modifications issued after the execution of the subcontract(s), in each case, in connection with the Project.
- 1.17. Development and Maintenance Agreement. “Development and Maintenance Agreement” shall have the meaning given such term in the Recitals.
- 1.18. Cutoff Date. “Cutoff Date” means one (1) year from the date of Acceptance of the Project Improvements.
- 1.19. CVMC. “CVMC” has the meaning given to such term in the Recitals.
- 1.20. Defective Work. “Defective Work” means all work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not substantially conform to the Approved Drawings and Specifications.
- 1.21. Design and Construction Standards. “Design and Construction Standards” means the edition of the City-adopted Design and Construction Standards for public works projects that is in effect when the Approved Drawings and Specifications are approved by the City for purposes of the bids and which is available in the City’s Department of Engineering and Capital Projects and on the City’s website.
- 1.22. Developer. “Developer” has the meaning given to such term in the preamble.

- 1.23. Developer’s BFDIF Credits. “Developer’s BFDIF Credits” has the meaning given to such term in the Recitals.
- 1.24. Developer’s BFDIF Improvements. “Developer’s BFDIF Improvements” has the meaning given to such term in the Recitals.
- 1.25. Developer’s BFDIF Reimbursement. “Developer’s BFDIF Reimbursement” has the meaning given to such term in the Recitals.
- 1.26. Developer Parties. “Developer Parties” shall mean the Developer, the General Contractor, all Subcontractors and their respective directors, officers, employees, agents, and contractors.
- 1.27. Developer’s Public Improvement Contribution. “Developer’s Public Improvement Contribution” has the meaning given to such term in the Recitals.
- 1.28. Developer’s Sewer Improvements. “Developer’s Sewer Improvements” has the meaning given to such term in the Recitals.
- 1.29. Director of Development Services. “Director of Development Services” means the Director of Development Services of City or his or her designee.
- 1.30. District. “District” has the meaning given to such term in the Recitals.
- 1.31. Estimated Cost of BFDIF Improvements. “Estimated Cost of BFDIF Improvements” means the total cost of the Developer’s BFDIF Improvements, as estimated by preliminary engineering studies to total \$4,665,000, as shown in Exhibit A, attached hereto. As Estimated Cost of BFDIF Improvements is not initially the result of competitive bids for the actual design and construction, it is subject to change during the competitive bid process as well as during the design and construction phases, subject to the approval of the Parties.
- 1.32. Estimated Cost of Developer’s Public Improvement Contribution. “Estimated Cost of Developer’s Public Improvement Contribution” means the total cost of the Developer’s Public Improvement Contribution, as estimated by preliminary engineering studies to total \$1,040,000, as shown in Exhibit A, attached hereto. As Estimated Cost of Developer’s Public Improvement Contribution is not initially the result of competitive bids for the actual design and construction, it is subject to change during the competitive bid process as well as during the design and construction phases, subject to the approval of the Parties.
- 1.33. Estimated Cost of Project Improvements. “Estimated Cost of Project Improvements” means the sum of the Estimated Cost of BFDIF Improvements, the Estimated Cost of Sewer Improvements, and the Estimated Cost of Developer’s Public Improvement Contribution.

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- 1.34. Estimated Cost of Sewer Improvements. “Estimated Cost of Sewer Improvements” means the total cost of the Developer’s Sewer Improvements, as estimated by preliminary engineering studies to total \$390,000, as shown in Exhibit A, attached hereto. As Estimated Cost of Sewer Improvements is not initially the result of competitive bids for the actual design and construction, it is subject to change during the competitive bid process as well as during the design and construction phases, subject to the approval of the Parties.
- 1.35. Effective Date. “Effective Date” has the meaning given to such term in the preamble.
- 1.36. Final Accounting Date. “Final Accounting Date” has the meaning given to such term in Section 9.1.7.
- 1.37. General Contractor. “General Contractor” means a party or parties under any contract with the Developer to perform the work or provide supplies for the Project.
- 1.38. Greenbook. “Greenbook” means the 2012 edition of the Standard Specifications for Public Works Construction.
- 1.39. Hazardous Materials. “Hazardous Materials” means hazardous waste or hazardous substances as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42) United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). “Hazardous Materials” shall also include asbestos or asbestos containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.
- 1.40. Holiday. “Holiday” means the City-observed holidays listed below (if any holiday listed falls on a Saturday, then the Saturday and the preceding Friday are both legal holidays. If the holiday should fall on a Sunday, then the Sunday and the following Monday are both legal holidays):

<u>Holiday</u>	<u>Observed On</u>
New Year’s Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
Caesar Chavez Day	March 31
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran’s Day	November 11

Thanksgiving Day	Fourth Thursday in November
Thanksgiving Day Friday	Friday after Thanksgiving
Christmas Day	December 25

- 1.41. Illegal Discharge. “Illegal Discharge” has the meaning given to such term in Section 14.1.3.
- 1.42. Landscape Improvements. “Landscape Improvements” means all landscaping within the BFDIF facility right-of-way and all erosion control landscaping associated with cut and fill slopes for the BFDIF facility.
- 1.43. Maximum BFDIF Reimbursement Amount. “Maximum BFDIF Reimbursement Amount” means the lesser of the Estimated Cost of BFDIF Improvements, as may be amended from time to time, less Developer’s BFDIF Credits, or the amount calculated during the Final Accounting.
- 1.44. Maximum Reimbursement Amount. “Maximum Reimbursement Amount” means the sum of the Maximum BFDIF Reimbursement Amount and the Maximum Sewer Reimbursement Amount.
- 1.45. Maximum Sewer Reimbursement Amount. “Maximum Sewer Reimbursement Amount” means the lesser of the Estimated Cost of Sewer Improvements, as may be amended from time to time, or the amount calculated during the Final Accounting.
- 1.46. Non-Reimbursable Costs. “Non-Reimbursable Costs” means costs that shall not be eligible for reimbursement under this Agreement, including but not limited to: Loss During Delivery, Costs Incurred Due to Negligence, Unapproved Costs, Excess Costs, Non-Project Shared Costs, and Developer’s Public Improvement Contribution as defined in Section 9.1.8.2.
- 1.47. Notice of Completion. “Notice of Completion” means the standard document recorded by the City upon completion of a public works project in accordance with City’s standard and customary practices.
- 1.48. Party. “Party” has the meaning given to such term in the preamble.
- 1.49. Payment Date. “Payment Date” means twenty (20) Working Days following the date on which Developer submits a complete Reimbursement Request (as reasonably determined by the Director of Development Services).
- 1.50. Project. “Project” has the meaning given to such term in the Recitals.
- 1.51. Project Improvements. “Project Improvements” has the meaning given to such term in the Recitals.

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- 1.52. Project Site. “Project Site” means the location of the Project for the purposes of pre-construction services and construction.
- 1.53. Reimbursable Costs. “Reimbursable Costs” means costs of Developer’s BFDIF Improvements and Developer’s Sewer Improvements that have been expended by Developer and approved by the City through approval procedures described in the Agreement, less the Developer’s BFDIF Credits.
- 1.54. Reimbursement Request. “Reimbursement Request” means a reimbursement request package submitted to the City containing the items listed in Section 9.1.3.1.
- 1.55. Sewer Income Fund. “Sewer Income Fund” means the fund designated as the “sewer income fund” with respect to the Developer’s Sewer Improvements pursuant to and in accordance with CVMC Section 3.16.010.
- 1.56. Sewer Income Fund Eligible Expenses. “Sewer Income Fund Eligible Expenses” means costs for which the City shall reimburse Developer from the Sewer Income Fund for the design, development, and construction of the Developer’s Sewer Improvements, not to exceed the Estimated Cost of Sewer Improvements.
- 1.57. Standard Specifications. “Standard Specifications” means the Greenbook, the local standard special provisions referenced in the Approved Drawings and Specifications, and any amendments thereto.
- 1.58. Subcontractor. “Subcontractor” means a party or parties under contract with Developer to perform the work or provide supplies for the Project Improvements.
- 1.59. SWPPP. “SWPPP” has the meaning given to such term in Section 8.1.3.
- 1.60. Transportation Facilities. “Transportation Facilities” has the meaning given to such term in CVMC Section 3.54.080.
- 1.61. Working Day(s). “Working Day(s)” means Monday through Friday, excluding Holidays.

ARTICLE II. SUBJECT OF THE AGREEMENT - GENERALLY

The above-listed Recitals are true and correct and are hereby incorporated by this reference. All attachments to this Agreement as Exhibits are incorporated into this Agreement by this reference.

- 2.1. Project Improvements. Except as expressly provided in this Agreement, Developer shall cause the design and construction of the Project Improvements in accordance with the Development and Maintenance Agreement.

- 2.2. Complete and Functional Improvements. Developer shall provide complete and functional Project Improvements meeting the standards identified herein.
- 2.3. Maintain Until Acceptance. Following the completion of the Project Improvements, Developer shall maintain the Project Improvements until Acceptance of the Project Improvements by City.
- 2.4. Maintain After Acceptance. Following the completion and Acceptance of the Landscape Improvements by the City, Developer shall maintain the Landscape Improvements for a period of one (1) year.
- 2.5. City Payment. City shall reimburse Developer, subject to the terms and conditions herein, for the BFDIF Fund Eligible Expenses of design and construction of the Developer's BFDIF Improvements, less Developer's BFDIF Credits. Further, City shall reimburse Developer, subject to the terms and conditions herein, for the Sewer Income Fund Eligible Expenses of design and construction of the Developer's Sewer Improvements. City acknowledges and agrees that all of the Estimated Cost of BFDIF Improvements identified in Exhibit A, less Developer's BFDIF Credits, are BFDIF Fund Eligible Expenses and the Estimated Cost of Sewer Improvements identified in Exhibit A are Sewer Income Fund Eligible Expenses. City further acknowledges that reimbursement to Developer pursuant to this Agreement shall be considered a funding priority, as BFDIF funds become available.

ARTICLE III. DURATION OF AGREEMENT

- 3.1. Term of Agreement. This Agreement shall be effective on the Effective Date following City Council approval by resolution, and the term shall extend until such time as all executory terms have been completed or it is early terminated according to the termination provisions herein.

ARTICLE IV. PROJECT COSTS

- 4.1. Estimated Cost of BFDIF Improvements. The Estimated Cost of the BFDIF Improvements is \$4,665,000 as shown in Exhibit A, attached hereto.
- 4.2. Estimated Cost of Sewer Improvements. The Estimated Cost of the Sewer Improvements is \$390,000, as shown in Exhibit A, attached hereto.
- 4.3. Adjustment to Estimated Cost. Estimated Cost of BFDIF Improvements and Estimated Cost of Sewer Improvements are subject to change by the methods identified below and those established elsewhere in this Agreement.

- 4.3.1. *Revisions to the Estimated Cost of BFDIF Improvements.* In the event that the City Manager reviews Developer’s BFDIF Improvements and determines, in his/her sole discretion, that the cost of design and construction will exceed the then current Estimated Cost of BFDIF Improvements, the Estimated Cost of BFDIF Improvements shall be increased to reflect the revised estimate accordingly.
- 4.3.2. *Revisions to the Estimated Cost of Sewer Improvements.* In the event that the City Manager reviews Developer’s Sewer Improvements and determine, in his/her sole discretion, s that the cost of design and construction will exceed the then current Estimated Cost of Sewer Improvements, the Estimated Cost of Sewer Improvements shall be increased to reflect the revised estimate accordingly.
- 4.3.3. *Adjustments Based on Other Cost Increases.* The Estimated Cost of BFDIF Improvements and the Estimated Cost of Sewer Improvements may be increased due to: (i) acts of God, acts of any governmental authority, the elements, war, litigation, shortages of material, labor strikes, inflation, later commonly accepted or adopted higher standards and specifications of construction, concealed or unknown conditions encountered in the completion of the Developer’s BFDIF Improvements and/or Developer’s Sewer Improvements, or other cause beyond Developer’s reasonable control; (ii) actual bids received being greater than estimated; or (iii) other factors not the result of unreasonable conduct by Developer. The Estimated Cost of BFDIF Improvements and/or the Estimated Cost of Sewer Improvements may be increased by the amount of such increases, respectively, subject to approval by the City Manager.
- 4.3.4. *Failure to Obtain Approval of Increase.* In any case where City Manager approval is required for an increase in the Estimated Cost of BFDIF Improvements and such approval is not obtained, Developer shall have no obligation to incur costs in excess of the Estimated Cost of BFDIF Improvements. In such case, the Developer’s BFDIF Improvements shall be revised through deductive changes approved by the City Manager, such that the Developer’s BFDIF Improvements, as revised, can be completed for the Estimated Cost of BFDIF Improvements. In any case where City Manager approval is required for an increase in the Estimated Cost of Sewer Improvements and such approval is not obtained, Developer shall have no obligation to incur costs in excess of the Estimated Cost of Sewer Improvements. In such case, the Developer’s Sewer Improvements shall be revised through deductive changes approved by the City Manager, such that the Developer’s Sewer Improvements, as revised, can be completed for the Estimated Cost of Sewer Improvements.

- 4.4. Notification of Increased Costs. If, at any time, Developer reasonably determines that the amount expended on the Developer’s BFDIF Improvements or the Developer’s Sewer Improvements will exceed the Estimated Cost of BFDIF Improvements or the Estimated Cost of Sewer Improvements, Developer shall as soon as reasonably possible, not more than ten (10) Working Days from reasonably determining that the potential increase will occur, notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions (e.g., deductive changes) which Developer believes will bring the construction cost to within the Estimated Cost of BFDIF Improvements and/or the Estimated Cost of Sewer Improvements. The City may either: (i) approve an increase in the Estimated Cost of BFDIF Improvements or the Estimated Cost of Sewer Improvements; or (ii) delineate a project which may be constructed for the Estimated Cost of BFDIF Improvements and Estimated Cost of Sewer Improvements; or (iii) any combination of (i) and (ii).

ARTICLE V. PROJECT SCHEDULE

- 5.1. Project Schedule. Developer shall perform and complete the work for the Project Improvements within thirty (30) months of the Effective Date.
- 5.2. Unavoidable Delay. Each Party shall be entitled to an extension of the date of any performance required of such Party under this Agreement if the failure of the Party to duly perform was because of a cause beyond the Party’s reasonable control.

ARTICLE VI. COMPETITIVE BIDDING AND EQUAL OPPORTUNITY

- 6.1. Compliance. Developer shall bid and award contracts to complete Developer’s BFDIF Improvements and Developer’s Sewer Improvements in accordance with all applicable public contract laws, rules, and regulations, including but not limited to those set forth in the City of Chula Vista Charter and Municipal Code, including CVMC §2.56.160(H).
- 6.1.1. *Proof of Advertising.* In the case of any Competitive Bid or Solicitation Process, Developer shall provide the City with proof that the Developer solicited competitive bids from the General Contractor and/or Subcontractors, as applicable, in accordance with CVMC §2.56.160(H)(2)(c) (Developer-Performed Public Works – Bid and Award – Competitive Solicitation of Bids).
- 6.1.2. *Prevailing Wage.* Developer shall advertise the Project Improvements as requiring the payment of Prevailing Wage and include all provisions in the advertisement as required by the California Department of Industrial Relations.
- 6.2. Bid Opening and Award of Contract. In the case of any Competitive Bid or Solicitation Process, Developer shall provide City with a copy of the tabulation of competitive bid

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results with respect to each contract and subcontract, as applicable. Contract(s) for the construction of Developer's BFDIF Improvements and Developer's Sewer Improvements shall be awarded by Developer pursuant to CVMC §2.56.160(H)(2)(d). In the event that the best qualified contractor's bid, combined with a reasonable amount for contingencies, exceeds the Estimated Cost of BFDIF Improvements and/or the Estimated Cost of Sewer Improvements, the increase in the costs must be approved by City Manager pursuant to Section 4.3 prior to awarding the contract. In the event the City Manager does not approve the increased cost, this Agreement, at the City's option but subject to the next sentence, may be terminated upon prior written notice thereof to Developer of not less than twenty (20) days and the Developer's BFDIF Improvements and Developer's Sewer Improvements may be rebid and/or redesigned. If the City notifies the Developer that it intends to exercise the termination option, then Developer shall have the right to pay the amount in excess of the Estimated Cost of BFDIF Improvements and/or the Estimated Cost of Sewer Improvements (together or separately, the "Excess Cost"), in which case the City shall no longer have the right to terminate this Agreement. Developer acknowledges and agrees that payment of any Excess Cost shall not be a Reimbursable Cost under this Agreement. In the event that the Agreement is terminated pursuant to this Section 6.2, the Developer's design, development, and/or construction costs for the Developer's BFDIF Improvements and the Developer's design, development, and/or construction costs for the Developer's Sewer Improvements will be reimbursed to Developer from BFDIF Fund and the Sewer Income Fund, respectively. City shall reimburse Developer for the actual Reimbursable Costs expended by Developer prior to termination of this Agreement. Developer shall provide City with copies of all executed contracts awarded in accordance with this Section 6.2.

6.3. Equal Employment Opportunities and Equal Opportunity Contracting.

6.3.1. *Equal Employment Opportunity Nondiscrimination.* Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall instruct its consultants, subconsultants, General Contractor, and Subcontractors, to comply with this provision. Nothing in this subsection 6.3.1 shall be interpreted to hold Developer liable for any discriminatory practice of its General Contractor, Subcontractors, or any other party.

6.3.2. *Equal Employment Opportunity Certification.* Developer shall require all bidders to submit signed Equal Employment Opportunity Certifications, on forms approved by the City, with their bid packages.

6.3.3. *Equal Opportunity Contracting Nondiscrimination.* Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual

orientation, age, or disability in the solicitation, selection, hiring, or treatment of bidders, the General Contractor, Subcontractors, vendors, or suppliers. Developer shall provide equal opportunity for bidders, contractors, the General Contractor, and Subcontractors to participate in contracting and subcontracting opportunities. Developer understands and agrees that violation of this subsection 6.3.3 shall be considered a material breach of this Agreement and may result in termination of this Agreement, debarment, or other sanctions. The language in this subsection 6.3.3 shall be inserted in contracts between Developer, the General Contractor, any Subcontractors, vendors, and suppliers awarded in accordance with Section 6.2.

ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

- 7.1. Standard of Care. Developer agrees that the services provided as part of this Agreement shall be performed in accordance with the standards customarily adhered to by experienced and competent professional architectural, engineering, landscape architecture, and construction firms (as applicable) using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.
- 7.2. Compliance with all Laws. Developer shall comply and ensure compliance in all material aspects by any of its General Contractors, Subcontractors, employees, and agents with all laws, including but not limited to:
- 7.2.1. All local, City, County, State, and Federal laws, codes and regulations, ordinances and policies, including, but not limited to, City permits, hazardous material permits, site safety, state and local Building Codes, stormwater regulations, etc.
- 7.3. Compliance with Design and Construction Standards. Developer shall comply and ensure compliance in all material aspects by the Developer Parties with the most current editions of Design and Construction Standards.
- 7.3.1. *Standard Specifications.* Developer shall comply and ensure compliance in all material aspects by the Developer Parties with the most current editions of the following reference specifications when designing and constructing the Project Improvements, including:
- 7.3.1.1. The Greenbook, including the Regional and any local Supplement Amendments.
- 7.3.2. *City Standards.* Developer's and Developer Parties' services shall be provided in conformance with the standards of practice established by City. This includes amendments and revisions of these standards as adopted by City. The standards of practice established by City include, but are not limited to, the following:

7.3.2.1. The Standard Specifications and the Approved Drawings and Specifications.

- 7.4. Changes to Standards. Developer shall not be required to comply, nor to cause Developer Parties to comply, with any design standard or any construction standard or any amendment, update, supplement or other modification to the Design and Construction Standards after the date of the approval of the Approved Drawings and Specifications for purposes of the bids.
- 7.5. City Approval Not a Waiver of Obligations. Where approval by the City, the City Manager, or other representatives of City is required, it is understood to be general approval only and does not relieve Developer or Developer Parties of their responsibility for complying with all applicable laws, codes, and good consulting, design, or construction practices. An approval by City under this Agreement is not an assumption of liability by the City and shall not cause City to become an insurer or surety of work associated with such approval.

ARTICLE VIII. CONSTRUCTION

- 8.1. Site Safety, Security, and Compliance. Developer shall be responsible for site safety, security, and compliance with all related laws and regulations.
- 8.1.1. *Persons.* Developer shall be fully responsible for the safety and security of its officers, agents, and employees authorized by Developer to access the Project site.
- 8.1.2. *Other.* Developer is responsible for Project site, materials, equipment, and all other incidentals until the completed Project has been accepted by the City pursuant to Article X.
- 8.1.3. *Environment.* Developer shall comply with all environmental laws and regulations, including the Clean Air Act of 1970, the Clean Water Act, Executive Order number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988 and any and all Best Management Practice (BMP) guidelines and pollution elimination requirements as may be established by an enforcement official. Furthermore, Developer shall prepare and incorporate into the Construction Drawings a Stormwater Pollution Prevention Plan (SWPPP) to be implemented by Developer during Project construction and maintenance. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and shall be in conformance with the City of Chula Vista BMP Design Manual and CVMC Chapter 14.20 (Storm Water Management and Discharge Control).

- 8.2. Access to Project Site. City officers, agents, and employees with Project-related business shall have the right to enter the Project site at any time for Project related purposes; provided that such person complies with all written applicable security and safety procedures provided by Developer to City.
- 8.3. Public Right-of-Way. All work, including materials testing, special testing, and surveying to be conducted in the Public right-of-way shall be coordinated with the City.
- 8.3.1. *Follow all Laws, Rules, and Regulations.* Developer agrees to follow all Federal and State laws and regulations, and all written and publicly available City standards and regulations while working in the public right-of-way, including, but not limited to, utilizing proper traffic control and obtaining necessary permits.
- 8.4. Traffic Control. Developer shall comply with all traffic control requirements for Project, including, if applicable, all traffic control plans and/or notes.
- 8.5. Maintenance. Developer shall maintain and be responsible for the Project Improvements and the Project site until Acceptance, including ongoing erosion prevention measures. Upon Acceptance of the Project, City shall be responsible for maintenance of the Project Improvements.

ARTICLE IX. REIMBURSEMENT/PAYMENT OF COSTS AND EXPENSES

- 9.1. Payment of Costs Associated with Project
- 9.1.1. *BFDIF Reimbursement Amount.* The maximum amount of reimbursement for Developer’s BFDIF Improvements shall not exceed the Maximum BFDIF Reimbursement Amount. Neither Developer nor the General Contractor nor any Subcontractor, nor any combination thereof, shall be entitled to payment from the BFDIF Fund in excess of the Maximum BFDIF Reimbursement Amount.
- 9.1.2. *Sewer Reimbursement Amount.* The maximum amount of reimbursement for Developer’s Sewer Improvements shall not exceed the Maximum Sewer Reimbursement Amount. Neither Developer nor the General Contractor nor any Subcontractor, nor any combination thereof, shall be entitled to payment from the Sewer Income Fund in excess of the Maximum Sewer Reimbursement Amount.
- 9.1.3. *Reimbursement Amount.* The maximum amount of reimbursement for Project shall not exceed the Maximum Reimbursement Amount. Neither Developer nor Subcontractor shall be entitled to payment in excess of the Maximum Reimbursement Amount.

9.1.3.1. Reductions to the Maximum Reimbursement Amount. City's Project Administration Costs included in the Estimated Cost of BFDIF Improvements and the Estimated Cost of Sewer Improvements, as shown in Exhibit A, that are not charged to Developer shall be deducted from the Maximum Reimbursement Amount. Any anticipated increase in the total City's Project Administration Costs identified in Exhibit A shall be handled in accordance with Section 4.3.

9.1.4. *Funds for Payment of Costs/Expenses.* The source of funds for the payment of costs/expenses associated with Project shall be limited to those listed below. No other City fund, or monies held by, owed to, or in trust for the City, shall be used by the City or sought to be collected by Developer, its employees, agents, General Contractor, or Subcontractors other than those identified in Section 9.1.24.1.

9.1.4.1. Funds for Project. Funds for payment of costs/expenses for Project shall be limited to the BFDIF Fund and the Sewer Income Fund.

9.1.5. *Prerequisites to Payment.*

9.1.5.1. Reimbursement Request. Prior to reimbursement of any expenses, Developer shall provide the City with a Reimbursement Request containing the following:

- a. Invoices. Developer shall provide the Director of Development Services all invoices for Reimbursable Costs associated with Project, not previously paid by the City, immediately upon receipt thereof.
- b. Proof of Payment. Developer shall provide the Director of Development Services with proof of payment of all invoices for Reimbursable Costs submitted within 30 days after such payment.
- c. Lien Releases/Stop Notices. Developer shall provide the Director of Development Services with statutory lien/stop notice releases associated with all work performed or supplies provided in a form satisfactory to the City Attorney.
- d. Certification of Payment. Developer shall provide the Director of Development Services with a written certification that all trades and soft costs for which they are seeking reimbursement have been paid.
- e. Certification of Prevailing Wage Compliance. Developer shall provide the Director of Development Services with a written

certification of compliance with all applicable Prevailing Wage laws and regulations.

- f. Acknowledgement of Subcontractors. Developer shall provide the Director of Development Services with a letter from each firm (e.g. civil, survey, and geotechnical) acknowledging that eligible soft costs included in the relevant invoices have been paid.
- g. Time Sheets. Developer shall provide the Director of Development Services with time sheets from the construction manager to justify the project management costs.
- h. Graphics. Developer shall provide the Director of Development Services with a graphic depicting the areas within the Project for which the Reimbursement Request is being submitted.
- i. Reimbursement Request Summary Report. Developer shall provide the Director of Development Services with a Reimbursement Request Summary Report, summarizing the expenses submitted for reimbursement, including proposed designation of each expense as either “BFDIF Eligible”, “Sewer Eligible”, or “Non-Reimbursable”.
- j. Other Documents. Developer shall provide the Director of Development Services with any other documents that may be needed to evaluate the eligibility of the expense as determined necessary by the Director of Development Services in his/her sole discretion.

City shall not have an obligation to make payment to Developer unless and until Developer provides the Director of Development Services with an accurate and complete Reimbursement Request containing all of the above and such Reimbursement Request is approved by the Director of Development Services as provided below.

9.1.5.2. Inspection. The Project shall be subject to City inspection as provided in section 2-11 of the Greenbook. Developer shall ensure that all persons and entities providing work or services for the Project comply with the inspection requirements provided in section 2-11 of the Greenbook.

9.1.5.3. Prevailing Wage Compliance. Developer shall ensure that all persons and entities providing work or services for the Project comply with Prevailing

Wage requirements as established by the California Department of Industrial Relations, as applicable

9.1.5.4. City Approval. The Director of Development Services shall promptly review each Reimbursement Request and the supporting documentation. If the Director of Development Services finds that any such payment request is incomplete, improper, or otherwise not suitable for reimbursement, the Director of Development Services shall inform Developer in writing within fifteen (15) Working Days after receipt thereof of the reasons for his finding. Developer shall have the right to respond to this finding by submitting further documentation after receipt of said findings. The Director of Development Services shall review any further documentation received from Developer in support of the payment request and inform Developer of his/her approval or denial of the payment request, or his/her request for additional information or documentation, within ten (10) Working Days after receipt of the supplemental documentation.

9.1.6. *Time of Sewer Income Fund Payment.* After Developer has obtained City's approval pursuant to 9.1.5, City shall reimburse Developer for the Reimbursable Costs associated with each Reimbursement Request for Sewer Income Fund Eligible Expenses by the Payment Date. If the Payment Date falls on a weekend or Holiday, the Payment Date shall be extended to the next Working Day.

9.1.6.1. Additional Sewer Costs. Any costs that may accrue, such as interest on late payments to Developer's General Contractors, Subcontractors, or suppliers, shall not be the obligation of the City if the City has not received an accurate and complete Reimbursement Request. Such additional charges shall be the obligation of the Developer and are not eligible for reimbursement.

9.1.7. *Time of BFDIF Fund Payment.* After Developer has obtained City's approval pursuant to 9.1.5, City shall reimburse Developer for the Reimbursable Costs associated with each Reimbursement Request for BFDIF Fund Eligible Expenses at such time as the BFDIF Fund has sufficient monies appropriated for such expense, but in no case earlier than the Payment Date. If the Payment Date falls on a weekend or Holiday, the Payment Date shall be extended to the next Working Day.

9.1.7.1. Additional BFDIF Costs. Any costs that may accrue, such as interest on late payments to Developer's General Contractors, Subcontractors, or suppliers, shall not be the obligation of the City if the City has not received

an accurate and complete Reimbursement Request and/or the BFDIF Fund does not have sufficient monies appropriated to provide the BFDIF Fund payment at that time.

9.1.8. *Reimbursement Amount per Reimbursement Request.* The City shall pay Developer approved amounts in the Reimbursement Request, less any Non-Reimbursable Costs and Contested Charges (as defined below) pursuant to the timeframes established in 9.1.6 and 9.1.7.

9.1.8.1. Retention Withholding. The prime contract and subcontracts for the Project may provide for retention withholding from each payment to the General Contractor or the Subcontractor, as applicable, until Acceptance.

a. Payment and Invoicing for Retention Withholding. Developer shall not pay the General Contractor and the Subcontractors the amounts withheld as retention until (1) forty-five (45) calendar days from recordation of the Notice of Completion, and (2) confirmation has been submitted to the Director of Development Services by Developer that no Stop Notices or Mechanic’s Liens have been filed and not released with respect to the Project and the following work has been completed:

- i. All Project improvements have been installed.
- ii. As-builts have been submitted to the City.
- iii. Form PWE106 is completed.
- iv. The final punch list is complete.

Where a stop payment notice or mechanic’s lien has been filed following the recordation of the Notice of Completion, Developer shall continue to withhold the amount in controversy until a fully executed release of stop payment notice or mechanic’s lien or a bond releasing the stop payment notice or mechanic’s lien has been filed and a conformed copy delivered to the City. Notwithstanding anything in this Agreement to the contrary, Developer shall not be required to withhold any funds from the General Contractor or any Subcontractor to the extent doing so would violate any applicable law.

9.1.8.2. Non-Reimbursable Costs. The following costs/expenses shall not be eligible for reimbursement under this Agreement.

a. Loss During Delivery. Developer shall assign risk of loss related to the delivery of project supplies, materials, and equipment to shipper

as free on board (FOB) destination. Developer acknowledges and agrees that any loss to Project supplies, materials, or equipment prior to delivery shall not be a Reimbursable Cost.

- b. Costs Incurred Due to Negligence. Developer shall not be entitled to payment for any cost or expenditures incurred due to negligent acts, omissions, or willful misconduct of Developer or the any Developer Parties.
- c. Unapproved Costs. Developer shall not be entitled to reimbursement for any cost or expenditure that has not been approved by the City in the manner required by this Agreement.
- d. Excess Costs. Developer acknowledges and agrees that any Excess Cost (as defined in section 6.2 of this Agreement) shall not be a Reimbursable Cost.
- e. Non-Project Shared Costs. The Parties acknowledge that Developer may share certain costs (e.g. mobilization, traffic control) for the Project with the Private Improvements. Developer acknowledges and agrees that any shared project costs that are not directly attributable to or reasonably apportioned to the Project, as determined by the City, shall not be a Reimbursable Cost.
- f. Developer's Public Improvement Contribution. The Parties acknowledge that the Project Improvements include Developer's Public Improvement Contribution, the costs of which shall not be a Reimbursable Cost.

9.1.8.3. Contested Charges. In the event that the City contests any charge on an Reimbursement Request (a "Contested Charge"), the City shall provide Developer a written statement of the Contested Charges, the reason that the charges are contested, and a proposed resolution.

- a. Appeal to City Manager. Developer may appeal the City's determination that certain costs are not reimbursable. The appeal must be received within twenty (20) Working Days of City's determination or prior to the Payment Date for the Reimbursement Request in which the Contested Charges are contained, whichever comes first. During the appeal period, and as long as the charges remain disputed, Developer shall proceed with the work, and the City shall compensate Developer for the undisputed amounts. If,

following the appeal, the City Manager determines that any previously unpaid amounts are eligible for reimbursement, such amounts shall be included in the next payment to Developer.

9.1.9. *Cutoff for Submission of Invoices.* Developer shall submit its final Reimbursement Request not later than the Cutoff Date. Any Reimbursement Requests submitted after the Cutoff Date shall not be reviewed or included as a Reimbursable Cost. The final payment by the City for the Project will be made only after Developer has submitted all documentation reasonably necessary to substantiate the cost of construction and completing the Project Improvements associated with that phase, lien and stop payment notice free, in accordance with the Plans. Final inspection and sign-off by the City’s inspectors with associated mechanic’s lien releases (or bonds releasing contested liens) shall be sufficient evidence of the lien free completion of the Improvements.

9.1.10. *Final Accounting.* Following completion of the Project, Developer shall submit a final accounting to the City in order to determine the cost of design, engineering, construction, and related work thereto to complete the Developer’s BFDIF Improvements and the Developer’s Sewer Improvements. Developer shall also submit all supporting information reasonably necessary to document expenditures on the Developer’s BFDIF Improvements and Developer’s Sewer Improvements, including specific details on the costs and work attributable to Developer’s BFDIF Improvements and Developer’s Sewer Improvements, including third-party invoices, billings, and receipts for construction surveying, soil testing, blue printing, actual construction costs, and similar expenses. All expenses shall be designated as either “BFDIF Eligible”, “Sewer Eligible”, or “Non-Reimbursable”.

9.1.10.1. *True-up Payments.* Following a Final Accounting, the City shall determine whether the actual payments made to Developer equal the audited approved expenditures. In the event that the amount of the approved expenditures exceeds the amount of the actual payments, the City shall make a true-up payment to Developer for the difference; however, in no event shall the true-up payment cause the total amount paid per phase to exceed the Maximum Reimbursement Amount. If the Final Accounting shows that the amount of actual payments to Developer exceeds the amount of the approved expenditures, Developer shall remit or cause the remittance of the difference to the City within twenty (20) Working Days of a notice of deficiency.

ARTICLE X. PROJECT ACCEPTANCE AND FINAL COMPLETION

- 10.1. No Waiver. Developer shall perform and complete the work in strict accordance with the Contract Documents, as reasonably determined by the City Engineer and the Director of Development Services. Neither recommendation of any progress payment or acceptance of work, nor any payment by City to Developer under this Agreement, nor any use or occupancy of the Improvements or any part thereof by the City, nor any act of acceptance by the City, nor any failure to act, nor any review of a shop drawing or sample submittal, will constitute an acceptance of work, which is not substantially in accordance with the Contract Documents.

ARTICLE XI. WARRANTIES

- 11.1. Enforcement of Warranties. Developer shall enforce for the City's benefit all warranties provided in the Contract Documents and any other implicit or explicit warranties or guarantees required or implied by law.
- 11.1.1. *Materials and Workmanship*. Developer shall guarantee, and shall require all Developer Parties to guarantee, all work on the Project against defective workmanship and materials furnished for the Project for a period of one (1) year from the date of Acceptance.
- 11.1.2. *New Materials and Equipment*. Developer shall warrant and guarantee, and shall require all Developer Parties to warrant and guarantee to City that all materials and equipment incorporated into the Project are new unless otherwise specified.
- 11.1.3. *Design, Construction, and Other Defects*. Developer shall warrant and guarantee, and shall require all Developer Parties to warrant and guarantee to City that all work is in accordance with the Contract Documents and is not defective in any way in design, construction, or otherwise.
- 11.2. Term of Warranties. Unless otherwise specified or provided by law, warranties shall extend for a term of one (1) year from the date of Acceptance.

ARTICLE XII. DEFECTIVE WORK

- 12.1. Correction, Removal, or Replacement. If, within the designated warranty period, or such additional period per applicable law or regulation, the City determines the Project contains defective work (“Defective Work”), Developer shall promptly and in accordance with the City’s written instructions and within the reasonable time limits stated therein, either correct, repair, or replace the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.
- 12.2. City’s Right to Correct. If circumstances warrant, including but not limited to an emergency or Developer’s failure to comply with its obligations in Section 12.1, City may

¹ City of Chula Vista Agreement No.: [insert # from City Clerk’s Office]
SUN CHULA VISTA BAYFRONT RV LLC

correct, remove, or replace the Defective Work. In such circumstances, Developer or its General Contractors or Subcontractors, as applicable, shall not recover costs associated with the Defective Work.

- 12.3. Non-Reimbursable Costs. All costs incurred by Developer and the Developer Parties to remedy defects are Non-Reimbursable Costs. If the City has already reimbursed Developer or the Developer Parties for the defective work, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount, or to make a claim against Developer's bond, if Developer or the Developer Parties have been paid in full, until the defects are remedied.
- 12.4. Extension of Warranty. When Defective Work, or damage therefrom, has been corrected, removed, or replaced during the warranty period, the one (1) year, or relevant warranty period, will be extended for an additional time period equal to that of the initial warranty period, from the date of the satisfactory completion of the correction, removal, or replacement.
- 12.5. No Limitation on Other Remedies. Exercise of the remedies for defects pursuant to this Article shall not limit the remedies City may pursue under this Agreement or law.
- 12.6. Disputes. If Developer and City are unable to reach agreement on disputed work, City may direct Developer to proceed with the work and compensate Developer for undisputed amounts. Payment of disputed amounts shall be as later determined in accordance with 9.1.5.2(c). Developer shall maintain and keep all records relating to disputed work for a period of three (3) years in accordance with Article XV.

ARTICLE XIII. SECURITY FOR CONSTRUCTION

- 13.1. Bond. The Developer shall provide a payment bond and a performance bond for the construction of the Project. The City shall be named as a co-obligee of the bonds. The bonds shall be maintained until such time as the Project is complete and Accepted by the City.
- 13.2. Insolvency or Bankruptcy. If the surety on the above-mentioned bond is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Developer shall within five (5) Working Days thereafter substitute or require the substitution of another bond and surety, acceptable to the City.
- 13.3. Calling the Bond. Developer acknowledges and agrees that if Developer's construction of the Improvements has not been commenced, has not been completed in accordance with the Project Schedule, has not been performed in accordance with the Approved Drawings and Specifications, or if the Developer has failed to cure any defects within the time

specified with a Notice of Defect, the City may use the security referenced in 13.1 above to complete the Improvements. This remedy is not a limitation on remedies of the City and is in addition to any other remedy that the City may have at law or in equity.

ARTICLE XIV. INDEMNITY AND DUTY TO DEFEND

14.1. Defense, Indemnity, and Hold Harmless.

14.1.1. *General Requirement.* Developer shall defend, indemnify, protect, and hold harmless the City, its elected and appointed officers, agents and employees, from and against any and all claims, demands, causes of action, costs (including reasonable attorney’s fees), expenses, liability, loss, cost, damage or injury, in law or equity, to property, including takings claims, or persons, including wrongful death, foreseeable or unforeseeable, in any manner arising out of or incident to any alleged passive or active negligence or willful misconduct of Developer, its officials, officers, contractors, Subcontractor(s), agents, or employees arising out of or in connection with the Project or this Agreement.

This indemnity provision does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arising from the sole negligence, active negligence or willful misconduct of the City, its officers, or employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of Developer, the Developer Parties or third parties.

14.1.2. *Illegal Discharge to Storm Drains.* Developer shall defend, indemnify, protect, and hold harmless City, its agents, officers, and employees, from and against all claims asserted, or liability established for damages or injuries to any person or property resulting from a discharge to public storm drains in violation of applicable laws to the extent arising out of the construction of the Improvements (an “Illegal Discharge”) caused by any action or failure of Developer, its officials, officers, contractors, Subcontractor(s), agents, or employees to take reasonable measures to prevent an Illegal Discharge. Developer shall also be responsible for payment of any fines or penalties assessed against City for an Illegal Discharge. Developer’s duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its agents or employees.

14.1.3. *Costs of Defense and Award.* Included in the obligations in sections 14.1.1 through 14.1.3 above is Developer’s obligation to defend, at Developer’s own cost, expense

¹ City of Chula Vista Agreement No.: [insert # from City Clerk’s Office]
SUN CHULA VISTA BAYFRONT RV LLC

and risk, any and all suits, actions, or other legal proceedings that may be brought or instituted against the City, its directors, officials, officers, employees, agents, and/or volunteers, subject to the limitations in sections 14.1.1 and 14.1.2. Developer shall pay and satisfy any judgement, award, or decree that may be rendered against City or its directors, officials, officers, employees, agents, and/or volunteers, for any and all related legal expense and costs incurred by each of them to the extent of Developer's actual determined negligence, subject to the limitations in Sections 14.1.1 and 14.1.2. The City may, in their sole and absolute discretion, participate in the defense of any and all suits, actions, or other legal proceedings that may be brought or instituted against the City, its directors, officials, officers, employees, agents, and/or volunteers, but the Developer shall have no obligation to reimburse the City for any costs of defense incurred by the City, including, without limitation, reimbursement for attorneys' fees, experts' fees and other costs. The City's participation shall not relieve the Developer of any of its obligations under this Article XIV.

14.1.4. *Insurance Proceeds.* Developer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, and/or volunteers.

14.1.5. *No Use of Security.* The security identified in Article XIII shall not be used to satisfy the obligations of Developer under this Article XIV.

14.1.6. *Declarations.* Developer's obligations under Article XIV shall not be limited by any prior or subsequent declaration by Developer.

14.1.7. *Enforcement of Costs.* Developer agrees to pay any and all costs, including attorneys' fees, City incurs enforcing the indemnity and defense provisions set forth in Article XIV.

14.1.8. *Survival.* Developer's obligations under Article XIV shall survive the expiration and/or termination of this Agreement.

15. ARTICLE XV. INSURANCE

15.1. Insurance Requirements. Developer agrees to have and maintain the policies set forth in Exhibit B, which is attached hereto and incorporated herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by City. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

Chula Vista, California 91910

If to Developer: SUN CHULA VISTA BAYFRONT RV LLC
C/O Sun Communities, Inc.
Attention: Chief Operating Officer
27777 Franklin Road, Suite 200
Southfield, Michigan 48034

With a copy to: Jaffe Raitt Heuer & Weiss, PC
Attn: Mark Krysinski
27777 Franklin Road, Suite 2500
Southfield, Michigan 48034

- 17.2. Captions. Captions in this Agreement are inserted for convenience of reference. They do not define, describe or limit any term of this Agreement.
- 17.3. Entire Agreement. This Agreement embodies the entire agreement and understanding between the Parties regarding the subject matter hereof. No prior or contemporaneous oral or written representations, agreements, understandings and/or statements regarding its subject matter shall have any force or effect. This Agreement is not intended to supersede or amend any other agreement between the parties unless expressly noted. However, all previous written agreements, remain in full force and effect except to the extent they conflict with this Agreement.
- 17.4. Severability. If any provision of this Agreement or its particular application is held invalid or unenforceable, the remaining provisions of this Agreement, and their application, shall remain in full force and effect, unless a party's consideration materially fails as a result.
- 17.5. Recordation. The City may record this Agreement in the Office of the County Recorder of San Diego County, California.
- 17.6. Preparation of Agreement. No inference, assumption or presumption shall be drawn from the fact that a Party or its attorney drafted this Agreement. It shall be conclusively presumed that all Parties participated equally in drafting this Agreement.
- 17.7. Authority. Each Party warrants and represents that it has legal authority and capacity to enter into this Agreement, and that it has taken all necessary action to authorize its entry into this Agreement. Each individual signing this Agreement on behalf of an entity warrants that his/her principal has duly authorized him/her to sign this Agreement on its behalf so as to bind his/her principal.

- 17.8. Modification. This Agreement may not be modified, terminated or rescinded, in whole or in part, except by written instrument duly executed and acknowledged by the Parties hereto, their successors or assigns.
- 17.9. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement shall be the City of San Diego.
- 17.10. Administrative Claims. Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the CVMC, as same may from time to time be amended (the provisions of which are incorporated by this reference as if fully set forth herein), and such policies and procedures used by City in the implementation of same.
- 17.11. Non-liability of City Officials and Employees. No member, official, employee or consultant of the City shall be personally liable to Developer in the event of any default or breach by City, or for any amount which may become due to Developer, or on any obligations under the terms of this Agreement.
- 17.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be the original and all of which shall constitute one and the same document.

[End of page. Signature page follows this page.]

IN WITNESS WHEREOF, this Reimbursement Agreement is executed as of the day and year first set forth above.

CITY

CITY OF CHULA VISTA, a California charter city and municipal corporation

By: _____
Gary Halbert, City Manager

ATTEST:

By: _____
Kerry Bigelow, City Clerk

APPROVED AS TO FORM:

By: _____
Glen R. Googins, City Attorney

DEVELOPER

SUN CHULA VISTA BAYFRONT RV LLC, a Michigan limited liability company

By: Sun Communities Operating Limited Partnership, a Michigan limited partnership, its Sole Member

By: Sun Communities, Inc., its General Partner

By: _____

Name: _____

Title: _____

EXHIBIT A – ESTIMATED COST

EXHIBIT B – INSURANCE REQUIREMENTS

Developer shall procure and maintain for the duration of the Agreement, and for two years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Developer, his agents, representatives, employees, or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence.
2. **Automobile Liability:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employers’ Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Builder’s Risk** (Course of Construction) insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Surety Bonds** as described below.
6. **Professional Liability** (if Design/Build), with limits no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
- 7.

Contractors’ Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the Developer maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Self-Insured Retentions

Self-insured retentions are included as a part of Developer’s overall insurance program and as shown in the attached summary of its insurance. Developer agrees that it will maintain a per occurrence self-insured retention amount of no more than two hundred and fifty thousand dollars (\$250,000.00). The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City. Developer agrees that it will maintain its insurance program in a manner commercially similar to the attached summary.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts, or equipment furnished

¹ City of Chula Vista Agreement No.: [insert # from City Clerk’s Office]
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in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Developer. General liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

2. For any claims related to this project, the **Developer's insurance coverage shall be primary** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City.

Builder's Risk (Course of Construction) Insurance

Developer may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Claims Made Policies – (If at all possible avoid and require occurrence type CGL policies)

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Developer must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City for review.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

Waiver of Subrogation

Developer hereby agrees to waive rights of subrogation which any insurer of Developer may acquire from Developer by virtue of the payment of any loss. Developer agrees to cause its General Contractor to **waive rights of subrogation which any insurer of General Contractor may acquire** from General Contractor by virtue of the payment of any loss. Developer agrees to obtain any endorsement, and cause its General Contractor to obtain any endorsement, that may be necessary to

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affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by the Developer, its General Contractor, Subcontractors, employees, and agents.

Verification of Coverage

Developer shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Developer's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

General Contractor and Subcontractors

Developer shall require and verify that its General Contractor and Subcontractors maintain insurance meeting all requirements stated herein, and Developer shall ensure that City is an additional insured on insurance required from the General Contractor and Subcontractors. For CGL coverage, the General Contractor and Subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

Surety Bonds

Developer shall provide the following Surety Bonds:

1. Performance Bond
2. Payment Bond
3. Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the Estimated Cost. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

City reserves the right to modify these requirements, including limits, based including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.