

**FUNDING, CREDIT AND REIMBURSEMENT
AGREEMENT FOR THE CONSTRUCTION OF
MASTER PLANNED DRAINAGE FACILITIES**

This **FUNDING, CREDIT AND REIMBURSEMENT AGREEMENT** (this "Agreement") is entered into as of this ____ day of _____, 2009, by and between the **CITY OF LANCASTER** (the "City") and **FORESTAR DORADO SKIES, L.L.C.**, a Delaware limited liability company, as successor in interest to **WESTERN PACIFIC HOUSING, INC.**, a Delaware corporation (the "Developer").

RECITALS

A. The purpose of this Agreement is to set forth the terms and conditions upon which the Developer, who has constructed certain Master Planned Drainage Facilities ("Drainage Facilities") for the benefit of the City and other property owners, will receive either drainage fee credits or cash reimbursements from the City for money the Developer spent in excess of the amount of the City's Drainage Impact Fees would be for Tract 61206, being a subdivision of a portion of the Northeast ¼ of Section 20, Township 7 North, Range 11 West, San Bernardino Meridian ("Tract 61206").

B. The City has adopted a policy, effective as of January 19, 1993 (the "Reimbursement Policy"), for issuing credits to, or cash reimbursement to, developers for the construction of drainage facilities.

C. The City conditioned its approval of the Developer's Tentative Map for Tract 61206 for 169 residential lots upon the construction of the Drainage Facilities. On August 12, 2008, the City accepted the Drainage Facilities.

D. The City has adopted a Drainage Impact Fee of Four Thousand Three Hundred Fifty Four Dollars (\$4,354.00) (the "Drainage Fee") per lot, which Drainage Fee is imposed on each residential lot within Tract 61206 and is used to pay for the cost of constructing the Drainage Facilities.

E. The cost to the Developer to construct the Drainage Facilities is greater than the per lot Drainage Fee assessed by the City.

F. Six lots (lots 115-117 and lots 120-122) (the "Model Lots") in Tract 61206 have already been built out with model homes. The remaining 163 lots in Tract 61206 (the "Remaining Lots") do not have homes built on them. The Developer has already paid Drainage Fees in the amount of \$24,388.56 for the Model Lots (the "Model Lot Drainage Fee"). The Developer has not paid any Drainage Fees for the Remaining Lots.

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the parties hereby agree as set forth below.

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into, and are a fully operative and effective part, of this Agreement.

2. Master Drainage Benefit Area. The Developer has constructed all segments and portions of the Drainage Facilities contained in the Master Drainage Benefit Area (“Area”), which is the watershed defined as follows: The area bounded by Avenue J to the north, Avenue J-4 to the south, 35th Street East to the west, and 37th Street East to the east; otherwise known as Tract 61206 and associated drainage improvements.

3. Cost of Construction. The total improvement cost for constructing the Drainage Facilities described above is \$1,173,407.00 (the “Total Improvement Cost”).

4. Fair Share of Costs. The Developer shall be responsible for its proportional share of Drainage Facilities costs within the City of Lancaster. The City is currently collecting Drainage Fees at the time of residential building permit issuance at an amount of \$4,354.00 per resident lot. The Developer is subject to citywide Drainage Facility fee changes as determined by the City.

5. Intentionally Omitted.

6. Costs to be Reimbursed. The City shall provide to the Developer cash reimbursement or credits in the amount of Drainage Fees (“Drainage Fee Credit”) equal to the Total Improvement Cost.

7. Benefit to Other Property Owners. The City acknowledges that the Drainage Facilities constructed by the Developer benefit other property not owned or controlled by the Developer and that the City will be receiving Drainage Fees from those properties when they are developed and benefit from the construction by the Developer of the Drainage Facilities.

8. Refund, Credit and Reimbursement. The City agrees to refund, credit and reimburse the Developer for the cost to construct the Drainage Facilities in a total aggregate amount equal to the Total Improvement Cost as follows:

a. Within sixty (60) days of the date of this Agreement, the City shall refund the Developer the Model Lot Drainage Fee (the “Refund”).

b. At the time of building permit issuance for each of the Remaining Lots, the City shall provide Developer a drainage fee credit equal to the then current Drainage Fee (the “Drainage Fee Credit”). The total aggregate amount of Drainage Fee Credit shall not exceed the Total Improvement Cost less the Refund (i.e., \$1,149,018.44).

c. Once a building permit has been issued for all Remaining Lots, the City shall reimburse (pursuant and subject to the City’s Reimbursement Policy described in Section 9 of this Agreement) the Developer in an amount equal to the Total Improvement Cost less the sum of the Refund and Drainage Fee Credit (the “Reimbursement”).

d. The sum of the Drainage Fee Credit and Reimbursement shall not exceed the Total Improvement Cost less the Refund (i.e., \$1,149,018.44).

9. Reimbursement Policy. The City's Reimbursement Policy provides that 20% of all Drainage fees paid to the City in a calendar year to be available for reimbursement for the construction of Master Drainage Facilities. The Developer shall receive a percentage share of the funds available for reimbursement that is calculated by dividing the balance owed to the Developer by the total amount owed by the City to principals that have constructed Drainage Facilities and are participating in the City's Reimbursement Policy. Reimbursements are to be paid to the Developer within ninety (90) days of the last day of the calendar year.

10. Assignment by Developer. Except as provided below, the Developer shall be entitled to assign any portion or all of its rights under this Agreement with the City's consent, which consent shall not be unreasonably withheld. The City hereby consents to the assignment of the Developer's rights hereunder (a) to a general or limited partnership to be formed, or a limited liability corporation, that is created to handle this construction project, (b) an entity that has purchased all or a portion of Tract 61206, or (c) any affiliate under the control of, or under common control with, the Developer.

11. Conformity with State Labor and Work Safety Laws. To Developer's actual knowledge, the design and construction of the Drainage Facilities has been completed in conformity with all applicable laws, including but not limited to all applicable state labor and work safety laws and regulations, including the provisions of California Labor Code Sections 1770, et seq., relating to prevailing wages, to the extent applicable to the improvements, as to which the City makes no representations. The Developer agrees to hold the City harmless and to indemnify and defend the City from all third party claims relating to the construction of the Drainage Facilities that may arise under the provisions of California Labor Code Sections 1720, et. seq., including, but not limited to the provisions of California Labor Code Section 1726 and 1781.

12. Entire Agreement. This Agreement contains the entire agreement and understanding concerning the funding of, and the reimbursement of the costs incurred in connection with, the construction of the Drainage Facilities, and this Agreement supersedes and replaces all prior negotiations and proposed agreements, written or oral, except as they are included in this Agreement. The Developer and City acknowledge that neither the other party nor its agents nor attorneys have made any promise, representation, or warranty whatsoever, express or implied, not contained herein to induce the execution of this Agreement and acknowledge that this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

13. Amendment Must be in Writing. This Agreement may not be modified except by a writing signed by the Developer and the City.

14. Venue for Resolving Disputes. Any arbitration or litigation arising out of this Agreement shall be conducted only in the County of Los Angeles, State of California.

15. Interpretation Guides. In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly and no ambiguity shall be resolved against either Party on the premise that it or its attorneys was responsible for drafting this Agreement or any provision hereof. The captions or headings set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent or any Sections, Subsections, or other provisions of this Agreement. Any reference in the Agreement to a Section or to a Subsection, unless specified otherwise, shall be a reference to a Section or Subsection of this Agreement.

16. Due Authority of Signatures. Each individual signing this Agreement warrants and represents that he or she has been authorized by appropriate action of the Party which he or she represents to enter into this Agreement on behalf of the Party.

17. Notices. All notices, demands, and communications between the Developer and the City shall be duly addressed as indicated below and given by (a) personal delivery, (b) registered or certified mail (postage prepaid and return receipt requested), (c) Federal Express or other reliable private express delivery, or (d) facsimile transmission; provided that such facsimile shall be followed within one (1) business day by delivery of such notice pursuant to clause (a), (b) or (c) above. Such notices, demands, or communications shall be deemed received (i) upon actual delivery if personally served or sent by facsimile, or (ii) after three business days if given or sent by any other approved manner specified above. Any Party to this Agreement may change its below-specified name, address, facsimile number, or person to whom attention should be directed by giving notice as specified in this Section. A copy of any notice, demand, or communication sent to a Party pursuant to this Agreement shall be sent to such Party's legal counsel. Notices, demands, and communications shall be duly addressed and sent as follows:

To City:

City of Lancaster
Attn: City Manager
44933 N. Fern Avenue
Lancaster CA 93534

To City's Legal Counsel:

David R. McEwen, Esq.
Stradling, Yocca, Carlson & Rauth
660 Newport Center Drive
Suite 1600
Newport Beach, CA 92660

To Developer:

Forestar Dorado Skies, L.L.C.
Attn: Stephen Cameron
2151 Michelson Drive, Suite 190
Irvine, CA 92612

To Developer's Legal Counsel:

Pircher, Nichols & Meeks
1925 Century Park East, Suite 1700
Los Angeles, CA 90067
Attn: Real Estate Notices (APJ/SAC)

18. California Law Governs. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California.

19. Counterparts. This Agreement may be signed in one or more counterparts; which, taken together, shall constitute one original document.

20. Exhibits. All Exhibits attached hereto or referenced herein are incorporated into this Agreement.

21. Effective Date. This Agreement shall be effective as of the date noted on page one (1) of this Agreement.

IN WITNESS WHEREOF, the undersigned execute this Agreement on Behalf of the Parties.

CITY:

CITY OF LANCASTER, a municipal corporation

By: _____
Name: _____
Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:


City Attorney

DEVELOPER:

FORESTAR DORADO SKIES, L.L.C., a Delaware limited liability company

By: Forestar Land Partners, LLC, a Delaware limited liability company, Its Sole Member

By: Foremost Land, LLC, a Delaware limited liability company, its Administrative Member

By: 
Name: Stephen Cameron
Its: President

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