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**AMENDED AND RESTATED  
MEMORANDUM OF AGREEMENT**

**by and between**

**CITY OF ONTARIO**

**and**

**NMC BUILDERS, LLC**

**Dated as of November 1, 2022**

**City of Ontario  
Ontario Ranch  
Community Facilities Districts**

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## AMENDED AND RESTATED MEMORANDUM OF AGREEMENT

**THIS AMENDED AND RESTATED MEMORANDUM OF AGREEMENT** (this “Agreement”), dated as of November 1, 2022, is by and between the CITY OF ONTARIO, a general law city organized and existing under and by virtue of the laws of the State of California (the “City”), and NMC BUILDERS, LLC, a limited liability company organized and existing under the laws of the State of California (“NMC Builders”).

### WITNESSETH:

**WHEREAS**, certain real property within the boundaries of the City located generally south of State Route 60 is commonly known as the New Model Colony;

**WHEREAS**, the City has approved a General Plan for the New Model Colony (the “General Plan”) and has certified an Environmental Impact Report in connection with the General Plan (the “Environmental Impact Report”);

**WHEREAS**, the City has specified in the General Plan and the Environmental Impact Report the major backbone transportation, water, sewer, storm drainage, parks and public safety infrastructure required to serve the New Model Colony;

**WHEREAS**, the New Model Colony is now commonly referred to as Ontario Ranch;

**WHEREAS**, the members of NMC Builders (the “Members”) own and intend to develop certain of the property within Ontario Ranch;

**WHEREAS**, in order to provide a mechanism to fund, in a timely manner, the costs of certain of such major backbone infrastructure required to serve Ontario Ranch (the “Facilities”) so that such development may occur, the City has, pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Act”), established, and the City anticipates that it will, pursuant to the Act, establish, community facilities districts, each of which has and will include only property that is within Ontario Ranch and that is subject to a development agreement between the City and a Member (each, a “Community Facilities District”)

**WHEREAS**, pursuant to the Act, the proceedings of the City Council of the City and an election held within each existing Community Facilities District, each such Community Facilities District is authorized to issue special tax bonds (the “Bonds”) secured by special taxes (“Special Taxes”) levied within such Community Facilities District to finance certain of the Facilities and it is anticipated that, pursuant to the Act, the proceedings of the City Council of the City and an election held within each future Community Facilities District, each such Community Facilities District will be authorized to issue Bonds secured by Special Taxes levied within such Community Facilities District to finance certain of the Facilities;

**WHEREAS**, from time to time, Bonds have been issued by certain of the existing Community Facilities Districts and it is anticipated that, from time to time, Bonds will be issued by existing and future Community Facilities Districts;

**WHEREAS**, pursuant to the First Amended and Restated Agreement for Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony (the “Construction Agreement”), made as of August 21, 2012, by and between the City and NMC Builders, the City and NMC Builders have agreed that the City shall be the sole and exclusive lead agency in the formation of any community facilities district, assessment district or other public financing mechanism within the Property (as defined in the Construction Agreement); provided however, that the proceeds of any such community facilities district, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district;

**WHEREAS**, Section 53312.7 of the Act provides that a local agency may initiate proceedings to establish a community facilities district pursuant to the Act only if it has first considered and adopted local goals and policies concerning the use of the Act, which policies must include the statements described in said Section;

**WHEREAS**, in accordance with Section 53312.7 of the Act, the City has adopted its Mello-Roos Community Facilities Act of 1982 Local Goals and Policies (the “Policies”);

**WHEREAS**, the Policies include policies regarding project eligibility, priorities for facilities to be financed through the City’s use of the Act and the maximum total tax burden for parcels within community facilities districts established by the City under the Act;

**WHEREAS**, the Policies provide that the City may, in its discretion and to the extent provided by law, waive any of the policies set forth in the Policies in particular cases;

**WHEREAS**, pursuant to the Memorandum of Agreement, dated as of July 21, 2015 (the “Original Agreement”), by and between the City and NMC Builders, the City and NMC Builders set forth their mutual understanding and agreement as to how certain of the policies in the Policies were to be applied to the Community Facilities Districts, the order of priority in which proceeds of the Special Taxes and Bonds were to be applied to the costs of the Facilities and certain other matters;

**WHEREAS**, subsequent to the date of the Original Agreement, the City and NMC have had ongoing discussions regarding how certain of the policies in the Policies are being applied to the Community Facilities Districts, the order of priority in which proceeds of the Special Taxes and Bonds are being applied to the costs of the Facilities and certain other matters, and the City and NMC desire to amend and restate the Original Agreement in order to reflect their current mutual understanding and agreement as to how certain of the policies in the Policies are to be applied to the Community Facilities Districts, the order of priority in which proceeds of the Special Taxes and Bonds of such Community Facilities Districts are to be applied to the costs of the Facilities and certain other matters; and

**WHEREAS**, Section 9 of the Original Agreement provides that the Original Agreement may be amended by an instrument in writing executed and delivered by the City and NMC Builders;

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

**Section 1. Definitions.** Unless otherwise provided herein, capitalized undefined terms used herein have the meanings ascribed thereto in the NMC Acquisition Agreement. In addition, the following term shall have the meaning specified below.

**“Actual Cost”** shall have the meaning ascribed to such term in the NMC Acquisition Agreement; provided, however, that, with respect to Actual Costs for Eligible CFD Facilities that are not intended to be acquired pursuant to the NMC Acquisition Agreement but, rather, are intended to be acquired pursuant to an acquisition agreement between the City and a Member or other owner of property within a Community Facilities District, references in such definition to NMC Builders, Members or Affiliates of NMC Builders or Members, Payment Requests, Plans and Segments shall be deemed to be references to the correlative terms that would be defined in and applicable to such acquisition agreement between the City and a Member or other owner of property within a Community Facilities District.

**“Effective Date”** means November 3, 2022.

**“Member Specific Improvements”** means, with respect to a Community Facilities District (a) the Facilities that, pursuant to a Development Agreement to which property within the boundaries of such Community Facilities District is subject, the Member that is party to such Development Agreement is obligated to construct or cause to be constructed as a condition of development of such property, and (b) which Facilities are constructed by or on behalf of such Member singly and not jointly or in conjunction with another Member or NMC Builders.

**“NMC Acquisition Agreement”** means the Acquisition and Funding Agreement, dated as of July 21, 2015, by and between the City and NMC Builders, as amended and restated by the Amended and Restated Acquisition and Funding Agreement, dated as of November 1, 2022, by and between the City and NMC Builders, and as the same may be further amended from time to time in accordance with its terms.

**Section 2. Applicability.** The provisions of this Agreement apply only to Community Facilities Districts, as defined herein, which are community facilities districts established by the City under the Act, each of which includes only property that is within Ontario Ranch and that is subject to a development agreement between the City and a Member.

**Section 3. Eligibility.** An application to the City for Community Facilities District financing, the property within which Community Facilities District is being developed by a single landowner, will be considered by the City if such property is proposed to be developed with at least 175 residential units. An application to the City for Community Facilities District financing, the property within which Community Facilities District is being developed by multiple landowners, will be considered by the City if the property being developed by all such landowners is (a) within the same general area, (b) has substantially equivalent estimated development timelines, and (c) is proposed to be developed with at least 175 residential units.

**Section 4. Eligible CFD Facilities.** With respect to the Community Facilities Districts, “backbone infrastructure,” for purposes of the Policies, shall mean (a) fire suppression facilities,

vehicles and equipment, (b) streets, signals and bridges, (c) water source, storage and distribution facilities, (d) storm drainage collection system facilities, (e) sewer collection system facilities, (f) library facilities and collection, (g) fiber optic communications system facilities, (h) public park facilities, (i) pavement, curb and gutter, sidewalks and street lighting improvements for the lane adjacent to the curb on public street segments, which public street segments are included in the DIF Program (as defined in the Construction Agreement), and (j) landscaped parkways and neighborhood edge facilities on public street segments, which public street segments are included in the DIF Program (collectively, “Eligible CFD Facilities”). Eligible CFD Facilities shall not include any facilities that constitute in-tract infrastructure.

**Section 5. Financing Priorities.** (a) The Net Proceeds of each Community Facilities District shall be applied in the following order of priority:

*First Priority.* To pay, or to provide for the payment of, the Actual Costs of Eligible CFD Facilities that are Member Specific Improvements with respect to such Community Facilities District and that are intended to be acquired by the City pursuant to an acquisition agreement between the City and a Member or other owner of property within such Community Facilities District, in an amount equal to the lesser of (i) the estimated amount of such Actual Costs, and (ii) the amount of such Net Proceeds.

If Net Proceeds remain after being applied pursuant to the first paragraph of this First Priority, such Net Proceeds shall be applied to pay, or to provide for the payment of, costs of public improvements constructed by or on behalf of the City, in an amount equal to the lesser of (i) an amount equal to the remainder of (A) the amount of the Parkland Acquisition and Facilities Fee imposed with respect to the development of the property within such Community Facilities District (the “Subject Property”) pursuant to the DIF Program (the “Park Fee”), minus (B) the amount, if any, of such Park Fee against which a credit has previously been granted, and (ii) the amount of such remaining Net Proceeds (such lesser amount being referred to as the “Available Park Fee Credit Amount”). Upon such application of such remaining Net Proceeds pursuant to the preceding sentence (i) if all or a portion of such Park Fee has previously been paid (other than by way of a deemed payment resulting from a credit previously granted), the City shall refund to the payor of such Park Fee an amount equal to the lesser of (A) the amount of the Park Fee so paid, and (B) the Available Park Fee Credit Amount, and (ii) the Subject Property shall receive a credit against the Park Fee in an amount equal to the remainder of (A) the Available Park Fee Credit Amount, minus (B) the amount so refunded to such payor.

*Second Priority.* If Net Proceeds remain after satisfying the requirements of the First Priority, such Net Proceeds shall be applied to pay, or to provide for the payment of, the Actual Costs of Eligible CFD Facilities that are intended to be acquired by the City from NMC Builders pursuant to the NMC Acquisition Agreement, including Eligible CFD Facilities, the costs of which have been advanced by a single Member or group of Members, in an amount equal to the lesser of (i) the estimated amount of such Actual Costs, and (ii) the amount of such remaining Net Proceeds.

*Third Priority.* If (i) Net Proceeds remain after satisfying the requirements of the Second Priority, and (ii) all Conditions of Approval for the property within such

Community Facilities District have been fully satisfied, other than subdivision improvement agreement conditions for specific units, the construction of which has not been completed, and other than such other conditions of such Conditions of Approval that the City has agreed in writing need not be satisfied for purposes of this Third Priority, such Net Proceeds shall be applied to pay, or to provide for the payment of, costs of Eligible CFD Facilities constructed by or on behalf of the City, in an amount equal to the lesser of (A) the remainder of (I) the amount of the development impact fees, other than Park Fees, imposed with respect to the development of the property within such Community Facilities District pursuant to the DIF Program (the "DIF Fees), minus (II) the amount, if any, of such DIF Fees against which a credit has previously been granted, and (B) the amount of such remaining Net Proceeds (such lesser amount being referred to as the "Available DIF Fees Credit Amount"). Upon such application of such remaining Net Proceeds (i) if all or a portion of such DIF Fees has previously been paid (other than by way of a deemed payment resulting from a credit previously granted), an amount equal to the lesser of (A) the amount of the DIF Fees so paid, and (B) the Available DIF Fees Credit Amount shall be refunded by the City to the payor of such DIF Fees, and (ii) such property shall receive a credit against the DIF Fees in an amount equal to the remainder of (A) the Available DIF Fees Credit Amount, minus (B) the amount so refunded to such payor.

(b) The amendments to the Original Agreement made by this Section shall apply only to Community Facilities Districts that have not issued Bonds prior to the Effective Date.

**Section 6. Purchase Prices.** (a) The purchase price of Eligible CFD Facilities to be acquired by the City, whether pursuant to the NMC Acquisition Agreement or pursuant to an acquisition agreement between the City and a Member or other owner of property within a Community Facilities District, shall be equal to the Actual Cost thereof.

(b) The amendments to the Original Agreement made by this Section shall apply only to segments of Eligible CFD Facilities for which the Purchase Price has not been paid prior to the Effective Date.

**Section 7. Total Tax Burden.** (a) An application to the City for Community Facilities District financing will be considered by the City if the Total Tax Burden (as defined in the Policies) on any parcel in such Community Facilities District on which a for-sale detached residential unit has been, is being or is to be constructed does not exceed 1.95% of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto.

(b) An application to the City for Community Facilities District financing will be considered by the City (i) if the sum of (A) the Total Tax Burden, plus (B) the anticipated annual property owners' association fee or charge on any parcel in a Community Facilities District on which a for-sale detached residential unit has been, is being or is to be constructed (the amount of which anticipated fee or charge shall be demonstrated to the reasonable satisfaction of the City), may exceed 2.15% of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto, and (ii) if and to the extent that the City determines that the enhanced level of amenities to be provided by the property owners'

association in such Community Facilities District justifies allowing such sum to exceed said 2.15%.

(c) An application to the City for Community Facilities District financing will be considered by the City (i) if the sum of (A) the Total Tax Burden, plus (B) the anticipated annual property owners' association fee or charge on any parcel in a Community Facilities District on which a for-sale attached residential unit has been, is being or is to be constructed (the amount of which anticipated fee or charge shall be demonstrated to the reasonable satisfaction of the City), may exceed 2.55% of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto, and (ii) if and to the extent that the City determines that the enhanced level of amenities to be provided by the property owners' association in such Community Facilities District justifies allowing such sum to exceed said 2.55%.

**Section 8. Policies Amendments.** The City shall not arbitrarily or capriciously amend the Policies (as in effect on the Effective Date).

**Section 9. Binding on Successors and Assigns.** Neither this Agreement nor the duties and obligations of NMC Builders hereunder may be assigned to any person without the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Neither this Agreement nor the duties and obligations of the City hereunder may be assigned to any person, without the written consent of NMC Builders, which consent shall not be unreasonably withheld, conditioned or delayed. The agreements and covenants included herein shall be binding on and inure to the benefit of any partners, permitted assigns, and successors-in-interest of the parties hereto.

**Section 10. Amendments.** This Agreement may be amended by an instrument in writing executed and delivered by the City and NMC Builders.

**Section 11. Waivers.** No waiver of, or consent with respect to, any provision of this Agreement by a party hereto shall in any event be effective unless the same shall be in writing and signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

**Section 12. Third-Party Beneficiaries.** Each Member is a third-party beneficiary of this Agreement.

**Section 13. Notices.** Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

City:	City of Ontario
	303 East "B" Street
	Ontario, California 91764
	Attention: Executive Director of Finance

NMC Builders: NMC Builders, LLC  
c/o SC Ontario Development Corporation  
1156 North Mountain Avenue  
Upland, California 91786  
Attention: Administrative Member

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 given by courier or delivery service or if personally served or delivered, upon delivery, (b) 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, (c) if given by electronic mail, on the date sent, but only if confirmation of the receipt of such electronic mail is received or if notice is concurrently sent by another means specified herein, and (d) if given by any other means, upon delivery at the address specified in this Section.

**Section 14. Attorneys' Fees.** If any action is instituted to interpret or enforce any of the provisions of this Agreement, the party prevailing in such action shall be entitled to recover from the other party thereto reasonable attorney's fees and costs of such suit (including both prejudgment and postjudgment fees and costs) as determined by the court as part of the judgment.

**Section 15. Jurisdiction and Venue.** Each of the City and NMC Builders (a) agrees that any suit, action or other legal proceeding arising out of or relating to this Agreement shall be brought in a state or local court in the County of San Bernardino or in the Courts of the United States of America in the district in which said county is located, (b) consents to the jurisdiction of each such court in any such suit, action or proceeding, and (c) waives any objection that it may have to the laying of venue of any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the City and NMC Builders agrees that a final and non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**Section 16. Usage of Words.** As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

**Section 17. Governing Law.** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

**Section 18. Effective Date.** This Agreement has been dated for convenience purposes only. Notwithstanding the stated date of this Agreement, this Agreement shall be effective on the Effective Date.

**Section 19. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

**CITY OF ONTARIO**

By: \_\_\_\_\_



Scott Ochoa,  
City Manager

**NMC BUILDERS, LLC**, a California limited liability company

By: SC Ontario Development Company LLC, a Delaware limited liability company, its Administrative Member

By: Lewis Management Corp, a Delaware corporation, its Manager

By: \_\_\_\_\_



Leon Swails, Authorized Agent