

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made as of August 29, 2012, by and between the COUNTY OF IMPERIAL, a political subdivision of the State of California ("COUNTY"), and the COUNTY OF IMPERIAL COMMUNITY FACILITIES DISTRICT NO. 06-1 (McCABE RANCH), a governmental entity formed pursuant to the Mello-Roos Community Facilities Act of 1982 ("McCABE RANCH CFD"), on the one hand, and the HEBER PUBLIC UTILITY DISTRICT, a public utility district ("HPUD"), and the HEBER PUBLIC UTILITY DISTRICT COMMUNITY FACILITIES DISTRICT NO. 2005-01 (HEBER MEADOWS), a governmental entity formed pursuant to the Mello-Roos Community Facilities Act of 1982 ("HEBER MEADOWS CFD"), on the other hand, who agree as follows:

### 1. RECITALS.

This Agreement is made with reference to, and in contemplation of, the following facts:

#### a. Background.

HPUD's service area includes an unincorporated area located within the County of Imperial, commonly referred to as the Heber Townsite, which currently includes four Tax Rate Areas ("TRAs") designated as TRA 066-001, 066-002, 066-003, and 066-004.

As development occurred within the Heber Townsite area, HPUD began providing a variety of community services within its service area, which included maintenance and operation of a street lighting system, park landscaping and maintenance, storm retention/detention basin maintenance, and fire hydrant maintenance. In some situations, HPUD made commitments to the COUNTY and developers to provide such services for certain subdivisions located within the Heber Townsite as part of the development approval process.

In the case of the McCabe Ranch development, the Joint Community Facilities Agreement specified that Mello-Roos special taxes would be levied each year to cover the cost of the operation and maintenance of parkway and streetscaping, and parks/retention basins, that such special taxes would be distributed by the COUNTY as the legislative body of the McCABE RANCH CFD to HPUD, and that HPUD would be responsible for providing the specified services.

In the case of the Heber Meadows development, the HEBER MEADOWS CFD is responsible for providing the services in question and the costs are financed through the levy of Mello-Roos special taxes as directed by HPUD as the legislative body for the HEBER MEADOWS CFD.

Starting in or about January 2011, HPUD notified the COUNTY that it did not believe it had authority to provide the community services in question and would discontinue providing them. Specifically, in or about February 2011, HPUD notified the COUNTY that HPUD would no longer pay for the electricity to power the street lighting within its service area and that the COUNTY would have to pay for that electricity in order to keep the street lights on. Subsequently, starting in or about June 2011, HPUD notified the COUNTY, various developers of real estate projects located within HPUD's service area, and various members of the public that it would no longer provide park lighting, landscaping and maintenance, storm retention/detention basin maintenance, and fire hydrant maintenance services within its service area. Specifically,

HPUD notified Pulte Homes that it would not accept responsibility for providing electrical service to the retention/detention basin located in the Heberwood subdivision at 1160 N. Cherry Ave.

The COUNTY disagreed with HPUD's position and notified HPUD that it believed HPUD was indeed authorized to provide the services in question. However, in order to assure no disruption in the services, the COUNTY began paying the electricity bill for the street lighting system, first by reimbursing HPUD and later by transferring the service directly to the COUNTY's name; later, the COUNTY began paying other electricity bills related to two of the parks/basins within HPUD's service area.

In addition to the special taxes assessed in the CFDs, a portion of the *ad valorem* real property taxes assessed against the real property located in TRA 66-002, 66-003, and 66-004 is allocated to HPUD. With regard to that tax allocation, HPUD requested clarification as to the exact amount of the real property taxes allocated to HPUD from each TRA within HPUD's service area. Neither the COUNTY nor HPUD has been able to locate a complete set of records documenting the origins of the tax allocation for each TRA and, to some extent, there appear to be minor inconsistencies in the records. Moreover, the dollar amount of the allocation cannot be specified because it fluctuates with the assessed value of the real property each year. However, the parties have agreed to confirm, as part of this Agreement, the applicable allocation percentages and the means employed by the auditor's office in calculating the dollar amount to be allocated to HPUD each year as set forth below. In doing so, the parties agree that if the terms of this Agreement are in any way inconsistent with the terms of any prior document affecting the tax allocations, the terms of this Agreement shall govern from the date of this Agreement forward.

b. Pending Litigation.

On December 9, 2011, the COUNTY commenced Case No. ECU 06816 in the Superior Court of the State of California for the County of Imperial, by filing a Complaint for Declaratory Relief seeking direction from the court as to (a) HPUD's authority and obligation to provide the community services in question within its service area, (b) the respective rights and obligations of the parties with regard to the real property tax revenues collected by the COUNTY from the owners of the real property located within TRA 66-002, 66-003, and 66-004 in light of HPUD's refusal to provide the services in question, (c) the respective rights and obligations of the parties with regard to the McCABE RANCH CFD Special Tax B assessments in light of HPUD's perceived refusal to provide the services in question, and (d) the respective rights and obligations of the parties with regard to the authority and obligation of HPUD and the HEBER MEADOWS CFD to provide the services in question within the Heber Meadows assessment district area ("the Pending Litigation"). The parties now desire to resolve all issues presented in the Pending Litigation, all issues involving the responsibility and cost of the community services in question, and all issues involving the allocation of the *ad valorem* real property taxes received from the TRAs in the Heber Townsite.

c. Purpose.

The undersigned understand, acknowledge, and agree that, except as expressly set forth herein, the execution of this Agreement consummates the compromise of disputed claims that have been denied and contested, and that it is not to be construed as an admission of liability on the part of any party to this Agreement. It is the parties' desire and intention to effect a final settlement and resolution of all existing disputes and claims between the parties, whether known or unknown, relating to the authority and responsibility of HPUD to provide the community services in question within its service area, the amount of real property taxes to be allocated to HPUD from TRAs 066-002, 066-003, and 066-004, and all related issues which were, or could have been, raised in the Pending Litigation.

2. TERMS.

a. Provision of Community Services.

In consideration of the mutual covenants set forth herein, and specifically the *ad valorem* tax allocation described in Subsection 2.b., below, HPUD hereby acknowledges and affirms its obligation to provide the following community services:

i. As to community services to be provided within the McCabe Ranch subdivision, HPUD covenants and agrees to operate and maintain the street lighting system, maintain and replace as necessary all fire hydrants, maintain all parks, maintain the retention/detention basin and supporting systems, and perform any mosquito abatement determined by the County's Environmental Health Department to be required as a result of standing water accumulating in the retention/detention basin, all as reasonably required. The COUNTY and the McCABE RANCH CFD agree that HPUD shall be paid the amounts reasonably billed by HPUD to the McCABE RANCH CFD for services related to the maintenance of the retention/detention basin and supporting systems and any required mosquito abatement in accordance with the terms of the Joint Community Facilities Agreement dated March 1, 2006.

ii. As to community services to be provided within the Heber Meadows subdivision, HPUD covenants and agrees to operate and maintain the street lighting system, maintain and replace as necessary all fire hydrants, maintain all parks, maintain the retention/detention basin and supporting systems, and perform any mosquito abatement determined by the County's Environmental Health Department to be required as a result of standing water accumulating in the retention/detention basin, all as reasonably required. HPUD acknowledges and agrees that it will look to the HEBER MEADOWS CFD for the funding for such services to the extent allowed by the terms of the HEBER MEADOWS CFD documents.

iii. As to community services to be provided within other portions of those areas designated as TRA 066-001, TRA 066-002, TRA 066-003, and TRA 066-004, HPUD covenants and agrees to operate and maintain the street lighting system, maintain and replace as necessary all fire hydrants, maintain all parks, maintain the retention/detention basins and supporting systems, and perform any mosquito abatement determined by the County's Environmental Health Department to be required as a result of standing water accumulating in any retention/detention basin, all as reasonably required. HPUD acknowledges and agrees that it will pay the cost of community services provided within McCabe Ranch subdivision that are not paid by the McCABE RANCH CFD, the cost of community services provided within the Heber Meadows subdivision that are not paid by the HEBER MEADOWS CFD, and the cost of community services provided within other portions of those areas designated as TRA 066-01, TRA 066-02, TRA 066-03 and TRA 066-04, all as described above, from the *ad valorem* tax allocations described in Subsection 2.b., below.

For purposes of the foregoing provisions, the term "supporting systems" shall mean and include any pump station servicing a designated retention/detention basin, along with all drainage appurtenances (i.e. pipelines, inlet and outlet structures, and storm drains) handling storm water runoff from any of the designated TRAs.

Within 15 days after approval of this Agreement by both the Board of HPUD and the COUNTY's Board of Supervisors, counsel for the parties shall jointly advise LAFCO in writing that a settlement has been reached whereby HPUD will be providing the community services specified herein; in the event that LAFCO requests any further information or advises

HPUD that it needs to apply to LAFCO for approval to provide any of those services, HPUD shall provide the requested information and/or make the required application. HPUD shall bear sole responsibility for obtaining any required LAFCO approval and paying any fees or costs associated with such application.

b. Ad Valorem Tax Allocations.

In consideration of the mutual covenants set forth herein, the COUNTY hereby acknowledges and affirms its obligation to continue to allocate the *ad valorem* real property taxes generated by the real property located within the designated TRAs in accordance with the COUNTY's established practice as follows:

i. As to TRA 066-002, 16.634728% of the *ad valorem* real property taxes assessed on the base plus increment value of the real property located within TRA 066-002 from the prior tax year, adjusted by HPUD's share of the incremental tax adjustment for the current tax year, shall be allocated to HPUD. The incremental tax adjustment applied to HPUD's allocation shall be 16.634728% of the total incremental tax adjustment for all of the real property located within TRA 066-002. The actual amount paid out to HPUD will be reduced by the standard adjustments, including the ERAF adjustment, refunds, and the COUNTY's service fee. Distributions shall be made to HPUD in accordance with the schedule applied by the COUNTY with regard to all allocations to public agencies that receive an allocation of the real property taxes; as of the date of this Agreement, the COUNTY makes a 55% allocation in December, a 40% allocation in April, and a 5% allocation in June.

ii. As to TRA 066-003, 16.634727% of the *ad valorem* real property taxes assessed on the base plus increment value of the real property located within TRA 066-003 from the prior tax year, adjusted by HPUD's share of the incremental tax adjustment for the current tax year, shall be allocated to HPUD. The incremental tax adjustment applied to HPUD's allocation shall be one-third of the amount of the incremental tax adjustment for all of the real property located within TRA 066-003 that would otherwise be applied to the COUNTY's general fund allocation, assuming no other allocation of any amount of the incremental tax adjustment to HPUD. The actual amount paid out to HPUD will be reduced by the standard adjustments, including the ERAF adjustment, refunds, and the COUNTY's service fee. Distributions shall be made to HPUD in accordance with the schedule applied by the COUNTY with regard to all allocations to public agencies that receive an allocation of the real property taxes; as of the date of this Agreement, the COUNTY makes a 55% allocation in December, a 40% allocation in April, and a 5% allocation in June.

iii. As to TRA 066-004, 16.594930% of the *ad valorem* real property taxes assessed on the base plus increment value of the real property located within TRA 066-004 from the prior tax year, adjusted by HPUD's share of the incremental tax adjustment for the current tax year, shall be allocated to HPUD. The incremental tax adjustment applied to HPUD's allocation shall be 16.594930% of the total incremental tax adjustment for all of the real property located within TRA 066-004. The actual amount paid out to HPUD will be reduced by the standard adjustments, including the ERAF adjustment, refunds, and the COUNTY's service fee. Distributions shall be made to HPUD in accordance with the schedule applied by the COUNTY with regard to all allocations to public agencies that receive an allocation of the real property taxes; as of the date of this Agreement, the COUNTY makes a 55% allocation in December, a 40% allocation in April, and a 5% allocation in June.

As a material condition of this Agreement, HPUD acknowledges and accepts the foregoing allocations and computational methods with regard to the allocation of the *ad*

*valorem* real property taxes. The parties acknowledge and agree that nothing contained herein shall have any affect upon the COUNTY's standard allocation of either supplemental tax assessments or unsecured tax assessments.

c. Transfer of IID Electrical Service.

In consideration of the mutual covenants set forth herein, HPUD shall cause the accounts for electrical service provided by the Imperial Irrigation District ("IID") to the street lighting system in HPUD's service area and to each of the parks/basins in HPUD's service area to be transferred to HPUD's name; HPUD shall make every effort to cause such transfer to occur no later than September 21, 2012.

d. Reimbursement for Payment of Electricity Bills.

In consideration of the mutual covenants set forth herein, HPUD shall reimburse the COUNTY for all amounts paid by the COUNTY since January 2011 for electricity supplied by the IID to the street lighting system in HPUD's service area and to parks/basins in HPUD's service area. The amounts paid by the COUNTY for electrical service billed through mid-May 2012 are set forth on Exhibit "A" attached hereto and incorporated herein by reference; HPUD agrees that the COUNTY may deduct the total of \$30,433.70, as set forth in Exhibit "A," from the amount of the *ad valorem* tax allocation that is currently being held by the COUNTY prior to disbursing those tax funds to HPUD as set forth in Subsection 2.e., below. HPUD further agrees that the COUNTY may deduct from the tax allocation that would otherwise be paid to HPUD in December 2012 an amount equal to the total paid by the COUNTY to the IID for such electricity furnished after the cutoff dates on the billing statements listed on Exhibit "A."

HPUD shall reimburse Pulte Homes for all amounts incurred for electricity supplied to the retention/detention basin in the Heberwood Estates subdivision after February 15, 2011, and continuing until the date that HPUD transfers the account for such service to its own name. HPUD shall provide the COUNTY with a signed acknowledgement of such reimbursement from Pulte Homes on or before October 1, 2012. If HPUD fails to provide such signed acknowledgement to the COUNTY by October 1, 2012, HPUD agrees that the COUNTY may reimburse Pulte Homes for the amounts incurred and the COUNTY may deduct the amount of such payment from the tax allocation that would otherwise be paid to HPUD in December 2012. HPUD acknowledges that the electricity charges incurred by Pulte Homes between February 15, 2011 and May 16, 2012, total \$4,120.56.

e. Disbursement of 2011 – 2012 Real Property Tax Allocation.

Within fifteen (15) days following the delivery to counsel for the COUNTY of a counterpart of this Agreement signed by authorized representatives of HPUD and the HEBER MEADOWS CFD, and approved by counsel for HPUD, the COUNTY shall cause the net amount of the tax allocation that would otherwise have been paid to HPUD in December 2011, April 2012, and June 2012, after deducting the \$30,433.70 that HPUD is to pay to the COUNTY as specified in Subsection 2.d., above, to be disbursed to HPUD.

f. Dismissal of Pending Litigation.

Within 15 days following the delivery to counsel for the COUNTY of a counterpart of this Agreement signed by authorized representatives of HPUD and the HEBER MEADOWS CFD, and approved by counsel for HPUD, the COUNTY and the McCABE RANCH CFD shall cause the Pending Litigation to be dismissed in its entirety with prejudice.

3. MUTUAL RELEASE.

a. Mutual Release

Except as to the obligations set forth in this Agreement, each party to this Agreement, individually and on behalf of its respective successors-in-interest, agents, and assigns, hereby fully and forever releases, acquits, and discharges each other party hereto, and their respective officers, directors, supervisors, members, agents, employees, partners, corporations, subsidiaries, administrators, trustees, beneficiaries, assigns, successors-in-interest, and attorneys, and each of them, from any and all claims, demands, losses, actions, causes of action, costs, expenses, attorney's fees, and liabilities (contingent, accrued, inchoate, or otherwise), known or unknown, including, without limitation, any claim or demand before any court, administrative body, public agency, or any other body, which such party may now or hereafter have against any or all of them arising out of, or in any way related to, the positions taken by HPUD since January 2011 with regard to its authority to provide the community services in question, HPUD's cessation of payment of the IID electricity bills for street lighting and for parks/basins in the Heber Townsite, the COUNTY's allocation of *ad valorem* real property taxes for the TRAs in the Heber Townsite, and any of the matters that were raised, or which could have been raised, in the Pending Litigation with respect to such matters.

b. Mutual Waiver of Statutory Rights.

In connection with the foregoing release, each of the parties to this Agreement hereby waives all rights which may exist under Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

4. FURTHER ASSURANCE.

Each of the parties shall hereafter execute all documents and do all acts necessary, convenient, or desirable, in the reasonable opinion of any other party, to effect the provisions of this Agreement.

5. SUCCESSORS.

The provisions of this Agreement shall be deemed to obligate, extend to, and inure to the benefit of, the successors, assigns, transferees, grantees, insurance carriers, and indemnitees of each of the parties to this Agreement.

6. INDEPENDENT COUNSEL.

Each of the parties to this Agreement acknowledges and agrees that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, and that it has executed this Agreement with the consent, and upon the advice, of said independent counsel. Each of the parties to this Agreement further agrees that no statute or rule of construction that ambiguities are to be resolved against the drafting party is to be employed in the interpretation of this Agreement.

7. CALIFORNIA LAW.

This Agreement shall be deemed to have been made and entered into in the State of California and shall, in all respects, be interpreted, enforced, and governed by and under the laws of that State.

8. ATTORNEYS' FEES.

In the event litigation is commenced (or any motion is filed) to enforce any of the provisions of this Agreement, to recover damages for breach of any of the provisions of this Agreement, or to obtain declaratory relief in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, and other expenses incurred in connection with such litigation (or motion).

9. WARRANTY OF AUTHORITY.

By signing this Agreement, each of the undersigned individuals represents and warrants that he/she is authorized to enter into this Agreement for and on behalf of the party on whose behalf he/she executes this Agreement. Each party to this Agreement represents and warrants that this Agreement has been approved by the required vote of its board and agrees to provide to any other party, upon request, a copy of the Resolution whereby this Agreement was approved. Each party to this Agreement also represents and warrants that, except as expressly set forth herein, it has not assigned or transferred, and will not assign or transfer, any claim, cause of action, or right of any kind whatsoever released by this Agreement, and that no other person or entity has any interest in any of the claims, causes of action, or rights released herein.

10. INTERPRETATION.

Wherever the context so requires: the singular number shall include the plural; the plural shall include the singular; and, the masculine gender shall include the feminine and neuter genders.

11. CAPTIONS.

The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon its interpretation.

12. SEVERANCE.

If any provision of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, such provision shall be deemed to be severed and deleted and neither such provision, nor its severance and deletion, shall affect the validity of the remaining provisions.

13. INTEGRATION.

This Agreement (after full execution and delivery) memorializes and constitutes the entire agreement and understanding between the parties, and supersedes and replaces all prior negotiations, proposed agreements and agreements, whether written or unwritten. Each of the parties to this Agreement acknowledges that no other party, nor any agent or attorney of any other party, has made any promise, representation, or warranty whatsoever, express or implied, which is not expressly contained in this Agreement; and, each party further acknowledges that it has not executed this Agreement in reliance upon any collateral promise, representation, or warranty, or in

reliance upon any belief as to any fact not expressly recited in Subsections 1.a. through 2.f., above.

14. COUNTERPARTS & FAXED OR SCANNED SIGNATURES.

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Faxed signatures, and/or scanned signatures submitted by email, shall be accepted and enforceable as original signatures.

Dated: \_\_\_\_\_

THE COUNTY OF IMPERIAL,  
a political subdivision of the State of California

By: \_\_\_\_\_ (Signature)  
Ralph Cardenas Jr. (Name)  
Its CEO (Title)

Dated: \_\_\_\_\_

COUNTY OF IMPERIAL COMMUNITY FACILITIES  
DISTRICT NO. 06-1 (McCABE RANCH),  
a governmental entity formed pursuant to the Mello-Roos  
Community Facilities Act of 1982

By: \_\_\_\_\_ (Signature)  
Ralph Cardenas Jr. (Name)  
Its CEO (Title)

Dated: \_\_\_\_\_

HEBER PUBLIC UTILITY DISTRICT,  
a public utility district

By: \_\_\_\_\_ (Signature)  
\_\_\_\_\_  
Its \_\_\_\_\_ (Title)

Dated: \_\_\_\_\_

HEBER PUBLIC UTILITY DISTRICT COMMUNITY  
FACILITIES DISTRICT NO. 2005-01 (HEBER  
MEADOWS),  
a governmental entity formed pursuant to the Mello-Roos  
Community Facilities Act of 1982

By: \_\_\_\_\_ (Signature)  
\_\_\_\_\_  
Its \_\_\_\_\_ (Title)



APPROVED AS TO FORM AND CONTENT:

SCHWARTZ HEIDEL SULLIVAN, LLP

By: Laurel Lee Hyde

Laurel Lee Hyde  
Attorneys for the COUNTY OF IMPERIAL  
and the COUNTY OF IMPERIAL COMMUNITY  
FACILITIES DISTRICT NO. 06-1 (McCABE RANCH)

WALKER & DRISKILL, PLC

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

Steven M. Walker  
Attorneys for the HEBER PUBLIC UTILITY  
DISTRICT and the HEBER PUBLIC UTILITY  
DISTRICT COMMUNITY FACILITIES DISTRICT  
NO. 2005-01 (HEBER MEADOWS)

**Exhibit "A"**  
**IID Electricity Bill Summary**

**Street Lighting – HPUD Account No. 50030052**

01/20/2011 – 02/16/2011	\$2,284.55
02/17/2011 – 03/18/2011	\$2,284.55
03/19/2011 – 04/18/2011	\$2,284.55
04/19/2011 – 05/17/2011	\$2,284.55
07/19/2011 – 08/17/2011	\$2,173.11

**Subtotal** \$11,311.31

**Street Lighting – COI Account No. 50543200**

10/14/2011 – 10/18/2011	\$2,173.11
10/19/2011 – 11/17/2011	\$2,173.11
11/18/2011 – 12/19/2011	\$2,173.11
12/20/2011 – 01/19/2012	\$2,044.01
01/20/2012 – 02/21/2012	\$2,044.01
02/22/2012 – 03/21/2012	\$2,044.01
03/22/2012 – 04/19/2012	\$2,044.01
04/20/2012 – 05/18/2012	\$2,044.01

**Subtotal** \$16,739.38

**Correll Basin – COI Account No. 50543198**

10/14/2011 – 11/15/2011	\$39.83
11/16/2011 – 12/15/2011	\$16.14
12/16/2011 – 01/17/2012	\$14.73
01/18/2012 – 02/14/2012	\$14.40
02/15/2012 – 03/19/2012	\$14.73
03/20/2012 – 04/17/2012	\$14.40
04/18/2012 – 05/16/2012	\$15.08

**Subtotal** \$129.31

**Heber Meadows Basin – COI Account No. 50543201**

10/14/2011 – 11/16/2011	\$491.04
11/17/2011 – 12/15/2011	\$313.32
12/16/2011 – 01/17/2012	\$308.73
01/18/2012 – 02/14/2012	\$237.97
02/15/2012 – 03/19/2012	\$204.95
03/20/2012 – 04/17/2012	\$271.00
04/18/2012 – 05/16/2012	\$426.69

**Subtotal** \$2253.70

**Total** \$30,433.70