

**PUBLIC FACILITIES FEE CREDIT
AND
ENTITLEMENT FUND
AGREEMENT

AMENDMENT**

This Amendment to Public Facilities Fee Credit and Entitlement Fund Agreement with SP/CCI, LLC for Acquisition of Parcels APN 478-120-003 & -004 dated December 14, 2011 ("Amendment"), is entered into by between the City of Moreno Valley, a municipal corporation ("City") and SP/CCI, LLC, a California Limited Liability Company ("Developer") on this _____ day of _____, 2021.

RECITALS:

WHEREAS, City and Developer entered into a Public Facilities Fee Credit and Entitlement Fund Agreement with SP/CCI, LLC for Acquisition of Parcels APN 478-120-003 & -004 dated December 14, 2011 ("Agreement"); and

WHEREAS, pursuant to the Agreement, City and Developer agreed that the Public Facilities Fees and Entitlement Fund shall be effective for 10 years, effective from the date this agreement is fully executed or the date of escrow closing; and

WHEREAS, Developer has requested an extension in the term of the Agreement for a period of five years which City is not legally obligated to provide under the terms and conditions of the Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Recitals

The Recitals set forth above are true and correct and are hereby incorporated into this Amendment by this reference, as though set forth in full herein.

Section 2. Term Extension

The term of the Agreement shall be extended to December 14, 2026, subject to the terms and conditions of this Amendment.

Section 3. Nexus/Reasonable Relationship Challenges

As it relates to the subject Fee Credit Agreement and this Amendment, Developer consents to and waives any rights it may have now or in the future to challenge the legal validity of, the conditions or requirements set forth in this Amendment and the attached Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

Section 4. **Civil Code Section 1542 Waiver**

As it relates to the subject Fee Credit Agreement and this Amendment, Developer hereby waives any and all rights Developer or its successors and assigns may have under Article XIIC or Article XIID of the California Constitution and any and all rights Developer or its successors and assigns may have under any other applicable law to contest the fees, exactions and assessments and/or their amounts under this Amendment and the Agreement as follows:

In furtherance of the Parties' intentions, Developer with and under advice of counsel, hereby expressly waives any and all right and benefit conferred upon Developer by the provisions of Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that if known by him or her would have materially affected his or her settlement with the debtor or released party."

As it relates to the subject Fee Credit Agreement and this Amendment, Developer further expressly waives any and all rights and benefits conferred upon Developer by any provision of any other state, federal or local statute, code, ordinance or law similar to Section 1542 of the Civil Code. Developer expressly consents that the waiver of rights contained in the first paragraph shall be given full force and effect, according to the express terms and provisions of the instant waiver, to unknown and unsuspected claims, demands and causes of action, if any, arising out of or relating to the waiver of rights contained in this Amendment and the Agreement.

Initials:
Developer  _____

Section 5. **Legal Action; Attorneys' Fees**

Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy a default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto. The prevailing party in any such action shall

be entitled to its reasonable attorneys' fees and costs to be paid by the losing party.

Section 6. No Damages Relief

Notwithstanding anything else in this Amendment and the attached Agreement to the contrary, the parties acknowledge that neither would have entered into this Amendment and the Agreement had either been exposed to damage claims for any breach hereof. As such, the parties agree that in no event shall either party be entitled to recover monetary damages of any kind whatsoever (other than the recovery of costs and attorney's fees pursuant to the terms of this Amendment or applicable law) against the other for breach of this Amendment or the attached Agreement.

Section 7. Non-Liability of City's Officers and Employees

No officer or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or to its successor, or for any breach of any obligation of the terms of this Amendment or the attached Agreement.

Section 8. Notices

Any notice or communication required hereunder among the City and the Developer shall be in writing and may be given either personally or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses designated below as the party to whom notices are to be sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

To City:

City of Moreno Valley
Attention: City Manager
14177 Frederick Street
P.O. Box 88005
Moreno Valley, CA
92552-0805

To Developer:
Stowe Properties Inc.
C/O Nat S. Harty
1421 Seacrest Drive
Corona del Mar, CA 92625

Section 9. Captions and Headings

The captions and headings contained in this Amendment are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 10. Modifications and Amendments

This Amendment may be modified or amended only by a written instrument signed by both parties.

Section 11. Waiver

a. No waiver shall be binding, unless executed in writing by the party making the waiver.

b. No waiver of any provision of this Amendment or the attached Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either party to enforce any provision of this Amendment or the attached Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Amendment or the attached Agreement.

Section 12. Severability

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Amendment and the attached Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

Section 13. **Interpretation**

This Amendment and the attached Agreement shall not be interpreted against either party on the grounds that one of the parties was solely responsible for preparing it or caused it to be prepared as both parties were involved in drafting them.

Section 14. **Applicable Law**

This Amendment and the attached Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 15. **Venue**

In the event that suit is brought by either party to this Amendment or the attached Agreement, the parties agree that venue shall be exclusively vested in the State courts of the County of Riverside, California or where appropriate, in the United States District Court, Southern District of California, Riverside, California.

Section 16. **Litigation Expenses and Attorneys' Fees**

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Amendment and the attached Agreement as a result of any alleged breach of any provision of this Amendment or the attached Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 17. **Entire Agreement**

This Amendment and the attached Agreement attached hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Amendment and the attached Agreement, any prior correspondence, memoranda, warranties, representations and agreements unless otherwise provided in this Amendment or in the attached Agreement, are superseded in total by this Amendment and the Agreement attached hereto.

Section 18. **Execution in Counterparts**

This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same

instrument. Electronic signatures shall be deemed to constitute evidence of the Amendment having been executed.

Section 19. Authority to Execute Amendment

The person or persons executing this Amendment on behalf of Developer and City warrant and represent that they have the authority to execute this Amendment and the authority to bind Developer and City, as applicable, to the performance of their respective obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the dates written above.

CITY OF MORENO VALLEY


SP/CCI, LLC

Mike Lee, City Manager

By: Stowe Passco Development, LLC
Its Manager

By: Stowe Properties, Inc.
Its Manager

APPROVED AS TO CONTENT:



Nat S. Harty, President

ATTEST:

Pat Jacquez-Nares,
City Clerk

APPROVED AS TO FORM:

Steven B. Quintanilla,
Interim City Attorney