

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

Mission Springs Water District
Attn: Arden Wallum, General Manager
66575 Second Street
Desert Hot Springs, CA 92240

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

**THIRD AMENDMENT TO PUBLIC WATER SYSTEM IMPROVEMENT AND WATER
SERVICE CONNECTION FEE CREDIT/REIMBURSEMENT AGREEMENT**

This THIRD AMENDMENT TO PUBLIC WATER SYSTEM IMPROVEMENT AND WATER SERVICE CONNECTION FEE CREDIT/REIMBURSEMENT AGREEMENT (“**Third Amendment**”) is made and effective as of _____, 2021 (the “**Effective Date**”), by and between the MISSION SPRINGS WATER DISTRICT, a county water district and public agency of the State of California (“**District**”) and SKYBORNE VENTURES, LLC, a California limited liability company (“**Developer**”). District and Developer are hereinafter sometimes referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. District and Developer previously entered into that certain Public Water System Improvement and Water Service Connection Fee Credit/Reimbursement Agreement dated August 30, 2006 and recorded on October 25, 2006, as Document No. 2006-0784841 in the Official Records of Riverside County (“**Original Agreement**”), as amended by that certain First Amendment to Public Water System Improvement and Water Service Connection Fee Credit/Reimbursement Agreement dated March 27, 2007 and recorded on March 29, 2007, as Document No. 2007-0213347 in the Official Records of Riverside County (“**First Amendment**”) and as further amended by that certain Second Amendment to Public Water System Improvement and Water Service Connection Fee Credit/Reimbursement Agreement dated March 18, 2015 and was recorded on August 22, 2016, as Document No. 2016-0358292 in the Official Records of Riverside County (“**Second Amendment**”), concerning that certain real property more particularly described in Exhibit “A” attached hereto, (the “**Property**”), which is incorporated herein by this reference. The Original Agreement, collectively with the First Amendment and Second Amendment, shall be referred to as the “**Agreement.**” Capitalized terms not otherwise defined in this Third Amendment shall have the same meaning as set forth in the Agreement.

B. District and Developer desire to amend certain terms of the Agreement on the terms and conditions set forth herein in order to allow Developer to continue developing the Project and to provide for the timely and satisfactory completion of certain Improvements which are required by the Agreement and necessary to adequate water service by District for the Project.

C. This Third Amendment concerns the completion of certain public water service improvements for the Project and the Property, and more particularly is limited to the construction of Well 35-C and the Intertie to Well 34-C, and the rehabilitation of Well 34-C, all in a manner and in accordance with the time constraints set forth herein, in order to accommodate the construction of an additional one hundred and eight (108) residential units within the Project. All other terms and conditions set forth in the Agreement not addressed herein remain in full force and effect.

D. To date, District has provided sufficient water and irrigation meters for Developer to construct up to three hundred and two (302) residential units, in accordance with Section 5.1(a) of the Second Amendment.

E. District and Developer have determined that the Property will not yield wells adequate to provide water of sufficient quantity and quality to serve the Project, and that Well 36-C will likely need to be located off-site, at a location approved by the District and paid for by developer, with appropriate transmission facilities to tie in to Well 34-C and Well 35-C.

F. The terms and conditions of the Agreement notwithstanding, Developer has failed to provide the Improvements in the time, order or manner required therein, such that Well 35-C and the Intertie to Well 34-C have not been completed, and Well 34-C must be rehabilitated in order to provide domestic water service of the quality and quantity required by the Agreement. Developer now seeks District's agreement to provide sufficient water and irrigation meters for Developer to construct an additional one hundred and eight (108) residential units within the phase of the Project known as Village 2 (Hopewell).

G. Developer recognizes that District has relied on Developer's representations that it is ready, willing and able to comply with the provisions of the Agreement and this Third Amendment, and that construction of the Improvements must proceed in a timely and professional manner for the successful development of the Project. Developer further recognizes that District will be damaged to the extent of the cost of successful installation of the Improvements by Developer's failure to timely perform its obligations under the Agreement as amended herein, and that Developer's failure to comply with the provisions of this Third Amendment will result in Developer's default and District's immediate refusal to provide further water meters or connections for water service supply to the Project until such time as the Improvements have been completed to the District's satisfaction such that water service of quality and quantity adequate to supply the Project, in the time and manner required by the Agreement and this Third Amendment.

H. Developer further recognizes that District may be unable to locate or construct Well 35-C and the Intertie as currently planned and designed, and rehabilitate Well 34-C consistent with the Agreement such that they produce water of quality and quantity satisfactory to the District and adequate to provide water service for the Project, and Developer understands and agrees that it bears the risk of that failure to the ultimate success of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the approval of this Third Amendment, Developer and District agree as follows:

1. **Incorporation of Recitals.** Each of the above Recitals is incorporated herein and agreed upon by the Parties.

2. **Improvements; Water Meters.** District is willing to alter the timing and obligations for the build out of certain Improvements and to deliver water meters to the Project, upon Developer's delivery of the Well Work Deposit described in Section 3 hereinbelow, and subject to the following terms and conditions:

a. **Well 35-C and Intertie.** Section 5.1(b) of the Second Amendment is modified such that District, rather than Developer, shall, at the sole cost and expense of Developer, design, construct, equip, complete and connect (i) Well 35-C or the Alternative Well and (ii) the Intertie, consistent with the terms of Section 5.1 (b) of the Second Amendment (the "**Well 35-C Work**"). Well 35-C or the Alternative Well shall be of a quality and capacity that complies with District standards and specifications and capable of connection to Well 34-C. The risk of District's inability to achieve such standards and specifications for Well 35-C and the Intertie, in accordance with the Agreement and Section 5.1(b) of the Second Amendment, shall be borne by Developer.

b. **Well 34-C.** District shall, at the sole cost and expense of Developer, undertake and complete all work necessary to rehabilitate Well 34-C such that Well 34-C is brought back into service and can sustain production of no less than 600 gpm (the "**Well 34-C Work**"). Well 34-C shall be of a quality and capacity that complies with District standards and specifications and capable of connection through the Intertie to Well 35-C. The risk of District's inability to achieve such standards and specifications for Well 34-C, in accordance with the Agreement and Section 5.1(b) of the Second Amendment, shall be borne by Developer.

c. **Water Meters.** District's obligation to release water and irrigation meters as described in Section 5.1(b) of the Second Amendment is modified such that upon Developer's delivery of the Well Work Deposit, District agrees that it will provide sufficient water and irrigation meters for the construction of up to one hundred and eight (108) additional residential units within the phase of the Project known as Village 2 (Hopewell).

d. **Well 36-C Design.** Upon satisfactory completion of the Well 35-C Work and Well 34-C Work, Developer's acquisition of property at a location acceptable to the District and submission of complete plans and specifications for Well 36-C (the "**Well 36-C Design**") providing for the intertie connecting Well 36-C to Well 34-C and Well 35-C, such that the Improvements will provide water of adequate quality and quantity for service thereto as required by Section 5.2 of the Second Amendment, together with faithful performance and payment bonds in amounts established by District, guaranteeing the timely completion of Well 36-C and the intertie to Wells 34-C and 35-C, all to District's satisfaction and in conformance with the District's

standards and specifications, as required by Section 5.1(b) and Section 5.1(c) of the Second Amendment, District shall provide sufficient water and irrigation meters for the construction of up to one hundred and seventy eight (178) additional residential units within the phase of the Project known as Village 3. The total number of residential units provided for under the Agreement and this Third Amendment is five hundred and eighty eight (588).

3. Amendment and Restatement of Agreement. The Parties hereto agree to meet and confer, and prepare a global amendment and restatement of the Agreement, such that it accurately and concisely provides for the completion of the public water system improvements and water service connections for future development of the Project. The Parties further agree that no water meters or connections beyond those provided for in this Third Amendment will be provided by District until such time as the amendment and restatement of the Agreement has been approved.

4. Deposit. The Well 35-C Work and the Well 34-C Work shall be paid for by Developer as follows:

a. Well Work Estimate. On or before December 15, 2021, Developer shall cause to be deposited (the “**Well Work Deposit**”) with District an amount equal to the District’s preliminary estimate for the cost of the Well 35-C Work and the Well 34-C Work, attached hereto and incorporated herein as Exhibit B (the “**Well Work Estimate**”).

b. Revised Well Work Estimate – Supplemental Deposit. If at any time during design and construction thereof, the District’s estimated costs for Well 35-C Work and the Well 34-C Work exceed the Well Work Estimate, District shall deliver to Developer a statement of District’s revised estimated costs in excess of the Well Work Estimate (the “**Revised Well Work Estimate**”), together with copies of all back-up documentation therefor, and Developer shall, within thirty (30) days following Developer’s receipt thereof, cause to be deposited with District the additional amount represented by District’s Revised Well Work Estimate (the “**Supplemental Deposit**”). District may, but is not obligated to, proceed with work described in the Revised Well Work Estimate, or to continue issuing water service or construction meters, until such time as District has received the Supplemental Deposit from Developer.

c. Reallocation of Deposited Funds. Any portion of the Well Work Deposit and/or Supplemental Deposit which has not been expended by District after completion of the Well 34-C Work and the Well 35-C Work, shall be allocated to the acquisition of real property for relocation of the Well 36-C, the Well 36-C Design, the Well 36-C Improvements or for the design or construction of any Improvements in the 1630 Zone.

5. Bonds. As provided for in the Agreement, Developer is required to furnish security for its obligations under the Agreement, concerning performance of the Agreement, payment of contractors, subcontractors, and those providing labor and materials, to guaranty or warranty work and as otherwise provided in the Agreement. Pursuant to District’s agreement set forth above to construct certain Improvements, Developer’s obligation to furnish security is modified as follows:

a. Well 35-C Bond. As provided in Section 6.1 of the Second Amendment, Developer procured Ironshore Indemnity, Inc. Bond No. SUR60000011 as security for the construction,

completion and equipping of Well 35-C. On December 11, 2018, the Ironshore Bond was replaced by Lexon Insurance Company Bond No. 1161097. Upon release of the Well Work Deposit covering Well 35-C Work (including the Intertie) to District, District shall take all necessary actions to cause Lexon Insurance Company Bond No. 1161097 to be released.

b. 1530 Zone Improvements Bond. AIG Bond No. 997585 was released by District pursuant to Section 6.2 of the Second Amendment and was replaced with Ironshore Indemnity Bond No. SUR 60000013, dated January 16, 2015, in the amount of \$1,610,000.00. On December 11, 2018, the Ironshore Bond was replaced by Lexon Insurance Company Bond No. 1161098 in the same amount. Upon release of the Well Work Deposit covering the Well 35-C Work to District, District shall take all necessary actions to reduce the amount of Lexon Insurance Company Bond No. 1161098 by \$900,000.00 to reflect that District, and not Developer, will construct the Intertie.

6. Worsley Reservoir. The second sentence of Section 8 of the Second Amendment is modified to read as follows: “Developer shall be obligated to provide permanent power to the Worsley Reservoir, which is designated as item A1 on Exhibit “B” of the Original Agreement, prior to District allowing water connection to the first residential unit in the 1630 zone, but no later than October 31, 2025.”

7. Severability. The provisions of this Third Amendment are severable. If any portion, paragraph, sentence or clause of this Third Amendment is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

8. Headings. The headings of this Third Amendment are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction or meaning of any provisions of this Third Amendment.

9. Counterparts. This Third Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be an original, and each such counterpart shall, when combined with all other such counterparts, constitute one agreement binding on the parties hereto.

10. Survival of Agreement. Except as expressly modified, all terms and conditions of the Agreement shall remain and apply to Developer, District, the Project and Improvements required therein. Capitalized terms not specifically defined in this Third Amendment shall have the meanings attributed to them in the Agreement.

11. Binding on Successors. This Third Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest and assignees.

12. Recordation. This Third Amendment shall be recorded in the Official Records of Riverside County, State of California.

13. Authority. The signatories to this Third Amendment hereby represent and warrant that they have the authority to enter into this Third Amendment on behalf of the entities for which they sign below. Attached collectively hereto as Exhibit “C” are resolutions from Lansing Strategic Management, LLC; Strategic Land Partners, LP; JK-Riverwoods, LLC and Skyborne Ventures, LLC authorizing those individuals signing below to execute contracts on behalf of their respective entities. Exhibit “C_” is incorporated herein by this reference.

14. California Law: This Third Amendment is entered into and is to be performed in Riverside County, California and shall be interpreted pursuant to California law. Venue in any litigation shall be in Riverside County, California.

15. Attorneys’ Fees and Costs. In the event arbitration or suit are brought to interpret or enforce the terms of the Agreement and/or this Third Amendment, the prevailing party shall be entitled to its litigation costs and reasonable attorneys’ fees. Fees and costs shall also be awarded to prevailing party in any appellate or writ proceedings.

IN WITNESS WHEREOF, the Parties have executed this Third Amendment as of the day and year first above written.

**DISTRICT:
MISSION SPRINGS WATER DISTRICT**

**DEVELOPER:
SKYBORNE VENTURES, LLC,
a California limited liability company**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**ACKNOWLEDGMENT BY DISTRICT
OF THIRD AMENDMENT TO PUBLIC WATER SYSTEM IMPROVEMENT AND WATER
SERVICE CONNECTION FEE CREDIT / REIMBURSEMENT AGREEMENT**

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2021, before me, _____, a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the persons(s), or the entity upon behalf of which the person(s) acted, executed said instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**ACKNOWLEDGMENT BY DEVELOPER
OF THIRD AMENDMENT TO PUBLIC WATER SYSTEM IMPROVEMENT AND WATER
SERVICE CONNECTION FEE CREDIT / REIMBURSEMENT AGREEMENT**

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____, 2021, before me, _____, a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the persons(s), or the entity upon behalf of which the person(s) acted, executed said instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit "A"
[Description of the Property and the Project]

**DEVELOPER TO PROVIDE REVISED PROPERTY DESCRIPTION, EXCLUDING LOTS
SOLD TO THIRD PARTIES.**

[to be inserted prior to recordation]

Exhibit "B"
WELL WORK ESTIMATE

<u>Description of Work</u>	<u>Deposit Amount</u>
Well 34-C Rehabilitation	\$ 475,000.00
Well 35-C Completion	2,700,000.00
18-inch Intertie Line	1,100,000.00
 <u>Total Deposit</u>	
 <u>\$4,275,000.00</u>	

Exhibit “C”
[Developer Resolutions of Authority]

DEVELOPER TO PROVIDE