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## FORM OF DEVELOPMENT AND REIMBURSEMENT AGREEMENT

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LOMAS ENCANTADAS/ENCHANTED HILLS PUBLIC IMPROVEMENT DISTRICT  
DEVELOPMENT AND REIMBURSEMENT AGREEMENT  
BY AND BETWEEN THE CITY OF RIO RANCHO, NEW MEXICO,  
LOMAS ENCANTADAS/ENCHANTED HILLS PUBLIC IMPROVEMENT DISTRICT, AND  
AMREP SOUTHWEST INC.

THIS PUBLIC IMPROVEMENT DISTRICT DEVELOPMENT AND REIMBURSEMENT AGREEMENT (the "Agreement") is entered into as of the Effective Date (as defined below) by and among the CITY OF RIO RANCHO, NEW MEXICO, a charter municipality (the "City"), LOMAS ENCANTADAS/ENCHANTED HILLS PUBLIC IMPROVEMENT DISTRICT, a political subdivision of the State of New Mexico (the "District"), and AMREP SOUTHWEST INC., a New Mexico corporation, (the "Developer"), in connection with the facts and circumstances recited below.

### RECITALS

A. The Developer owns (or has consent from the owners with respect to) approximately 320 developable acres of land within the Lomas Encantadas Subdivision and 37 acres of developable land within the Enchanted Hills Subdivision. All of the approximately 357 acres of developable land is wholly located within the corporate boundaries of the City, and identified, collectively, by the legal descriptions provided in Exhibit A to this Agreement (the "Land"); provided that, if any lot within the real property described on Exhibit A is conveyed to a resident qualified elector or person other than the Developer or Pulte Homes of New Mexico, Inc., a Michigan corporation ("Pulte"), prior to the formation of the District such lot may in the Developer's discretion be excluded from the District and the Land. The Land comprises the real property included in the District and is subject to the provisions of the Public Improvement District Formation Resolution Enactment No. \_\_\_\_\_ (the "Formation Resolution"), attached to this Agreement as Exhibit B.

B. The District has been formed for the purpose of financing a portion of the costs of the improvements associated with the District (such improvements, the "PID Eligible Infrastructure Improvements"), including, but not limited to, on-site and off-site roads, sanitary sewer, water, drainage improvements, park and trail improvements, landscaping, grading, and various soft costs, which soft costs may include but are not limited to planning, design, engineering, construction, testing, construction management, inspection, fees, gross receipts taxes, contingencies, and incidental or necessary expenses or expenditures for the foregoing improvements constructed and installed by the Developer to serve the Land, in conformity with all relevant plans, specifications, requirements and standards of the City and in accordance with applicable plats, site development plans, and subdivision improvements agreements. Incidental or necessary expenses or expenditures include, but are not limited to, engineering expenses, legal expenses, printing, posting, publication and mailing expenses, fees and expenses incurred in making surveys, studies and estimates of costs, testing expenses, construction management expenses, and such other costs and expenses eligible for payment from the proceeds of the District Financing (defined below) under the Act. Additionally, Developer expects to finance the cost of certain other infrastructure improvements constructed on and for the benefit of the Land

(the "Developer Funded Infrastructure Improvements"). Developer Funded Infrastructure Improvements will be financed by the Developer without reimbursement from the District.

C. The Public Improvement District Act, NMSA 1978, §§ 5-11-1 through 27 (2001, as amended) (the "Act") and the City of Rio Rancho, New Mexico Public Improvement Development District Guidelines and Application Procedures (the "PID Policy") provide that the owner or owners of property to be included in a public improvement district, the municipality or county in which the district is located and the public improvement district may enter into a development agreement to establish the obligations of the owner or developer, the county or municipality and the public improvement district concerning the zoning, subdivision, improvement, impact fees, financial responsibilities, and other matters relating to the development, improvement and use of real property within the district.

D. The Developer has submitted to the City a petition and application for the formation of the District pursuant to NMSA 1978, § 5-11-3 (2003) and Section 2-10-4 of the PID Policy (the "Petition"), which includes the Land that is described in a "Map of the District" and more particularly identified in the legal descriptions attached as Tab 4 to the Petition. (The "Map of the District" is attached as Tab 5 of the Petition and as Exhibit A to the "District General Plan" (the "DGP"). The Developer warrants that it is the sole owner of the Land (or has consent from all other owners thereof) and that its consent is sufficient for the Developer to represent in the Petition that 100% of the owners of the Land have consented to the formation of the District. The Developer certifies that no formation election is required pursuant to NMSA 1978, § 5-11-7 (2001).

E. The City and the Developer intend that the Developer will construct the PID Eligible Infrastructure Improvements, as more fully described in the "Public Improvement Locations" (attached to the DGP as Exhibit C).

F. The City and the Developer intend that the PID Eligible Infrastructure Improvements shall be designed and constructed according to all applicable City standards and requirements, shall be suitable for dedication to the City upon completion and shall be acquired by, dedicated, to and conveyed to the City and otherwise be owned and operated by the City and applicable homeowner's association as provided in Section 7 of this Agreement. The City and the Developer intend that this Agreement shall be an agreement or condition pertaining to the District, as contemplated by Section 2-10-6(E) of the PID Policy, so that any existing agreements with the Developer or other developers and landowners regarding the provision of PID Eligible Infrastructure Improvements proposed to be furnished to the City shall be deemed amended to reflect the terms of this Agreement.

G. The City and the Developer anticipate that a portion of the PID Eligible Infrastructure Improvements (the "PID Funded Infrastructure Improvements") along with formation and operating costs of the District will be initially paid by the Developer and reimbursed by the District to the Developer by the District's issuance of reimbursement certificates (the "Reimbursement Certificates" or "District Financing"), payable by the imposition of a special levy upon the Land (the "District Special Levy"). The Reimbursement Certificates shall not be offered, sold, traded or transferred in the secondary market unless the District and the City receive an opinion of nationally recognized bond counsel that no state or federal securities laws will be violated by such offer, sale, trade or transfer. The Developer may

request the District to issue the Reimbursement Certificates as tax-exempt financing if the Developer delivers to the District and the City an opinion of nationally recognized bond counsel that the tax-exemption complies with all state and federal tax and securities laws and Developer pays all costs associated with obtaining such tax exemption. The City and the Developer anticipate that the District will be responsible for imposing the District Special Levy as provided in the Act, and that the cost of administering the District Special Levy, including any required reimbursements to the Sandoval County Assessor and Sandoval County Treasurer, will be an operating cost of the District, which operating cost may be paid by the Developer, upon Developer's election, and will be included as a PID eligible expense under the Act, included in the definition of "PID Eligible Infrastructure Improvements", and included in the PID Eligible Infrastructure Improvements to be reimbursed to Developer with the next issued Reimbursement Certificate.

H. Reimbursement Certificates shall carry a fixed rate of interest and the District Special Levy amounts remitted to the Developer will be first applied to the earliest issued Reimbursement Certificate. Developer, the District and the City understand and agree that any Reimbursement Certificates and amount remaining unpaid after every lot in the District has paid its Reimbursement Certificates Requirement for 30 years will be forgiven by Developer. Any District Special Levy amounts in excess of the debt service payments on the District Financing will be used to finance the costs associated with formation of the District, finance the regular operating cost of the District, and prepay any debt service payments on the District Financing.

NOW, THEREFORE, in consideration of the mutual covenants of the parties set forth in this Agreement, and for other valuable consideration, the City, the District, and the Developer agree as follows:

#### *AGREEMENT*

1. Effective Date of Agreement. District Formation is a condition precedent to the effectiveness of this Agreement.

A. Effective Date. This Agreement shall become effective upon formation of the District pursuant to the Act.

B. Conditions Precedent. This Agreement is conditioned upon (i) the formation of the District as provided in the Act and (ii) approval of this Agreement by the City Council. In the event the District is not formed or such approval is not obtained, this Agreement shall not take effect and no party shall have any obligation hereunder. Upon formation of the District, the District shall automatically be deemed to be a party under this Agreement, the District shall be bound by the obligations set forth herein, the District shall execute and deliver this Agreement, and this Agreement shall be recorded pursuant to Section 9(H) hereof.

C. District is a Party to this Agreement. Upon formation of the District, the District shall become a party to this Agreement and shall be bound to the obligations set forth herein.

D. No Net Cost to City. All costs and expenses incurred by the City pursuant to this Agreement in connection with the application, formation and operation of the District

shall be paid by the Developer through advance payments pursuant to the PID Policy, the receipt of which is hereby acknowledged; provided that the Developer may be reimbursed for all or a portion of such expenses through the District Special Levy by application for reimbursement to the PID Administrator, to the extent allowable by applicable state and federal law.

2. Boundaries of District. The District shall include the real property described in Tab 4 to the Petition; provided that, if any lot within the real property described on Exhibit A is conveyed to a resident qualified elector or person other than the Developer or Pulte, such lot shall be excluded from the District. The boundaries of the District may be amended as provided in NMSA 1978, § 5-11-13 (2001).

3. District Acquisition of PID Eligible Infrastructure Improvements Completed by the Developer. The District shall issue a Reimbursement Certificate for the applicable PID Eligible Infrastructure Improvements within thirty (30) days after the District receives a Disbursement Request (as defined below) from the Developer for such infrastructure. Concurrent with the issuance of applicable District Financing, and subject to the terms of Section 7 of this Agreement, the Developer shall convey completed PID Eligible Infrastructure Improvements to the City by bill of sale or other appropriate instrument of conveyance. In addition, within sixty (60) days after the formation of the District and the organization of the District Board, the Developer may submit a Disbursement Request to the District for reimbursement of those formation expenses actually incurred by the Developer and which are PID eligible expenses under the Act (the "Formation Expenses"), and all Formation Expenses shall be included in the definition of "PID Eligible Infrastructure Improvements." The District shall issue a Reimbursement Certificate to the Developer for the Formation Expenses within thirty (30) days after receiving the Developer's written request for such Formation Expenses together with invoices or other satisfactory evidence that such expenses have been incurred by the Developer.

A. Acceptance by City. The City shall accept conveyance of PID Eligible Infrastructure Improvements upon written certification and warranty by the Developer conveying such improvements (the "Developer Certificate"), as follows:

(i) The PID Eligible Infrastructure Improvements have been constructed in substantial compliance with plans and specifications approved by the City in a good and workmanlike manner by well-trained adequately supervised workers, and in compliance with all governmental and quasi-governmental regulations, laws, and building codes;

(ii) The PID Eligible Infrastructure Improvements have been inspected, approved for dedication to, and are expected to be accepted by the City; and

(iii) The costs of constructing the PID Funded Infrastructure Improvements actually have been incurred by the Developer or its affiliates, together with reasonable documentation of those costs.

B. Deposits to and Application of Project Fund. Simultaneously with the formation of the District, a PID administrator acceptable to the City and approved by the Developer shall be appointed (the "PID Administrator"). The PID Administrator shall establish a "Project Fund" and shall deposit to the credit of the "Project Fund", all the District Special

Levies collected by the District during each tax collection cycle (the "Deposit Cycle"). The PID Administrator shall first pay (or fund a reasonable reserve for payment thereof) the operating costs of the District and then shall pay the Developer (or other party entitled to receive payment of the applicable Reimbursement Certificate) amounts due under the Reimbursement Certificate(s) in accordance with Section 4 below. The District shall make two (2) payments annually from the Project Fund on January 15 and July 15 of each year. From and after the date the first Reimbursement Certificate is issued by the District, all moneys remaining in the Project Fund after payment of District operating costs shall be remitted to the Developer and applied to the reimbursement obligation evidenced by outstanding Reimbursement Certificates issued by the District (the "Reimbursement Servicing"). The Reimbursement Servicing shall first be applied to the earliest issued and unpaid Reimbursement Certificate.

(i) Requests for disbursement from the Project Fund shall be made substantially as follows: a disbursement request (the "Disbursement Request") in the form attached to the Reimbursement Certificate as Exhibit C, (a) signed by a duly authorized representative of the Developer and (b) for Disbursement Requests other than for Formation Expenses, an "Authorized Officer" of the District certifying that the work to which the payment relates has been accomplished in a manner satisfactory to the District shall be presented to the PID Administrator.

(ii) The authorized representatives of the District shall have the right, upon ten (10) business days prior written notice to the Developer and during normal business hours, to review all books and records of the Developer sufficient to demonstrate costs and expenses incurred by the Developer in construction of the PID Funded Infrastructure Improvements. Any copies, costs, or expenses incurred pursuant to this section will be at the sole cost of the District.

C. Completion and Acceptance. Upon completion of PID Eligible Infrastructure Improvements, the Developer shall submit to the City, on behalf of the District, one or more final acceptance packages (each of which shall be a "Final Acceptance Package"). Each Final Acceptance Package shall include a Developer Certificate (as defined herein below) for completed PID Eligible Infrastructure Improvements, a bill of sale for completed PID Eligible Infrastructure Improvements, Developer's Disbursement Request, form of Reimbursement Certificate to be issued by the District, and any other documentation supporting the conveyance, acceptance or reimbursement of the completed PID Eligible Infrastructure Improvements. The City shall review the Final Acceptance Package pertaining to the PID Eligible Infrastructure Improvements for completeness and accuracy. Such review shall be completed in a timely fashion and the approval and acceptance of the Final Acceptance Package shall not be unreasonably withheld, conditioned or delayed. Upon approval of the Final Acceptance Package, the City shall issue a "Certificate of Completion and Acceptance" for all or a portion of the PID Eligible Infrastructure Improvements, which shall then be conveyed and dedicated by the Developer to the City as provided in Section 7 of this Agreement.

D. Construction Services. The Developer shall obtain engineering, design and construction services for the PID Funded Infrastructure Improvements. All contractors and subcontractors shall agree to comply with the requirements of the City's Development Services Department.

E. Projected Costs and Timing of Construction. The estimated cost (including planning, design, engineering, construction, testing, surveying, construction management, inspection, fees, gross receipts taxes, and contingencies) of constructing the PID Eligible Infrastructure Improvements, as identified in Tables 1 – 3 of the DGP, is \$43,087,598, which includes \$18,510,933 in costs associated with the PID Funded Infrastructure Improvements. The construction of the PID Eligible Infrastructure Improvements, and all other improvements of the Land, is expected to be completed in multiple phases. The first Reimbursement Certificate (following the Reimbursement Certificate for the Formation Expenses) will be issued simultaneously with the City's acquisition of the PID Eligible Infrastructure Improvements and each subsequent Reimbursement Certificate will be issued as the City acquires the next portion of PID Eligible Infrastructure Improvements. The estimated phasing schedule is identified in §III(B) of the Feasibility Study and consists of approximately 6 phases completed over 14 years. Included in each series of District Financing will be all costs associated with the PID Funded Infrastructure Improvements dedicated to the City or otherwise eligible for reimbursement through District Financing that have not been included in a previous series of District Financing.

F. Indemnification. To the extent not prohibited by applicable law, the Developer's indemnity obligations contained in this Agreement shall be limited to direct and actual third party costs and expenses incurred by the City during the first six (6) years of the District's existence. To the extent allowed by applicable law, the District shall reimburse the Developer for any costs or expenses incurred pursuant to any indemnification that was not a result of the Developer's intentional misconduct or gross negligence.

(i) Indemnification Regarding Public Infrastructure. Until the PID Eligible Infrastructure Improvements are accepted by the City, the Developer shall be solely responsible for maintaining the premises upon which the PID Eligible Infrastructure Improvements are being constructed in a safe condition. The Developer, shall defend, indemnify and hold harmless the City and its officials, agents and employees from those claims, actions, suits or other proceedings arising from or out of the negligent acts or failures to act of the Developer, its agents, representatives, contractors or subcontractors or arising from the failure of the Developer, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Developer herein. The indemnifications required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage, and the Developer shall (a) obtain one year construction warranties in connection with PID Funded Infrastructure Improvements, and (b) cause the City to be included as an additional insured or beneficiary of such warranties. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

(ii) Indemnification Regarding Petition. Pursuant to the PID Policy, the Developer shall indemnify the City and their agents and employees and shall hold the City and their agents, officers and employees harmless from and against any and all liabilities, claims, costs and expenses including reasonable attorneys' fees, incurred in any challenge or proceeding relevant to the formation, operation, and administration of the District, the offer and sale of District Financing, the levying by the District of any tax, assessment, special levy or charge in connection with the PID and District Financing.

(iii) Indemnification Regarding Real Property. Pursuant to Section 2-

10-7(I) of the PID Policy, the Developer shall deliver to the City an independent environmental report or assessment of any real property which is to be dedicated to or otherwise owned, leased or operated by the City and a proposed form of indemnity agreement with respect to all environmental law liability.

4. District's Agreement to Reimburse Developer for PID Funded Infrastructure Improvements. The District shall issue District Financing in one or more Reimbursement Certificates for the purpose of reimbursing the Developer for the PID Funded Infrastructure Improvements. The Developer currently estimates that the maximum aggregate principal amount of the PID Funded Infrastructure Improvements is \$18,510,933. Under no circumstances will the City be obligated for the reimbursement obligation or payment of financial obligations of the District. Except for the District Financing, the District shall not issue any debt instruments, notes or other financing instruments without the written consent of the Developer.

A. District's Agreement to Reimburse Developer. The District agrees to reimburse the Developer for those PID Eligible Infrastructure Improvement expenses actually expended by Developer. The District shall issue Reimbursement Certificates to Developer concurrently with the District's acquisition of PID Eligible Infrastructure Improvements. The Reimbursement Certificates shall be in substantial conformity with Exhibit C to this Development Agreement and will bear interest at the Wall Street Journal Prime Rate existing thirty (30) days prior to the date such Reimbursement Certificate is issued (or if there is no Wall Street Journal Prime Rate available after reasonable inquiry by the District, at the then-equivalent variable interest rate generally used by national banking institutions, but in no event shall such substitute rate be less than three percent (3.0%), and if there is no such substitute rate available after reasonable inquiry by the District, at three percent (3.0%)), plus one percent (1%). The interest rate accruing may also be referred to as "Prime Plus One". The Prime Plus One rate will be a fixed rate of interest. Interest will continue to accrue on the Reimbursement Certificate until the total amount due under the Reimbursement Certificate is paid in full. Payments made by the District under this Agreement and the Reimbursement Certificates will be first applied to the earliest issued and outstanding Reimbursement Certificate until that Reimbursement Certificate is paid in full. Notwithstanding, any amounts remaining unpaid on Reimbursement Certificates after every lot in the District has paid its Reimbursement Certificates Requirement for 30 years will be forgiven by Developer as further described in Section 4(B). Payments under any Reimbursement Certificate shall be applied first to accrued but unpaid interest, second to outstanding principal and third to any remaining amounts due under the Reimbursement Certificate.

B. District Special Levy. Unless otherwise approved in writing by the Developer, the District shall impose the then applicable maximum allowable District Special Levy on each Developed Platted Property within the Land and the revenues of the District Special Levy shall be used to reimburse the Developer for PID Eligible Infrastructure Improvements, as provided in the Act, and Operating Expenses. The Developer may reduce the District Special Levy with respect to any Final Plat, without City or District approval, by notifying the PID Administrator and District Board of the reduction in the District Special Levy. The purpose of the reimbursement shall be to defray the cost of constructing the PID Funded Infrastructure Improvements and for such other purposes authorized under the Act. Except as provided for herein and in the Rate and Method of Apportionment of Special Levy attached as Exhibit D of the DGP, each Developed Platted Property within the District shall be levied by the

maximum allowable District Special Levy for each Fiscal Year beginning in the first Fiscal Year after a home on the Developed Platted Property receives a certificate of occupancy from the City (the "Maximum Annual Special Levy"). Unless reduced by the Developer with regard to a specific Final Plat as stated above, the Maximum Annual Special Levy in any given year shall be the same amount for each Developed Platted Property within said Final Plat which amount shall be computed as stated in Section C.1 of the Rate and Method of Special Levy Apportionment attached to the General Plan as Exhibit D; provided that, (1) the Maximum Annual Special Levy shall never exceed the maximum amounts identified below in this Paragraph 4(B); and (2) the Reimbursement Certificates Requirement shall not be imposed on any Developed Platted Property for more than 30 years after the date of imposition of the first Maximum Annual Special Levy on such Developed Platted Property. After the Reimbursement Certificates Requirement has been assessed for 30 years on a particular Developed Platted Property, the District Special Levy for such Developed Platted Property shall decrease to only that portion of the District Special Levy equal to such Developed Platted Property's pro rata amount of Operating Expenses (the "Operating Requirement"). Each Developed Platted Property's "pro rata amount of Operating Expenses" is equal to the estimated total amount of Operating Expenses divided by the aggregate number of Developed Platted Properties subject to the Reimbursement Certificates Requirement or the Operating Requirement. The terms "Developed Platted Property", "Reimbursement Certificates Requirement", "Operating Expenses", "Fiscal Year" and "Final Plat" used in this Agreement shall have the same meaning as such terms are defined in the Rate and Method of Special Levy Apportionment attached to the General Plan as Exhibit D. The Operating Requirement shall be assessed until the date the District terminates.

As described in Part VII and Exhibit D of the DGP, the District Special Levy shall be primarily apportioned based on lot density within each development unit of the Land. The proceeds of the District Special Levy shall be used to pay principal and interest on the District Financing and to pay expenses pertaining to the billing, collection and administration of such District Financing.

Exhibit C of the District Feasibility Study sets forth the estimated maximum annual special levy for the District. As set forth in Exhibit C of the District Feasibility Study, the anticipated maximum annual special levy per dwelling unit is not expected to exceed: (i) \$1,779 per year for any residential property with less than two units per acre; (ii) \$1,698 per year for any residential property with two to four units per acre; (iii) \$1,617 per year for any residential property with four to six units per acre; (iv) \$910 per year for any lot within Lomas Encantadas Unit 2D; and (v) \$1,617 per year for any lot within the Enchanted Hills Subdivision of the District. The District does not intend to increase the maximum annual special levy described above. However, the Act permits the anticipated maximum special levy amounts set forth to be subject to further increases, which may be imposed by the District's governing body pursuant to NMSA 1978, §5-11-20(H)(1) (2001) and the Rate and Method of Apportionment of Special Levy attached as Exhibit D of the DGP. Commencing with Fiscal Year 2016-17, the maximum amount of special levy shall be increased each year, for a period of thirty (30) years, by one percent (1%) of the prior year's maximum amount of special levy. In addition, the annual special levy collected from each lot may be increased by up to 10% per year due to delinquency or default by the owner of any lot subject to the District Special Levy.

B. District Procedures for Foreclosure in Connection with Delinquent Special Levies. Pursuant to NMSA 1978, § 5-11-20(G) (2001) and NMSA 1978, § 5-11-23(F) (2001) and Section (4) (P) of the Formation Resolution, the District shall establish foreclosure and

redemption procedures for delinquent special levies in substantially the following form:

(i) The District may institute foreclosure proceedings against a delinquent special levy after six months following written notice of the delinquency to the owner of the real property to which the delinquency applies. Delinquencies shall be determined as follows:

- a. On or before December 15 and May 15 of each year in which the Special Levy is in effect, the District Treasurer shall review the public records of Sandoval County relating to the collection of the District Special Levy in order to identify the real property to which any District Special Levy delinquency applies.
- b. Within 60 days after identifying delinquencies in payment of the District Special Levy in each year in which the District Special Levy is in effect, the District shall provide written notice of delinquency ("Notice") to the owner of any parcel determined to be delinquent, which Notice shall state (1) the amount of the delinquency as of the date of the Notice, (2) that the delinquency, including applicable interest and penalties, must be cured within 180 days following the date of the Notice (the "Notice Date"), and (3) if the delinquency is not cured within that 180-day period, the District or its designee shall have the power to commence foreclosure proceedings with respect to the real property to which the delinquency applies.
- c. Not earlier than 15 days after the expiration of the 180-day period provided in a Notice, the District shall have the power to institute foreclosure proceedings with respect to all parcels or tracts for which a Notice has been provided.

(ii) Any delinquent District Special Levy shall be foreclosed in the manner provided by law for the foreclosure of mortgages on real estate.

(iii) In any action seeking the foreclosure of a special levy lien after special levy financing has been issued, if there is no other purchaser for the tract of land having a delinquent District Special Levy, the District or the trustee of the funds from which the special levy financing are to be paid, may:

- a. Purchase the tract or parcel sold at the foreclosure sale; and
- b. Bid, in lieu of cash, the amount of the special levy, interest, penalties, attorneys' fees, and costs found by the court to be due and payable under the District board of directors' resolution and associated notice documents filed for record in the Sandoval County Clerk's Office, Sandoval County, New Mexico, creating the lien and any cost taxed by the

court in the foreclosure proceedings against the property ordered sold.

- c. Upon the purchase of the tract or parcel, title to the tract or parcel of land, subject to the right of redemption provided by paragraph (vi) of this section, vests in the trustee of the fund from which the special levy financing is payable.

(iv) No real property shall be sold to satisfy a delinquent assessment until at least fifteen days after the date of the order, judgment or decree of the court, within which time the owner of the tract or parcel of land may pay off the decree and avoid the sale.

(v) After the expiration of the fifteen-day period, the property may be sold at a public or private sale subject to the right of redemption.

(vi) Any property sold under any order, judgment, or decree of court to satisfy the special levy lien may be redeemed at any time within one year, pursuant to NMSA § 3-33-30, or as otherwise provided by statute, of the date of sale by the owner or mortgage holder or other person having an interest, or their assigns, by repaying to the purchaser or his assign the amount paid plus interest at the maximum amount of judgment interest allowed by New Mexico law from the date of purchase until paid in full. The proceeds of the sale of the foreclosed tract or parcel of land at either a public or private sale shall be applied as follows:

- a. First, to the payment of costs in giving notice of the sale and of conducting the sale;
- b. Second, to costs and fees taxed against the tract or parcel of land in the foreclosure proceedings;
- c. Third, on a pro rata basis, to the indebtedness claimed under the special levy lien and any other lien on the property that has a priority coequal to the special levy lien;
- d. Fourth, after all costs, liens, assessments, and taxes are paid, to the former owner, mortgage holder or other parties having an interest in the tract or parcel, upon the foregoing person's providing satisfactory proof to the court of the interest and upon approval of the court.

(vii) Receipts for the satisfaction of the indebtedness claimed under the special levy lien shall be paid into the proper District fund for payment of the District Financing, as well as costs of collection and other administrative expenses of the District.

(viii) No public rights of way or public property shall be subject to foreclosure pursuant to this Agreement.

D. Plan of Finance. The District shall implement the Plan of Finance attached to this Agreement as Exhibit D in accordance with the Formation Resolution.

5. District Levy. As identified in Part VI of the of the District Feasibility Study, the following charges are included in the annual District Special Levy within the District: (i) a Sandoval County tax collection fee that will not exceed two percent (2.00%) of the annual special levy amount; and (ii) the cost of District administration, which is estimated not to initially exceed \$56,500 in Fiscal Year 2016-2017.

6. District Governance. The District's governing body shall be composed of a board of directors selected as follows: two City Council nominees, which members shall initially be Keith Riesberg and Dan Olsen; two nominees of the Developer, which members shall initially be Louie Maldonado and Christopher Vitale; and one member nominated collectively by the City and the Developer, which member shall initially be Carey Plant. Within six years following the date of formation of the District, the District shall hold an election to select a new slate of directors for the District's governing body. Prior to the end of the initial six year period of the District, if any of the City Council nominees shall resign or otherwise cease to act as directors of the District, the City Council shall have the sole right to nominate their replacements for the remaining term. Prior to the end of the initial six year period of the District, if any of the Developer nominees shall resign or otherwise cease to act as directors of the District, the Developer shall have the right to nominate their replacements for the remaining term subject to the City's right to approve such nominees in the City's reasonable discretion. Prior to the end of the initial six year period of the District, if the joint nominee shall resign or otherwise cease to act as a director of the District, the City Council and the Developer shall jointly nominate the replacement for the remaining term. In each case, such nominee shall be appointed to the District's board of directors by the remaining members of the District's board of directors.

7. Dedication, Operation, and Maintenance of Improvements. Upon the City's issuance of a certificate of completion and acceptance, the Developer will convey the PID Eligible Infrastructure Improvements to the City. The City shall accept conveyance of PID Eligible Infrastructure Improvements upon written certification and warranty by the Developer that constructed such improvements, as follows: (i) the PID Eligible Infrastructure Improvements have been constructed in substantial compliance with plans and specifications approved by the City in a good and workmanlike manner by well-trained adequately supervised workers, and in compliance with all current governmental and quasi-governmental regulations, laws, and building codes; and (ii) the PID Eligible Infrastructure Improvements have been inspected, approved for dedication to, and will be accepted by the City. The following general provisions shall govern the dedication to the City and operation by the City of PID Eligible Infrastructure Improvements:

A. The Developer shall convey to the City the PID Eligible Infrastructure Improvements within the District, free and clear of all liens, claims and encumbrances (except those non-monetary liens and encumbrances that are required by the City or other public agency or that would not materially interfere with the intended use of the PID Eligible Infrastructure Improvements as reasonably determined by City). The conveyances shall be by bill of sale or other appropriate instrument of conveyance.

B. Upon the issuance of a certificate of completion and acceptance, the City or appropriate homeowner's association shall accept, own, operate and maintain the PID Eligible Infrastructure Improvements. The District will not fund any operations and maintenance prior to or after the dedication of improvements. Pre-dedication operation and maintenance costs, if any,

will be funded by the Developer. The operation and maintenance of the parks, trails, and landscaping within the District, from and after conveyance to the City, will be performed by the appropriate homeowner's association. The operation and maintenance of the remaining PID Eligible Infrastructure Improvements, from and after conveyance to the City, will be performed and paid for by the City or appropriate homeowner's association, as applicable.

8. Default; Termination; Annual Review.

A. Defaults. Any failure by any party to perform any material term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within thirty (30) days following written notice, and the failing party diligently prosecutes the cure to completion, then the alleged failure shall be deemed to be cured within such thirty (30) day period and shall not constitute a default under this Agreement. Upon the occurrence of a default under this Agreement, the non-defaulting party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing party shall take no further action.

B. Term of Agreement. The term of this Agreement shall commence upon the execution of this Agreement by all parties and shall extend until the later of (i) the date on which all Operating Expenses of the District are fully paid or repaid; (ii) the date on which all such Developed Platter Property has paid the Reimbursement Certificates Requirement for thirty (30) years; (iii) the date the Developer confirms in writing to the District that no further PID Eligible Infrastructure Improvements remain unreimbursed and/or are expected to be incurred; or (iv) the date of mutual consent of the parties to termination. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect.

9. Limitation of Liability. Notwithstanding anything to the contrary in this Agreement or the Petition, the liability of Developer arising out of or related to this Agreement, the Petition or otherwise, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, shall be limited to direct and actual third party damages only. Notwithstanding anything to the contrary in this Agreement or the Petition, in no event shall Developer be liable under this Agreement, the Petition or otherwise for claims, actions, suits or other proceedings arising out of or resulting from Developer, any of its affiliates or any of their agents, officers or employees adhering to instructions provided by the City, the District or any of their agents, officers or employees, the negligence, acts or failures to act of the City, the District or any of their agents, officers or employees or for any consequential, incidental, indirect, statutory, exemplary, special or punitive damages, including any damages for business interruption, diminution in value or loss of use, data, revenue or profit, whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not Developer, any of its affiliates or any of their agents, officers or employees has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose. In no event shall the aggregate liability of Developer arising out of or related to this Agreement, the Petition or otherwise,

whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total amount paid to Developer pursuant to this Agreement prior to the event giving rise to the claim, action, suit or other proceeding.

9. Other General Provisions.

A. Covenants Running with the Land. The provisions of this Agreement constitute covenants running with the Land and are binding upon and inure to the benefit of the parties hereto, their successors and assigns.

B. Notice. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the parties at the following addresses:

If to the City:

City of Rio Rancho, New Mexico  
3200 Civic Center Circle NE  
Rio Rancho, NM 87144  
Attention: Keith Riesberg City Manager

If to the District:

Lomas Encantadas/ Enchanted Hills Public Improvement District  
c/o Chairperson, District Board  
3200 Civic Center Circle NE  
Rio Rancho, NM 87144  
Attention: \_\_\_\_\_

If to the Developer:

AMREP Southwest Inc.  
333 Rio Rancho Dr, Suite 400  
Rio Rancho, NM 87124  
Attention: President

With a copy to:

Matthew Spangler, Esq.  
Lastrapes, Spangler & Pacheco, P.A.  
333 Rio Rancho Dr, Suite 401  
Rio Rancho, NM 87124

For purposes of giving formal written notice, including notice of change of address, the addresses are as set forth in this paragraph unless changed by written notice.

C. Attorney's Fees. Except where expressly prohibited by ordinance or statute, if a suit, action, arbitration or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Development Agreement or to interpret or enforce any rights under this Development Agreement, if successful, the Developer is entitled to recover reasonable attorneys' fees from the District, in addition to any other available remedy at law.

D. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

E. Changes to Agreement. Changes to this Agreement are not binding unless made writing and signed by all parties.

F. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is capable of completion.

G. Assignment. This Agreement will not be assigned without the prior written consent of the parties; provided that the Developer may assign its interest in any or all District Financing in the Developer's sole discretion.

H. Recitals. The recitals set forth above are a material part of this Agreement and are incorporated by reference.

I. Recording. This Agreement shall be filed for record in the Sandoval County Clerk's Office, Sandoval County, New Mexico.

J. Governing Law. This Agreement is governed by and is to be construed in accordance with the law of New Mexico.

K. Audit. The City shall have the right to audit all expenditures of the District and expenditures of the Developer in connection with community facilities or public improvements to be dedicated to the City and which are PID Eligible Infrastructure Improvements, at no cost to the City, through an accounting firm approved by the City Treasurer. Any copies, costs, or expenses incurred by Developer or its affiliates pursuant to this section will be at the sole cost of the District.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its corporate name and the seal of the City affixed and attested by its duly authorized officers; the District has executed this Agreement in its corporate name and attested by its duly authorized officer; and the Developer has executed this Agreement in its respective corporate name and, as applicable, attested by its respective duly authorized officers. All of the above are effective as of \_\_\_\_\_, 2016.

CITY OF RIO RANCHO, NEW MEXICO,  
a municipal corporation

By: \_\_\_\_\_  
Keith Riesberg, City Manager

[SEAL]

ATTEST:

By: \_\_\_\_\_  
City Clerk

AMREP SOUTHWEST INC.,  
a New Mexico corporation

By: \_\_\_\_\_  
Louie Maldonado, Vice President

ATTEST:

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

LOMAS ENCANTADAS/ENCHANTED HILLS  
PUBLIC IMPROVEMENT DISTRICT,  
a political subdivision of the State of New Mexico

By: \_\_\_\_\_  
\_\_\_\_\_, Its Chairperson

ATTEST:



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## LEGAL DESCRIPTION

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Tracts Nine (9), Twelve (12), Thirteen (13), Fourteen (14) and Fifteen (15), LOMAS ENCANTADAS, as said tracts are shown and described on the plat entitled "LOMAS ENCANTADAS, TRACTS ONE (1) THRU TWENTY-ONE (21), A THRU D AND PARCELS A THRU J, A VACATION AND REPLAT OF PORTIONS OF UNIT TWENTY", and filed in the office of the County Clerk of Sandoval County, New Mexico on November 10, 2005, in Book No. 408, page 46844, as Document No. 200546844;

AND

Lots numbered One (1) thru Thirteen (13), in Block numbered One (1); Lots numbered One (1) thru Thirteen (13), in Block numbered Two (2); Lots numbered One (1) thru Eighteen (18), in Block numbered Three (3); and Parcel "A", LOMAS ENCANTADAS, UNIT 2-F, as shown and designated on the plat entitled, "LOMAS ENCANTADAS, UNIT 2-F, A SUBDIVISION AND REPLAT OF TRACTS AD AND 11A IN LOMAS ENCANTADAS WITHIN UNIT TWENTY, WITHIN SECTIONS 25 AND 26, T.13N., R.3E., N.M.P.M., SANDOVAL COUNTY, NEW MEXICO", filed in the office of the County Clerk of Sandoval County, New Mexico on April 16, 2008 in Plat Book 3, Folio 2912A;

AND

Tracts Sixteen-B (16B), LOMAS ENCANTADAS, as shown and designated on the plat entitled, "SUMMARY PLAT TRACT 16A AND 16B, A REPLAT OF TRACT 16 WITHIN LOMAS ENCANTADAS IN UNIT TWENTY, WITHIN SECTION 22, TOWNSHIP 13 NORTH, RANGE 3 EAST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF RIO RANCHO, SANDOVAL COUNTY, NEW MEXICO", filed in the office of the County Clerk of Sandoval County, New Mexico on February 7, 2011 in Plat Book 3, Folio 3296;

AND

Tract A and Lots One (1) through Four (4) in Block One (1) and Lots One (1) through Twenty-four (24) of Block Two (2) and Lots One (1) through Twenty-one (21) of Block Three (3) and Lots One (1) through Twenty-eight (28) of Block Four (4) and Lots One (1) through Six (6) of Block Five (5) of LOMAS ENCANTADAS UNIT 2-D as the same are shown and designated on the plat thereof entitled "LOMAS ENCANTADAS Unit 2-D, A SUBDIVISION OF TRACT 10 UNIT 20 WITHIN SECTION 26, T.13N., R.3E., N.M.P.M. CITY OF RIO RANCHO, SANDOVAL COUNTY, NEW MEXICO", and filed in the office of the County Clerk of Sandoval County, New Mexico on May 9, 2008, in Volume 3, Folio 2920-A (Rio Rancho Estates Plat Book 21, Page 68);

AND

Tract lettered "A" of Enchanted Hills Unit 11A, as shown and designated on the plat entitled "Enchanted Hills Unit 11A, a Subdivision of Unplatted Property within Unit Twenty, within Sections 15 and 22, Township 13 North, Range 3 East, New Mexico Principal Meridian, City of Rio Rancho, Sandoval County, New Mexico", filed in the office of the County Clerk of Sandoval

County, New Mexico, on January 30, 2004, in Vol. 3, Folio 2384B.

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**EXHIBIT B**  
**Public Improvement District Formation Resolution Enactment No. \_\_\_\_\_**

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[The Form of Formation Resolution is attached to this application at Tab 20. The final version of the Formation Resolution will be attached to the Development and Reimbursement Agreement as Exhibit B]

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**EXHIBIT C**  
**Form of Reimbursement Certificate**

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**REIMBURSEMENT CERTIFICATE**

THIS REIMBURSEMENT CERTIFICATE (the "Certificate") is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (the "Date Hereof"), by the LOMAS ENCANTADAS/ENCHANTED HILLS PUBLIC IMPROVEMENT DISTRICT, a political subdivision of the State of New Mexico (the "District"), in favor of AMREP SOUTHWEST INC., a New Mexico corporation (the "Developer").

Pursuant to the terms of that certain Public Improvement District Development and Reimbursement Agreement dated \_\_\_\_\_, 2016 (the "Agreement"), by and among the District, the Developer, and the City of Rio Rancho, New Mexico, a charter municipality (the "City"), the District agrees to pay to the Developer the following amount under the following terms:

1. Principal. The District shall pay to the Developer the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) together with accrued interest at the rate stated in Paragraph 2 hereinbelow from the Date Hereof on the outstanding principal balance pursuant to the terms of Agreement.

2. Interest. Interest shall accrue on the outstanding principal balance of this Certificate at the rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum compounded monthly.

3. Manner of Payment. Payments due under this Certificate shall be made as and when required by the Agreement. Payments shall be applied as stated in the Agreement.

4. Default; Remedies. If the District shall fail to make any payment on or before the date such payment is due, and after any notice of default required by the Agreement, the Developer shall have the option to declare the entire balance of principal together with all accrued interest thereon immediately due and payable and to exercise any and all additional rights and remedies available to it under New Mexico law or in equity. No delay or omission on the part of the Developer in exercising any right under this Certificate shall operate as a waiver of such right. In the event of any default under this Certificate, the District shall pay the Developer's reasonable costs of enforcement and collection, including, but not limited to, reasonable attorneys' fees, whether or not any action or proceeding is brought to enforce the provisions hereof.

5. Prepayment. Maker shall have the right to prepay this Certificate in full or in part.

6. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of New Mexico.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the District has caused this Certificate to be duly executed and delivered as of the date first above written.

LOMAS ENCANTADAS/ENCHANTED HILLS  
PUBLIC IMPROVEMENT DISTRICT,  
a political subdivision of the State of New Mexico

By: \_\_\_\_\_  
\_\_\_\_\_, Its Chairperson

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, Its Secretary

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**EXHIBIT D**  
**Plan of Finance**

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[The Financing Plan is attached as Section V of the Feasibility Study found at Tab 11.  
The full Financing Plan will be attached to the executed Development and  
Reimbursement Agreement as Exhibit D]