

## PLEDGE AGREEMENT

This Pledge Agreement (this “*Agreement*”) is made and entered into and dated as of September 1, 2020, by and between The Sands Metropolitan District No. 2 (“*District No. 2*” or the “*Issuing District*”) and The Sands Metropolitan District No. 1 (“*District No. 1*” or the “*Pledge District*”), each a quasi-municipal corporation and political subdivision of the State of Colorado (the “*State*”) located within El Paso, Colorado (the “*County*”).

### RECITALS

WHEREAS, the Issuing District, the Pledge District, The Sands Metropolitan District No. 3 (“*District No. 3*”) and The Sands Metropolitan District No. 4 (“*District No. 4*”), referred to herein individually as a “*District*” and collectively as the “*Districts*”), were organized pursuant to an order and decree entered by the District Court for El Paso County, Colorado, on December 13, 2013; and

WHEREAS, organization of the Districts was preceded by the approval of a consolidated Service Plan for the Districts by the Board of County Commissioners of the County by Resolution 16-349 on October 4, 2016 (the “*Original Service Plan*”), as amended and restated for Districts 1-3 by the Amended and Restated Service Plan for The Sands Metropolitan District Nos. 1-3, approved by the City Council of the City of Colorado Springs (the “*City Council*”) by Resolution No. 150-19 on December 10, 2019 (the “*Amended Service Plan*”)(collectively the *Original Service Plan* and *Amended Service Plan* are referred to hereinafter as the “*Service Plan*”), and approval of such organization of the Districts by the eligible electors of each of those Districts at elections lawfully held within each of the Districts on November 6, 2016 (the “*Organizational Elections*”); and

WHEREAS, the purposes for which the Districts were formed include, without limitation, the provision of the following facilities and associated services in accordance with the Service Plan: potable water and irrigation water facilities and systems, sanitary sewers, street and safety protection improvements, flood and surface drainage improvements, parks and recreation facilities, services and programs, public transportation improvements, mosquito control, television relay and translation facilities, limited fire protection improvements, covenant enforcement and design review services and security services; and

WHEREAS, the Service Plan provides generally that it is the intention of the Districts to coordinate their activities with respect to the financing, construction, operation and maintenance of the public improvements authorized by the Service Plan and for which the Districts have received electoral authorization to issue or incur indebtedness (“*Public Improvements*”) in order to serve development within their common service area and provide for the fair and equitable allocation of the costs of Public Improvements and related services within the various development areas within the Districts; and

WHEREAS, pursuant to the Colorado Constitution Article XIV, Section 18(2)(a), and Section 29-1-203, Colorado Revised Statutes, as amended (“*C.R.S.*”), the Districts may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for the sharing of costs, the imposition and collection of taxes and the incurring of debt; and

WHEREAS, at the Organizational Elections, each District was authorized to, among other things: (i) levy taxes to pay the District's operations, maintenance and other expenses; (ii) levy taxes to fund expenses related to any lawful purpose of the District and to carry out the objects and purposes for which the District was organized, including the funding of capital costs and other obligations, authorized by the County, the Service Plan and as otherwise authorized under applicable law; (iii) incur general obligation indebtedness, and levy taxes for the payment thereof, for the purpose of funding certain improvements and facilities; (iv) incur indebtedness, and levy taxes for the payment thereof, for the purpose of paying the costs of operating, maintaining or otherwise providing systems, operations, management services contracts and administration to carry out the objects and purposes for which the District was organized; (v) enter into one or more intergovernmental agreements with the State or one or more political subdivisions of the State for the purpose of financing the costs of any public improvements, facilities, systems, programs or projects which such District may lawfully provide, or for the purpose of providing for the operations and maintenance of such District and its facilities and properties, which agreement may constitute a multiple fiscal year financial obligation of the District to the extent provided therein and otherwise authorized by law; and (vi) enter into one or more contracts with private parties, or one or more intergovernmental agreements with the State or any political subdivision of the State for the purpose of jointly financing the costs of any public improvements, facilities, systems, programs, or projects which the District may lawfully provide, or for the purpose of providing for the operations and maintenance of the District and its facilities and properties, which agreement may constitute a debt or indebtedness and a multiple fiscal year obligation of the District to the extent provided therein and otherwise authorized by law; and

WHEREAS, pursuant to the authority provided by State law, the Service Plan and the Organizational Elections, the Districts have entered into that certain Intergovernmental Agreement Concerning District Operations and Outstanding Reimbursement Obligations, dated as of December 13, 2016 (the "*Master IGA*"), pursuant to which the Districts agree to cooperate and coordinate in the financing, construction and operation and maintenance of the Public Improvements in connection with development in the Districts, with all of the Districts to participate in the financing of all such activities and provide the necessary tax base for the construction, operation and maintenance of the Public Improvements; and

WHEREAS, the Amended Service Plan, provides that the maximum debt service mill levy that may be levied for District No. 1 and No. 2 shall be 40 mills, and for District No. 3 shall be 50 mills, and that the maximum operational mill levy that may be levied by any of District Nos. 1-3 shall be 10 mills, provided that if, on or after January 1, 2006 there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement, the mill levy limitations applicable in each case would be subject to adjustment so to the extent possible, the actual tax revenue generated by the mill levies, adjusted for such changes are neither diminished nor enhanced as a result of such changes as provided in the Service Plan; and

WHEREAS, in order to provide for the payment of obligations that may be issued by the Issuing District or District 1 from time to time (as more particularly defined herein, the "*Financing Obligations*") for the purpose of financing or refinancing the costs of the Pledge District Public Improvements (as more particularly defined herein, the "*Financing Costs*"), the Pledge District has agreed to pledge the revenues derived from the mill levies imposed for such purposes pursuant to this Agreement (the "*Pledge District Pledged Revenues*") to the Issuing District (or to District No. 1

at the Issuing District's direction) for the payment of the Financing Costs and Operating Costs (as defined herein), and covenants to take certain actions with respect to generating such Pledge District Pledged Revenues, for the benefit of the owners of the Financing Obligations (the "Owners"), the Issuing District, District No. 1 and the inhabitants, property owners and taxpayers of the Districts; and

WHEREAS, it has heretofore been determined, and is hereby determined, by the Issuing District and the Pledge District that the Pledge District shall contribute to the payment of Financing Costs and Operating Costs by the imposition of a maximum levy of 40 mills by the Pledge District (the "*Financing Costs Mill Levy*"), subject to adjustment and the limitations set forth herein, and that such contribution is fair and is and shall be reasonably related to the benefit expected to be received from the Pledge District Public Improvements by the Pledge District and the property owners and taxpayers thereof; and

WHEREAS, it has also heretofore been determined, and is hereby determined, by the Issuing District and the Pledge District that the Pledge District shall contribute to the payment of Operating Costs by the imposition of a maximum levy of 10 mills by the Pledge District (the "*Operating Costs Mill Levy*"), subject to adjustment and the limitations set forth herein, and that such contribution is fair and is and shall be reasonably related to the benefit expected to be received from the Operating Costs by the Pledge District and the property owners and taxpayers thereof; and

WHEREAS, notwithstanding the foregoing, the maximum combined Financing Costs Mill Levy and Operating Costs Mill Levy that the Pledge District shall be required to impose in any year pursuant to this Agreement (the "*Pledge District Required Mill Levy*") shall be 50 mills, subject to adjustment and the limitations set forth herein; and

WHEREAS, due to the nature of the payment obligation incurred by the Pledge District pursuant to this Agreement, it is not possible to predict with certainty the amounts that the Pledge District will pay hereunder for Financing Costs or Operating Costs, and therefore the Pledge District shall (i) reserve and allocate voter-authorization from its Organizational Election for the incurrence of indebtedness for capital improvements to the obligations of the Pledge District represented by this Agreement for the payment of Financing Costs based upon the principal amount of Financing Obligations payable pursuant to the terms hereof and the manner in which the Issuing District allocates the same based upon the Public Improvements financed by such Financing Obligations in accordance with the use of net proceeds of the Financing Obligations, and (ii) reserve and allocate all of the voter-authorization from its Organizational Election for the incurrence of indebtedness for District operations and maintenance to the obligation of the Pledge District represented by this Agreement for the payment of Operating Costs; and

WHEREAS, such reservation of voter authorization by the Pledge District shall not count twice against the Service Plan's limitation on the aggregate debt of the Districts when combined with the issuance of Financing Obligations secured by this Agreement; and

WHEREAS, the Issuing District and the Pledge District have determined and hereby determine that the execution of this Agreement is in the best interests of the Districts and the existing and future inhabitants, property owners and taxpayers thereof; and

WHEREAS, all amendments to this Agreement made pursuant hereto and not in specific conflict with specific limits of the ballot questions which authorized the debt represented by this Agreement shall be deemed part of this Agreement and fully authorized by such ballot questions;

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

## Article I. DEFINITIONS

### Section 1.1 DEFINITIONS.

In addition to the terms defined in the Recitals to this Agreement, which are incorporated in this section by reference, as used in this Agreement, the following terms shall have the respective meanings set forth below unless the context indicates otherwise:

*“Annual Financing Costs”* means Financing Costs that are due and payable in a particular calendar year, whether at maturity or upon earlier redemption, and which may include an estimate of interest to become due if necessary, in accordance with the Financing Documents, less the amount then held under the Financing Documents available for the payment of such Financing Costs, and any amount of revenues projected to be available for payment of such Financing Costs, to the extent such amounts are permitted under the Financing Documents to be taken into account in the calculation of the Financing Costs Mill Levy component of the Pledge District Required Mill Levy as of the date on which the Pledge District Required Mill Levy is required to be imposed in accordance with the provisions hereof.

*“Developer Agreements”* means that certain Advance and Reimbursement Agreement (Capital Costs), that certain Improvement Acquisition Agreement and that certain Funding and Reimbursement Agreement (Operations and Maintenance Costs), each dated as of December 13, 2016, by and among the Districts and Eagle Development Company, a Colorado corporation.

*“Financing Costs”* means the principal and redemption price of, and interest and premium on, Financing Obligations, required deposits to or replenishments of funds or accounts securing Financing Obligations, and customary fees and expenses relating to Financing Obligations, all in accordance with and to the extent provided in the Financing Documents, including: any scheduled mandatory or cumulative sinking fund payments and any extraordinary redemption amounts and the required funding or replenishment of any reserves or surplus funds relating to the Financing Obligations, customary fees related to the issuance of the Financing Obligations (including, but not limited to, fees of a trustee, paying agent, rebate agent and provider of liquidity or credit facility) and any reimbursement due to a provider of liquidity or credit facility securing any Financing Obligations.

*“Financing Costs Mill Levy”* means an annual mill levy of the Pledge District of not more than 40 mills (subject to adjustment as provided in the definition of Pledge District Required Mill Levy) to fund Annual Financing Costs.

*“Financing Documents”* means, collectively, any resolutions, indentures, loan agreements or other instruments, including, without limitation, the Developer Agreements, executed by the Issuing District or District No. 1, as applicable, pursuant to which Financing Obligations are issued or

incurred, and any undertakings or agreements with respect to the provision of continuing disclosure relating thereto.

*“Financing Obligations”* means any bonds, notes, certificates or obligations (including, without limitation, repayment obligations under the Developer Agreements, a loan agreement or similar agreements) issued or incurred by the Issuing District or District No. 1 and designated in the applicable Financing Documents as secured by a lien on all or any portion of Pledge District Pledged Revenues payable hereunder; provided, however, that such obligations are issued or incurred for the purpose of financing obligations for which the Pledge District is obligated to impose ad valorem property taxes, or obligations issued to refinance the same, provided that the outstanding principal amount of all Financing Obligations shall never exceed the amount then authorized by the Service Plan and the available voter authorization. For purposes of the foregoing, in the event that any such Financing Obligations are issued as capital appreciation bonds, the aggregate principal amount thereof shall be deemed to equal the original principal amount thereof as of the date of issuance or inurrence of such Financing Obligations. In addition, an obligation shall not constitute a Financing Obligation unless such obligation: (i) is issued pursuant to an exemption from the registration requirements of Title 11, Article 59, Part 1, C.R.S., or any successor statute, and (ii) is permitted pursuant to the provisions of Section 32-1-1101(6)(a), C.R.S., or Section 32-1-1101(6)(b), C.R.S.

*“Operating Costs”* means costs incurred by the Issuing District associated with operating and maintaining the Public Improvements and other costs necessary to continued good standing of the Districts under applicable law.

*“Operating Costs Mill Levy”* means an annual mill levy of the Pledge District of not more than 10 mills (subject to adjustment as provided in the definition of Pledge District Required Mill Levy) to fund Operating Costs.

*“Payment Obligation”* means the obligation of the Pledge District to pay Financing Costs and Operating Costs in accordance with the provisions hereof, but solely from Pledge District Pledged Revenues to the extent available.

*“Pledge District Pledged Revenues”* means the revenues resulting from the imposition of the Pledge District Required Mill Levy, including the specific ownership taxes that may be received by the Pledge District as a result of the imposition of the Pledge District Required Mill Levy.

*“Pledge District Public Improvements”* means the Public Improvements that have been determined to be required to develop the property within the Pledge District in accordance with development plans approved by the authorizing jurisdiction (the City, the County or water and sewer district, as appropriate), as well as Public Improvements of a regional nature that have been reasonably determined by the Issuing District to provide a general benefit to the property in the Pledge District and one or more of the other Districts. The specific design, cost and construction schedule of the Pledge District Public Improvements shall be in accordance with such approved development plans and otherwise as agreed to by and between the Issuing District and the Pledge District as a condition precedent to the obligations of the Issuing District to fund and construct such Pledge District Public Improvements hereunder.

*“Pledge District Required Mill Levy”* means an ad valorem property tax levy or levies imposed by the Pledge District each year pursuant to this Agreement, consisting of the Financing

Costs Mill Levy and the Operating Costs Mill Levy, in the aggregate rate of 50 mills (a mill being equal to 1/10 of 1¢); provided, however, that:

(a) subject to paragraph (b) below, if there are changes in the method of calculating assessed valuation or any constitutionally mandated or statutorily authorized tax credit, cut or abatement that occur after January 1, 2006, the maximum Pledge District Required Mill Levy shall be increased or decreased, as applicable, to reflect such changes, which adjustments shall be determined by the Board of Directors of the Pledge District in good faith, and as so determined shall be binding and final, so that to the extent possible Pledge District Pledged Revenues (excluding specific ownership taxes) generated by the maximum Pledge District Required Mill Levy, as adjusted, are neither diminished nor enhanced as a result of such changes (for purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation shall be deemed to be a change in the method of calculating assessed valuation);

(b) at such time as all Financing Costs contemplated by this Agreement have been paid, as certified in writing by the Issuing District to the Pledge District, the Pledge District Required Mill Levy shall be reduced to the amount of the Operating Costs Mill Levy;

(c) the Financing Costs Mill Levy and the Operating Costs Mill Levy shall never exceed the amounts then permitted by the Service Plan; and

(d) notwithstanding anything in this Agreement to the contrary, in no event shall the Pledge District Required Mill Levy be established at a rate which would cause the Pledge District to derive tax revenue in any year in excess of the maximum tax increases permitted by the Pledge District's electoral authorization applicable to this Agreement and the Service Plan, and if the Pledge District Required Mill Levy as calculated pursuant to the foregoing would cause the taxes collected in any year to exceed the maximum tax increase permitted by such electoral authorization or the Service Plan, the Pledge District Required Mill Levy shall be reduced to the point that such maximum tax increase is not exceeded.

For the avoidance of doubt, it is hereby declared to be the intent of the Issuing District and the Pledge District that the Pledge District Required Mill Levy shall be 50 mills annually (subject to the adjustments and limitations provided in this section) until the occurrence of the event provided in paragraph (b) above, after which the Pledge District Required Mill Levy shall be 10 mills annually (subject to the adjustments and limitations provided in this section).

*“Pledge District Subordinate Obligations”* means bonds, notes or other obligations of the Pledge District payable in whole or in part from, or constituting a lien upon, the general ad valorem taxes of the Pledge District on a basis subordinate to the Payment Obligation hereunder.

*“Pledge District Subordinate Revenues”* means revenues (including specific ownership taxes) resulting from ad valorem property tax mill levies imposed for the purpose of paying Pledge District Subordinate Obligations.

## **Section 1.2 INTERPRETATION.**

In this Agreement, unless the context expressly indicates otherwise, the words defined below shall have the meanings set forth below:

(a) The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Agreement as a whole and not to any particular article, section or subdivision hereof; the term “heretofore” means before the date of execution of this Agreement, the term “now” means the date of execution of this Agreement, and the term “hereafter” means after the date of execution of this Agreement.

(b) All definitions, terms and words shall include both the singular and the plural, and all capitalized words or terms shall have the definitions set forth in Section 1.1 hereof.

(c) Words of the masculine gender include correlative words of the feminine and neuter genders, and words importing the singular number include the plural number and vice versa.

(d) The captions or headings of this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision, article or section of this Agreement.

(e) All schedules, exhibits and addenda referred to herein are incorporated herein by this reference.

## **Article II. PAYMENT OBLIGATION**

### **Section 2.1 NO ADDITIONAL ELECTORAL APPROVAL REQUIRED.**

The authorization for issuance of debt, fiscal year spending, revenue collections and other constitutional matters requiring voter approval for purposes of this Agreement was approved at the Organizational Elections held in accordance with law and pursuant to due notice. The performance of the terms of this Agreement requires no further electoral approval.

### **Section 2.2 FUNDING OF COSTS GENERALLY.**

(a) In consideration for the issuance or incurrence of Financing Obligations for the provision of the Pledge District Public Improvements, the Pledge District hereby agrees to levy the Financing Costs Mill Levy and pay to the Issuing District (or as otherwise directed by the Issuing District) such portion of the Financing Costs as may be funded from Pledge District Pledged Revenues to the extent available from such Financing Costs Mill Levy, in accordance with the provisions hereof.

(b) In consideration of the Pledge District providing the services of District Administrator pursuant to the Master IGA, the Pledge District and the Issuing District hereby agrees to levy the Operating Costs Mill Levy, and pay to the Pledge District (or as otherwise directed by the Pledge District) such portion of the Operating Costs as may be funded from Pledged Revenues to the extent available from the Operating Costs Mill Levy, in accordance with the provisions hereof.

(c) The obligation of the Pledge District to pay its portion of the Financing Costs and Operating Costs as provided herein (i.e., the Payment Obligation) shall constitute a limited tax general obligation of the Pledge District payable solely from and to the extent of the Pledge District Pledged Revenues. The Pledge District Revenues are hereby pledged by

the Pledge District to the Issuing District for the payment of the Payment Obligation in accordance with the provisions hereof. This Agreement and the Payment Obligation shall constitute an irrevocable lien upon the Pledge District Pledged Revenues. The Issuing District and the Pledge District hereby elect to apply all of the provisions of the Supplemental Act to this Agreement and the Payment Obligation.

(d) In no event shall the total or annual obligations of the Pledge District hereunder exceed the maximum amounts permitted under its electoral authority applicable to this Agreement, the Service Plan and any applicable law. The portion of the Payment Obligation, if any, that exceeds such electoral authority or applicable law shall be deemed paid in full upon the payment by the Pledge District of such maximum amount.

(e) Because the total Pledge District Pledged Revenues to be payable by the Pledge District hereunder cannot be determined with any certainty at this time, the Pledge District shall not be permitted to pre-pay any amounts due hereunder except to the extent required in connection with the prior redemption or defeasance of Financing Obligations or otherwise with the consent of the Issuing District.

### **Section 2.3 IMPOSITION OF THE PLEDGE DISTRICT REQUIRED MILL LEVY.**

(a) In order to fund the Payment Obligation, the Pledge District agrees to levy on all of the taxable property of the Pledge District, in addition to all other taxes, direct annual taxes in calendar year 2020 (for collection of taxes in 2021) and in each year thereafter, to the extent necessary to provide for payment of the Payment Obligation, in the amount of the Pledge District Required Mill Levy.

(b) In order to facilitate the determination of the Pledge District Required Mill Levy, the Pledge District shall provide to the Issuing District each year: (i) on or before September 30 the preliminary certification of assessed value of the Pledge District from the county assessor of each county in which the Pledge District may levy ad valorem property taxes; and (ii) not later than one business day after receipt by the Pledge District the final certified assessed value of the Pledge District from such county assessor(s) (expected to be certified by the county assessor(s) not later than December 10 each year). In accordance with the definition of Pledge District Required Mill Levy set forth herein, the Issuing District shall preliminarily determine, and provide to the Pledge District, the Pledge District Required Mill Levy (including the components thereof) no later than October 15 of each year, and shall finally determine, and provide to the Pledge District, the final Pledge District Required Mill Levy (including the components thereof) no later than December 15 of each year.

(c) The Issuing District shall notify the Pledge District each year of the Financing Costs and Operating Costs in sufficient time to permit the Pledge District to incorporate such amounts in its annual budgets and appropriation resolutions and to timely certify the Pledge District Required Mill Levy to the proper taxing authorities as provided in this section.

(d) The Pledge District acknowledges that it has actively participated in the development of the methodology of determining the Pledge District Required Mill Levy, that such methodology is designed to reasonably allocate among the Districts the Financing Costs and Operating Costs based on the benefit expected to be received by the Districts from the



Pledge District Public Improvements and Operating Costs and the relative ability of the Districts, dependent upon the relative stages of development therein, to fund such Financing Costs and Operating Costs in any given year, and that so long as made in accordance with the foregoing, the determinations of the Issuing District as to the Pledge District Required Mill Levy and the components thereof shall be final and binding upon the Pledge District.

(e) This Section 2.3 is hereby declared to be the certificate of the Pledge District to the Board of County Commissioners of each county in which the Pledge District may levy ad valorem property taxes indicating the aggregate amount of taxes to be levied for the purposes of paying the Payment Obligation due hereunder.

(f) It shall be the duty of the Pledge District, annually at the time and in the manner provided by law for the levying of the Pledge District's taxes, if such action shall be necessary to effectuate the provisions of this Agreement, to ratify and carry out the provisions hereof with reference to the levy and collection of the ad valorem property taxes herein specified, and to require the officers of the Pledge District to cause the appropriate officials of each county in which the Pledge District may levy ad valorem property taxes to levy, extend and collect such ad valorem taxes in the manner provided by law for the purpose of providing funds for the payment of the amounts to be paid hereunder promptly as the same, respectively, become due. Such taxes, when collected, shall be applied only to the payment of the amounts to be paid hereunder.

(g) The taxes provided for in this Agreement shall be levied, assessed, collected and enforced at the time and in the form and manner, and with like interest and penalties, as other general taxes in the State.

(h) The Pledge District shall pursue all reasonable remedies to collect, or cause the collection of, delinquent ad valorem taxes levied by the Pledge District.

(i) Notwithstanding anything in this Agreement to the contrary, the Pledge District's obligation to impose the Pledge District Required Mill Levy and remit the Pledge District Revenues to the Issuing District (or as otherwise directed by the Issuing District) shall be contingent upon: (i) the Issuing District constructing, or causing to be constructed, the District Public Improvements necessary to develop the property within the Pledge District in accordance with development plans approved by the authorizing jurisdiction (the City, the County, or water and sewer district, as appropriate); and (ii) receipt by the Pledge District of the notice provided for in Section 2.2(d).

#### **Section 2.4 PAYMENT AND APPLICATION OF PLEDGE DISTRICT PLEDGED REVENUES.**

(a) The Pledge District hereby agrees to remit to the Issuing District, or as otherwise directed by the Issuing District (subject to the limitations and requirements of the Financing Documents), as soon as practicable upon receipt, all revenues comprising Pledge District Pledged Revenues, which Pledge District Pledged Revenues shall be applied by the Issuing District or other recipient thereof to Financing Costs and Operating Costs, as the case may be, in accordance with the Financing Documents, the Service Plan and the Master IGA, as applicable. To the extent that any Pledge District Pledged Revenues constituting Financing Costs are released from the lien of the Financing Documents, the Issuing District shall

continue to ensure that such revenues are applied to Financing Costs and any other costs of the Pledge District Public Improvements. The Pledge District Pledged Revenues shall be paid by the Pledge District to the Issuing District or other designated recipient thereof in lawful money of the United States of America by check mailed or delivered, by wire transfer or by such other method as may be mutually agreed to by the Issuing District and the Pledge District.

(b) The Pledge District hereby covenants that a debt service property tax levy imposed by the Pledge District for the payment of any the Pledge District Subordinate Obligations shall be deemed reduced to the number of mills (if any) available for payment of such obligation in any calendar year after first providing for the full payment and accumulation of all amounts due on the outstanding Financing Obligations in such calendar year.

### **Section 2.5 EFFECTUATION OF PLEDGE OF SECURITY, CURRENT APPROPRIATION.**

The sums required by this Agreement to pay the amounts due hereunder are hereby appropriated for that purpose, and such amounts for each year shall be included in the annual budget and the appropriation resolution or measures to be adopted or passed by the Board of Directors of the Pledge District in each year while any of the obligations of the Pledge District herein authorized are outstanding and unpaid. No provisions of any constitution, statute, resolution or other order or measure enacted after the execution of this Agreement shall in any manner be construed as limiting or impairing the obligation of the Pledge District to levy ad valorem property taxes, or as limiting or impairing the obligation of the Pledge District to levy, administer, enforce and collect the ad valorem property taxes as provided in this Agreement for the payment of the obligations hereunder.

In addition, and without limiting the generality of the foregoing, the obligations of the Pledge District to transfer funds as described herein for each payment described herein shall survive any court determination of the invalidity of this Agreement as a result of a failure, or alleged failure, of any of the directors of the Pledge District or the Issuing District to properly disclose, pursuant to State law, any potential conflicts of interest related hereto in any way, provided that such disclosure is made on the record of such District's meetings as set forth in their official minutes.

### **Section 2.6 LIMITED DEFENSES; SPECIFIC PERFORMANCE.**

It is understood and agreed by the Pledge District that its obligations hereunder are absolute, irrevocable and unconditional except as specifically stated herein, and that so long as any obligation of the Pledge District hereunder remains unfulfilled, the Pledge District agrees that, notwithstanding any fact, circumstance, dispute or any other matter, the Pledge District will not assert any rights of setoff, counterclaim, estoppel or other defenses to its Payment Obligation, or take or fail to take any action which would (i) delay a payment to, or on behalf of, the Issuing District or any Owners or impair the ability of the Issuing District or any Owners to receive payments due hereunder, or (ii) impair the ability of the Pledge District to perform the services of District Administrator pursuant to the Master IGA. Notwithstanding that this Agreement specifically prohibits and limits defenses and claims of the Pledge District, in the event that the Pledge District believes that it has valid defenses, setoffs, counterclaims or other claims other than specifically permitted by this Section 2.6, it shall nevertheless make all payments as described herein and then may attempt or seek to recover such payments by actions at law or in equity for damages or specific performance, respectively.

**Section 2.7 FUTURE EXCLUSION OF PROPERTY.**

Any property excluded from the Pledge District after the effective date of this Agreement shall remain liable for the imposition of the Pledge District Required Mill Levy and payment of the proceeds thereof in accordance with the provisions hereof to the same extent as such property otherwise remains liable for the debt of the Pledge District, in accordance with Section 32-1-503, C.R.S. In the event that any order providing for the exclusion of property from the Pledge District does not so provide and specifically indicate the liability of such excluded property for the obligations set forth herein, the Pledge District hereby agrees to take all actions necessary to cause the property owners of such proposed excluded property to covenant to assume all responsibilities under this Agreement, which covenants shall run with the land and shall be in a form satisfactory to the Issuing District.

**Section 2.8 ADDITIONAL COVENANTS.**

(a) Without the prior consent of the Issuing District and the Owners of 100% of any outstanding Financing Obligations, the Pledge District shall not issue or incur any bonds, notes or other obligations payable in whole or in part from, or constituting a lien upon, the general ad valorem truces of the Pledge District or other Pledge District Pledged Revenues; provided, however, that the following obligations shall be permitted without the consent of the Issuing District or the Owners:

(i) Pledge District Subordinate Obligations satisfying the requirements of Section 2.8(b) below;

(ii) obligations issued solely for the purpose of paying operations and maintenance costs of the Pledge District the repayment of which is contingent upon the Pledge District's annual determination to appropriate moneys therefor (other than obligations of the Pledge District as lessee under capital leases) so long as (A) no amounts due or to become due on such obligations are payable from the Pledge District's debt service mill levy, and (B) no amounts due or to become due on such obligations are payable from the Pledge District's operations and maintenance mill levy in excess of that permitted by the Service Plan (after taking into account the Pledge District Required Mill Levy required hereunder, in the event that the Service Plan then establishes a combined limit for debt service and operation and maintenance mill levies);

(iii) obligations issued for any purpose the repayment of which is contingent upon the Pledge District's annual determination to appropriate moneys therefor (other than obligations of the Pledge District as lessee under capital leases) so long as (A) such obligations are payable only to the extent the Pledge District has excess moneys on hand, (B) such obligations are payable in any calendar year only after the last scheduled payment of principal or interest on the Financing Obligations in such calendar year and (C) the Pledge District makes no promise to impose any tax, fee or other governmental charge for the payment of such obligations;

(iv) obligations which are payable solely from the proceeds of other obligations permitted to be issued in accordance with the provisions hereof, when and if issued;

(v) obligations payable solely from periodic, recurring service charges imposed by the Pledge District for the use of any facility or service of the Pledge District and which obligations do not constitute a debt or indebtedness of the Pledge District or an obligation required to be approved at an election under State law;

(vi) obligations to reimburse any person in respect of surety bonds, financial guaranties, letters of credit or similar credit enhancements so long as (A) such surety bonds, financial guaranties, letters of credit or similar credit enhancements guarantee payment of principal or interest on any obligation permitted to be issued in accordance with the provisions hereof, (B) the reimbursement obligation does not arise unless payment of an equivalent amount (or more) of principal on the secured obligation and (C) such reimbursement obligations are payable from the same or fewer revenue sources, with the same or a subordinate lien priority as the obligations supported by the surety bonds, financial guaranties, letters of credit or similar credit enhancements; and

(vii) any operating leases, payroll obligations, accounts payable or taxes incurred or payable in the ordinary course of business of the Pledge District.

(b) The Pledge District may issue or incur Pledge District Subordinate Obligations, the terms of which shall be as provided in the authorizing documents pursuant to which they are issued or incurred, provided that each of the following conditions shall apply to the Pledge District Subordinate Obligations:

(i) the failure to make a payment when due on Pledge District Subordinate Obligations shall not constitute an event of default thereunder;

(ii) the Pledge District Subordinate Obligations shall be payable as to both principal and interest only on an annual basis and on a date which is after the final principal or interest payment date in that calendar year with respect to all outstanding Financing Obligations; and

(iii) the Pledge District Subordinate Obligations shall be payable from Pledge District Subordinate Revenues only to the extent available after the funding of amounts due on outstanding Financing Obligations (as more particularly provided in Section 2.8(c) below); and

(iv) the Pledge District Subordinate Obligations shall be payable from a mill levy imposed by the Pledge District of not more than 35 mills (subject to adjustment as provided in the definition of Pledge District Required Mill Levy) less the then applicable Pledge District Required Mill Levy.

(c) It is acknowledged that in order to ensure that all amounts due with respect to outstanding Financing Obligations are paid each year prior to the Pledge District Subordinate Obligations, the Pledge District Subordinate Revenues shall be remitted by the Pledge District to the Issuing District or as otherwise directed by the Issuing District (subject to the limitations and requirements of the Financing Documents) as soon as practicable upon receipt. The Issuing District hereby covenants and agrees that any Financing Document shall

provide that all revenues payable by the Pledge District hereunder shall be applied to amounts due each year (including funding or replenishing any required reserves or surplus funds or accounts) with respect to Financing Obligations, with any excess revenues to be released to the Issuing District at least annually. The Issuing District agrees to remit any such excess revenues first to the Pledge District in the amount of the Pledge District Subordinate Revenues, or such lesser amount as is released to the Issuing District, and thereafter to apply such excess revenues to any lawful purpose.

(d) At least once a year, the Pledge District shall either cause an audit to be performed of the records relating to its revenues and expenditures or, if applicable under State law, will apply for an audit exemption, and the Pledge District shall use its best efforts to have such audit report or application for audit exemption completed no later than September 30 of each calendar year. The foregoing covenant shall apply notwithstanding any different time requirements for the completion of such audit or application for audit exemption under State law. In addition, at least once a year in the time and manner provided by law, the Pledge District shall cause a budget to be prepared and adopted. Copies of the budget and the audit or audit exemption shall be filed and recorded in the places, time and manner provided by law. It is acknowledged by the Issuing District and the Pledge District that the Issuing District as District Administrator has the responsibility of causing such audits or applications for audit exemption and budgets to be prepared, completed, filed and recorded, as applicable, on behalf of the Pledge District.

### **Article III. REPRESENTATIONS AND WARRANTIES**

#### **Section 3.1 REPRESENTATIONS AND WARRANTIES.**

The Issuing District and the Pledge District each hereby makes the following representations and warranties with respect to itself:

(a) Such District is a quasi-municipal corporation and political subdivision duly organized and validly existing under the laws of the State.

(b) Such District has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement has been duly authorized by all necessary action.

(c) Such District is not in violation of any of the applicable provisions of law, or any order of any court having jurisdiction in the matter, which violation could reasonably be expected to materially adversely affect the District's ability to perform its obligations hereunder. The execution, delivery and performance of this Agreement by such District (i) will not violate any provision of any applicable law or regulation or of any order, writ, judgment or decree of any court, arbitrator or governmental authority, (ii) will not violate any provision of any document or agreement constituting, regulating or otherwise affecting the District's operations or activities in a manner that could reasonably be expected to result in a material adverse effect, and (iii) will not violate any provision of, constitute a default under, or result in the creation or imposition of any lien, mortgage, pledge, charge, security interest or encumbrance of any kind on any of the District's revenues or other assets pursuant to the provisions of any mortgage, indenture, contract, agreement or other undertaking to which the

District is a party or which purports to be binding upon the District or upon any of its revenues or other assets which could reasonably be expected to result in a material adverse effect.

(d) Such District has obtained all consents and approvals of, and has made all registrations and declarations with, any governmental authority or regulatory body required for the District's execution, delivery and performance of this Agreement.

(e) There is no action, suit, inquiry, investigation or proceeding to which such District is a party, at law or in equity, before or by any court, arbitrator, governmental or other board, body or official which is pending or, to the best knowledge of such District threatened, in connection with any of the transactions contemplated by this Agreement, nor to the best knowledge of such District is there any basis therefor, wherein an unfavorable decision, ruling or finding could reasonably be expected to have a material adverse effect on the validity or enforceability of, or the authority or ability of the District to perform its obligations under, this Agreement.

(f) This Agreement constitutes a legal, valid and binding obligation enforceable against such District in accordance with its terms except as such enforceability may be limited by bankruptcy, moratorium or other similar laws affecting creditors' rights generally and provided that the application of equitable remedies is subject to the application of equitable principles.

#### **Article IV. NON-COMPLIANCE AND REMEDIES**

##### **Section 4.1 EVENTS OF NON-COMPLIANCE.**

The occurrence or existence of any one or more of the following events shall constitute an "*Event of Non-Compliance*" under this Agreement, and there shall be no default or Event of Non-Compliance under this Agreement except as provided in this Section:

(a) the Pledge District either fails or refuses to impose the Pledge District Required Mill Levy after being provided with the notice set forth in Section 2.3(c) hereof, or to remit Pledge District Pledged Revenues as required by the terms of this Agreement;

(b) the Issuing District fails or refuses to either cause the Pledge District Public Improvements to be constructed, or to provide and pay for all administrative costs of the Pledge District, as required by the terms of this Agreement;

(c) any representation or warranty made in this Agreement by the Issuing District or the Pledge District proves to have been untrue or incomplete in any material respect when made and which untruth or incompleteness would have a material adverse effect upon any other party;

(d) the Issuing District or the Pledge District fails in the performance of any other of its covenants in this Agreement and such failure continues for 30 days after written notice specifying such default and requiring the same to be remedied is given by the other party hereto; or

(e) the occurrence of any of the following events: (i) either the Issuing District or the Pledge District shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors seeking to have an order for relief entered with respect to such District or seeking to adjudicate such District insolvent or a bankrupt or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to such District or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for such District or for any substantial part of the District's property, or either District shall make a general assignment for the benefit of its creditors; (ii) there shall be commenced against either the Issuing District or the Pledge District any case, proceeding or other action of a nature referred to in clause (i) and the same shall remain not dismissed within 90 days following the date of filing; (iii) there shall be commenced against either the Issuing District or the Pledge District any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed or bonded pending appeal within 90 days from the entry thereof; (iv) either the Issuing District or the Pledge District shall take action in furtherance of, or indicating its consent to, approval of or acquiescence in, any of the acts set forth in clauses (i), (ii) or (iii) above; or (v) either the Issuing District or the Pledge District shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

#### **Section 4.2 REMEDIES FOR EVENTS OF NON-COMPLIANCE.**

Upon the occurrence and continuance of an Event of Non-Compliance by either the Issuing District or the Pledge District, any party may proceed to protect and enforce its rights against the District or Districts causing the Event of Non-Compliance by mandamus or such other suit, action or special proceedings, in equity or at law, in any court of competent jurisdiction, including an action for specific performance: In the event of any litigation or other proceeding to enforce any of the terms, covenants or conditions hereof, the prevailing party in such litigation or other proceeding shall be entitled to obtain, as part of its judgment or award, its reasonable attorneys' fees and costs.

### **Article V. MISCELLANEOUS**

#### **Section 5.1 PLEDGE OF REVENUE.**

The creation, perfection, enforcement and priority of the pledge of revenues to secure or pay the Payment Obligation shall be governed by Section 11-57-208 of the Supplemental Act and this Agreement. The Pledge District Revenues shall immediately be subject to the lien of such pledge without any physical delivery, filing or further act. The lien of such pledge shall be valid, binding and enforceable as against all persons having claims of any kind in tort, contract or otherwise against any of the Districts irrespective of whether such persons have notice of such liens.

#### **Section 5.2 NO RECOURSE AGAINST OFFICERS AND AGENTS.**

Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the governing body of the Pledge District or any officer or agent of the Pledge District acts in good faith, no civil recourse shall be available against such member, officer or agent for payment of the Payment Obligation. Such recourse shall not be available either directly or indirectly through the governing body or the





All notices or documents delivered or required to be delivered under the provisions of this Agreement shall be deemed received one day after hand delivery or three days after mailing. Either party by written notice so provided may change the address to which future notices shall be sent.

**Section 5.6 MISCELLANEOUS.**

(a) This Agreement constitutes the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Agreement.

(b) If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions hereof, then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible.

(c) The Owners shall be third party beneficiaries to this Agreement. It is intended that there be no third party beneficiaries of this Agreement other than the Owners,. Nothing contained herein, expressed or implied, is intended to give to any person other than the Issuing District, the Pledge District and such third party beneficiaries any claim, remedy or right under or pursuant hereto, and any agreement, condition, covenant or term contained herein required to be observed or performed by or on behalf of the Issuing District and the Pledge District shall be for the sole and exclusive benefit of the other District and such third party beneficiaries, as applicable.

(d) This Agreement may not be assigned or transferred by either the Issuing District or the Pledge District without the prior written consent of the other District.

(e) This Agreement shall be governed by and construed under the applicable laws of the State.

(f) This Agreement may be amended or supplemented by the parties, but any such amendment or supplement shall be in writing and executed by both parties hereto and shall be subject to any limitations and requirements of the Financing Documents.

(g) If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Agreement, shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city in which the principal office of the Issuing District is located are authorized or required by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are

authorized or required by law to remain closed, with the same force and effect as if done on the nominal date provided in this Agreement.

(h) Each party has participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

(i) This Agreement may be executed in counterparts each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 5.7 EFFECTIVE DATE.**

This Agreement shall become effective as of the date first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Issuing District and the Pledge District have executed this Pledge Agreement as of the day and year first above written.

THE SANDS METROPOLITAN DISTRICT NO. 2,  
EL PASO COUNTY, COLORADO, as the Issuing  
District

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

ATTESTED:

\_\_\_\_\_  
Secretary or Assistant Secretary

THE SANDS METROPOLITAN DISTRICT NO. 1,  
EL PASO COUNTY, COLORADO, as the Pledge  
District

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

ATTESTED:

\_\_\_\_\_  
Secretary or Assistant Secretary

STATE OF COLORADO     )  
  )  ss.  
COUNTY OF EL PASO     )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_, acting on behalf of the Sands Metropolitan District No. 2, El Paso County, Colorado.

WITNESS MY HAND AND OFFICIAL SEAL, the day and year above written.

(Notarial Seal)

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

STATE OF COLORADO     )  
  )  ss.  
COUNTY OF EL PASO     )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_, acting on behalf of the Sands Metropolitan District No. 1, El Paso County, Colorado.

WITNESS MY HAND AND OFFICIAL SEAL, the day and year above written.

(Notarial Seal)

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_



**EXHIBIT A**  
**TO**  
**PLEDGE AGREEMENT**  
**BALLOT QUESTIONS OF THE DISTRICTS**

**EXHIBIT B**  
**TO**  
**PLEDGE AGREEMENT**  
**LEGAL DESCRIPTION OF DISTRICT NO. 1**

**EXHIBIT C**  
**TO**  
**PLEDGE AGREEMENT**  
**ACKNOWLEDGMENT, CONSENT AND WAIVER**