

AGREEMENT NO. _____

**INDEMNIFICATION AGREEMENT BETWEEN CITY OF BAKERSFIELD
AND PRESERVATION GOLF, LLC**

This **INDEMNIFICATION AGREEMENT** (this "Agreement") is entered into as of _____, 2023, by and between the **CITY OF BAKERSFIELD**, a municipal corporation and political subdivision of the State of California (the "CITY"), and the **PRESERVATION GOLF, LLC**, a California Limited Liability Company (the "LLC"), (the CITY and the LLC being collectively referred to herein as the "Parties" and individually as a "Party") with reference to the following facts, and is as follows:

RECITALS

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California, including the City of Bakersfield (the "City"); and

WHEREAS, Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") authorizes the Authority to establish voluntary contractual assessment programs to finance or refinance renewable energy, energy efficiency, water efficiency and seismic strengthening improvements, electric vehicle charging infrastructure and such other improvements, infrastructure or other work as may be authorized by law from time to time (collectively, the "Improvements") through the levy of contractual assessments within counties and cities throughout the State of California that consent to the participation of properties within their respective territories and the issuance of bonds from time to time; and

WHEREAS, for the purpose of providing financing and refinancing for the Improvements, the Authority has established the CSCDA Open PACE Program; and

WHEREAS, the Authority has designated multiple third-party program administrators to administer the CSCDA Open PACE Program, including Nuveen Green Capital (including its affiliates, "Nuveen"); and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner or owners of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

WHEREAS, the owner, Preservation Golf, LLC, (the "Participating Property Owner") of the property located at 5201 Riverlakes Drive, Bakersfield, California (the "Participating Property") has asked the Authority and Nuveen to provide financing through the CSCDA Open PACE Program for the installation of Improvements on the Participating Property (the "Project"), and the City consents and authorizes the Participating Property Owner to participate in the CSCDA Open PACE Program and consents and authorizes the Authority to conduct assessment proceedings under Chapter 29 within its territory and to issue bonds to finance or refinance the installation of Improvements on the Participating Property (the "CSCDA Open PACE Program Actions"); and

WHEREAS, the Authority shall conduct all assessment proceedings under Chapter 29 for the Participating Property and issue any bonds related to the Participating Property, and the City shall not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Participating Property.

NOW, THEREFORE, based on the foregoing recitals, the Parties agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to defend and provide for indemnification of the CITY for any claims associated with the CSCDA Open PACE Program Actions, Resolution of Consent, or the Project.
2. **TERMS OF THE AGREEMENT.** During the term of this Agreement the Parties agree to the following:
 - 2.1. **Duty To Defend.** The LLC shall defend the CITY against any cause of action or claim brought by any third party, including, without limitation, any state or federal governmental agency or organization, with respect to any matter relating to the CSCDA Open PACE Program Actions, Resolution of Consent or the Project (a "Subject Claim"). The CITY shall have the right in its sole and absolute discretion to choose legal counsel to defend the CITY hereunder, and such counsel shall have the right to concurrently represent the LLC in the same cause of action or claim. So long as the LLC engages legal counsel, such legal counsel agrees to defend the CITY, and the LLC continues to diligently and continuously provide such defense using such counsel (or any substitute counsel meeting the foregoing qualifications which the LLC appoints) until the Subject Claim is "Fully Resolved" (as defined in Section 2.2 below), then the LLC shall have satisfied its defense

obligations hereunder in full. The CITY shall fully cooperate with and assist the LLC and such counsel in the defense of any Subject Claim. So long as the LLC is defending the CITY against a Subject Claim in accordance herewith, the CITY shall not settle any Subject Claim without the LLC's written consent, which consent shall not be unreasonably withheld. The CITY shall consent to any settlement of a Subject Claim requested by the LLC so long as (i) the CITY is not required to contribute or agree to contribute to any payment on account of the Subject Claim, (ii) the CITY is not required to admit to any wrongdoing as a condition to such settlement; (iii) the settlement includes an agreement by the LLC to indemnify the CITY for any claims against the CITY arising out of the settlement agreement. Nothing in this provision shall be construed to limit the CITY's ability to decline a settlement that the CITY reasonably believes impairs, or could impair, the exercise of the CITY's legitimate exercise of its police, zoning, or other municipal powers.

2.2. Indemnification. The LLC will indemnify and hold harmless the CITY from any: (i) actual damages awarded to such third party that result directly and proximately from a binding, final and non-appealable adverse determination of any Subject Claim made by a court of competent jurisdiction; and (ii) any settlement payment arising out of the settlement of such Subject Claim. The LLC's obligations hereunder shall terminate and be of no further force and effect on the date that is five (5) years after the date on which the LLC completes the Project. The LLC shall have no obligation to defend, indemnify, or hold harmless the CITY from the CITY's gross negligence or willful misconduct. As used in this Agreement, a Subject Claim shall be deemed "Fully Resolved" by (1) a final, non-appealable judgment by a court of competent jurisdiction or by entry of a final, non-appealable award by an arbitrator to whose jurisdiction all parties have consented, in favor of CITY, or if against CITY by satisfaction of such judgment or award; or (2) a settlement agreement executed by all parties to be bound thereby and releasing CITY from any monetary obligation.

2.3. Notice Of Subject Claims. The CITY shall notify the LLC in writing within thirty (30) days following CITY's receipt of notice of any Subject Claim for which it seeks a defense and/or indemnity. If the CITY fails to notify the LLC as provided herein, the LLC shall have no obligation to defend or indemnify the CITY for such Subject Claim. All notices shall be sent in compliance with section 16 of this Agreement.

3. **GOVERNING LAW.** This Agreement shall be interpreted and enforced in accordance with the provisions of laws of the State of California in effect at the time it is executed, without regard to conflict of law provisions.
4. **COMPLIANCE WITH ALL LAWS.** LLC shall, at LLC's sole cost, comply with all of the requirements of Municipal, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to this Agreement, and shall faithfully observe in all activities relating to or growing out of this Agreement all Municipal ordinances and State and Federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force including, without limitation, obtaining a City of Bakersfield business tax certificate (Bakersfield Municipal Code Chapter 5.02) where required.
5. **SEVERABILITY.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity thereof shall not affect the remaining provisions of this Agreement.
6. **THIRD-PARTY BENEFICIARIES.** Nothing in this Agreement is intended or deemed to create any legal or contractual relationship between the CITY or the LLC and any party other than the signatories to this Agreement, including but not limited to any alleged third-party beneficiary.
7. **LIMITATION OF LIABILITY AND WAIVER.** THE LLC WAIVES AND RELEASES ANY CLAIMS AGAINST THE CITY AND ITS COUNCILMEMBERS, OFFICERS, AND EMPLOYEES FOR DAMAGES ARISING FROM THIS AGREEMENT, EXCEPT FOR CLAIMS TO ENFORCE OR FOR BREACH OF THIS AGREEMENT. IN NO EVENT SHALL THE CITY OR SUCH PERSONS BE LIABLE FOR, AND THE LLC HEREBY WAIVES, ANY AND ALL CLAIMS FOR LOST PROFITS OR PUNITIVE DAMAGES.
8. **ENTIRE AGREEMENT.** This Agreement shall be deemed to be the complete and entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, understandings, or other agreements or statements between the Parties or their representatives.
9. **NON-ASSIGNMENT.** The LLC shall not assign this Agreement or any rights or obligations hereunder without the approval from the CITY Council of the CITY, and any attempted unpermitted assignment shall be null and void and without further effect.
10. **AMENDMENTS.** This Agreement shall not be modified except by an instrument in an express writing signed by the Parties.

11. **FURTHER ASSURANCES.** From time to time, at the request and expense of the requesting Party whether at or after the date of execution and delivery of this Agreement, without further consideration, the other Party shall execute and deliver such further instruments and take such other action that does not increase the burden on the other party as the requesting Party may reasonably request in order to effectuate the transactions set forth herein consistent with the terms hereof.
12. **HEADINGS.** All headings and captions herein are inserted for convenience only.
13. **NON-WAIVER.** No delay or omission or exercise of a right or remedy accruing to any Party on any breach or default by the other shall impair any such right or remedy, and the same shall not be construed to be a waiver of any such breach or default. Any waiver must be in writing and shall be effective only to the extent specifically allowed by such writing.
14. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, which when so executed and delivered shall be deemed an original, and such counterparts shall constitute one and the same Agreement.
15. **CORPORATE AUTHORITY.** Each individual signing this Agreement on behalf of entities represents and warrants that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.
16. **NOTICES.** All notices, requests, claims, demands and other communications hereunder shall be in writing. Such notices shall be given by (i) delivery in person, (ii) a nationally recognized next day courier service, (iii) registered or certified mail, or (iv) facsimile. Notices shall be effective (a) upon receipt by the party to which notice is give or (b) on the fifth day following mailing, whichever occurs first.

All notices shall be provided:

If to the CITY:

City of Bakersfield
Office of the City Attorney
City Hall North
1600 Truxtun Avenue, 4th Floor
Bakersfield, California 93301
Attention: City Attorney
Telephone: (661) 326-3721

If to the LLC:

Preservation Golf, LLC
3433 Parkside Drive
San Bernardino, CA 92404
Attention: Ken Arimitsu
Telephone: 949-390-5512

IN WITNESS WHEREOF, this Indemnification Agreement has been executed and delivered by the Parties as of the date first written above.

"CITY"
CITY OF BAKERSFIELD

"LLC"
PRESERVATION GOLF, LLC

By: _____
KAREN GOH
Mayor

By: _____
Print Name: KEN ARIMITSU

APPROVED AS TO CONTENT:
CITY MANAGER

Title: Partner

By: _____
CHRISTIAN CLEGG
City Manager

APPROVED AS TO FORM:
VIRGINIA GENNARO
CITY Attorney

By: _____
JOSHUA H. RUDNICK
Deputy CITY Attorney II

Insurance: _____

COUNTERSIGNED:

By: _____
RANDY MCKEEGAN
Finance Director

JHR:vlg:ag:em

PRESERVATION GOLF, LLC

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