

HEBER PUBLIC UTILITY DISTRICT

COMMUNITY FACILITIES DISTRICT NO. 2005-1

MEETING DATE: April 17, 2014

FROM: Laura Fischer, General Manager

SUBJECT: Authorize the District's Bond Counsel to distribute to registered owners of the CFD's Series 2005 Bonds a request for consent to a First Supplemental Indenture.

ISSUE:

Shall the HPUD Board of Directors acting as legislative body of the Heber Public Utility District Community Facilities District No. 2005-1 (Heber Meadows) (the "CFD"), authorize the District's bond counsel, Richards, Watson & Gershon ("Bond Counsel"), and bond trustee, Wells Fargo Bank, National Association (the "Trustee"), to distribute to registered owners of the CFD's Series 2005 Bonds (the "Bonds") a request for bond owner consent to a First Supplemental Indenture?

GENERAL MANAGER RECOMMENDATION:

Authorize the District's Bond Counsel to distribute to registered owners of the CFD's Series 2005 Bonds a request for consent to a First Supplemental Indenture.

FISCAL IMPACT:

No fiscal impact to HPUD. All administrative costs associated with this action will be paid through the CFD administrative expense portion. Our bond counsel, Richard Watson and Gershon estimate the cost will be \$2,400.

BACKGROUND:

In September 2014, the Heber Community Facility District Board of Directors authorized the bond counsel to distribute to registered owners of the CFD's Series 2005 Bonds a request for consent to a First Supplemental Indenture which will allow the new parcel owner to pay and cure the delinquent special taxes with respect to fiscal years 2007-08, 2008-09, and 2009-10 by paying the Cure Amount to the District, instead of the District incurring additional costs and expenses of future foreclosure sales to execute on the Judgment. Unfortunately this effort was unsuccessful and we did not receive a majority.

Staff and bond counsel have discussed several options and we believe that renewing our effort to get bond owner approval may be successful if some additional information is provided that will explain our efforts, our desired outcome, and emphasizing the need for majority approval.

Current Financial Status of the CFD:

Since the issuance of the Bonds and to date, the CFD has timely paid to Bondowners scheduled principal and interest on the Bonds, notwithstanding the outstanding Judgment Amount and other delinquencies which have occurred from time to time. Moreover, the CFD is current in the payment of its administrative and legal expenses, notwithstanding the outstanding Judgment Amount.

As of July 18, 2013, only \$1,495.00 (less than 1%) in 2012-13 special taxes were delinquent out of the total fiscal year 2012-13 special tax levy. Moreover, except for the subject delinquencies on APN 054-601-001 for fiscal years 2007-08, 2008-09, and 2009-10, only the following prior year special tax delinquency remains unresolved in the CFD: a fiscal year 2007-08 delinquency with respect to assessor's parcel number 054-605-030 in the amount of \$923.10 (the collection of which is currently stayed by bankruptcy proceedings).

DISCUSSION:

The foreclosure covenant set forth in the Bond Indenture, dated as of November 1, 2005 (the "Indenture"), by and between the CFD and the Trustee has resulted in a highly unusual situation with respect to one parcel in the CFD – APN 054-601-001. In fiscal year 2007-08, when delinquencies in the CFD were approximately 50% of the total special tax levy for that year, APN 054-601-001 was owned by Heber Meadows I, LLC, the Developer with respect to the Heber Meadows development encompassing the CFD. In view of the high delinquency rate in fiscal year 2007-08 and because the Reserve Account held by the Trustee with respect to the Bonds only contains reserve monies equivalent to debt service payments on the Bonds for approximately one year, in August 2008 the Board of Directors, as legislative body of the CFD, determined to commence foreclosure proceedings against all then delinquent parcels in the CFD, to avert a payment default on the Bonds.

Although most of the parcels delinquent in 2007-08 special taxes have since cured and paid their respective delinquencies, this is not the case with respect to APN 054-601-001. With respect to APN 054-601-001, no cure was provided by or on behalf of the property owner, and a default judgment was entered in favor of the District on March 15, 2010, which judgment was amended on April 21, 2011 (the "Judgment"), to include special tax delinquencies with respect to fiscal years 2007-08, 2008-09, and 2009-10, in the respective amounts of \$766.90, \$954.00, and \$954.00, as well as related statutory penalties and interest, and administrative costs and attorneys' fees incurred by the CFD, for a total judgment amount of \$21,568.89 (the "Judgment Amount"). If a foreclosure sale is held to execute on the Judgment, the Mello-Roos Act specifies that the minimum bid amount for the foreclosure sale is the sum of (i) the Judgment Amount, (ii) post judgment interest at 10% per annum, and (iii) authorized costs (primarily costs of the Imperial County Sheriff).

In accordance with the foreclosure covenant, the CFD duly caused the Imperial County Sheriff to hold a foreclosure sale on March 14, 2012 to execute on the Judgment, for the minimum bid price of \$22,110.41. There were no bidders at the March 2012 CFD foreclosure sale.

On February 23, 2013, the Imperial County Tax Collector held a tax sale in accordance with the Revenue and Taxation Code to collect delinquent ad valorem property taxes and other delinquent assessments and taxes remaining on the Imperial County tax roll with respect to the preceding five fiscal years (including delinquent special taxes levied by the CFD with respect to fiscal years 2010-11 and 2011-12 which are not included in the Judgment). The minimum bid at the February 2013 County tax sale was significantly lower than the minimum bid required under the Mello-Roos Act for a CFD

foreclosure sale, because the Revenue and Taxation Code authorizes the County Tax Collector to proceed with a tax sale under a process prescribed by the Revenue and Taxation Code and without judicial action and related costs. By way of contrast, the CFD is required to undertake foreclosure through a judicial foreclosure action and a foreclosure sale to execute on the Judgment. APN 054-601-001 was sold at the February 2013 County tax sale for a sale price of \$5,210 to RSG Capital, LLC, a California limited liability company.

Under California law, the Judgment survives the February 2013 County tax sale. Although APN 054-601-001 was intended to be developed ultimately as a single-family residence, the now bankrupt Developer had temporarily paved the lot and used it for locating sales trailers with respect to the Heber Meadows development. Currently, APN 054-601-001 remains an undeveloped paved lot.

Although the fair market value of APN 054-601-001, in its current state, is significantly lower than the minimum bid amount specified by the Mello-Roos Act for a foreclosure sale, the foreclosure covenant presently requires the CFD to continue to hold foreclosure sales to execute on the Judgment, at the minimum bid amount specified in the Mello-Roos Act until the delinquent special taxes included in the Judgment are paid. The minimum bid amount as of August 30, 2013 was \$26,662.69 and will continue to increase over time. As of March 17, 2014, the minimum bid amount is \$27,838.64.

Except for the delinquent special taxes included in the Judgment, APN 054-601-001 is presently current in the payment of special taxes. RSG Capital, LLC has stated its intent to develop APN 054-601-001 as a single family residence and is willing to cure the delinquent special taxes included in the Judgment (with respect to fiscal years 2007-08, 2008-09, and 2009-10) by paying to the CFD an amount equal to the delinquent principal of such delinquent special taxes (\$2,674.90) together with related statutory penalties (\$267.49), for a total amount of \$2,942.39 (the "Cure Amount").

Should the First Supplemental Indenture be Approved:

If the required majority of registered owners of the Bonds, per Article VI of the Indenture, provides its consent to the First Supplemental Indenture, the Board of Directors will be requested to adopt a Resolution approving the First Supplemental Indenture.

Should The First Supplement Indenture Not Be Approved:

HPUD could purchase the parcel for parking lot uses. This was an idea that HPUD had previously inquired about in July 2011, but then decided not to do. The HPUD would submit a bid for the minimum bid amount, calculated at the time of the sale. As we previously discussed, the CFD itself is not authorized to acquire a parking lot under the formation documents for the CFD.

Try to get the minimum sale price for the parcel at a foreclosure sale reduced, but this would require approval of 75% of the bondowners. However, given the higher approval requirements (75% vs. majority bondholders), this option doesn't seem very helpful.

CONCLUSION:

To avert the incurrence of additional costs and expenses of future (likely unsuccessful) foreclosure sales to execute on the Judgment, staff recommends that the Board of Directors, as legislative body of the CFD, authorize Bond Counsel and the Trustee to distribute to registered owners of the Bonds a request for bondowner consent to a First Supplemental Indenture, in substantially the form attached hereto.

The proposed amendment would allow RSG Capital, LLC, to satisfy and cure the delinquent special taxes with respect to fiscal years 2007-08, 2008-09, and 2009-10 on APN 054-601-001 by paying the Cure Amount to the CFD, without the need to pursue additional foreclosure sales to execute on the Judgment. Article VI of the Indenture provides that amendments such as the proposed amendment can only be made if the specified majority of registered owners of the Bonds provides its consent to the First Supplemental Indenture.

Respectfully Submitted,

Laura Fischer,
General Manager

Attachments: First Supplemental Indenture
Consent to Amend Indenture

**REQUEST FOR APPROVAL AND CONSENT;
BONDOWNER APPROVAL AND CONSENT TO AMEND INDENTURE**

Heber Public Utility District
Community Facilities District No. 2005-1
(Heber Meadows)
Heber, California

Wells Fargo Bank, National Association
Los Angeles, California

Re:

**\$2,355,000 (original aggregate principal amount)
Heber Public Utility District
Community Facilities District No. 2005-1 (Heber Meadows)
Special Tax Bonds
Series 2005**

September __, 2013

On November 22, 2005, the Heber Public Utility District Community Facilities District No. 2005-1 (Heber Meadows) (the “**District**”) issued its Special Tax Bonds, Series 2005 (the “**2005 Bonds**”) pursuant to a Bond Indenture, dated as of November 1, 2005 (the “**Indenture**”), by and between the District and Wells Fargo Bank, National Association, as trustee (the “**Trustee**”), and the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Part 1, Division 2, Title 5, of the California Government Code (the “**Act**”). Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Official Statement, dated November 8, 2005, with respect to the 2005 Bonds.

THE DISTRICT HEREBY REQUESTS the approval and consent of the registered owners of the 2005 Bonds, in accordance with Article VI of the Indenture, to a First Supplemental Indenture, dated as of December 1, 2013 (the “**First Supplemental Indenture**”), by and between the District and the Trustee to provide a limited amendment to the foreclosure covenant set forth in Section 5.2(c) of the Indenture. The First Supplemental Indenture would allow for the cure of certain special tax delinquencies with respect to assessor’s parcel number 054-601-001 (“**APN 054-601-001**”), located in the District by authorizing the District to accept payment from RSG Capital, LLC, a California limited liability company and new owner of APN 054-601-001, of the delinquent special taxes together with related statutory penalties in the total amount of \$2,942.39 (the “**Cure Amount**”), without the need to pursue additional foreclosure sales to execute on a judgment previously issued in favor of the District. **Your consent is requested to be submitted to the District by November 15, 2013.**

BACKGROUND

The Foreclosure Covenant

As permitted by Section 53356.1 of the Act, the legislative body of the District opted by Resolution No. 2005-17, which authorizes the issuance of the 2005 Bonds, to include a foreclosure covenant in the Indenture (the “**Foreclosure Covenant**”). The Foreclosure Covenant

requires the District to commence judicial foreclosure proceedings against parcels in the District which are delinquent in the payment of their special taxes, by the October 1 following the close of the fiscal year in which either of the following tests is met: (i) the parcel has delinquent special taxes in excess of \$10,000 (the “**Per Parcel Test**”), or (ii) in the fiscal year, the District receives aggregate special taxes in an amount which is less than 95% of the total special taxes levied against all parcels within the District for such fiscal year (the “**Total Delinquency Rate Test**”); provided that the District may elect not to commence foreclosure proceedings with respect to the Total Delinquency Rate Test if the amount on deposit in the Reserve Account held by the Trustee with respect to the 2005 Bonds is not less than the Reserve Requirement.

Although the Per Parcel Test was not exceeded with respect to taxes levied in fiscal year 2007-08, the District received only \$107,827.90 in special taxes in fiscal year 2007-08 out of \$212,762.30 total special taxes levied in such year, ostensibly due to the onset of the Great Recession. This amount comprised only 50.67% of the total special taxes levied in fiscal year 2007-08 and is significantly less than the 95% collection rate threshold under the Total Delinquency Rate Test. In view of the high delinquency rate in fiscal year 2007-08 and because the Reserve Requirement only provides for reserve monies in the Reserve Account equivalent to debt service payments on the Bonds for approximately one year, in August 2008 the legislative body of the District determined to commence foreclosure proceedings against all then delinquent parcels in the District, to effectuate the purposes of the Foreclosure Covenant.

Assessor’s Parcel No. 054-601-001

In fiscal year 2007-08, APN 054-601-001 was owned by Heber Meadows I, LLC (the “**Developer**”), the developer with respect to the Heber Meadows development encompassing the District. APN 054-601-001 was among the parcels delinquent in the payment of fiscal year 2007-08 special taxes.

On August 1, 2008, the individuals owning 90% of the ownership interest in the Developer filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, and the Developer ceased all further development activities in the District. Although APN 054-601-001 was intended to be developed ultimately as a single-family residence, the Developer had temporarily paved the lot and used it for locating sales trailers with respect to the Heber Meadows development. Currently, APN 054-601-001 remains an undeveloped paved lot.

Although most of the parcels delinquent in 2007-08 special taxes, other than APN 054-601-001, have since cured and paid their respective delinquencies, this is not the case with respect to APN 054-601-001. With respect to APN 054-601-001, no cure was provided by or on behalf of the property owner, and a default judgment was entered in favor of the District on March 15, 2010, which judgment was amended on April 21, 2011 (the “**Judgment**”), to include special tax delinquencies with respect to fiscal years 2007-08 2008-09, and 2009-10, in the respective amounts of \$766.90, \$954.00, and \$954.00, as well as related statutory penalties and interest, and administrative costs and attorneys’ fees incurred by the District, for a total judgment amount of \$21,568.89 (the “**Judgment Amount**”).

Unsuccessful March 2012 District Foreclosure Sale

In accordance with the Foreclosure Covenant, the District duly caused the Imperial County Sheriff to hold a foreclosure sale on March 14, 2012 (the “**March 2012 District Foreclosure Sale**”) to execute on the Judgment, for the minimum bid price of \$22,110.41 (consisting, as specified by Section 53356.5 of the Act, of the Judgment Amount, postjudgment interest at 10% per annum, and authorized costs of the Imperial County Sheriff). There were no bidders at the March 2012 District Foreclosure Sale.

On February 23, 2013, the Tax Collector of the County of Imperial (the “**County Tax Collector**”) held a tax sale (the “**February 2013 County Tax Sale**”) in accordance with the Revenue and Taxation Code to collect delinquent ad valorem property taxes and other delinquent assessments and taxes remaining on the Imperial County tax roll with respect to the preceding five fiscal years (including delinquent special taxes levied by the District with respect to fiscal years 2010-11 and 2011-12 which are not included in the Judgment). The minimum bid at the February 2013 County Tax Sale was significantly lower than the minimum bid required under the Act for a District foreclosure sale, because the California Revenue and Taxation Code authorizes the County Tax Collector to proceed with a tax sale under a process prescribed by the Revenue and Taxation Code and without judicial action and related costs. By way of contrast, the District is required under the Foreclosure Covenant, as authorized under the Act, to undertake foreclosure through a judicial foreclosure action and a foreclosure sale to execute on the Judgment. APN 054-601-001 was sold at the February 2013 County Tax Sale for a sale price of \$5,210 to RSG Capital, LLC, a California limited liability company (the “**New Parcel Owner**”).

Negative Outlook for Future District Foreclosure Sales to Execute on the Judgment

Under California law, the Judgment survives the February 2013 County Tax Sale, and the Foreclosure Covenant presently requires the District to continue to hold foreclosure sales to execute on the Judgment, at the minimum bid amount specified in the Act until the delinquent special taxes included in the Judgment are paid. Because the minimum bid amount, as specified by Section 53356.5 of the Act, must include the Judgment Amount, postjudgment interest at 10% per annum, and authorized costs, the minimum bid amount as of August 30, 2013 was \$26,662.69 and will continue to increase over time.

The fair market value of APN 054-601-001, in its current state, is significantly lower than \$26,662.69, and the District is highly unlikely to accomplish a sale of the parcel at any future foreclosure sale to be held to execute on the Judgment. Moreover, the District is likely to continue to incur additional attorneys’ fees and Imperial County Sheriff costs in connection with any future attempts to sell APN 054-601-001 at a foreclosure sale.

Proposed Resolution of Outstanding Special Tax Delinquencies

Except for the delinquent special taxes included in the Judgment (with respect to fiscal years 2007-08, 2008-09, and 2009-10), APN 054-601-001 is presently current in the payment of special taxes. The New Parcel Owner intends to develop APN 054-601-001 as a single family residence and is willing to cure the delinquent special taxes included in the Judgment (with respect to fiscal years 2007-08, 2008-09, and 2009-10) by paying to the District an amount equal

to the delinquent principal of such delinquent special taxes (\$2,674.90) together with related statutory penalties (\$267.49), for a total amount of \$2,942.39 (the “**Cure Amount**”).

To avert the incurrence of additional costs and expenses of future foreclosure sales to execute on the Judgment (which are expected to be unsuccessful in view of the minimum bid requirements of the Act), the Board of Directors of the Heber Public Utility District, as the legislative body of the District, desires amend the Foreclosure Covenant to address this highly unusual situation. The proposed amendment would allow the New Parcel Owner to satisfy and cure the delinquent special taxes with respect to fiscal years 2007-08, 2008-09, and 2009-10 on APN 054-601-001 by paying the Cure Amount to the District, without the need to pursue additional foreclosure sales to execute on the Judgment. In all other respects and with respect to all other delinquencies, the Foreclosure Covenant would remain unchanged.

Current Financial Status of the District

Since the issuance of the 2005 Bonds and to date, the District has timely paid to Bondowners scheduled principal and interest on the 2005 Bonds, notwithstanding the outstanding Judgment Amount and other delinquencies which have occurred from time to time. Moreover, the District is current in the payment of its Administrative Expenses, notwithstanding the outstanding Judgment Amount.

As of July 18, 2013, only \$1,495.00 in 2012-13 special taxes were delinquent out of the total fiscal year 2012-13 special tax levy, amounting to delinquencies comprising less than 1% of the total fiscal year 2012-13 special tax levy. Moreover, currently only the following prior year special tax delinquencies remain unresolved in the District: (i) the delinquencies with respect to APN 054-601-001 for fiscal years 2007-08, 2008-09, and 2009-10, and (ii) a fiscal year 2007-08 delinquency with respect assessor’s parcel number 054-605-030 in the amount of \$923.10 (the collection of which is currently stayed by bankruptcy proceedings).

RECOMMENDATION OF THE BOARD OF DIRECTORS:

The Board of Directors of the Heber Public Utility District, acting as legislative body of the District, recommends that the First Supplemental Indenture be APPROVED, as being in the best interests of the Bondowners of the 2005 Bonds.

HEBER PUBLIC UTILITY DISTRICT
COMMUNITY FACILITIES DISTRICT NO. 2005-1
(HEBER MEADOWS)

By /s/ Martin A. Nolasco Jr.
President of the Board of Directors of the
Heber Public Utility District

[The submission of Bondowner Approval and Consent to the District in the enclosed, postage-prepaid envelope is requested by November 15, 2013.]

BONDOWNER APPROVAL AND CONSENT TO AMEND INDENTURE

The undersigned, an authorized representative of _____ (the "Owner"), hereby certifies as follows:

In accordance with Article VI of the Indenture, as a Bondowner of 2005 Bonds, the Owner hereby approves and consents to the amendment of Section 5.2(c) of the Indenture, pursuant to the First Supplemental Indenture in substantially the form attached hereto as Exhibit A, in order to allow the New Parcel Owner to satisfy and cure the delinquent special taxes with respect to fiscal years 2007-08, 2008-09, and 2009-10 on APN 054-601-001 by paying the Cure Amount to the District, without the need to pursue additional foreclosure sales to execute on the Judgment.

OWNER OF 2005 BONDS

By: _____
Name: _____
Title (*if applicable*): _____

EXHIBIT A
FORM OF FIRST SUPPLEMENTAL INDENTURE

[please see attached]

HEBER PUBLIC UTILITY DISTRICT
COMMUNITY FACILITIES DISTRICT NO. 2005-1
(HEBER MEADOWS)

and

WELLS FARGO BANK, NATIONAL ASSOCIATION

as Trustee

FIRST SUPPLEMENTAL INDENTURE

Dated as of December 1, 2013

Relating to

\$2,355,000
Heber Public Utility District
Community Facilities District No. 2005-1
(Heber Meadows)
Special Tax Bonds
Series 2005

RWG DRAFT
8/28/13

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I AUTHORITY AND DEFINITIONS	4
Section 1.1 Supplemental Indenture	4
Section 1.2 Authority for this First Supplemental Indenture.....	4
Section 1.3 Definitions	4
ARTICLE II AMENDMENT OF MASTER INDENTURE	4
Section 2.1 Amendment and Restatement of First Paragraph of Section 5.2(c).....	4

FIRST SUPPLEMENTAL INDENTURE

This First Supplemental Indenture, dated as of December 1, 2013 (this “First Supplemental Indenture”), is entered into between HEBER PUBLIC UTILITY DISTRICT COMMUNITY FACILITIES DISTRICT NO. 2005-1 (HEBER MEADOWS) (the “District”) and WELLS FARGO BANK, NATIONAL ASSOCIATION, as trustee (the “Trustee”).

Recitals

WHEREAS, the Board of Directors (hereinafter sometimes referred to as the “legislative body of the District”) of the Heber Public Utility District, located in Imperial County, California, has heretofore undertaken proceedings and declared the necessity to issue bonds on behalf of the District pursuant to the terms and provisions of the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Part 1, Division 2, Title 5, of the Government Code of the State of California (the “Act”);

WHEREAS, based upon Resolution Nos. 2005-10 and 2005-11 adopted by the legislative body of the District on August 18, 2005 and an election held August 18, 2005 authorizing the levy of a special tax and the issuance of bonds by the District, the District was authorized to issue bonds for one or more series, pursuant to the Act, in an aggregate principal amount not to exceed \$5,500,000;

WHEREAS, pursuant to its Resolution No. 2005-17, adopted by the legislative body of the District on October 19, 2005, the Act, and a Bond Indenture, dated as of November 1, 2005 (the “Master Indenture”), by and between the District and the Trustee, the District issued its Special Tax Bonds, Series 2005 (the “Bonds”), in the original aggregate principal amount of \$2,355,000 for the purpose of financing certain public facilities which the District is authorized to finance;

WHEREAS, in accordance with the Act, the Master Indenture provides that the Bonds are secured by, and payable from certain special taxes levied and collected by the District, as more particularly described in the Master Indenture;

WHEREAS, as permitted by Section 53356.1 of the Act, the legislative body of the District opted by Resolution No. 2005-17, to include in the Master Indenture a foreclosure covenant, set forth in Section 5.2(c) of the Master Indenture (the “Foreclosure Covenant”);

WHEREAS, the Foreclosure Covenant requires the District to commence judicial foreclosure proceedings against parcels in the District which are delinquent in the payment of their special taxes, by the October 1 following the close of the fiscal year in which either of the following tests is met: (i) the parcel has delinquent special taxes in excess of \$10,000 (the “Per Parcel Test”), or (ii) in the fiscal year, the District receives aggregate special taxes in an amount which is less than 95% of the total special taxes levied against all parcels within the District for such fiscal year (the “Total Delinquency Rate Test”); provided that the District may elect not to commence foreclosure proceedings with respect to the Total Delinquency Rate Test if the amount on deposit in the Reserve Account held by the Trustee with respect to the Bonds is not less than the Reserve Requirement;

WHEREAS, although the Per Parcel Test was not exceeded with respect to taxes levied in fiscal year 2007-08, the District received only \$107,827.90 in special taxes in fiscal year 2007-08 out of \$212,762.30 total special taxes levied in such year within the District, which comprises only 50.67% collected in the fiscal year and is less than the permitted collection rate under the Total Delinquency Rate Test;

WHEREAS, in view of the high delinquency rate in fiscal year 2007-08 and because the Reserve Requirement only provides for reserve monies in the Reserve Account equivalent to debt service payments on the Bonds for only approximately one year, the legislative body of the District determined to commence foreclosure proceedings against all then delinquent parcels in the District by October 1, 2008, to effectuate the purposes of the Foreclosure Covenant and as contemplated by the Total Delinquency Rate Test;

WHEREAS, in fiscal year 2007-08, assessor's parcel number 054-601-001 ("APN 054-601-001") was owned by Heber Meadows I, LLC (the "Developer"), the developer with respect to the Heber Meadows development encompassing the District, and special taxes in the amount of \$766.90 levied on APN 054-601-001 in fiscal year 2007-08 were, and continue to be, delinquent;

WHEREAS, on August 1, 2008, the individuals owning ninety percent (90%) of the ownership interest in the Developer filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, and the Developer ceased all further development activities in the District;

WHEREAS, although APN 054-601-001 was intended to be developed ultimately as a single-family residence, the Developer had temporarily paved the lot and used it for locating sales trailers with respect to the Heber Meadows development, and APN 054-601-001 currently remains an undeveloped paved lot;

WHEREAS, most of the parcels delinquent in 2007-08 special taxes, other than APN 054-601-001, have since cured and paid their respective delinquencies, through a combination of pre-foreclosure delinquency management activities undertaken on or behalf of the District, early responses to filed complaints for judicial foreclosure, or payment to satisfy a judgment issued in favor of the District in the judicial foreclosure proceedings;

WHEREAS, with respect to APN 054-601-001, a default judgment was entered in favor of the District on March 15, 2010, which judgment was amended on April 21, 2011 (the "Judgment"), to include the fiscal year 2007-08 delinquency in the amount of \$766.90, the fiscal year 2008-09 delinquency in the amount of \$954.00, and the fiscal year 2009-10 delinquency in the amount of \$954.00, as well as related statutory penalties and interest, and administrative costs and attorneys' fees incurred by the District, for a total judgment amount of \$21,568.89 (the "Judgment Amount");

WHEREAS, in accordance with the Foreclosure Covenant, the District duly caused the Imperial County Sheriff to hold a foreclosure sale on March 14, 2012 (the "March 2012 District Foreclosure Sale") to execute on the Judgment, for the minimum bid price of \$22,110.41 (consisting, as specified by Section 53356.5 of the Act, of the Judgment Amount, postjudgment interest at 10% per annum, and authorized costs of the Imperial County Sheriff);

WHEREAS, there were no bidders at the March 2012 District Foreclosure Sale;

WHEREAS, on February 23, 2013, the Tax Collector of the County of Imperial (the "County Tax Collector") held a tax sale (the "February 2013 County Tax Sale") in accordance with the Revenue and Taxation Code to collect delinquent ad valorem property taxes and other delinquent taxing entity assessments and taxes remaining on the Imperial County tax roll with respect to the preceding five fiscal years, including delinquent special taxes levied by the District with respect to fiscal years 2010-11 and 2011-12 which are not included in the Judgment;

WHEREAS, the minimum bid at the February 2013 County Tax Sale was significantly lower than the minimum bid required under the Act for a District foreclosure sale, because the County

Tax Collector may proceed with a tax sale without judicial action (and related costs) and under the process prescribed by the Revenue and Taxation Code, while the District, on the other hand, is required under the Foreclosure Covenant, as authorized under the Act, to undertake foreclosure through a judicial foreclosure action and a sale to execute on the judgment issued by the court;

WHEREAS, APN 054-601-001 was sold at the February 2013 County Tax Sale for a sale price of \$5,210 to RSG Capital, LLC, a California limited liability company (the "New Parcel Owner");

WHEREAS, under California law, the Judgment survives the February 2013 County Tax Sale, and the Foreclosure Covenant presently requires the District to continue to hold foreclosure sales to execute on the Judgment, at the minimum bid amount specified in the Act until the delinquent special taxes included in the Judgment are paid;

WHEREAS, because the minimum bid amount, as specified by Section 53356.5 of the Act, must include the Judgment Amount, postjudgment interest at 10% per annum, and authorized costs, the minimum bid amount as of August 30, 2013 was \$26,662.69 and will continue to increase over time;

WHEREAS, the fair market value of APN 054-601-001, in its current state, is significantly lower than \$26,662.69, and the District is highly unlikely to accomplish a sale of the parcel at any future foreclosure sale to be held to execute on the Judgment; moreover, the District is likely to continue to incur additional attorneys' fees and Imperial County Sheriff costs in connection with any future attempts to sell APN 054-601-001 at a foreclosure sale;

WHEREAS, except for the delinquent special taxes included in the Judgment (with respect to fiscal years 2007-08, 2008-09, and 2009-10), APN 054-601-001 is presently current in the payment of special taxes;

WHEREAS, the New Parcel Owner intends to develop APN 054-601-001 as a single family residence and is willing to cure the delinquent special taxes included in the Judgment (with respect to fiscal years 2007-08, 2008-09, and 2009-10) by paying to the District an amount equal to the delinquent principal of such delinquent special taxes together with related statutory penalties, being \$2,942.39 (the "Cure Amount");

WHEREAS, the District is current in the payment of its Administrative Expenses (as defined in the Master Indenture), notwithstanding the outstanding Judgment Amount;

WHEREAS, since the issuance of the Bonds and to date, the District has timely paid to Bondowners scheduled principal and interest on the Bonds, notwithstanding the outstanding Judgment Amount and other delinquencies which have occurred from time to time;

WHEREAS, as of July 18, 2013, only \$1,495.00 (or less than 1%) out of the total fiscal year 2012-13 special tax levy was delinquent;

WHEREAS, currently only the following prior year special tax delinquencies remain unresolved in the District: (i) the delinquencies with respect to APN 054-601-001 for fiscal years 2007-08, 2008-09, and 2009-10, and (ii) a fiscal year 2007-08 delinquency with respect assessor's parcel number 054-605-030 in the amount of \$923.10 (the collection of which is currently stayed by bankruptcy proceedings);

WHEREAS, the legislative body of the District has determined that it is in the best interests of the Bondowners for the Foreclosure Covenant to be amended by this First Supplemental

Indenture to allow the New Parcel Owner to pay and cure the delinquent special taxes with respect to fiscal years 2007-08, 2008-09, and 2009-10 on APN 054-601-001 by paying the Cure Amount to the District, instead of the District incurring additional costs and expenses of future foreclosure sales to execute on the Judgment;

WHEREAS, the District has determined that it is permitted under applicable law to accept the Cure Amount in full satisfaction of the Judgment, provided that the Master Indenture is amended by this First Supplemental Indenture with Bondowner consent, in accordance with Article VI of the Master Indenture; and

WHEREAS, the execution and delivery of this First Supplemental Indenture has been duly authorized by the District and the Bondowners in accordance with Article VI of the Master Indenture.

NOW THEREFORE, THIS FIRST SUPPLEMENTAL INDENTURE WITNESSETH, that the District does hereby covenant and agree with the Trustee, for the benefit of the holders from time to time of the Bonds, as follows:

ARTICLE I

AUTHORITY AND DEFINITIONS

Section 1.1 Supplemental Indenture. This First Supplemental Indenture is supplemental to the Master Indenture. Save and except as amended and supplemented by this First Supplemental Indenture, the Master Indenture shall remain in full force and effect.

Section 1.2 Authority for this First Supplemental Indenture. This First Supplemental Indenture is adopted (a) pursuant to the provisions of the Act and (b) in accordance with Article VI of the Master Indenture.

Section 1.3 Definitions. All terms which are defined in Section 1.1 of the Master Indenture shall have the same meanings, respectively, in this First Supplemental Indenture.

ARTICLE II

AMENDMENT OF MASTER INDENTURE

Section 2.1 Amendment and Restatement of First Paragraph of Section 5.2(c). Pursuant to Section 6.2 of the Master Indenture, a proviso clause is hereby added to the end of the first paragraph of Section 5.2(c) of the Master Indenture, so that such paragraph, as amended and restated in its entirety, reads as follows:

“(c) Commence Foreclosure Proceedings. The District covenants for the benefit of the Owners of the Bonds and any Parity Bonds that it (i) will commence judicial foreclosure proceedings against parcels with delinquent Special Taxes in excess of \$10,000 by the October 1 following the close of each Fiscal Year in which such Special Taxes were due; and (ii) will commence judicial foreclosure proceedings against all parcels with delinquent Special Taxes by the October 1 following the close of each Fiscal Year in which it receives Special Taxes in an amount which is less than 95% of the total Special Tax levied and the amount on deposit in the Reserve Account is at less than the Reserve Requirement, and (iii) will diligently pursue such foreclosure proceedings

until the delinquent Special Taxes are paid; provided, with respect to delinquent special taxes of assessor's parcel number 054-601-001 with respect to fiscal years 2007-08, 2008-09, and 2009-10, which total \$2,674.90 in aggregate principal amount and are subject to that certain amended default judgment issued on April 21, 2011 in favor of the District, the District is not obligated hereunder to pursue any additional foreclosure sale to execute on the judgment and instead is hereby authorized to accept from RSG Capital, LLC, the new owner of such parcel as of February 23, 2013, a cure and satisfaction of such judgment in an amount equal to \$2,942.39, which includes the aggregate principal amount of such delinquent special taxes, together with statutory penalties related thereto."

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the HEBER PUBLIC UTILITY DISTRICT COMMUNITY FACILITIES DISTRICT NO. 2005-1 (HEBER MEADOWS) has caused this First Supplemental Indenture to be signed by the President of the Board of Directors of the Heber Public Utility District, as the legislative body of the District, and attested thereto by the Clerk of the Board of Directors of the Heber Public Utility District, and Wells Fargo Bank, National Association, in token of its acceptance of the agreements created hereunder, has caused this First Supplemental Indenture to be signed in its corporate name by its duly authorized officer identified below, all as of the date first above written.

HEBER PUBLIC UTILITY DISTRICT
COMMUNITY FACILITIES DISTRICT NO. 2005-1
(HEBER MEADOWS)

By: _____
President of the Board of Directors of the
Heber Public Utility District, California

ATTEST

Clerk of the Board of Directors of the Heber
Public Utility District, California

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Officer