



Sacramento County Recorder
 Donna Allred, Clerk/Recorder
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OFFICIAL BUSINESS
 Document entitled to free recording
 Government Code Section 6103

RECORDING REQUESTED BY AND
 WHEN RECORDED, MAIL TO:

City of Rancho Cordova
 2729 Prospect Park Drive
 Rancho Cordova, CA 95670
 Attention: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
 BY AND BETWEEN THE CITY OF RANCHO CORDOVA,
 BEAZER HOME HOLDINGS CORP. AND
 HEARTHSTONE MULTI-ASSET ENTITY B, L.P.**

RELATIVE TO CAPITAL VILLAGE

This Second Amendment ("**Second Amendment**") to Development Agreement is entered into this 21 day of March 2016, by and between the CITY OF RANCHO CORDOVA, a California municipal corporation ("**City**"), BEAZER HOMES HOLDING CORP., a Delaware Corporation, and HEARTHSTONE MULTI-ASSET ENTITY B, L.P., a California limited partnership (collectively, "**Landowner**"). City and Landowner are hereinafter collectively referred to as the "**Parties**," and singularly as a "**Party**."

RECITALS

A. On October 6, 2005, the effective date of City Council Ordinance 19-2005, the City of Rancho Cordova and Landowner entered into that certain agreement entitled Development Agreement by and between the City of Rancho Cordova and Beazer Homes Holding Corp. and Hearthstone Multi-Asset Entity B, L.P. (the "**Development Agreement**").

B. Pursuant to the Development Agreement, Landowner agreed to develop certain property, more particularly described in the Development Agreement, subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of Sacramento County on April 6, 2006, in Book 20060406, Page 1536.

C. On April 6, 2015, the Parties entered into the First Amendment to the Development Agreement, which extended the expiration date of said Development Agreement an additional ten (10) years, or until April 6, 2025.

D. The Project area is mostly developed; however a 5.12-acre parcel on the Property identified as Assessor Parcel Number 072-0680-072-0000 and designated as "Loft" (hereinafter the "Loft district"), consistent with the City's Commercial Mixed Use ("CMU") zone, has not been developed.

E. On March 21, 2005, the City Council certified as adequate and complete the Mitigated Negative Declaration ("**MND**") for the Project on the Property. Subsequently, in

June 2006, the City Council approved a Supplemental Mitigated Negative Declaration (“SMND”). All environmental impacts associated with development of the Project were reviewed and addressed in the MND and the SMND.

F. Landowner has requested a further amendment to the Development Agreement to allow for high-density residential as a permitted use in the Loft district. To reflect changed market conditions and current housing demands, the Second Amendment to the Development Agreement will amend permitted uses for the Loft district, as described in Section 3.6 of the Capital Village Special Planning Area Handbook. Pursuant to Landowner’s request and Government Code section 65868, this Second Amendment to the Development Agreement (“**Second Amendment**”) would allow for the desired higher density residential uses in the Loft district.

G. The City evaluated the impacts associated with the proposed high-density residential uses in the Loft district in the Addendum to the Capital Village Mitigated Negative Declaration (“**Addendum**”), adopted on February 16, 2016 by City Council Resolution 146-2015.

H. All recitals and findings of determination in City Council Ordinance 19-2005, which adopted the Development Agreement on September 6, 2005, are still accurate and relevant to this Second Amendment and incorporated herein. All findings contained in City Council Ordinance 17-2015 adopting this Second Amendment are incorporated herein.

I. The Parties acknowledge the existing Park Development Agreement (“**PDA**”) between the Cordova Recreation and Park District and Beazer Homes, and that such PDA runs with the land.

J. This Second Amendment is consistent with the objectives, policies, general land uses and programs specified and contained in the City’s General Plan on October 6, 2005, the date the Development Agreement was executed.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties hereby agree to amend the Agreement as follows:

AGREEMENT

1. **Incorporation of Recitals.** Recitals A through J are hereby incorporated herein, including the documents referenced in the Recitals.

2. **Amendment of Section 5 of the Recitals Concerning “Environmental Review.”** Section 5 of the Recitals of the Development Agreement is hereby amended by deleting section 5 and replacing it with the following section:

“**5. Environmental Review.** The following environmental review documents have been prepared for the Project.

5.1 On March 21, 2005, the City Council certified as adequate and complete the Mitigated Negative Declaration (“MND”) for the Project, which included required mitigation measures.

5.2 On June 8, 2006, the City Council approved a Supplemental Mitigated Negative Declaration ("SMND") that evaluated the modification of the commercial aspect of the Project to add approximately 65,000 square feet of retail uses as part of a new home improvement center and modified the mitigation measures to address the change. The MND and SMND are hereby collectively referred to as the "MND."

5.3 On February 16, 2016, the City Council approved an Addendum to the MND to evaluate the addition of high density residential as a permitted use on the commercial mixed use (CMU) parcel designated as the Loft district and modified the mitigation measures to address the change.

5.4 The mitigation measures adopted as part of the MND, as modified by the SMND and the Addendum, are incorporated into the Project and into the terms and conditions of this Agreement, as reflected by the findings adopted by the City Council concurrently with the adoption of the Development Agreement in 2005 and the adoption of the Second Amendment on March 21, 2016."

3. Amendment of Section 6 of the Recitals Concerning "Project Approvals." Section 6 of the Recitals of the Development Agreement is hereby amended by deleting subsection 6.4 and replacing it with the following:

"6.4 The Development Agreement approved by the City Council on September 6, 2005 by City Council Ordinance 19-2005 and amended on April 6, 2015 by City Council Ordinance No. 5-2015 adopting the First Amendment and as amended on March 21, 2016 by City Ordinance No. 17-2015 adopting the Second Amendment."

Section 6 of the Recitals of the Development Agreement is hereby amended by deleting subsection 6.5 and replacing it with the following:

"6.5 The approval of the Capital Village Special Planning Area ("SPA"), which contains design guidelines and specifications pertaining to the Project (attached hereto as Exhibit 4), as adopted by City Council Ordinance No. 06-2005, and as may be amended from time to time by City Council Ordinance."

Section 6 of the Recitals of the Development Agreement is hereby amended by deleting section 6.6 and replacing it with the following section:

6.6 Environmental Review and Mitigation. The Mitigation Measures in the MND, including any changes provided in the SMND and the Addendum, are incorporated into the Project and into the terms and conditions of this Agreement."

4. Amendment of Section 6.2, concerning the "Permitted Uses." City and Landowner agree that Section 6.2 of the Agreement is hereby deleted and replaced with the following:

"6.2 Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, location and maintenance of on-site and off-site improvements, location of public utilities and other terms and conditions of development applicable to the Property, shall be those set forth in this

Agreement, the Project Approvals and any amendments to this Agreement or the Project Approvals. City acknowledges that the Project Approvals provide for the following land uses and approximate acreages for the Property:

784 single family residential units, including townhomes, on 66.35 ± acres;

199 high-density residential units on 5.12± acres within the "Loft" district;

25.25± acres of retail/commercial mixed use

7.67± acres of parks;

1.8703± acres of open space;

5.2393± acres of right of way for roads; and

4.9181± acres of landscape corridors;

all as set forth in Exhibit 3. Such uses shall be developed in accordance with the Project Approvals, as such Project Approvals provide on the Effective Date of this Agreement."

5. Amendment of Section 6.4.1 of the Agreement, concerning "New Park Development Obligation." City and Landowner agree that subdivision (ii) of Section 6.4.1 of the Agreement is amended to add the following sentence at the end of the paragraph:

"The Parties acknowledge that the Parks DA was executed on April 12, 2006 and it is understood that park impact fees will be collected and dispersed pursuant to the terms of said agreement."

6. Amendment of Section 8.3, concerning "CEQA Mitigation Measures." City and Landowner agree that Section 8.3 of the Agreement is hereby deleted and replaced with the following:

8.3 CEQA Mitigation Measures. Notwithstanding any other provision in this Agreement to the contrary, as and when Landowner elects to develop the Property, Landowner shall be bound by, and shall perform, all mitigation measures contained in the MND, as amended in the SMND and the Addendum, and the Conditions of Approval/MMRP, as approved by the City on February 16, 2016 by Resolution No. 146-2015 and Resolution No. 147-2015, related to such development, which are adopted by the City, and are identified as being a responsibility of Landowner."

7. Amendment of Exhibit 4, Capital Village Special Planning Area Handbook. City and Landowner agree that Section 3.6 of the Capital Village Special Planning Area Handbook is hereby deleted and replaced with the language approved by City Council through Ordinance No. 17-2015 on March 21, 2016 and provided in **Attachment 1** to this Second Amendment. This amended Section 3.6 shall replace Section 3.6 within Exhibit 4 to the Development Agreement.

8. Definition of Terms. All capitalized terms used in this Second Amendment shall have the same definition as provided in the Agreement, except where a different definition has been supplied in this Second Amendment.

9. **All Other Terms in Force.** Except as amended by this Second Amendment, all terms and conditions of the Agreement, including its First Amendment, remain in full force and effect.

10. **Recording.** Within ten (10) days after the Effective Date, City shall record this Second Amendment with the Sacramento County Recorder's Office.

11. **Counterparts.** The Parties may execute this Second Amendment in counterparts, each of which will be considered an original, but all of which will constitute the same instrument.

12. **Entire Agreement.** This Second Amendment sets forth the Parties' entire understanding regarding the matters set forth above. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those matters (whether written, oral, express, or implied) and may be modified only by another written agreement signed by all Parties. This Second Amendment will control if any conflict arises between it and the Agreement.

IN WITNESS WHEREOF, the City of Rancho Cordova, a municipal corporation, has authorized the execution of this Second Amendment in duplicate by its City Manager and attested to by its City Clerk under the authority of Ordinance No. 17-2015, adopted by the Council of the City on 21 day of March, 2016 and Landowner has caused this Second Amendment to be executed.

"CITY"

"LANDOWNER"

CITY OF RANCHO CORDOVA,
a municipal corporation

BEAZER HOMES HOLDING CORP.,
a Delaware corporation

By: Cyrus Akbar

By: Laura Stickelman

Name: Cyrus Akbar

Name: Laura Stickelman

Its: City Manager

Its: Division President

ATTEST:

HEARTHSTONE MULTI-ASSET ENTITY B,
L.P., a California limited partnership

Mindy Curry
City Clerk, Mindy Curry

By: HHP GP, LLC, A California limited liability company, its General Partner

APPROVED AS TO FORM:

By: HEARTHSTONE, INC.,
a California corporation, its Manager

Adam U. Lindgren
City Attorney

By: _____

Name: _____

Its: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Placer)

On September 30, 2016 before me, Anna E. Kine, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Laura Stickelman
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature Anna E. Kine
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document Second Amendment - Capital Village
Title or Type of Document: to Development Agreement Document Date: _____
Number of Pages: let 3 attachment Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

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 Corporate Officer — Title(s): _____
 Partner — Limited General
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 Trustee Guardian or Conservator
 Other: _____
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"LANDOWNER"

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a municipal corporation

BEAZER HOMES HOLDING CORP.,
a Delaware corporation

By: Cyrus Abhar

By: _____

Name: Cyrus Abhar

Name: _____

Its: City manager

Its: _____

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L.P., a California limited partnership

Mindy Cuppy
City Clerk, Mindy Cuppy

By: HHP GP, LLC, A California limited liability company, its General Partner

APPROVED AS TO FORM:

By: HEARTHSTONE, INC.,
a California corporation, its Manager

Adam U. Lindgren

By: STEVEN C BRATH

Adam U. Lindgren
City Attorney

Name: STEVEN C BRATH

FOR

Its: SVP- GENERAL COUNSEL