

OFFICIAL BUSINESS
Document entitled to free recording
Government Code §6103

Recording requested by, and
when recorded return to:

59-2018
City of Rancho Cordova
2719 Prospect Park Drive
Rancho Cordova, CA 95670
Attn: City Clerk

CERTIFIED TO BE A TRUE COPY
RECORDED April 18, 2018
BOOK _____ PAGE _____
SERIES No. 201804180892
STEWART TITLE OF SACRAMENTO
BY [Signature]

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
RELATIVE TO DOUGLAS 98
BY AND BETWEEN
THE CITY OF RANCHO CORDOVA AND DOUGLAS ROAD 105, LLC

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
RELATIVE TO DOUGLAS 98
BY AND BETWEEN
THE CITY OF RANCHO CORDOVA AND DOUGLAS ROAD 105, LLC**

This Second Amendment (the "Second Amendment") to the Development Agreement is dated April 5, 2018, for references purposes only, is made by and between the **CITY OF RANCHO CORDOVA**, a California municipal corporation ("City"); and **DOUGLAS ROAD 105, LLC**, a California limited liability company (the "Landowner"). City and Landowner are hereinafter collectively referred to as the "Parties" and singularly as a "Party."

RECITALS

A. The City and Douglas Road 98, LP, a California limited partnership, entered into a Development Agreement effective April 6, 2006 and was recorded on May 5, 2006 in the Official Records of Sacramento County at Book 20060505, Page 0951 (the "Agreement") establishing certain development rights for real property located in the City of Rancho Cordova, California, as more particularly described in Exhibit A-1 and Exhibit A-2 of the Agreement (the "Property").

B. The Property has changed ownership since the City and Douglas 98, LP entered into the Development Agreement. Douglas Road 105, LLC, a California limited liability company, ("Landowner") currently owns the Property and has assumed all of the interests and obligations of Douglas Road, LP in the Agreement by virtue of that certain "Assumption Agreement Relative to Douglas 98" dated August 12, 2013.

C. On September 3, 2013, The City Council adopted Ordinance No. 26-2013 approving the First Amendment to the Agreement ("First Amendment"), adding Section 6.4.6 to the Agreement related to the payment of a Supplemental Traffic Impact Fee to be used by the City to fund traffic improvements necessary to serve the project.

D. Landowner desires to fund and construct some of the traffic improvements intended to be funded in part with the Supplemental Traffic Impact Fee established by Section 6.4.6 of the Agreement and therefore City has determined that a partial fee credit toward Landowner's Supplemental Traffic Impact Fee obligation, in return for the construction of traffic improvements that will serve the project, is appropriate.

E. Pursuant to Government Code section 65868, City and Landowner now desire to modify and revise the Development Agreement to reflect certain further changes and modifications to the obligations of the Landowner to pay the Supplemental Traffic Impact Fee and to reflect the incorporation of the Cooperative Agreement, all as more fully set forth below in this Second Amendment.

F. This Second Amendment amending certain provisions of the Development Agreement applicable to the entire Property was adopted by City Ordinance No. 02-2018 on March 5, 2018.

AGREEMENT

1. **Incorporation of Recitals.** Recitals A through F are hereby incorporated herein, including the documents referred to in the Recitals.

2. **Restatement of Section 6 of the Recitals concerning "Project Approvals."** City and Landowner agree that Section 6 of the Recitals of the Agreement is hereby deleted and replaced with the following:

6.1 The General Plan amendment adopted by the City on February 21, 2006 by Resolution No. 16-2006;

6.2 The Sunridge Specific Plan adopted by the County of Sacramento, as adopted by the City on July 1, 2003, by City Resolution No. 06-2003 (the 'Specific Plan');

6.3 The Mitigation Measures in both the Environmental Impact Report ('EIR') certified in July 2002 by the County of Sacramento (State Clearinghouse No. 97022055), as revised by the City on November 7, 2011, the Mitigated Negative Declaration adopted on February 21, 2006, as further analyzed in the Addenda dated April 19, 2006 and August 2013;

6.4 The Rezoning of the Property approved on March 6, 2006 by City Ordinance No. 08-2006 as further amended on September 3, 2013 by City Ordinance No. 26-2013;

6.5 The Large Lot / Small Lot Tentative Subdivision Map approved on August 19, 2013 by City Resolution No. 103-2013;

6.6 The Development Agreement adopted on March 6, 2006 by City Ordinance No. 07-2006 as amended on September 3, 2013 by City Ordinance No. 26-2013 adopting the First Amendment to the Development Agreement and as amended on March 5, 2018 by City Ordinance No. 02-2018 adopting the Second Amendment to the Development Agreement."

3. **Addition of Section 6.4.6.1 concerning the "Credit Toward New Supplemental Traffic Impact Fee."** City and Landowner agree that Section 6.4.6.1 is hereby added to the Agreement to immediately follow Section 6.4.6 and to read as follows:

"6.4.6.1 Credit for New Supplemental Traffic Impact Fee. City and Landowner agree that Landowner shall be credited up to Nine Hundred and Seventy-Five Dollars (\$975.00) toward the \$4,195.00 portion of the Supplemental Traffic Impact Fee due at the time of issuance of a building permit (referenced above in Section 6.4.6) for a residential lot if all of Landowner obligations within the Cooperative Agreement, attached hereto and incorporated herein as **Exhibit H**, are fully met to the satisfaction of City. This fee credit is applicable only toward the Supplemental Traffic Impact Fee, as

the street and frontage improvements to Douglas Road that will serve the Project and improve access to Highway 50 from the Project, including improvements to the portion of Douglas Road adjacent to the Douglas .103 property (which is not part of Landowner's Project), advance the purpose of the supplemental fee. City agrees that Landowner and Property will have fully satisfied its obligation under the Conditions of Approval and Mitigation and Monitoring Reporting Program for offsite traffic improvements (as to each lot credited) when the fee credit required under this section is implemented. This Section 6.4.6.1 shall become null and void upon the termination of the Cooperative Agreement."

4. Addition of Section 6.4.7 related to an Enforceable Covenants, Conditions, Restrictions, and Reservations (CC&RS). City and Landowner agree to add a new Section 6.4.7 to the Development Agreement as follows regarding CC&RS:

"6.4.7 Enforceable Covenants, Conditions, Restrictions, and Reservations (CC&Rs). Landowner agrees to record a Declaration of Covenants, Conditions, Restrictions, and Reservations that contain enforcement provisions if approved by and in a form approved by the City Attorney. The City shall be a third-party beneficiary to the duties and covenants imposed therein and shall be entitled to, without obligation, take appropriate legal action to enforce these duties and covenants. If an action is commenced, the City shall be entitled to recover costs including reasonable attorneys' fees. The provisions of said paragraph may not be amended or rescinded without the prior written approval of the City."

5. Amendment of Section 29. City and Landowner agree to delete and replace the last sentence of Section 29 of the Agreement to read as follows:

"This Agreement consists of 18 pages and 10 Exhibits, which constitute the entire understanding and agreement of the parties."

6. Amendment of Exhibit List. City and Landowner agree that the Exhibit List to the Agreement is amended to include Exhibit H, the Cooperative Agreement.

7. 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.

8. All Other Terms Remain in Force. Except as amended by Sections 1 through 10 above, all terms and conditions of the Agreement remain in full force and effect.

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

10. 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.

11. 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 First Amendment or the Agreement.

Signatures to Follow on Next Page

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. 02-2018, adopted by the Council of the City on this 5th day of March, 2018, and Landowner has caused this Second Amendment to be executed.

City of Rancho Cordova

DOUGLAS 105, LLC

By: Cyrus Abhar

By: Constantino Galaxid

Name: Cyrus Abhar

Name: Constantino Galaxid

Title: City Manager

Title: Manager

Date: 4-16-, 2018

Date: 4-11-, 2018

Attest:

By: Michael Foondos

Michael Foondos,
Manager

Stacy Leitner
Stacy Leitner, City Clerk

Date: 4-17-18

Approved as to Form:

Katherine Cox, Deputy City Attorney
FOR Adam U. Lindgren
City Attorney

Date: 4/10, 2018

[Attach Certificate of Acknowledgment – Civil Code § 1189]

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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 Sacramento }

On 4/11/18 before me, Marie Weber, Notary Public,
(Here insert name and title of the officer)

personally appeared Constantino John Galaxidas
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.

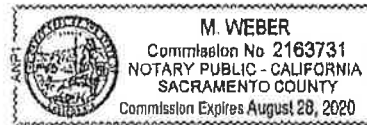
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

M. Weber

Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public)
- Print the name(s) of document signer(s) who personally appear at the time of notarization
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they; is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form
- Signature of the notary public must match the signature on file with the office of the county clerk
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document
 - ❖ Indicate title or type of attached document, number of pages and date
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary)
- Securely attach this document to the signed document with a staple

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 Sacramento

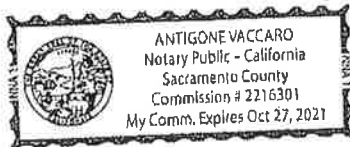
On April 17, 2018 before me, Antigone Vaccaro Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Michael Foondos
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 Antigone Vaccaro
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

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
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: _____

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

EXHIBIT H

CONTRACT NO. 14-2018

COOPERATIVE AGREEMENT FOR TEMPORARY CLOSURE OF DOUGLAS ROAD BETWEEN THE CITY OF RANCHO CORDOVA AND DOUGLAS 105, LLC.

This Cooperative Agreement ("Agreement") is entered into as of April 11, 2018, by and between the City of Rancho Cordova (the "City") and Douglas 105, LLC (the "Developer").

RECITALS

- A. On February 21, 2006, the City Council held a public hearing to approve tentative maps and Development Agreements on parcels known as Douglas 98, Douglas 103, Grant Line 208, and Arista Del Sol, commonly referred to as the Eastside projects in the Sunridge Specific Plan ("SRSP").
- B. On February 21, 2006, the City Council adopted Resolution 13-2006 approving a tentative map for Douglas 98 (the "Project") with conditions of approval, including transportation improvement thresholds, and introduced Ordinance 07-2006 approving a Development Agreement for the Project.
- C. On August 19, 2013, the City Council held a public hearing and adopted Ordinance 26-2013 approving zoning amendments for the conversion of 3.1 acres of open space to RD-5 zoning, Single Family Residential, and a First Amendment to the Development Agreement ("First Amendment") for the Project, and adopted Resolution 103-2013 approving an amended Tentative Subdivision Map for 528 single family lots with conditions of approval.
- D. The approvals referenced in Resolution 103-2013 included approval of a California Environmental Quality Act ("CEQA") Addendum and an exception to the requirements of Mitigation Measure 37a for the Project based on evidence in the record that the traffic generated by the currently approved lots in the SRSP area with the addition of the 528 Project lots would not result in unacceptable traffic conditions without the completion of construction of all the improvements listed in the Mitigation Measure prior to the traffic generated by the development of the lots. The Project developer, in Section 6.4.6 of the Development Agreement added via the First Amendment, agreed to pay a "Supplemental Traffic Impact Fee", which will be used by City to fund the traffic improvements in Mitigation Measure 37a and other traffic improvements needed to serve the Project.
- E. The Douglas 98 property owner and interested building partners (collectively, "Developer") desire to promptly begin development of the Project, but need to construct utility and roadway infrastructure to begin residential development. Developer has requested: the closure of Douglas Road from Americanos Boulevard to Grant Line Road for up to six months to construct underground utilities and improve Douglas Road, to ensure safety during construction, and to reduce construction duration and construction costs. Developer also requested a reduction in impact fees in the amount of \$975 for each of the 528 housing units in the Project.
- F. In response to Developer's request for a fee reduction, City has evaluated and determined that the establishment of a credit towards the Supplemental Traffic Impact Fee for improvements constructed is appropriate. The off-site improvements to Douglas Road to be constructed by Developer, including the addition of three lanes, will improve vehicular access from the Project to Highway 50 and other major thoroughfares. These improvements serve the Project and help ensure that traffic impacts from the Project will remain less than significant and therefore advance the purpose of the Supplemental Traffic Impact Fee as established in the August 2013 CEQA Addendum for this Project.

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G. The City and Developer desire to enter into this Agreement to set forth a clear understanding of each Party's obligations associated with the closure of Douglas Road pursuant to Developer's request.

H. City and Developer are entering into a Second Amendment to the Development Agreement for the Project that will incorporate this Agreement and will specifically amend Section 6.4.6 of the Development Agreement related to the Supplemental Traffic Impact Fee requirements, among other amendments. City and Developer will also enter into a Fee Credit agreement to establish specific obligations related to the fee credit.

AGREEMENT

1. Purpose. The purpose of this Agreement is to set forth the obligations of Developer and City relating to the issuance of building permits for the Project and the timing of construction of certain utility and roadway improvements, as set forth in this Agreement. Recitals A through H inclusive, above, are true and correct and are hereby incorporated into this Agreement and made a part hereof

2. Obligations of Developer and City for Douglas Road Phase 3 Improvements.

2.1. Developer Obligations for Douglas Road Phase 3 Improvements. Douglas Road Phase 3 Improvements generally include, but are not limited to, the following improvements on Douglas Road and associated adjacent property and easements between the intersections of Americanos Boulevard and Grant Line Road: roadway improvement with full curb, gutter and sidewalk improvements on the south side of the road, two eastbound lanes, a landscaped median, one westbound lane, landscaping limited to the frontage of the Project, sewer, water, drainage, and other associated improvements per City and County Standards. In order to satisfy the Douglas Road Phase 3 improvements and request for closure of Douglas Road, the Developer shall:

2.1.1. Construct the Douglas Road Phase 3 roadway and utility improvements in an expeditious manner with the road closure lasting no longer than six months. Road closure shall mean a full closure of all eastbound and westbound lanes of Douglas Road between Americanos Boulevard and Grantline Road

2.1.2. Construct the full frontage improvements on Douglas Road adjacent to the Douglas 103 property, including curb, gutter and sidewalk, but explicitly excluding sound walls and landscaping, and receive a credit pursuant to the terms outlined below in Section 2.2.2.

2.1.3. Developer shall not request nor receive any further impact fee credits for improvements constructed on the Douglas 103 frontage as may be negotiated and implemented by the City in other development areas. Developer shall remain eligible to receive fee credits for the construction of other facilities within the Douglas Road Phase 3 project.

2.1.4. Conduct outreach to the community prior to and during construction based on an Outreach Plan to be approved by the City prior to approval of the improvement plans. Such plan shall, at a minimum, include outreach and communication prior to and during the road closure including, but not limited to, mailings, electronic and published information, electronic message signs, and

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public meetings as necessary.

2.1.5. Prepare a Traffic Management Plan prior to approval of improvement plans and implement traffic control measures during construction to manage potential cut-through traffic through the North Douglas subdivision, maintain adequate detours, and adequately inform the public.

2.1.6. The developers shall record a Declaration of Covenants, Conditions, Restrictions, and Reservations that contain enforcement provisions if approved by and in a form approved by the City Attorney. The City shall be a third-party beneficiary to the duties and covenants imposed therein and shall be entitled to, without obligation, take appropriate legal action to enforce these duties and covenants. If an action is commenced, the City shall be entitled to recover costs including reasonable attorneys' fees. The provisions of said paragraph may not be amended or rescinded without the prior written approval of the City.

2.1.7. Adhere as closely as possible to the following intended schedule, with exception given for force majeure events, including, but not limited to extreme weather events not in line with typical weather patterns for the region, or abnormal labor and material shortages :

- 2.1.7.1.1. Submit construction documents/mass grading to City on or before February 20, 2018
- 2.1.7.1.2. Submit construction documents/Douglas Road Improvements to City on or before February 23, 2018
- 2.1.7.1.3. Commence mass grading of the Project on or before April 30, 2018
- 2.1.7.1.4. Commence full road closure of Douglas Road between Americanos Boulevard and Grant Line Road no sooner than May 1, 2018, or later if earlier closure is not necessary.
- 2.1.7.1.5. Commence in-tract improvements on or before July 1, 2018
- 2.1.7.1.6. Open all lanes of Douglas Road no later than October 31, 2018
- 2.1.7.1.7. Commence construction of model homes no later than February 1, 2019
- 2.1.7.1.8. Commence construction of production homes on or before March 1, 2019

2.2. City Obligations for Douglas Road Phase 3 Improvements.

2.2.1. City shall take the actions necessary to allow the closure of Douglas Road between Americanos Boulevard and Grant Line Road for up to six months.

2.2.2. City shall provide a maximum credit of \$975 per lot in fee credits for the 528 lots in the Project against the Supplemental Traffic Impact Fee for the Developer obligations outlined in this Agreement, including construction of frontage improvements outlined in this Agreement, construction of model homes, and commencement of home production by the dates specified.

2.2.3. If the closure of Douglas Road exceeds the six months agreed upon, except for reasons outside of the control of Developer or City such as acts of God, extreme weather events not in line with typical weather patterns for the region, abnormal labor or material shortages, or major impediments caused by

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other jurisdictions, the above fee credit on all remaining unbuilt lots shall be reduced by \$50 per lot for each week beyond the agreed to six months.

2.2.4. City staff shall cooperate with Developer in the development, approval, and implementation of the Outreach Plan and Traffic Management Plan. Developer shall reimburse City for any staff and City consultant time and materials expended related to the outreach.

2.2.5. City staff shall cooperate with Developer to review and approve improvements plans in an expedited fashion, to meet the aggressive timeline proposed in section 2.1.7 above.

3. Disclosure of Conditions. If the Developer chooses to enter into a purchase agreement with any third party for any portion of Douglas 98 Project prior to satisfaction of the terms of this Agreement, the Developer shall disclose to the potential purchaser the requirement to satisfy these conditions to improve Douglas Road. Such disclosure shall be in writing and specify that the issuance of building permits is subject to the satisfaction of completion of Douglas Road Improvements by the Developer. The disclosure shall be signed by the Developer and potential purchasers prior to entering into the purchase agreement. The Developer shall provide a copy of the signed disclosure to the City prior to entering into any purchase agreement.

4. Effect of Agreement. The Developer and the City acknowledge that additional binding documents (amendment to development agreement, construction contracts, credit agreement, outreach and traffic management plans, etc.) are necessary to implement the terms of this Agreement, and that such additional documents may be subject to substantive review and approval by the Developer and the City. Nevertheless, all Parties intend that this Agreement creates enforceable obligations, and each party understands that the other parties will be undertaking certain actions in reliance on the enforceability of this Agreement.

5. Term. If the Douglas Road improvements referenced in Section 2.1.7 have commenced by April 2018, this Agreement shall continue until all of the actions required by all parties have been completed, at which time this Agreement shall terminate. The Parties agree that time is of the essence. If no improvements to Douglas Road have commenced by June 1, 2018, at the discretion of the City Manager, this agreement shall become null and void, including the credits for Douglas Road frontage improvements.

6. Not Entire Agreement. The Parties hereto have endeavored in this Agreement to set forth their understanding and intent with respect to the matters addressed herein. This Agreement is not, however, intended to set forth in full detail the terms and conditions under which the Parties are to proceed in regard to the overall Project. The Development Agreement, amendments thereto and related Project entitlements ("Project Entitlements") remain in full force and effect. In the event of a direct conflict between this Agreement and the Project Entitlements, the Project Entitlements shall control.

7. Notices. Any notices to be delivered on matters pertaining to this Agreement shall be addressed as follows:

If to the Developer:
DOUGLAS 105, LLC
Constantino John Galaxidas
7700 College Town Drive, Suite 201
Sacramento, CA 95826

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Attention: Constantino Galaxidas

With a copy to:
Woodside Homes
111 Woodmere Road, Suite 190
Folsom, CA 95630
Attention: Brian Cutting

If to the City:
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
Attention: Public Works Director

With a copy to:
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
Attention: Community Development Director

8. Amendment to Agreement. This Agreement may be amended only by a written instrument signed by all the Parties. The Developer shall bear all costs of amendments to this Agreement that are requested by the Developer.

9. Indemnification. The Developer shall indemnify, defend and hold harmless the City, its officers, agents, employees and representatives from and against any and all claims, losses, liabilities or damages, demands and actions, including payment of reasonable attorney's fees, arising out of or resulting from the performance of this Agreement, caused by any negligent or willful act or omission of the Developer, agents, employees, or anyone directly or indirectly acting on behalf of the Developer except any claims, losses demands, damages or actions arising from the sole, active negligence of City or its officers, employees or agents.

10. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

11. Attorney's Fees. In the event any legal action is brought to enforce or interpret this MOU, the prevailing party shall be entitled to an award of reasonable attorney fees, in addition to any other relief to which it may be entitled.

12. Construction and Interpretation. It is agreed and acknowledged by the Developer that the provisions of this Agreement have been arrived at through negotiation, and that the Developer has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

13. Severability. The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the Parties.

14. Venue. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the State Court of California in the County of Sacramento, or in the United States District Court for the Eastern District of California. The law governing this Agreement is the law of the State of

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California.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first referenced above.

CITY OF RANCHO CORDOVA:

DOUGLAS 105, LLC

Cyrus Abhar

Cyrus Abhar, City Manager

Date: 4-16-18

Constantino Galaxidas

Constantino Galaxidas
Managing Member

Date: 4-11-18

Attest:

Stacy Leitner

Stacy Leitner, City Clerk

Date: 4/17/18

Michael Foondos

Michael Foondos,
Managing Member

Date: 4-17-18

Approved as to form:

Katherine Brock, Deputy City Attorney
FOR Adam Lindgren, City Attorney

Date: 4/16/18

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