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**DEVELOPMENT AGREEMENT**  
**BY AND BETWEEN**  
**THE CITY OF RANCHO CORDOVA**  
**AND**  
**RHNC SUNDANCE – SACRAMENTO GP, AS LANDOWNERS**  
**RELATIVE TO SUNDANCE**

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## DEVELOPMENT AGREEMENT RELATIVE TO SUNDANCE

This Development Agreement is entered into as of this 15<sup>th</sup> day of May, 2006, by and between the CITY OF RANCHO CORDOVA, a municipal corporation ("City"), RHNC SUNDANCE-SACRAMENTO GP, a California general partnership ("Landowner"). City and Landowner are hereinafter collectively referred to as the "Parties" and singularly as "Party."

### RECITALS

1. **Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864, et seq. (the "Development Agreement Statute"), which authorizes the City and any person having a legal or equitable interest in the real property to enter into a development agreement, establishing certain development rights in the Property which is the subject of the development project application.
2. **Property.** Landowner holds a legal or equitable interest in certain real property located in the City of Rancho Cordova, County of Sacramento, more particularly described in Exhibit A-1 and Exhibit A-2 attached hereto (the "Property"). Landowner represents that all persons holding legal or equitable interests in the Property shall be bound by this Agreement.
3. **Project.** Landowner has obtained various approvals from the City (described in more detail in Recital 6 below), including approval for a tentative subdivision map for a project known as Sundance (the "Project") to be located on the Property.
4. **Public Hearing.** On March 30, 2006, the Planning Commission of the City of Rancho Cordova, serving as the City's planning agency for purposes of development agreement review pursuant to Government Code Section 65867, considered this Agreement and recommended approval of this Agreement to the City Council.
5. **Environmental Review.** On January 27, 2005, the Planning Commission certified as adequate and complete, the Mitigated Negative Declaration ("MND") for the Project. Mitigation measures were required in the MND and 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 this Agreement.
6. **Project Approvals.** The following land use approvals (together the "Project Approvals") have been granted for the Property, which entitlements are the subject of this Agreement.
  - 6.1. The Sunridge Specific Plan adopted by County, as adopted by the City on July 1, 2003, by City Resolution No. 06-2003 (the "Specific Plan"), and as amended to the Zoning Code by the City on April 17, 2006, by City Ordinances Nos. 13-2006 and 14-2006 (the "Zoning Code Amendments");

6.2. The Amendments to the Master Mitigation Monitoring Reporting Program as approved by the City on April 17, 2006, by Resolution No. 31-2006 (the "Mitigation Monitoring Reporting Program");

6.3. The MND. The Mitigation Measures in both the MND and the Environmental Impact Report ("EIR") are incorporated into the Project and into the terms and conditions of this Agreement.

6.4. The Amendment of the Map Conditions/Mitigation Monitoring Reporting Program for the Property as approved by the City on April 17, 2006, by City Resolution No. 32-2006 (the "Map Condition Amendment").

6.5. The Addendum to the Final EIR for the Sunridge Specific Plan and Zoning Ordinance (the "EIR Addendum"), dated April 3, 2006, addressing the revision of the roadway improvement phasing affecting the Property pursuant to the Map Condition Amendment as prepared by the City.

6.6. The Tentative Subdivision Map for the Project (attached hereto as Exhibit B) approved by the City on January 27, 2005, by City Resolution No. 20-2004;

6.7. This Development Agreement, as adopted on May 15, 2006 by City Ordinance No. 22-2006 (the "Adopting Ordinance").

7. **Need for Services and Facilities.** Development of the Property will result in a need for municipal services and facilities, some of which services and facilities will be provided by the City to such development subject to the performance of Landowner's obligations hereunder. With respect to water, pursuant to Government Code Section 65867.5, any tentative map approved for the Property will comply with the provisions of Government Code 66473.7.

8. **Contribution to Costs of Facilities and Services.** Landowner agrees to contribute to the costs of such public facilities and services as required herein to mitigate impacts on the community of the development of the Property, and City agrees to provide such public facilities and services as required herein to assure that Landowner may proceed with and complete development of the Property in accordance with the terms of this Agreement. City and Landowner recognize and agree that, but for Landowner's contributions to mitigate the impacts arising as a result of development entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement and that, but for City's covenant to provide certain facilities and services for development of the Property, Landowner would not and could not commit to provide the mitigation as provided by this Agreement. City's vesting of the right to develop the Property as provided herein is in reliance upon and in consideration of Landowner's agreement to make contributions toward the cost of public improvements as herein provided to mitigate the impacts of development of the Property as development occurs.

9. **Development Agreement Ordinance.** City and Landowner have taken all actions mandated by, and fulfilled all requirements set forth in, the Development Agreement Ordinance of the City of Rancho Cordova, as set forth in the City Municipal Code.

10. **Consistency with General and Specific Plan.** Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, in City

Ordinance No. 22-2006, the City found that this Agreement satisfies the Government Code §65867.5 requirement of general plan and specific plan consistency.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereinafter set forth, the Parties agree as follows:

### **AGREEMENT**

1. **Incorporation of Recitals.** The Preamble, the Recitals and all defined terms set forth in both are hereby incorporated into this Agreement as if set forth herein in full.
2. **Description of Property.** The property, which is the subject of this Development Agreement, is described in Exhibit A-1 and depicted in Exhibit A-2 attached hereto ("Property").
3. **Interest of Landowner.** The Landowner has a legal or equitable interest in the Property. Landowner represents that all persons holding legal or equitable interests in the Property shall be bound by this Agreement.
4. **Relationship of City and Landowner.** It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Landowner and that the Landowner is not an agent of City. The City and Landowner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Landowner joint venturers or partners.
5. **Effective Date and Term.**
  - 5.1. **Effective Date.** The effective date of this Agreement ("Effective Date") is June 15, 2006, which is the effective date of City Ordinance No. 22-2006, adopting this Agreement.
  - 5.2. **Term.** Upon execution, the term of this Agreement shall commence on the Effective Date and extend for a period of fifteen (15) years, unless said term is terminated, modified or extended by circumstances set forth in this Agreement. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect. Said termination of the Agreement shall not affect any right or duty created by City approvals for the Property adopted prior to, concurrently with, or subsequent to the approval of this Agreement.
  - 5.3. **Automatic Termination Upon Completion and Sale of Residential Lot.** This Agreement shall automatically be terminated, without any further action by either party or need to record any additional document, with respect to any single-family residential lot within a parcel designated by the Project Approvals for residential use, upon completion of construction and issuance by the City of a final occupancy permit for a dwelling unit upon such residential lot and conveyance of such improved residential lot by Landowner to a bona-fide good-faith purchaser thereof. In connection with its issuance of a final inspection for such improved lot, City shall confirm that all improvements, which are required to serve the lot, as determined by City, have been accepted by City. Termination of this Agreement for any such residential lot as provided for in this Section shall not in any way be construed to terminate or modify any assessment district or Mello-Roos Community Facilities District lien affecting such lot at the time of termination.

**6. Use of Property.**

**6.1. Right to Develop.** Landowner shall have the vested right to develop the Project in accordance with the terms and conditions of this Agreement, the Project Approvals, and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. Landowner's vested right to develop the Property shall be subject to subsequent approvals; provided however, except as provided in Section 6.3, that any conditions, terms, restrictions and requirements for such subsequent approvals shall not prevent development of the Property for the uses, or reduce the density and intensity of development, or limit the rate or timing of development set forth in this Agreement, so long as Landowner is not in default under this Agreement.

**6.1.1. Processing.** Upon request of Landowner, City agrees to retain a contract plan checker or other third party plan checkers or inspectors acceptable to City in order to enable City to expedite the processing and review of building plans, construction drawings, building permits and building inspections for the Landowner's use and development of the Property. Landowner shall reimburse City for the costs of using such plan checkers and inspectors for the expedited processing of Landowner's building plans, construction drawings, building permits and building inspections.

**6.2. Permitted Uses.** The permitted uses of the Property, the density and intensity of use, the maximum height and size of 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: 129 single-family, medium density (RD-20), residential units in an area designated for Commercial Mixed Use with a Limited Commercial (LC) Zoning designation of 11.9 acres. The 129 single-family residential units will consist of 101 detached and 28 half-plex design units. The project density is 10.84 dwelling units per acre.

The distribution and location of the particular units is set forth in Exhibit C.

**6.3. Moratorium, Quotas, Restrictions or Other Growth Limitations.** Subject to applicable law relating to the vesting provisions of development agreements, Landowner and City intend that, except as otherwise provided in this Agreement, this Agreement shall vest the Project Approvals against subsequent City resolutions, ordinances and initiatives that directly or indirectly limit the rate, timing, sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses as set forth in the Project Approvals; provided however, Landowner shall, to the extent allowed by the laws pertaining to development agreements, be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted on a uniformly applied, City-wide or area-wide basis, and directly concerns a public health or safety issue, in which case City shall treat Landowner in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by that public health or safety issue.

**6.4. Additional Conditions.**

**6.4.1. New Park Development Obligation.** The Project shall be subject to Resolution No. 28-2005, which establishes revised standards for park and open space in the City. Landowner shall pay development impact fees to mitigate the costs of

designing, constructing and installing park improvements based on the seven (7) acre per one thousand (1,000) population standard as set forth in Resolution No. 28-2005. These development impact fees shall be in the amount of Eleven Thousand and Twenty-Seven dollars (\$11,027) per single-family residential parcel or residential parcel equivalent which shall be adjusted on an annual basis beginning on March 1, 2007, by the higher of either: (a) the method described in City Ordinance No. 24-2004, Section 16.83.200, relating to the establishment of development impact fees within the Sunrise Douglas Community Plan which provides for an annual program fee adjustment, (b) the method provided in any subsequent revisions of City Ordinance No. 24-2004, or (c) four (4%) percent. The development impact fee of Eleven Thousand and Twenty-Seven dollars (\$11,027) shall not include the costs of park street frontage improvements. To fulfill park land dedication obligation, Landowner shall be obligated to provide park land in-lieu fees to the Cordova Recreation and Park District to satisfy a total park land obligation of 2.66 acres (calculated as 7 acres of park land per 1,000 residents). Landowner will satisfy this obligation as follows:

- i. Pay fees in-lieu of dedication to City for use by Cordova Recreation and Parks District in providing park and recreational facilities to serve the residents of the Project to the extent that the dedication of land does not satisfy Landowners park land dedication obligation specified in Section 6.4.1. Therefore, Landowner shall pay in-lieu fees on the balance of the total park/land obligation of 2.66 net acres. The calculation of in-lieu fees shall be based on 2.95 residents per dwelling unit and the appraised value of the required Park Land valued as of the date no earlier than six (6) weeks prior to the recordation of the final map, or the payment of the fee, whichever occurs later, in accordance with City requirements, or by agreement among Landowner, City and Cordova Recreation and Parks District, which agreement shall be in writing.

**6.4.2. Timing of Dedications and Improvements of Parks.**

Prior to the recordation of any small lot final map for the Project or for any individual residential or non-residential parcel of the Property, but not prior to construction of model homes, Landowner shall pay the fee in-lieu of dedication set forth in 6.4.1. Landowner will be deemed to have satisfied in full its new park development obligation, after fulfilling the requirements described in Section 6.4.1 and 6.4.2.

**6.4.3. In-fill Park and Open Space Renovation and**

**Acquisition Fee.** The Landowner agrees that it shall pay the City the total sum of one thousand and five hundred dollars (\$1500.00) for each residential parcel shown on the final maps for the Property. Beginning on January 1, 2006, the fee shall be adjusted annually on each January 1 based upon the percentage change in the United States Department of Labor Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-San Jose area between April and April of each year. This fee shall be paid to the City no later than prior to issuance of the building permit for each residential parcel for the Property. It shall be used by the City, at its sole discretion to acquire, renovate, repair, improve or maintain parks or open space in that portion of the City as described in Exhibit D. This payment is made voluntarily by the Landowner. It is in addition to all other existing park fees, and construction and dedication obligations, including without limitation any fees paid pursuant to California Government Code Section 66477 (the "Quimby Act"). Landowner agrees that it shall not claim any credit or right to reimbursement of any other existing park fees, and construction and dedication obligations, including Quimby Act fees, as a result of paying the existing park renovation fees required under this Section.



**6.4.4. Police Tax.** Landowner agrees to vote in favor of and to cooperate in the creation of a special tax zone area within the Rancho Cordova Special Police Tax Area. A vote by Landowner to repeal or amend the special tax shall constitute an event of default under this Agreement and in addition to all other remedies, Landowner shall be obligated to pay under this Agreement, the difference between the amount of the tax before the vote to repeal or amend the tax, and the amount of the proposed special tax. The boundaries of the special tax zone area shall be contiguous with the boundaries of the Property. The Landowner shall vote in favor of and cooperate in the levy of a special tax for police services on each residential parcel or residential parcel equivalent on the Property. The City is in the process of preparing a General Plan Fiscal Analysis which will include a review of the current shortfall of revenue for police services, and a new proposed amount of the special police tax. The special tax shall be in the amount of the lesser of (1) \$450 annually, per single-family residential parcel or residential parcel equivalent, and \$0.25 for each square foot of gross parcel area of non-residential use (excluding recreational and agricultural uses), or (2) the amount calculated in the General Plan Fiscal Analysis which the City is in the process of preparing. Multi-family residential units on a single parcel shall be assessed on a proportionately equivalent basis (e.g., a two-unit attached housing structure, such as a duplex, would be deemed to consist of two residential parcels for purposes of the police tax). The amount of the special tax shall be adjusted annually based upon the percentage change in the United States Department of Labor Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-San Jose area between April and April of each year. If the Consumer Price Index is discontinued, or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised. The special tax shall be payable annually following issuance of a building permit for each subject parcel. The Landowner shall pay all the costs of conducting the election and all costs related to the implementation of this Section for the Project.

**6.4.5. Supplemental Development Fee.** Landowner shall pay a development fee in the amount of Five Thousand and Sixty (\$5,060) for each of the 129 lots shown on the final maps for the Property (the "Fee"). Landowner shall pay the Development Fee in the following increments: (i) Eight Hundred Sixty-Five dollars (\$865) for each residential lot at the time of the final map approval, and (ii) Four Thousand One Hundred and Ninety-Five dollars (\$4,195) at the time of the issuance of a building permit for each lot.

i. **Use of New Development Fee.** The New Development Fee shall be used by the City to fund certain roadway improvements and by the Cordova Recreation and Park District to fund the shortfall for park improvements for the Anatolia I, II, III, and IV, Sunridge Park and North Douglas projects located within the City. The City shall enter into a separate agreement with the Cordova Recreation and Park District to provide for the allocation of the New Development Fee for the above described uses. A minimum of Forty-Four Thousand Five Hundred Five dollars (\$44,505) of the New Development Fee for the entire Property shall be utilized by the Cordova Recreation and Park District to fund the shortfall for park improvements. The portion of the New Development Fee to be utilized by the Cordova Recreation and Park District shall be treated as an increase to the amount of new park development fees required under Section 6.4.1 of the Agreement.

**7. Applicable Rules, Regulations, Fees and Official Policies.**

**7.1. Rules Regarding Permitted Uses.** Except as provided in this Agreement, the City's ordinances, resolutions, rules, regulations and official policies governing

the permitted uses of the Property, the density and intensity of use, the rate timing and sequencing of development, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land shall be those in force on the Effective Date of this Agreement. Except as provided in Section 8.2, this Agreement does not vest Landowner's rights to pay development impact fees, exactions and dedications, processing fees, inspection fees, plan checking fees or charges.

**7.2. Rules Regarding Design and Construction.** Unless otherwise expressly provided in this Agreement, all other ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project and to public improvements to be constructed by the Landowner shall be those in force and effect at the time the applicable permit approval is granted.

**7.3. Changes in State or Federal Law.** This Agreement shall not preclude the application to development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations.

**7.4. Uniform Codes Applicable.** Unless otherwise expressly provided in this Agreement, the Project shall be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical and Fire Codes, City standard construction specifications, and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project. If no permits are required for infrastructure improvements, such improvements will be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical and Fire Codes, City standard construction specifications, and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the start of construction of such infrastructure.

## **8. Subsequently Enacted Fees, Dedications, Assessments and Taxes.**

**8.1. Processing Fees and Charges.** Landowner shall pay those processing, inspection, and plan check fees and charges required by City under then current regulations for processing applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Landowner hereunder.

**8.2. Development Impact Fees, Exactions and Dedications.** Landowner shall pay all development impact fees, dedications of land, connection or mitigation fees, and exactions required by the City to support the construction of any public facilities and improvements or the provision of public services in relation to development of the Property (together "Exactions") authorized by City after the Effective Date so long as said Exactions otherwise comply with applicable law, and are either (i) required on a City-wide basis, or (ii) apply uniformly to all properties within the City that are zoned consistent with the Project Approvals, or (iii) apply uniformly to all properties that are similarly situated, whether by geographic location or other distinguishing circumstances. Except as otherwise provided in this Agreement, Exactions required by City to be paid by the Landowner that do not meet one of the preceding criteria, shall not be Exactions authorized as of the Effective Date. Wherever this Agreement obligates Landowner to design, construct or install any improvements, the cost thereof may be provided by Landowner or by a Community Facilities District (CFD) or other

such financing mechanism acceptable to the City, subject to and in accordance with the provisions thereof.

**9. Community Facilities District.**

**9.1. Community Facilities District Formation - Financing.** City acknowledges that Landowner may cause to be formed a Community Facilities District ("CFD") pursuant to the provisions of Section 53311 et seq. of the Government Code for the purpose of financing the acquisition or construction of a portion of the Improvements described in Section 8.2.

**9.2. Issuance of Bonds.** City and Landowner agree that, with the consent of Landowner, and to the extent permitted by law, City and Landowner shall use their best efforts to cause bonds to be issued in amounts sufficient to achieve the purposes of this Section.

**9.3. Payment Prior to Issuance of Bonds.** Nothing in this Agreement shall be construed to preclude the payment by an owner of any of the parcels to be included within the CFD of a cash amount equivalent to its proportionate share of costs for the Improvements, or any portion thereof, prior to the issuance of bonds.

**9.4. Private Financing.** Nothing in this Agreement shall be construed to limit Landowners option to install the Improvements through the use of private financing.

**9.5. Acquisition and Payment.** City agrees that it shall use its best efforts to allow and facilitate monthly acquisition of completed Improvements or completed portions thereof, and monthly payment of appropriate amounts for such Improvements to the person or entity constructing Improvements or portions thereof, provided City shall only be obligated to use CFD bond or tax proceeds for such acquisitions.

**10. Service District for Maintenance.**

**10.1. Formation, Consent, Waiver and Special Benefit.** Landowner must cooperate in formation or annexation to, one or more financing mechanism or assessment district for maintenance purposes, as chosen by the City (herein the "Services District"), and consents herewith to the levy of such special taxes as are necessary to fund the maintenance obligations described below. No residential building permit, excluding permits for model homes, shall be issued until the formation of, and inclusion of the Property in, the Services District. For purposes of Article XIIIID of the California Constitution, Landowner acknowledges hereby that all the services described herein to be provided by the Services District will provide a "special benefit" to the Property, as defined by said Article, and that the foregoing support and consent shall apply as to any claim that any portion of the services supported by the special tax does not provide special benefit to the Property. The Services District shall:

i. Provide City assured funding for the ongoing maintenance and operation of public facilities and all Improvements required herein or in the Project Approvals, whether such facilities and Improvements are located within or outside of the boundaries of the Project, including: public roads, public streets, bridges/culverts, traffic signals, traffic signs, striping and legends, ITS operation, street lights, public alleys and associated frontage improvements such as curb, gutter and sidewalks, intersection signals, and street signs; road special features (e.g. speed bumps, textured or painted surfaces, modified crosswalks, etc.); project monument signs; all public landscaping,

including street frontage landscaping and road medians; streetlights within the Property and upon the Property frontages and statuary, fountains or ornamental structures. Privately owned and maintained improvements are excluded from this provision. The maintenance cost for public roads, bridges/culverts, traffic signals, traffic signs, striping and legends, ITS operations, street lights, public alleys and associated frontage improvements such as curb, gutter and sidewalks, street signs, road special features (e.g. speed bumps, textured or painted surfaces, modified crosswalks, etc.), and project monument signs shall not exceed \$300 annually, per single-family residential parcel or residential parcel equivalent, which amount shall be adjusted on each January 1, beginning on January 1, 2007, based upon the percentage change in the Engineering News Record. The maintenance costs for public landscaping, including street frontage landscaping and road medians; streetlights within the Property and upon the Property frontages and statuary, fountains or ornamental structures is not set, fixed or capped in this Agreement. All road damage, both onsite and offsite, due to construction shall be the responsibility of Landowner and all costs associated with the damage shall be borne by Landowner.

ii. Cause to be established appropriate funding mechanisms, to the satisfaction of the Cordova Recreation and Park District, to fund the ongoing maintenance of park facilities and improvements within the Project, and any other park improvements pursuant to the Project Approvals.

iii. Cause to be established appropriate funding mechanisms, as determined appropriate by the City, in consultation with the Sacramento County Department of Water Resources, to fund the ongoing maintenance of drainage facilities within the Project consistent with the Project Approvals.

iv. Cause to be established appropriate funding mechanisms, as determined appropriate by the City, to maintain all public open space areas within the Property, other than improved park sites, including without limitation, maintaining bike trails and conducting weed abatement and providing fire prevention to the satisfaction of the Sacramento Metropolitan Fire District within such open space areas. Such fire prevention efforts may include flail mowing from adjacent private property lines into such open space areas and other such vegetation management efforts as deemed necessary by the Fire District.

v. Conduct, manage and finance any environmental mitigation monitoring required by the Project Approvals.

Landowner acknowledges that the total annual cost of the maintenance obligations in this Section 10.1 is not known as of the Effective Date, and will be determined in the future. The assessments listed herein shall be adjusted annually on each January 1, beginning on January 1, 2006, based upon the Consumer Price Index, consistent with Sections 6.4.3 and 6.4.4 of this Agreement.

**10.2. Public Parcel Exclusion.** Landowner expressly agrees that Parcels conveyed or to be conveyed to the City or Cordova Recreation and Park District shall be excluded from any assessment to be imposed by the Services District.

**11. Amendment or Cancellation.**

**11.1. Modification Because of Conflict with State or Federal Laws.** In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be approved by the City Council in accordance with the Municipal Code and this Agreement.

**11.2. Amendment by Mutual Consent.** This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of State law and the Municipal Code.

**11.3. Insubstantial Amendments.** Notwithstanding the provisions of the preceding Section ~~11.2~~<sup>11.2</sup>, any amendments to this Agreement which do not relate to (a) the term of the Agreement as provided in Section 5.2; (b) the permitted uses of the Property as provided in Sections 6.2 and 7.1; (c) provisions for "significant" reservation or dedication of land; (d) the location and maintenance of on-site and off-site improvements; (e) the density or intensity of use of the Project; (f) the maximum height or size of proposed buildings or (g) monetary contributions by Landowner as provided in this Agreement shall not, except to the extent otherwise required by law, require notice or public hearing before either the Planning Commission or the City Council before the parties may execute an amendment hereto. City's City Manager shall determine whether a reservation or dedication is "significant".

**11.4. Amendment of Project Approvals.** Any amendment of Project Approvals relating to: (a) the permitted use of the Property; (b) provision for reservation or dedication of land; (c) the density or intensity of use of the Project; (d) the maximum height or size of proposed buildings; (e) monetary contributions by the Landowner; (f) the location and maintenance of on-site and off-site improvements or (g) any other issue or subject not identified as an "insubstantial amendment" in Section 11.3 of this Agreement, shall require an amendment of this Agreement. Such amendment shall be limited to those provisions of this Agreement, which are implicated by the amendment of the Project Approval. Any other amendment of the Project Approval(s) shall not require amendment of this Agreement unless the amendment of the Project Approval(s) relates specifically to some provision of this Agreement.

**11.5. Cancellation by Mutual Consent.** Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by the mutual consent of the parties or their successors in interest, in accordance with the provisions of the Municipal Code. Any fees paid pursuant to this Agreement prior to the date of cancellation shall be retained by City.

**12. Term of Project Approvals.** Pursuant to California Government Code Section 66452.6(a), the term of any parcel map or tentative subdivision map shall automatically be extended for the term of this Agreement.

**13. Annual Review.**

**13.1. Review Date.** The annual review date for this Agreement shall be approximately 12 months from the date this Agreement is entered into.

**13.2. Initiation of Review.** The City's Planning Director shall initiate the annual review by giving to Landowner written notice that the City intends to undertake such review. Within 30 days of City's notice, Landowner shall provide evidence to the Planning Director to demonstrate good faith compliance with the Development Agreement. The burden of proof, by substantial evidence of compliance, is upon the Landowner. The City's failure to timely initiate the annual review is not deemed to be a waiver of the right to do so at a later date; accordingly, Landowner is not deemed to be in compliance with the Agreement by virtue of such failure to timely initiate review.

**13.3. Staff Reports.** City shall deposit in the mail to Landowner a copy of all staff reports, and related exhibits, concerning contract performance at least three (3) days prior to any annual review.

**13.4. Costs.** Costs reasonably incurred by the City in connection with the annual review shall be paid by Landowner in accordance with the City's schedule of fees and billing rates in effect at the time of review.

**13.5. Non-compliance with Agreement; Hearing.** If the Planning Director determines, on the basis of substantial evidence, that Landowner has not complied in good faith with the terms and conditions of the Agreement during the period under review, the City Council, upon receipt of any report or recommendation from the Planning Commission, may initiate proceedings to modify or terminate the Agreement, at which time an administrative hearing shall be conducted, in accordance with the procedures of State law and Municipal Code Section 110-05. As part of that final determination, the City Council may impose conditions that it considers necessary and appropriate to protect the interest of the City.

**13.6. Appeal of Determination.** The decision of the City Council as to Landowner's compliance shall be final, and any court action or proceeding to attack, review, set aside, void or annul any decision of the determination by the Council shall be commenced within thirty (30) days, as set forth in the Municipal Code (Section 115-39).

**14. Default.** Subject to any applicable extension of time, failure by any party to perform any term or provision of this Agreement required to be performed by such party shall constitute an event of default ("Event of Default"). For purposes of this Agreement, a party claiming another party is in default shall be referred to as the "Complaining Party," and the party alleged to be in default shall be referred to as the "Party in Default." A Complaining Party shall not exercise any of its remedies as the result of such Event of Default unless such Complaining Party first gives notice to the Party in Default as provided in Section 14.1.1, and the Party in Default fails to cure such Event of Default within the applicable cure period.

**14.1. Procedure Regarding Defaults.**

**14.1.1. Notice.** The Complaining Party shall give written notice of default to the Party in Default, specifying the default complained of by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

**14.1.2. Cure.** The Party in Default shall diligently endeavor to cure, correct or remedy the matter complained of, provided such cure, correction or remedy shall be completed within the applicable time period set forth herein after receipt of written notice (or

such additional time as may be deemed by the Complaining Party to be reasonably necessary to correct the matter).

**14.1.3. Failure to Assert.** Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies.

**14.1.4. Notice of Default.** If an Event of Default occurs prior to exercising any remedies, the Complaining Party shall give the Party in Default written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the Party in Default shall have such period to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged default is such that it cannot, practicably be cured within such thirty (30) day period, the cure shall be deemed to have occurred within such thirty (30) day period if: (a) the cure is commenced at the earliest practicable date following receipt of the notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (in no event later than thirty (30) days after the curing party's receipt of the notice), the curing party provides written notice to the other party that the cure cannot practicably be completed within such thirty (30) day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within ninety (90) days after the first notice of default is given.

**14.1.5. Legal Proceedings.** Subject to the foregoing, if the Party in Default fails to cure a default in accordance with the foregoing, the Complaining Party, at its option, may institute legal proceedings pursuant to this Agreement or, in the event of a material default, terminate this Agreement. Upon the occurrence of an Event of Default, the parties may pursue all other remedies at law or in equity, which are not otherwise provided for or prohibited by this Agreement, or in the City's regulations governing development agreements, expressly including the remedy of specific performance of this Agreement.

**14.1.6. Effect of Termination.** If this Agreement is terminated following any Event of Default of Landowner or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement shall prevent Landowner from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.

**15. Estoppel Certificate.** Either Party may, at any time, and from time to time, request written notice from the other Party requesting such Party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the Parties; (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying Party the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such

longer period as may reasonably be agreed to by the Parties. City Manager of City shall be authorized to execute any certificate requested by Landowner. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default.

**16. Mortgagee Protection; Certain Rights of Cure.**

**16.1. Mortgagee Protection.** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

**16.2. Mortgagee Not Obligated.** Notwithstanding the provisions of Section 16.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement.

**16.3. Notice of Default to Mortgagee and Extension of Right to Cure.** If City receives notice from a Mortgagee requesting a copy of any notice of default given Landowner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Landowner, any notice given to Landowner with respect to any claim by City that Landowner has committed an Event of Default. Each Mortgagee shall have the right during the same period available to Landowner to cure or remedy, or to commence to cure or remedy, the Event of Default claimed set forth in the City's notice. City, through its City Manager, may extend the cure period provided in Section 14.1.2 for not more than an additional sixty (60) days upon request of Landowner or a Mortgagee.

**17. Severability.** Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party hereto of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to terminate this entire Agreement from and after such determination.

**18. Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.