

REPORT TO CITY COUNCIL

DATE: MAY 9, 2012

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

SUBJECT: ADOPTION OF ORDINANCE NO. 11-396; APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF AGOURA HILLS AND AGOURA BUSINESS CENTER WEST, LLC / AGOURA BUSINESS CENTER NORTH, LLC (CASE NO. 11-DA-001)

At the April 25, 2012, City Council meeting, the Council introduced, read by title only, and waived further reading of Ordinance No. 12-396.

The Ordinance will approve a Development Agreement between the City of Agoura Hills and Agoura Business Center West, LLC, and Agoura Business Center North, LLC. The Development Agreement allows for a 10-year time extension for previously approved entitlements to construct a 103,070 square foot light industrial complex at 28721 Canwood Street (Agoura Business Center “North” project), and a 22,617 square foot retail center at 28631 Canwood Street, on the northwest corner of Canwood Street and Derry Avenue (Agoura Business Center “West” project). In exchange, the Development Agreement requires the construction of additional roadway improvements along Canwood Street, including frontage of one vacant parcel owned by the Successor Agency to the Agoura Hills Redevelopment Agency.

Attached for your reference is a copy of the Ordinance No. 12-396 and the Development Agreement.

RECOMMENDATION

Staff recommends the City Council adopt Ordinance No. 12-396, approving a Development Agreement between the City of Agoura Hills and Agoura Business Center West, LLC, and Agoura Business Center North, LLC.

Attachment: Ordinance No. 12-396 and Development Agreement

ORDINANCE NO. 12-396

AN ORDINANCE OF THE CITY COUNCIL OF AGOURA HILLS, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN AGOURA BUSINESS CENTER NORTH, LLC, AND AGOURA BUSINESS CENTER WEST, LLC, AND THE CITY OF AGOURA HILLS

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS HEREBY ORDAINS
AS FOLLOWS:

Section 1. An application was duly filed by the Agoura Business Center North, LLC, and Agoura Business Center West, LLC, with respect to a request for a Development Agreement for a 10-year time extension for the previously approved entitlements to construct a retail center at 28631 Canwood Street (Assessor Parcel Nos. 2048-012-029,031) and a light industrial complex at 28721 Canwood Street (Assessor's Parcel No. 2048-012-033), and which would also require the construction of additional roadway improvements along Canwood Street, including along the frontage of 28661 Canwood Street (Assessor's Parcel No. 2048-012-901).

Section 2. A duly noticed public hearing was held by the Agoura Hills Planning Commission on April 5, 2012, at 6:30 p.m. in the City Hall Council Chambers and notice of the time, date, place and purpose of the aforesaid hearing was duly given, all as required by Section 9682.6 of the Agoura Hills Municipal Code.

Section 3. Evidence, both written and oral, including the staff report and supporting documentation, was presented to and considered by the Planning Commission at the public hearing. The Planning Commission voted 4-0, recommending the City Council approve the application.

Section 4. A subsequent duly noticed public hearing was held by the Agoura Hills City Council on April 25, 2012, at 6:00 p.m. in the City Hall Council Chambers and notice of the time, date, place, and purpose of the aforesaid hearing was duly given, all as required by Section 9682.6 of the Agoura Hills Municipal Code.

Section 5. Evidence, both written and oral, including the staff report and supporting documentation, was presented to and considered by the Planning Commission at the public hearing. Based on the full record of these proceedings, the City Council hereby finds the Development Agreement:

- 1) Is consistent with the General Plan as the properties are designated BP-M (Business Park-Manufacturing) and CRS (Commercial Retail Service) and the City Council finds that proposed development agreement, including its entitlements and roadway construction requirements, would be consistent with the anticipated development within the BP-M zone and CRS zone, and would comply with all applicable provisions of the General Plan;

- 2) Is in conformity with public conveniences and good land use practices, as the projects' conditions of approval, mitigation monitoring program, and development agreement will guarantee adequate infrastructure for the development and land uses that are compatible with their surroundings;
- 3) Will not be detrimental to the health, safety, and general welfare as the projects' conditions of approval, mitigation monitoring program and development agreement will guarantee adequate infrastructure, safety measures and public services, including fire protection, utilities and sanitation;
- 4) Will not adversely affect the orderly development of property or the preservation of property values because the proposed development, its entitlement extension and required roadway improvements, are consistent with the General Plan and the Zoning Ordinance, and is compatible with surrounding land uses. The required roadway improvements will likely enhance surrounding property values; and
- 5) Is consistent with the provisions of Government Code 65864 through 65869.5.

Section 6. The City Council hereby makes the following environmental findings and determinations in connection with the approval of the Development Agreement:

- A. Pursuant to the California Environmental Quality Act ("CEQA") and the City's local CEQA Guidelines, City staff prepared an Initial Study of the potential environmental effects of the approval of the Development Agreement as described in the Initial Study (the "Project"). Based upon the findings contained in that Study, City staff determined that there was no substantial evidence that the Project could have a significant effect on the environment and a Mitigated Negative Declaration was prepared.
- B. Thereafter, City staff provided public notice of the public comment period and of the intent to adopt the Mitigated Negative Declaration as required by law. The public comment period commenced on February 16, 2012, and expired on March 7, 2012. Copies of the documents have been available for public review and inspection at the offices of the Department of Planning and Community Development, located at City Hall, 30001 Ladyface Court, Agoura Hills, California, 91301.
- C. Two written comments were received prior to the public hearing and a response to all of the comments made therein was prepared, submitted to the

City Council, and incorporated into the administrative record of the proceedings.

- D. The City Council has reviewed the Mitigated Negative Declaration and all comments received regarding the Mitigated Negative Declaration prior to and at the April 25, 2012 public hearing, and based on the whole record before it, finds that: (1) the Mitigated Negative Declaration was prepared in compliance with CEQA; (2) there is no substantial evidence that the Project will have a significant effect on the environment; and (3) the Mitigated Negative Declaration reflects the independent judgment and analysis of the City Council.
- E. Based on the findings set forth in this Ordinance, the City Council hereby adopts the Mitigated Negative Declaration and Mitigation Measures prepared for the Project. The Director of Planning and Community Development is authorized and directed to file a Notice of Determination in accordance with CEQA.

Section 7. Based upon the aforementioned findings, the City Council hereby approves the Development Agreement between Agoura Business Center North, LLC, and Agoura Business Center West, LLC, and the City of Agoura Hills, attached hereto as Exhibit "A" and incorporated herein by reference.

Section 8. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 9. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the City's official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days after its adoption. The Mayor is authorized to execute the Development Agreement on behalf of the City once this Ordinance is effective. The executed development agreement shall be recorded against the title to the property.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2012, by the following vote to wit:

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

John M. Edelston, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

EXHIBIT “A”

Development Agreement

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of Agoura Hills
Attn: City Clerk
30001 Ladyface Court
Agoura Hills, CA 91301

No Recording Fee (Government Code § 27383)

DEVELOPMENT AGREEMENT

By and between

CITY OF AGOURA HILLS, a municipal corporation

and

AGOURA BUSINESS CENTER WEST, LLC,

and

AGOURA BUSINESS CENTER NORTH, LLC

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is made and entered into by and between the CITY OF AGOURA HILLS, a municipal corporation (“City”), and AGOURA BUSINESS CENTER WEST, LLC, (“ABC West”) and AGOURA BUSINESS CENTER NORTH, LLC, (“ABC North”) as of _____, 2012. The City, ABC West and ABC North are individually referred to herein as a “Party” and collectively referred to as the “Parties”.

RECITALS

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement:

(a) ABC West owns certain real property which is located in the City, which is more particularly described in Exhibit “A” attached hereto and incorporated herein by reference (the “business center Property”);

(b) ABC West desires to construct the business center Project (as hereafter defined) on the business center Property;

(c) ABC North owns certain real property which is located in the City, which is more particularly described in Exhibit “B” attached hereto and incorporated herein by reference (the “industrial center Property”);

(d) ABC North desires to construct the industrial park Project (as hereafter defined) on the industrial center Property;

(e) Prior to the Effective Date of this Agreement (as hereinafter defined), ABC West and ABC North have received the Project Approvals (as hereinafter defined) allowing the construction and operation of the business center and the industrial center Projects (collectively the “Projects”);

(f) The Projects are fully described in the Mitigated Negative Declarations (as hereinafter defined) and the Project Approvals, which are on file with the City;

(g) The Project Approvals allowing the construction and operation of the Projects were conditionally approved, and the Conditions of Approval thereon have been accepted by ABC West and ABC North as being lawfully imposed thereon;

(h) ABC West and ABC North have applied to the City for approval of this mutually binding Agreement, pursuant to the provisions of the Development Agreement Act, Government Code §§ 65864, et seq. (as hereinafter defined), the Development Agreement Ordinance and other applicable laws; and

(i) The City is authorized pursuant to the Development Agreement Act, its Municipal Code and other applicable laws, to enter into binding development agreements with persons or entities having legal or equitable interests in real property for the development of property therein described;

(j) The City desires to obtain the binding agreement of the ABC West and ABC North for the development of the Projects in accordance with the provisions of this Agreement, the Applicable Rules and Project Approvals;

(k) ABC West and ABC North desire to obtain the vested right from the City to allow them to construct and operate the Projects in accordance with the Project Approvals and the Applicable Rules (as hereinafter defined), including any modifications, changes or additions permitted or required by this Agreement;

(l) The Parties intend that this Agreement will limit, to the degree permitted by applicable laws, the ability of the City to delay, postpone, preclude or further regulate development of the Projects, except as expressly provided for in this Agreement;

(m) The Planning Commission and City Council of the City have each conducted a duly noticed public hearing to consider the approval of this Agreement, pursuant to Government Code § 65867, and each has found that the provisions of this Agreement are consistent with the City's adopted plans and policies, the Zoning Regulations (as hereinafter defined) and the General Plan (as hereinafter defined);

(n) An environmental review has been conducted and completed with regard to the Projects and Mitigated Negative Declarations have been circulated and adopted in accordance with CEQA (as hereinafter defined) and State and local guidelines;

(o) This Agreement is required in furtherance of the public health, safety, and welfare as to the residents of the City and the surrounding region, and will serve the public interest, convenience and necessity as to the City and its residents and the surrounding region;

(p) The City Council has specifically considered and approved the impact and benefits of this Project upon the welfare of the City and the region;

(q) This Agreement eliminates uncertainty in planning and provides for the orderly development of the Project in a manner consistent with the City's Official Zoning Regulations, the Applicable Rules (as hereinafter defined) and the General Plan;

(r) This Agreement will provide ABC West and ABC North with the assurance that they can complete the Projects and that the Projects will not be changed, delayed or modified after the Effective Date of this Agreement, except pursuant to the provisions of this Agreement;

(s) This Agreement will permit ABC West and ABC North to construct and operate the Projects in accordance with the Applicable Rules, the Conditions of Approval imposed upon the Project Approvals and the terms and provisions of this Agreement;

(t) The Projects will provide substantial benefits to the City, by providing, without limitation, the dedication of land for public improvements both on-site and off-site, and the creation of job opportunities for residents of the City;

(u) The City Council has heretofore determined that the Applicable Rules and the Reserved Powers (as hereinafter defined) will be adequate to regulate the development of the Projects; and

(v) The City Council has determined that the public interest, convenience and necessity require the execution and implementation of this Agreement.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City and the Development Agreement Ordinance, and in consideration of the mutual promises and covenants herein contained and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

Section 1. Definitions. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context of this Agreement otherwise requires, the following words and phrases shall be defined as is set forth below:

(a) “Applicable Rules” means the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of the City governing the use and development of real property, including, but not limited to, the City's Official Zoning Regulations and building regulations, in force as of the date the applications for Project Approvals were deemed complete. Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property. “Applicable Rules” shall mean and include only those Developer Fees (as hereinafter defined) and Processing Fees (as hereinafter defined) in effect as of the Effective Date of this Agreement as increased (but only as increased) in accordance with Sections 6(e) and 6(f) of this Agreement.

(b) “CEQA” means the California Environmental Quality Act (California Public Resources Code §§ 21000 et seq.), as it now exists or may hereafter be amended.

(c) “Conditions of Approval” shall mean those conditions of approval imposed by the City upon the Project Approvals expressly referenced in City Council Ordinance No. 09-365 and City Council Resolution Nos. 09-1538, 09-1539, 09-1540, 09-1541, 09-1542 and 09-1543 adopted on June 24, 2009, for the business center Project and City Planning Commission Resolution Nos. 937 and 938, adopted on June 19, 2008, and Resolution No. 11-1032, adopted on May 5, 2011, for the industrial center Project.

(d) “Developer Fees” shall mean those fees established and adopted by City with respect to development and its impacts pursuant to applicable governmental requirements, including §§ 66000 et seq., of the Government Code of the State of California, including impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on or in connection with new development by the City. Developer Fees does not mean or include Processing Fees. The Developer Fees applicable to the Project are set forth on Exhibit “D” attached hereto.

(e) “Development Agreement” or “Agreement” means this Agreement.

(f) “Development Agreement Act” means Article 2.5 of Chapter 4 of Division 1 of Title 7 (§§ 65864 through 65869.5) of the California Government Code.

(g) “Development Agreement Ordinance” means Division 2, Part 4, Chapter 6 of Article IX of the Agoura Hills Municipal Code as it exists on the Effective Date of this Agreement.

(h) “Discretionary Action(s)” or “Discretionary Approval(s)” means an action which requires the exercise of judgment, deliberation or discretion on the part of the City, including any board, agency, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which is defined herein as a Ministerial Permit or Ministerial Approval.

(i) “Effective Date of this Agreement” shall mean the date Ordinance No. 12-396 takes effect following its adoption by the City Council.

(j) “General Plan” means the General Plan of the City, as it exists as of the Effective Date of this Agreement.

(k) “Ministerial Permit(s), or “Ministerial Approval(s)” means a permit or approval, including, but not limited to, building permits, grading permits, and certificates of occupancy, which requires the City, including any board, agency, commission or department or any officer or employee thereof, to determine whether there has been compliance with applicable rules, statutes, ordinances, conditions of approval, and/or regulations, as distinguished from an activity which is included in the definition of Discretionary Action or Discretionary Approval.

(l) "Mitigated Negative Declaration" meant the mitigated declarations circulated by the City and adopted by the Planning Commission in the Resolutions identified in section 1(c) above.

(m) "Mortgagee" means a mortgagee of a mortgage or a beneficiary under a deed of trust encumbering all or a portion of the Property.

(n) "Phase" shall mean any discrete portion or part of the Projects developed by ABC West or ABC North or any successor in interest thereto.

(o) "Processing Fees" means all processing fees and charges required by the City including, but not limited to, fees for land use applications, building permit applications, building permits, grading permits, subdivision or parcel maps, lot line adjustments, inspection fees, certificates of occupancy and plan check fees. Processing Fees shall not mean or include Developer Fees.

(p) "Project" or "Projects" means the business center and the industrial center Projects as defined in the Mitigated Negative Declarations and the Resolutions of the Planning Commission identified in section 1(c) above.

(q) "Project Approvals" shall mean, collectively, General Plan Amendment No. 07-GPA-001, Zone Change No. 07-ZC-001, Vesting Tentative Parcel Map No. VTPM 69426, Conditional Use Permit No. 07-CUP-010, Sign Permit No. 07-SP-036 and Variance Nos. 08-VAR-006(A) and (B) approved by the City with respect to the business center Project, and Parcel Map No. 65503, Conditional Use Permit No. 06-CUP-003 and Oak Tree Permit No. 06-OTP-005 approved by the City with respect to the industrial center Project and shall include any Subsequent Project Approvals (as hereinafter defined), extensions, amendments or modifications.

(r) "Property" or "Properties" means the real property described on Exhibit "A" for the business center Project and Exhibit "B" for the industrial center Project.

(s) "Redevelopment Agency Owned Property" shall mean Lot 36 as shown on Licensed Surveyor Map filed in Book 15, pages 8 and 9 of Record Surveys, in the City of Agoura Hills, County of Los Angeles, State of California, in the Office of the County Recorder of said County (as shown on Exhibit "C").

(t) "Reserved Powers" means the rights and authority excepted from this Agreement's restrictions on the exercise of City's police powers and which rights and authority are reserved to the City pursuant to the provisions of this Agreement. The City's exercise of the Reserved Powers shall be limited as set forth in this Agreement. If, after the Effective Date of this Agreement, City enacts regulations and/or takes Discretionary Actions which are in conflict with the Applicable Rules, the enactment of such regulations and/or the taking of Discretionary Actions shall be deemed to be included in the City's Reserved Powers, if (but only if) the same:

(1) (i) are expressly found by the City Council to be necessary to protect the occupants of the Projects or the residents of the City from a condition that is imminently dangerous to public health and safety; (ii) are generally applicable to all properties in the City, which are zoned the same as the Properties; and (iii) do not prevent or unreasonably delay development of the Projects in accordance with this Agreement and the Project Approvals; or

(2) are specifically mandated and required by State or Federal laws and regulations which are applicable to the Projects (whether enacted previous or subsequent to the Effective Date of this Agreement); or

(3) represent increases to existing Developer Fees under the Applicable Rules as permitted pursuant to Section 6(f) below.

(u) "Site Map" means the site plan for the Projects attached hereto as Exhibit "E" for the business center Project and Exhibit "F" for the industrial center Project generally depicting the development of the Properties contemplated pursuant to the Project Approvals.

(v) "Subsequent Land Use Regulations" means any change in or addition to the Applicable Rules adopted or becoming effective after the Effective Date of this Agreement, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the City Council or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Projects.

(w) "Subsequent Project Approvals" shall mean all further Discretionary Actions or Discretionary Approvals requested with respect to the Projects. Following adoption, a Subsequent Project Approval shall become a Project Approval.

(x) "Term" means the term of this Agreement remains in full force and effect. The initial Term shall be ten (10) calendar years commencing on the Effective Date of this Agreement.

(y) "Zoning Regulations" shall mean Article IX of the Agoura Hills Municipal Code in effect as of the Effective Date of this Agreement.

Section 2. Recitals of Premises, Purpose and Intent.

(a) State Enabling Statute. 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 the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or

equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

“The Legislature finds and declares that:

“(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

“(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development.”

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties.

(b) City Procedures and Actions. Pursuant to the authorization set forth in § 65865 of the Development Agreement Act, City has adopted rules and regulations establishing procedures and requirements for development agreements. Such rules and regulations are set forth in the Development Agreement Ordinance. In accordance with such rules and regulations, City has undertaken the necessary proceedings, has found and determined that this Agreement is consistent with the General Plan and the Zoning Regulations, and has adopted Ordinance No. 12-396 approving this Agreement which Ordinance becomes effective on _____, 2012.

(c) The Properties. ABC West owns approximately 2.02 acres located in the City as more particularly described in Exhibit “A” attached hereto and as shown on the Site Map attached hereto as Exhibit “E”. ABC North owns approximately 10.29 acres located in the City as more particularly described in Exhibit “B” attached hereto and as shown on the Site Map attached hereto as Exhibit “F”.

(d) The Projects. It is ABC West’s intent to improve the business center Property as described in the Project Approvals and the Mitigated Negative Declaration subject to the Applicable Rules, the Conditions of Approval and this Agreement. It is ABC North’s intent to improve the industrial center Property as described in the Project Approvals and the Mitigated Negative Declaration subject to the Applicable Rules, the Conditions of Approval and this Agreement. For the Term of this Agreement, the permitted uses, the densities and intensities of use, the subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, and

development standards, provisions for reservation or dedication of land for public purposes and location of public improvements, and the design, improvement, construction and other guidelines, standards and specifications applicable to the development of the Property shall be those set forth in the Project Approvals, the Applicable Rules and this Agreement, including the Conditions of Approval for the Projects.

(e) Public Objectives. In accordance with the legislative findings set forth in §§ 65864, et seq. of the Development Agreement Act, City wishes to attain certain public objectives that will be furthered by this Agreement. Development of the Projects in accordance with this Agreement will provide for the orderly development of the Properties in accordance with the Applicable Rules and the Project Approvals. Moreover, this Agreement will eliminate uncertainty in planning for and securing orderly development of the Projects, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens, and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. Additionally, although development in accordance with this Agreement will restrain the City's land use and other relevant police powers, the Agreement will provide City with sufficient Reserved Powers during the Term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to the City, ABC West and ABC North will receive assurances that the Project may be developed during the Term of this Agreement in accordance with the Applicable Rules and the Project Approvals, subject to the terms and conditions of this Agreement and the Conditions of Approval.

Section 3. Project Development.

(a) Project Development. In consideration of the premises, purposes and intentions set forth in Section 2 above, including but not limited to its vested right to build out the Projects in accordance with the Project Approvals and subject only to the Applicable Rules, ABC West and ABC North shall use commercially reasonable efforts, in accordance with their own sole and subjective business judgment taking into account market conditions and economic considerations, to develop their respective Projects in accordance with the terms set forth in this Agreement, the Project Approvals and the Applicable Rules. ABC West and ABC North may develop their respective Properties or any portions thereof with a development of lesser height or density than the Projects, provided that such development otherwise complies with the Applicable Rules, including the Mitigated Negative Declarations, the Project Approvals and this Agreement.

(b) Timing of the Development. The Parties acknowledge that neither ABC West nor ABC North can at this time predict when or the rate at which their respective Projects would be developed. Such decisions depend upon numerous factors which are not all within the control of either ABC West or ABC North, such as construction costs, occupancy and space needs for tenants and owners within the Properties, interest rates, and other similar factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Ca1.3d 465, that the failure of the parties

therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the intent of the ABC West, ABC North and City to hereby cure that defect by acknowledging and providing that the ABC West and ABC North shall have the right to develop their respective Properties consistent with the Project Approvals and the Conditions of Approval in such order and at such rate and at such times as the they deem appropriate within the exercise of their sole and subjective business judgment during the Term of this Agreement. City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement. This Agreement shall immediately vest the right to develop the Properties with the permitted uses of land and the densities and intensities of uses specifically set forth in the Project Approvals, subject only to the requirements of the Applicable Rules, the Project Approvals and the Conditions of Approval.

(c) Moratorium. No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Properties, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the Council, a board, agency, commission or department of City, the electorate, or otherwise) affecting parcel maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Properties to the extent such moratorium or other limitation is in conflict with this Agreement; provided, however, the provisions of this Section shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

(d) Low and Moderate Income Housing. Neither ABC West nor ABC North shall be required to include any low, moderate or other restricted income housing in, nor to pay in lieu fees, in connection with the construction and operation of the Projects.

(e) Infrastructure Phasing Flexibility. Notwithstanding the provision of any phasing requirements in the Project Approvals or any Subsequent Project Approvals, ABC West, ABC North and City recognize that economic and market conditions may necessitate changing the order in which the on-site and/or off-site infrastructure is constructed. Therefore, should it become necessary or desirable to develop any portion of the Projects' infrastructure in an order that differs from the order set forth in the Project Approvals or any Subsequent Project Approvals, ABC West, ABC North and City shall collaborate and City shall permit any modification reasonably requested by ABC West or ABC North so long as the modification continues to ensure adequate infrastructure is available to serve that portion of the Projects being then developed.

(f) City Services. Subject to ABC West's and ABC North's installation of infrastructure in accordance with the requirements of the Project Approvals and any Subsequent Project Approvals, City will cooperate with ABC West and ABC North in working with the services and utilities providers to assure to the extent the laws and

regulations of the State, the County of Los Angeles and the City provide to service the Project. City shall provide all applicable City controlled services to the Projects and City shall impose no restriction regarding City provided hookups or service to the Projects with respect to said items during and after the term of this Agreement.

(g) Issuance of Permits. City shall cooperate with ABC West and ABC North in the issuance of permits on an expedited basis and at the earliest feasible date, including, separate and sequential issuance of grading and building permits and, if applicable, issuance of permits prior to recordation of tract maps for their respective Projects provided that ABC West's and ABC North's applications for such permits comply with all Applicable Rules applying to the subject matter of the applicable permit and with their respective Project Approvals and Conditions of Approval.

(1) Timely City Actions. City shall timely consider and expeditiously act upon any matter which is reasonably required, necessary or desirable to accomplish the intent, purpose and understanding of the Parties in entering into this Agreement, including, without limitation, processing of any Ministerial Permit or Ministerial Approval or any request for a Discretionary Action or Discretionary Approval. If ABC West or ABC North satisfactorily comply with all preliminary procedures, actions, payments of applicable Processing and Developer Fees, and criteria generally required of developers by City for processing applications for such Discretionary Actions or Discretionary Approvals that City will not unreasonably withhold or unreasonably condition any such subsequent Discretionary Action or Discretionary Approval required in connection with any Subsequent Project Approval. All Subsequent Project Approvals shall be subject to the terms and conditions of this Agreement. Any Subsequent Project Approval implementing the Project Approval or any conditions, terms, restrictions and requirements of any such Subsequent Project Approval implementing the Projects, shall not prevent development of the Projects for the uses and in accordance with the maximum densities or intensities of development set forth in this Agreement. Without limiting the generality of the foregoing, City acknowledges that the Project Approvals, Conditions of Approval and EIR Mitigation Measures set forth the full and complete conditions, exactions, restrictions, mitigations and other like matters required in connection with development of the Properties and that, except as required by the Reserved Powers or as ABC West or ABC North may otherwise consent, no additional conditions of approval, exactions, dedications, mitigations or other like matters shall be required from or imposed upon ABC West or ABC North in connection with any Subsequent Project Approval required or sought by ABC West or ABC North in connection with the implementation of their respective Projects approved in the Project Approvals.

(2) Processing and Time Period of Tentative Map and Other Project Approvals. Notwithstanding anything to the contrary in the Applicable Rules or otherwise, ABC West or ABC North may file applications for tentative maps for their respective Projects at any time as determined necessary or appropriate for

the expeditious development of their respective Properties. As provided in California Government Code §§ 66452.6 and 65863.9, the term of any tentative, vesting tentative or parcel map hereafter approved with respect to the Projects and the term of each of the Project Approvals shall remain in effect and be valid through the scheduled termination date of this Agreement as set forth in Section 1(y) above or the date such approval would otherwise be in effect under applicable law, whichever is later.

(3) Additional Staffing. If, in the reasonable discretion of the City Manager or his/her designee, City and its regular staff would be unable to process (or if, in fact, standard City staffing fails to result in processing of) Ministerial Permits and Approvals or Discretionary Actions and Approvals as promptly as required to meet ABC West's or ABC North's schedules, City shall, after consultation with ABC West or ABC North, hire sufficient temporary plan check, inspection, engineering and other personnel or additional consultants for such actions as reasonably necessary to meet ABC West's or ABC North's requirements, at their sole cost and expense. City shall consult in good faith with the ABC West or ABC North as to any additional consultants to be hired pursuant to this Section provided that City shall retain the sole discretion as to selection of any such consultants. In order to provide the City with advance notice of upcoming applications for Ministerial Permits and Approvals, ABC West and ABC North shall supply to the City, no later than January 1 of each year, a list of the various Discretionary Actions and Approvals and Ministerial Permits and Approvals which it reasonably anticipates will be requested during that year. Such list shall be updated quarterly, unless agreed to sooner by the Parties. To the extent (i) any outside consultants or exclusively dedicated staff performs work on the Projects under this Section and ABC West or ABC North reimburse City for all costs of such consultants or staff as provided above, and (ii) such work replaces work that would have otherwise been performed by standard City staff under normal processing conditions, ABC West and ABC North shall be entitled to a credit for such consultant fees or special staff reimbursement charges against the standard Processing Fees paid by ABC West or ABC North or which normally would have been otherwise required to be paid by them. ABC West and ABC North shall pay all reimbursements to City required under this Agreement within thirty (30) days after it receives an invoice identifying such reimbursable expenses; provided that ABC West and ABC North shall have the right to audit such costs, at their expense, upon request.

(h) Design/Development Standards. Notwithstanding the provisions of the Applicable Rules, the following design/development standards shall apply to the Projects:

(1) Easements. Easements dedicated for pedestrian use as shown on Tentative or Vesting Tentative Map(s) shall be permitted to include easements for underground drainage, water, sewer, gas, electricity, telephone, cable and other utilities and facilities approved by the City Engineer so long as they do not unreasonably interfere with pedestrian use. Nothing in this subsection (i) (1) shall

be interpreted as expanding or extending public access to or through the Project Property in excess of the requirements of the General Plan, or the Project Approvals as of the Effective Date of this Agreement.

(i) Eminent Domain. If any Project Approval contains a condition for acquiring or improving property off-site, City will, at ABC West's or ABC North's cost, undertake such acquisition or rights of use by way of its powers of eminent domain if it determines that the use of such power is in the public interest. If City does not elect to exercise its power of eminent domain, ABC West or ABC North shall be absolved of the duty to acquire and improve off-site property, and the aforesaid condition shall be vacated by City.

(j) Architectural Approval. No architectural review beyond that required by the Conditions of Project Approvals shall be required of the Projects.

(k) Cooperation and Implementation.

(1) Processing. Upon ABC West's or ABC North's completion of all required preliminary actions and payment of appropriate Processing Fees, including the fee for processing this Agreement, City shall commence and thereafter diligently process all required steps necessary for the implementation of this Agreement. ABC West and ABC North shall, in a timely manner, provide City with all documents, plans and other information required under the Applicable Rules which are necessary for City to carry out its processing obligations.

(2) Clarification or Minor Modification. The provisions of this Agreement require a close degree of cooperation between the Parties and the refinement and further development of the Projects may demonstrate that clarifications or minor modifications of this Agreement are appropriate with respect to the details of performance by them. If and when, from time to time, during the term of this Agreement, City and ABC West or ABC North agree that such clarifications or minor modifications are necessary or appropriate, they shall effectuate such clarifications or minor modifications through an Operating Memoranda approved by City and ABC West or ABC North, which, after execution, shall be attached hereto. No such Operating Memoranda shall require public notice or hearing. The City Attorney shall be authorized to make the determination whether a requested clarification or minor modification may be effectuated pursuant to this Section or whether the requested clarification or minor modification is of such a character as to constitute an amendment hereof. The City Manager may execute any Operating Memoranda hereunder without Council or Planning Commission action.

(3) Other Governmental Permits. ABC West and ABC North shall apply for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the

Projects as may be required for the development of, or provision of services to, the Projects. City shall cooperate with ABC West and ABC North in their endeavors to obtain such permits. To the extent that City, the Council, the Planning Commission or any other board, agency or commission of City constitutes and sits as any other board, agency or commission, committee, or department, it shall not take any action that conflicts with City's obligations under this Agreement.

(4) Legal Challenges. In the event of a legal action instituted by a third party or other governmental entity or official challenging the validity of this Agreement or any provision hereof or the granting of any of the Project Approvals or the terms thereof, the Parties shall affirmatively cooperate with one another in defending said action. If litigation is filed contesting the validity of this Agreement or the right of ABC West or ABC North to construct their respective Projects in accordance with the provisions of this Agreement or the granting of any Project Approvals or the terms thereof, City, as well as ABC West or ABC North, shall be entitled to appear and to defend against the allegations made in such litigation provided that ABC West or ABC North, pursuant to the Conditions of Approval, shall reimburse City for all of its expenditures actually incurred and supported by receipts in the defense of such litigation, including, but not limited to, City's reasonable attorneys' fees, so long as there is no settlement thereof without ABC West's or ABC's North's consent, which consent shall not be unreasonably withheld. City shall cooperate with ABC West's or ABC North's defense of any such litigation, and shall make its records (other than documents privileged from disclosure) and personnel available to ABC West's or ABC North's counsel as may be reasonably requested in connection with such litigation.

Section 4. Redevelopment Agency Owned Property

(a) ABC West and ABC North (collectively "ABC") shall do all of the following, at its sole cost, with respect to the Redevelopment Agency Owned Property:

(1) Install a reclaimed water line stubbed at the property line to serve the Redevelopment Agency Owned Property as shown on Exhibit "G."

(2) Install a water line stubbed at the property line to serve the Redevelopment Agency Owned Property as shown on Exhibit "G."

(3) Install an 18" flared inlet with concentric apron and an 18" storm drain pipe as shown on Exhibit "G."

(4) Install a 24" storm drain and manhole pursuant to MTD 1840 (privately maintained) as shown on Exhibit "G."

(5) Install a hydrant to serve the Redevelopment Agency Owned Property and install a ten inch fire water line stubbed at the property line to serve the Redevelopment Agency Owned Property as shown on Exhibit "G."

(6) Install conduits for future underground utilities such as electricity, gas, phone and cable television installed by others stubbed out at the property line into hand hole to serve the Redevelopment Agency Owned Property as shown on Exhibit "G."

(7) Install street lights as shown on Exhibit "G."

(8) Construct street, sidewalk, curb and gutters, and six three inch conduit crossings under the sidewalk, for future irrigation installed by others, at designated locations as shown on Exhibit "G."

(9) ABC shall commence the installation of the improvements shown on Exhibit "G" within two years of the Effective Date and shall diligently pursue them until completion.

All of the improvements shown on Exhibit "G" shall be subject to the City Engineer's approval, such approval not to be unreasonably withheld.

(b) Limitations on ABC's Responsibilities with Respect to Providing Improvements to Serve the Redevelopment Agency Owned Property.

(1) ABC shall not be responsible for dewatering of any kind during the infrastructure improvement process.

(2) Prior to the commencement of grading on either the business center Property or the industrial center Property, ABC shall have the absolute right, but not the obligation, to terminate this Agreement if the ABC determines, in its sole discretion, that the total cost to provide the improvements shown on Exhibit "G" will exceed \$250,000. If ABC makes that determination, and if it decides, in its sole discretion that it will terminate this Agreement, it shall immediately notify the City in writing of its decision. Upon receipt of that decision by the City, no Party to this Agreement shall thereafter have any rights or obligations under this Agreement.

(3) ABC shall complete any improvement shown on Exhibit "G" if, at the time ABC terminates this Agreement, ABC has commenced construction of that improvement.

(4) Once grading has commenced on either the business center Property or the industrial center Property, ABC shall have no right to terminate this Agreement.

(c) City Responsibilities with Respect to the Redevelopment Agency Owned Property.

(1) The City shall waive all Processing Fees and inspection fees which would otherwise be due in connection with the provision of the improvements shown on Exhibit "G."

(2) The City shall defend, indemnify and hold ABC West and ABC North and its agents and employees harmless from any claims, demands, liabilities, costs, including attorneys' fees incurred by ABC West and ABC North, arising out of, or connected to, the provision of improvements to serve the Redevelopment Agency Owned Property once the work is completed and the City has inspected, approved and accepted the improvements.

Section 5. Warranties

(a) City Warranties. City hereby warrants to ABC West and ABC North as follows:

(1) Entitlement to Develop. City has the authority to permit ABC West and ABC North to develop their respective Projects, subject to, and in accordance with: (a) the Mitigated Negative Declarations; (b) the Applicable Rules; (c) the Project Approvals, and Conditions of Approval thereon; and (d) the terms and conditions of this Agreement, and, based upon all the information made available to City prior to or concurrently with the execution of this Agreement, there are no Applicable Rules that would prohibit or prevent the full completion and occupancy of the Projects in accordance with the uses, densities, heights, and terms of development incorporated and agreed to herein.

(2) Consistency with General Plan. The Projects are consistent with the General Plan and the Project Approvals lawfully authorize the construction and use of the Projects.

(3) Authority to Enter Agreement. The City has the legal authority to enter into and implement this Agreement.

Section 6. Changes in Applicable Rules.

(a) Non-application of Changes in Applicable Rules. The adoption of any Subsequent Land Use Regulations after the Effective Date of this Agreement, or any change in, or addition to, the Applicable Rules, including, without limitation, any changes in the General Plan or the Zoning Regulations (including any regulation relating to the timing, sequencing, or phasing of the Projects or construction of all or any part of the Projects) or the imposition of any new fee or exaction (except for the increases in the Developer Fees as provided for in this Agreement), adopted or becoming operative after the Effective Date of this Agreement, including, without limitation, any such change by

means of ordinance, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by any board, agency, commission or department of City, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Projects and which would conflict in any way with or be more restrictive than the Applicable Rules, ABC West's or ABC North's entitlements under the Project Approvals, or this Agreement, shall not be applied to the Projects unless such changes represent an exercise of City's Reserved Powers. ABC West or ABC North may, at their sole discretion, give City written notice of its election to have any Subsequent Land Use Regulations applied to their respective Property, in which case such Subsequent Land Use Regulation shall be deemed to be an Applicable Rule with respect to such Project.

(b) Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Projects shall be subject to changes occurring from time to time in the provisions of City's building, mechanical, plumbing and electrical regulations which are based on the recommendations of a multi-state professional organization and become applicable throughout the City, including, but not limited to, the Uniform Building Code and other similar or related uniform codes.

(c) Changes Mandated by Federal or State Laws or Regulations. Changes in, or additions to, the Applicable Rules adopted or made operative on or after the Effective Date of this Agreement shall apply to the Projects, if such changes or additions are specifically mandated to be applied to developments such as the Projects, by applicable State or Federal laws or regulations. Where City, ABC West or ABC North believes that such a change or addition exists, such Party shall take the following actions:

(1) Notice and Copies. The Party which believes a change or addition to the Applicable Rules has occurred shall provide the other Parties hereto with a copy of such State or Federal law or regulation and a statement of the nature of its conflict with the provisions of the Applicable Rules and/or of this Agreement.

(2) Modification Conferences. The Parties shall, within ten (10) days, meet and confer in good faith and engage in a reasonable attempt to modify this Agreement to comply with such Federal or State law or regulation. In such discussions, the City, ABC West and ABC North shall preserve the terms of this Agreement and the rights of the ABC West and ABC North derived from this Agreement to the maximum feasible extent while resolving the conflict.

(3) Council Hearings. Thereafter, if the representatives of the Parties are unable to reach agreement on the effect of such Federal or State law or regulation and the change in the Applicable Rules necessitated thereby, or if the required change which is agreed to by the Parties requires, in the judgment of the City Manager and the City Attorney, a hearing before and/or approval by the City Council, then the matter shall be scheduled for hearing before the City Council by the City Clerk at the Council's next meeting. At least ten (10) days' written notice of the time and place of such hearing shall be given by the City Clerk to the

representative of ABC West and ABC North and the City Manager. The City Council, at such hearing, or at a continuation of such hearing, shall determine the exact modification which is necessitated by such Federal or State law or regulation. ABC West and ABC North, and any other interested person, shall have the right to offer oral and written testimony at the hearing. The determination of the City Council shall be final and conclusive, except for judicial review thereof.

(d) Cooperation in Securing Permits. The City shall cooperate with ABC West and ABC North in the securing of any permits or approvals of other governmental agencies having jurisdiction over the Project, including, without limitation, any permits or approvals required as a result of such a modification referred to in Section 6(c) above.

(e) Applicable Processing Fees. The applicable Processing Fees shall be those in effect at the time that any approvals or permits are sought for the development of the Projects.

(f) Applicable Developer Fees. The Projects shall be subject only to the payment of Developer Fees in existence as of the Effective Date of this Agreement, and to increases in such Developer Fees imposed after the Effective Date of this Agreement, only if: (a) the same are mandated by Federal or State law or regulation, and (b) such increases comply with the requirements of California Government Code §§66000, et seq., and other applicable law. No development charges, fees or contributions, other than as expressly provided for in the Project Approvals and this Development Agreement, shall be imposed by the City on the Projects or the Properties.

(g) ABC West's and ABC North's Right to Contest Increases in Fees. Nothing in this Agreement shall prevent ABC West or ABC North or their representatives from contesting, in any appropriate forum, the imposition or the amount of any new Processing Fees or new Developer Fees or any increase in existing fees. Such right of protest shall not extend to the current amount of any Developer Fees or Processing Fees in effect as of the Effective Date of this Agreement, which shall be paid pursuant to the terms of this Agreement and the City's normal fee payment schedule. Notwithstanding any pending contest of such fees, City shall proceed with issuance of all required Project and Ministerial Approvals, plan checks and inspections with respect to the Projects and shall not withhold or delay issuance of those Project or Ministerial Approvals, plan checks and inspections based upon any pending protest or appeal with respect to such fee.

(h) Ministerial Permits. The City shall not require ABC West or ABC North to obtain any Ministerial Permits or Approvals for the development of their respective Projects in accordance with this Agreement other than those required by the Applicable Rules. Any Ministerial Permit or Approval required under the Applicable Rules shall be governed by the Applicable Rules.

(i) Discretionary Approvals. Any Subsequent Project Approval involving a Discretionary Action or Discretionary Approval required after the Effective Date of this Agreement in order to commence or complete the Projects, which does not materially change, modify or alter the Projects, shall be governed by the Applicable Rules. Any such subsequent Discretionary Action or Discretionary Approval which materially and substantially changes, modifies or alters the Projects, shall be subject to the Applicable Rules and any applicable Subsequent Land Use Regulations.

(j) Amendments to Entitlements. From time to time, ABC West or ABC North may seek amendments to one or more of the Project Approvals applicable to its respective Property. Any such amendments are within the scope of this Agreement as long as they are consistent with the Applicable Rules and shall, upon approval by City, continue to constitute the "Project Approvals" as referenced herein.

Section 7. Default Provisions. In the event that the City, ABC West or ABC North does not perform its material obligations under this Agreement in a timely manner and fails to cure such breach within the period provided herein ("Defaults"), then, except as provided below, the non-defaulting Party shall have all rights and remedies provided herein and/or under applicable law, which shall include, but not be limited to, compelling the specific performance of the material obligations of the defaulting Party under this Agreement, or terminating this Agreement with respect to such defaulting Party, provided that the non-defaulting Party has first complied with the following procedure:

(a) Dispute Resolution. Any and all claims, grievances, demands controversies, causes of action or disputes of any nature whatsoever (including but not limited to tort and contract claims, and claims upon any law, statute, order, or regulation) (hereinafter "Claims"), arising out, in connection with, or in relation to (i) the interpretation, performance or breach of this Agreement, or (ii) the arbitrability of any Claims under this Agreement, shall be resolved in accordance with a two-step dispute resolution process administered by "End Dispute" arbitration and mediation service or other mutually selected dispute resolution service involving, first, mediation by a retired judge from a panel supplied by the service, followed, if necessary, by final and binding arbitration before the same, or if requested by either Party, another panelist. Such dispute resolution process shall be confidential and shall be conducted in accordance with California Evidence Code § 1119.

(1) Mediation. In the event any Claim is not resolved by an informal negotiation between City and ABC West or ABC North, within thirty (30) days after a Party receives written notice from another Party that a Claim exists, the matter shall be referred to the Los Angeles offices of "End Dispute" for an informal, non-binding mediation consisting of one or more conferences between the Parties in which a retired judge will seek to guide the Parties to a resolution of the Claims. The Parties shall select a mutually acceptable neutral mediator from among the "End Dispute" panel of mediators. In the event the Parties cannot agree on a mediator, the Administrator of "End Dispute" will appoint a mediator. The mediation process shall continue until the earliest to occur of the following: (i) the

Claims are resolved, (ii) the mediator makes a finding that there is no possibility of resolution through mediation, or (iii) thirty (30) days have elapsed since the Claim was first scheduled for mediation.

(2) Arbitration. Should any Claims remain after the completion of the mediation process described above, the Parties shall submit all remaining Claims to final and binding arbitration administered by “End Dispute” in accordance with the then existing “End Dispute” Arbitration Rules. Neither Party nor the arbitrator shall disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all Parties. Except as provided herein, the California Arbitration Act shall govern the interpretation, enforcement and all proceedings pursuant to this subparagraph (2). The Arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the State of California. Except as otherwise provided in this Agreement, the arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any Party and shall apply the standards governing such motions under the California Code of Civil Procedure. The arbitrator shall render an award and a written, reasoned opinion in support thereof. Such award shall include reasonable attorneys' fees to the prevailing Party as set forth in Section 8(ff) below. Judgment upon the award may be entered in any court having jurisdiction thereof. The Parties shall have the right to contest the arbitrator’s award based on errors of fact or law.

(3) Adherence to this dispute resolution process shall not limit the Parties' right to obtain any provisional remedy, including without limitation, injunctive or similar relief, from any court of competent jurisdiction as may be necessary to protect their rights and interests.

(4) This dispute resolution process shall survive the termination of this Agreement. The Parties expressly acknowledge that by signing this Agreement, they are giving up their respective right to a jury trial.

(b) Termination. If any Party wishes to terminate this Agreement, in whole or in part, but for the purposes of this subparagraph (b) only, as a result of any breach of this Agreement established pursuant to the arbitration procedure set forth above, it shall first provide written notice to the non-defaulting Party setting forth the nature of the default established by the arbitration proceeding and the actions, if any, required by the defaulting Party to cure such default, and the defaulting Party shall have failed to cure such default within thirty (30) days after receipt of such notice or within such additional time as is reasonably necessary to cure such default, provided that the defaulting Party commences the cure of that default within said thirty (30) day period and thereafter diligently pursues the cure of that default to completion. If the defaulting Party does not cure the default or comply with the arbitrator's order within that period, then the non-defaulting Party may, after compliance with §§ 65864 et seq., of the Government Code, terminate this Agreement upon written notice to the defaulting Party. Such termination shall not affect any right or duty arising from entitlements or approvals, including the

Project Approvals applicable to the Properties, approved prior to the effective date of termination. Notwithstanding anything herein to the contrary, City shall not have the right to specifically enforce against ABC West or ABC North the provisions of Section 3(a) above, nor in any way to compel ABC West or ABC North to either start or complete their respective Projects, nor to seek any monetary damages from ABC West or ABC North for its failure to start or complete their respective Projects. Notwithstanding the foregoing, City shall have the right (i) to compel ABC West or ABC North by an action for specific performance to complete any public improvements which have been commenced and are partially completed as of the date of termination, (ii) to require ABC West or ABC North to dedicate any property and complete any public improvements which are required by the Project Approvals to be dedicated and/or completed prior to occupancy of those Project improvements in fact constructed on the Properties pursuant to this Agreement and (iii) to compel ABC West and ABC North by an action for specific performance to complete the improvements as shown on Exhibit "G"

(c) No Monetary Damages Remedy Against the City. ABC West and ABC North acknowledge that the City would not have entered into this Agreement had it been exposed to monetary damage claims from ABC West or ABC North for any breach, termination or default hereunder. In no event shall ABC West or ABC North be entitled to recover money damages of any amount against the City for the City's breach, termination or default under this Agreement.

Section 8. General Provisions.

(a) Expiration.

(1) Upon the expiration of the Term, this Agreement shall terminate and be of no further force or effect; provided, however, such termination shall not affect any claim of any Party hereto, arising out of the provisions of this Agreement prior to the effective date of such termination, or affect any right or duty arising from entitlements or approvals, including the Project Approvals, applicable to the Properties approved prior to the effective date of the termination, and all representations and warranties set forth herein shall survive such termination.

(2) This Agreement shall terminate and be of no further force or effect as to any buyer of a condominium unit which is a part of the industrial center Project and which has received a certificate of occupancy notwithstanding the right to assign provided in section 8(f)(1) below.

(b) ABC West's and ABC North's Right to Terminate upon Specified Events. Notwithstanding any other provisions of this Agreement to the contrary, ABC West and ABC North retain the right to terminate this Agreement as it affects their Property and their Project upon thirty (30) days written notice to City in the event that they determine that continued development of their respective Projects has become economically infeasible due to changed market conditions, increased development costs, or burdens imposed, consistent with this Agreement, by City or other governmental or quasi-

governmental entity or agency as conditions to Subsequent Project Approvals or City's exercise of its Reserved Powers in a way deemed by ABC West or ABC North to be inconsistent with the development of their respective Projects. In the event ABC West or ABC North exercises this right, it shall nonetheless be responsible for mitigation of those impacts to City resulting from development that has occurred on the Property subject to the termination prior to the notice of termination, and within the thirty (30) day notice period. City and ABC West or ABC North shall meet to identify any such mitigation obligation that may remain to be satisfied. If the Parties are in disagreement at the end of the (30) day notice period, the Agreement shall be terminated as to the Property involved and as to all matters except for the remaining mitigation obligation in dispute, and with respect thereto the Parties shall proceed as provided in Section 7 above. In the event ABC West or ABC North exercises this right of termination, ABC West or ABC North shall not be entitled to any restoration, refund or reimbursement of costs, fees, dedications or other consideration already paid or otherwise transferred to the City in accordance with the Project Approvals, Conditions of Approval and this Agreement.

(c) Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, whenever a period of time is designated within which any Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is prevented from the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including, without limitation, war; acts of terrorism; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; strikes; litigation and administrative proceedings involving the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs, such as an annual review); ABC West's or ABC North's inability to obtain financing; economic conditions which make the construction or operation of the Properties infeasible; restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; the exercise of the City's Reserved Powers; or similar bases for excused performance which are not within the reasonable control of the Party to be excused (collectively, "Force Majeure Event"). The Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from any enactments pursuant to the City's Reserved Powers or other Force Majeure Event; provided, that the Term of this Agreement shall not be extended under any circumstances for more than an additional five (5) years under this Section 8(c).

(d) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California with the venue of the Los Angeles County Superior Court.

(e) Amendments. This Agreement may be amended from time to time in accordance with City Ordinances and the Development Agreement Act.

(f) Assignment.

(1) Right to Assign. ABC West and ABC North shall have the unfettered right to sell, transfer or assign its interest in their respective Properties in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code §§ 66410, et seq.) without the consent of City, and in so doing assign its rights and obligations under this Agreement as the same may relate to the portion of the Property being transferred, to any person, partnership, joint venture, firm or corporation at any time during the Term of this Agreement.

(2) Release of Transferring Owner. Upon the sale, transfer or assignment of all or a portion of the Properties, the seller, transferor or assignor shall be released of all obligations under this Agreement that relate to the portion of the Properties being transferred and, thereafter, City shall look solely to such transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Properties acquired by such transferee. In connection with each such transfer, the transferor shall require the transferee to assume in writing all of the obligations under this Agreement that relate to the portion of the Properties being transferred. If any such buyer, transferee or assignee defaults under this Agreement, such default shall not constitute a default by the owner of any other portion of the Property and shall not entitle City to terminate this Agreement with respect to such other portion of the Properties or the owner thereof who is not in default. The transferee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferee.

(g) Covenant. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Properties. All provisions of the Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with respect to development of the Properties: (i) is for the benefit of, and is a burden upon, the Properties; (ii) runs with the Properties and each portion thereof; and (iii) is binding upon each Party and each successor in interest during ownership of the Properties or any portion thereof.

(h) This Agreement's benefits and burdens relating to the business center and the industrial center Properties and Projects are independent of each other. A default by ABC West shall not affect ABC North's benefits and burdens under this Agreement nor shall a default by ABC North affect ABC West's benefits and burdens under this Agreement. A default under section 4(a) of this Agreement shall be considered a default of both ABC West and ABC North.

(i) Relationship of the Parties. Neither ABC West nor ABC North is acting as an agent, joint venturer or partner of City, but is, in fact, an independent party and not in

any way under the control or direction of City except as is expressly provided to the contrary in this Agreement.

(j) Notices. Whenever notices are required to be given pursuant to the provisions of this Agreement, the same shall be in written form and shall be served upon the Party to whom addressed by personal service as required in judicial proceedings, or by deposit of the same in the custody of the United States Postal Service, postage prepaid, Registered or Certified Mail, or by reputable overnight courier, or by facsimile addressed to the Parties as follows:

CITY City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301
Attn: City Manager & Director of
Planning & Community Development
Facsimile No.: (818) 597-7352

WITH A COPY TO: Richards, Watson & Gershon
355 South Grand Avenue,
40th Floor
Los Angeles, California 90071-3101
Attn: Craig A. Steele, Esq.
Facsimile No.: (213) 626-0078

ABC WEST Richard M. Ota, President
and ABC NORTH: Agoura Business Center West, LLC, and
Agoura Business Center North, LLC
5304 Derry Avenue, Suite A
Agoura Hills, CA 91301
Facsimile No.: (818) 889-8750

WITH A COPY TO: Kenneth B. Bley, Esq.
Cox, Castle & Nicholson LLP.
2049 Century Park East, 28th Floor
Los Angeles, CA 90067-3284
Facsimile No.: (310) 277-7889

Notices shall be deemed, for all purposes, to have been given and received on the date of (i) personal service or (ii) three (3) consecutive calendar days following the deposit of the same in the United States mail as provided above or (iii) the next business day after deposit with the overnight courier, or (iv) when received by the Party to whom faxed as confirmed in the fax confirmation has not been rejected (provided that any such notice delivered after 5:00 p.m. shall be deemed received on the next business day).

(l) Recordation. As provided in California Government Code § 65868.5, the City Clerk shall record a copy of this Agreement with the Registrar-Recorder of the

County of Los Angeles within ten (10) days following its execution by all Parties. ABC West and ABC North shall reimburse the City for all costs of such recording, if any.

(m) Severability. If any provision of this Agreement is determined by a court to be invalid or unenforceable, or if any provision of this Agreement is superseded or rendered unenforceable according to any applicable law which becomes effective after the Effective Date of this Agreement, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

(n) Time of the Essence. Time is of the essence for each provision of this Agreement of which time is an element.

(o) Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect to any occurrence or event shall be deemed a waiver of any right or remedy in respect to any other occurrence or event.

(p) No Third Party Beneficiaries. The only Parties to this Agreement are the City, ABC West and ABC North and their respective successors-in-interest. There are no third party beneficiaries and this Agreement is not intended and shall not be construed to benefit or be enforceable by any other person whatsoever.

(q) Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous representations, understandings or agreements, whether written or oral, with respect to the subject matter hereof.

(r) Advice. Neutral Interpretation. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement has been drafted through a joint effort of the Parties and their counsel and therefore shall not be construed against any of the Parties in its capacity as draftsman, but in accordance with its fair meaning.

(s) Headings. The section headings used in this Agreement are for convenient reference only and shall not be used in construing this Agreement. The words “include”, “including” or other words of like import are intended as words of illustration and not limitation and shall be construed to mean “including, without limitation”.

(t) Certificate of Compliance. At any time during the term of this Agreement, any lender or other Party may request any Party to this Agreement to confirm that (i) this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications) and that (ii) to the best of such Party's knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such

defaults and (iii) any other information reasonably requested. Each Party hereby agrees to provide a certificate to such lender or other Party within ten (10) business days of receipt of the written request therefore. The failure of any Party to provide the requested certificate within such ten (10) business day period shall constitute a confirmation that this Agreement is in full force and effect without modification except as may be represented by the requesting Party and that to the best of such Party's knowledge, no defaults exist under this Agreement, except as may be represented by the requesting Party.

(u) Mortgagee Protection. This Agreement shall not prevent or limit ABC West or ABC North, at its sole discretion, from encumbering its respective Property or any portion thereof or any improvement thereon, by any mortgage, deed of trust, or other security device securing financing with respect to all or a portion of the respective Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and/or modifications and shall, upon written request, from time to time, meet with ABC West or ABC North and representatives of such lenders to negotiate in good faith any such request for interpretation, modification or amendment. City shall not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property, or any portion thereof, shall be entitled to the following rights and privileges:

(1) Neither the entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Properties, nor any portion thereof, made in good faith and for value.

(2) The Mortgagee of any mortgage or beneficiary of a deed of trust encumbering the Properties, or any part thereof, who has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from the City of any default or noncompliance by ABC West or ABC North in the performance of its obligations under this Agreement.

(3) If City timely receives a request from a Mortgagee requesting a copy of any notice of default or notice of non-compliance given to ABC West or ABC North under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) calendar days of sending the notice of default to ABC West or ABC North, and the Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such Party under this Agreement, except that as to a default requiring title or possession of the Properties or any portion thereof to effectuate a cure, if the Mortgagee commences foreclosure proceedings to acquire title to the Properties or applicable portion thereof within ninety (90) days after receipt from City of the written notice of default, the Mortgagee shall be entitled to cure such default after

obtaining title or possession provided that such Mortgagee does so promptly and diligently after obtaining title or possession.

(4) Any Mortgagee who comes into possession of the Properties, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Properties, or part thereof, subject to the terms of this Agreement and shall automatically succeed to ABC West's or ABC North's rights hereunder, provided, however, in no event shall such Mortgagee or its successors and assigns be (a) liable for any monetary defaults of ABC West or ABC North under the Agreement arising prior to acquisition of title to the Properties, or portion thereof, by such Mortgagee, or (b) obligated to complete construction of the Projects or any component thereof, except as expressly provided in Section 7(b) above; provided, however, if such Mortgagee does not elect to cure any such default, the City shall have the rights and remedies set forth in this Agreement.

(v) Processing of Modification. ABC West or ABC North shall reimburse City for its actual costs reasonably and necessarily incurred as a result of any modification to this Agreement initiated by ABC West or ABC North or its Mortgagee, provided that City shall use its best efforts to minimize such costs.

(w) Warranty. ABC West warrants to the City that, as of the Effective Date of this Agreement, it owns the business center Property and ABC North warrants to the City that, as of the Effective Date of this Agreement, it owns the industrial center Property.

(x) Indemnity. ABC West and ABC North shall indemnify, defend and hold City, its elected and appointed officers, agents, employees and consultants harmless from and against any claim, demand, judgment, liability, cost or expense, including reasonable attorneys' fees and court costs, arising from any personal injury, property damage or wrongful death claim caused by or resulting from the operations of ABC West or ABC North or its contractors, subcontractors, employees or agents in connection with the development of their respective Projects; provided, that in no event shall the foregoing be construed to mean that ABC West or ABC North shall hold the City or any other Party harmless and/or defend them to the extent that any such claims, cost, liability or expense arise from, or are alleged to have arisen from, the negligent acts or omissions of the Party seeking indemnification. City reserves the right, in cases subject to this indemnity, to reasonably approve the attorney selected by ABC West or ABC North to defend ABC West or ABC North and City in any such action.

(y) Consideration. The City, ABC West and ABC North acknowledge that there is good, sufficient and valuable consideration flowing to the City and to ABC West and ABC North pursuant to this Agreement as more particularly set forth in the Recitals and Section 2 of this Agreement. The Parties further acknowledge that the exchanged consideration hereunder is fair, just and reasonable.

(z) Entitlement to Develop. ABC West and ABC North are hereby granted the vested right to develop their respective Projects on their respective Properties to the extent and in the time and manner provided in this Agreement. All of the development allowed under the Project Approvals is hereby vested specifically with ABC West and ABC North and their successors and assigns on the terms set forth in this Agreement.

(aa) Periodic Reviews.

(1) Annual Reviews. City shall conduct annual reviews to determine whether ABC West and ABC North are acting in good faith compliance with the provisions of this Agreement as provided in Agoura Hills Municipal Code Article 9, Chapter 6, Part 4, § 9682.6-(k)1. The reasonable cost of each annual review conducted during the term of this Agreement shall be reimbursed to City by ABC West and ABC North. Such reimbursement shall include all direct and indirect expenses reasonably incurred in such annual reviews.

(2) Special Reviews. In addition, upon a finding of substantial evidence of good cause, the City Council of City may order a special periodic review of ABC West's and ABC North's compliance with this Agreement at any time. The cost of such special reviews shall be borne by City, unless such a special review demonstrates that ABC West or ABC North is not acting in good faith compliance with the provisions of this Agreement. Upon such findings being made, ABC West or ABC North shall reimburse City for all costs, direct and indirect, incurred in conjunction with such a special review.

(3) Conduct of Reviews. The City Manager, or designee, shall cause the annual and special reviews to be conducted. If, at the conclusion of any annual or special review, ABC West or ABC North is found to be in substantial compliance with this Agreement, City shall, upon request of ABC West or ABC North, issue a Certificate of Agreement Compliance ("Certificate") in such form as ABC West or ABC North may reasonably request stating that, after the most recent annual and special review, this Agreement remains in effect and ABC West or ABC North is performing in accordance herewith. At ABC West's or ABC North's request, such Certificate shall be in recordable form and may be recorded against its respective Property. City's failure to timely conduct any annual review shall not constitute or be construed as a breach, default or waiver under this Agreement.

(bb) Development Agreement/Project Approvals. In the event of any inconsistency between any Applicable Rule, Project Approvals or Subsequent Project Approval and this Agreement, the provisions of the Agreement shall control.

(cc) Reimbursement. Nothing in this Agreement precludes City, ABC West and ABC North from entering into any reimbursement agreement for the portion (if any) of the cost of any dedications, public facilities and/or infrastructure that City may require as conditions of the Project Approvals or the Subsequent Project Approvals to the extent

that they are in excess of those reasonably necessary to mitigate the impacts of the Projects and are determined by the City Manager to benefit other properties as they may develop over time.

(dd) Processing During Third Party Litigation. The filing of any third party lawsuit(s) against City, ABC West or ABC North relating to this Agreement, the Project Approvals, any Subsequent Project Approvals or other development issues or approvals affecting the Properties shall not delay or stop the development, processing or construction of the Projects, approval of any future Discretionary Approvals, or issuance of future Ministerial Permits or Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

(ee) Record of Applicable Rules. Prior to the Effective Date of this Agreement, City, ABC West and ABC North shall use reasonable efforts to assemble three identical sets of the Applicable Rules, one set for City and one set each for ABC West and ABC North, so that, if it becomes necessary in the future to refer to any of the Applicable Rules, there will be a common set of the Applicable Rules available to all Parties.

(ff) Future Litigation Expenses.

(1) Payment of Prevailing Party. If City, ABC West or ABC North brings an action or proceeding (including, without limitation, any motion, order to show cause, cross-complaint, counterclaim, third-party claim, mediation or arbitration proceeding) by reason of defaults, breaches, tortious acts, or otherwise arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to its costs and expenses of suit including, but not limited to, reasonable attorneys' fees and expert witness fees.

(2) Scope of Fees. Attorneys' fees under this Section shall include attorneys' fees on any appeal and, in addition, a Party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action, including but not limited to the preparation and costs of the Administrative Record maintained by City. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

(gg) Counterparts. This Agreement may be executed in multiple counterparts, each of which is deemed to be an original, but all of which shall constitute one and the same Agreement. Facsimile or e-mail copies may be used as originals.

(hh) Binding Effect. All of the terms, provisions, agreements, rights, powers, standards, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the City, ABC West and ABC North, and their respective,

successors (by merger, reorganization, consolidation or otherwise) assignees, successors, mortgagees, administrators, representatives, lessees, and all other persons acquiring the Properties, or any portion thereof, or interest therein, whether by operation of law or in any manner whatsoever. Whenever the term "ABC West," "ABC North" or "Owner" is used herein, such term shall include any other lawfully approved successor in interest of ABC West or ABC North, with respect to all or any portion of their respective Properties.

IN WITNESS WHEREOF, City, ABC West and ABC North have executed this Agreement as of the date first above written.

CITY:

CITY OF AGOURA HILLS,
a municipal corporation

By: _____
John M. Edelston, Mayor

ATTEST:

Kimberly Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

By: _____
Craig A. Steele, City Attorney

ABC West
AGOURA BUSINESS CENTER WEST,
LLC

By: _____

Its: _____

ABC North
AGOURA BUSINESS CENTER NORTH,
LLC

By: _____

Its: _____

EXHIBIT “A”

Map and Legal Description of the Business Center Property

Exhibit “B”

Map and Legal Description of the Industrial Center Property

Exhibit “C”

Map and Legal Description of the Redevelopment Agency Owned Property

Exhibit “D”

Developer Fees

Exhibit “E”

Site Map for the Business Center Property

Exhibit “F”

Site Map for the Industrial Center Property

Exhibit “G”

Improvement Plan for the Redevelopment Agency Owned Property