

REPORT TO CITY COUNCIL

DATE: JUNE 13, 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: APPROVAL OF A “MEMORANDUM CONFIRMING EXPIRATION OF DEVELOPMENT AGREEMENT” BETWEEN THE CITY OF AGOURA HILLS AND SL AGOURA HILLS, LLC (OAK CREEK MIXED USE TRACT NO. 53752)

The request before the City Council is to approve the attached “Memorandum Confirming Expiration of Development Agreement,” between the City of Agoura Hills and SL Agoura Hills, LLC.

The subject Development Agreement was entered into by the City Council and recorded on July 26, 2002, allowing for the development of the Oak Creek residential-commercial mixed use tract (No. 53752) located east of the Canwood Street/Kanan Road intersection. In exchange for the purchase of City-owned property, the Development Agreement assured dedication of land to public improvements both on-site and off-site, including the realigned and expanded right-of-way for Canwood Street and the restricted open space area, and the removal of billboards and structures. The tract was developed by three separate owners with a mix of multi-family residential and commercial uses that include the current Archstone Oak Creek Apartments, the Homewood Suites Hotel, and the Shops at Oak Creek retail center.

Since the entire tract has been developed within the ten-year time frame of the Development Agreement, the current owner of the Shops at Creek retail center, Loja Real Estate, is requesting that the Development Agreement be terminated. Staff concurs with the findings of the attached Memorandum, which was reviewed by the City Attorney, that the project has been completed and all obligations have been satisfied. With the City Council’s approval, the Memorandum will confirm for all three property owners within the tract that the Development Agreement is terminated and of no further force and effect, and will be removed from record as an encumbrance against the properties. Staff would note, though, that the projects within the tract are still subject to compliance with current Municipal Code provisions, as well as any applicable conditions of approval of existing entitlements.

Attached for reference is a copy of the 2002 Development Agreement.

RECOMMENDATION

Staff respectfully recommends the City Council approve the “Memorandum Confirming the Expiration of a Development Agreement” between the City of Agoura Hills and SL Agoura Hills, LLC.

Attachments: Memorandum Confirming the Expiration of a Development Agreement
Development Agreement

RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:

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

No Recording Fee (Government Code Section 6103)

(Space above for Recorder's use)

MEMORANDUM CONFIRMING EXPIRATION OF DEVELOPMENT AGREEMENT

THIS MEMORANDUM is executed by the CITY OF AGOURA HILLS, a municipal corporation (the "City") as of the date set forth below in connection with that certain Development Agreement made and entered into by and between the City and SL Agoura Hills, LLC, a California limited liability company, which was recorded in the Official Records of Los Angeles County on July 26, 2002 as Instrument No. 02 1753177 (the "Development Agreement"). The Property affected by the Development Agreement is described in Exhibit A attached hereto and incorporated herein by this reference. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Development Agreement.

The entire Project has been completed, and the Development Agreement thus has expired in accordance with its terms. The purpose of this Memorandum is to confirm that the Development Agreement is terminated and of no further force and effect, and that the Development Agreement shall be removed from record as an encumbrance against the Property.

IN WITNESS WHEREOF, the City has executed this Memorandum as of the date set forth below.

CITY:

CITY OF AGOURA HILLS, a
municipal corporation

By: _____

Date: _____

EXHIBIT "A"

Description of the Property

SHAW PROPERTY

PARCEL A:

THOSE PORTIONS OF LOTS G AND H, IN THE RANCHO LOS VIRGINES, AS SHOWN ON THE MAP OF THE PARTITION OF SAID RANCHO ON FILE, IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY IN CASE NO. 2898 OF THE SUPERIOR COURT OF SAID COUNTY. A PORTION OF SAID LOTS ALSO BEING SHOWN ON A RECORD OF SURVEY MAP, FILED IN BOOK 82 PAGE 53 RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE NORTHEAST TERMINUS OF THAT CERTAIN COURSE IN THE EASTERLY BOUNDARY OF THE LAND AS DESCRIBED IN PARCEL 3-30.2 (AS AMENDED) IN THE DECREE OF CONDEMNATION, A CERTIFIED COPY OF WHICH WAS RECORDED ON NOVEMBER 17, 1966, AS INSTRUMENT NO. 2380 IN BOOK D3485 PAGE 91 OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS SHOWN ON MAP OF TRACT 30907 IN SAID COUNTY AND STATE AS PER MAP RECORDED IN BOOK 799 PAGES 27 TO 33 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS HAVING BEARING AND LENGTH "NORTH 61 DEGREES 38 MINUTES 24 SECONDS EAST 50 FEET", THENCE ALONG SAID EASTERLY BOUNDARY AND ALONG SAID COURSE AS FOLLOWS; SOUTH 61 DEGREES 38 MINUTES 24 SECONDS WEST 50 FEET, NORTH 28 DEGREES 21 MINUTES 36 SECONDS WEST 18.39 FEET, SOUTH 31 DEGREES 21 MINUTES 24 SECONDS WEST 122.21 FEET, SOUTH 44 DEGREES 45 MINUTES 15 SECONDS WEST 187.92 FEET, SOUTH 4 DEGREES 28 MINUTES 21 SECONDS WEST 185.07 FEET, SOUTH 56 DEGREES 15 MINUTES 08 SECONDS WEST 162.90 FEET, SOUTH 45 DEGREES 56 MINUTES 59 SECONDS WEST 127.48 FEET, AND SOUTH 31 DEGREES 55 MINUTES 27 SECONDS WEST 95.65 FEET TO THE MOST SOUTHEASTERLY CORNER OF SAID DECREE AND BEING IN THE NORTHERLY LINE OF THE LAND SHOWN ON A LICENSED SURVEYOR'S MAP FILED IN BOOK 15 PAGES 8 AND 9 OF RECORD OF SURVEYS, SAID NORTHERLY LINE ALSO SHOWN ON SAID MAP OF TRACT 30907; THENCE ALONG SAID NORTHERLY LINE SOUTH 86 DEGREES 56 MINUTES 11 SECONDS EAST 936.50 FEET TO THE SOUTHWEST CORNER OF LOT 94 OF SAID TRACT 30907; THENCE ALONG THE WESTERLY BOUNDARY OF SAID LOT 94 AND THE WESTERLY BOUNDARY OF SAID TRACT 30907 AS FOLLOWS; NORTH 3 DEGREES 03 MINUTES 49 SECONDS EAST 57.68 FEET, NORTHWESTERLY ALONG A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 400 FEET, THROUGH A CENTRAL ANGLE OF 30 DEGREES 41 MINUTES 30 SECONDS AN ARC DISTANCE OF 214.27 FEET, NORTH 27 DEGREES 37 MINUTES 41 SECONDS WEST 128.08 FEET, SOUTH 62 DEGREES 22 MINUTES 19 SECONDS WEST 95 FEET, NORTH 27 DEGREES 37 MINUTES 41 SECONDS WEST 152.78 FEET, NORTH 62 DEGREES 22 MINUTES 19 SECONDS EAST 12 FEET, NORTH

27 DEGREES 37 MINUTES 41 SECONDS WEST 304.23 FEET, AND SOUTH 61 DEGREES 38 MINUTES 24 SECONDS WEST 8.66 FEET TO THE POINT OF BEGINNING.

PARCEL B:

PARCEL 44 ON A LICENSED SURVEYORS MAP, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 15 PAGES 8 AND 9 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION DESCRIBED AS PARCEL 1 IN THE DEED TO THE STATE OF CALIFORNIA RECORDED NOVEMBER 27, 1962 AS INSTRUMENT NO. 1565 IN BOOK D1834 PAGE 731, OFFICIAL RECORDS.

PARCEL B1:

THE NORTH 20 FEET OF THAT PORTION OF PARCEL 1 OF THE LAND DESCRIBED IN DEED FROM TITLE INSURANCE AND TRUST COMPANY TO BRUCE WARING AND MADGE BLUNT WARING RECORDED IN BOOK 3422 PAGE 147, OFFICIAL RECORDS, LYING BETWEEN THE SOUTHERLY PROLONGATION OF THE EAST AND WEST LINES, RESPECTIVELY, OF PARCEL 1 ABOVE DESCRIBED.

EXCEPT THAT PORTION DESCRIBED AS PARCEL 1 IN THE DEED TO THE STATE OF CALIFORNIA RECORDED NOVEMBER 27, 1962 AS INSTRUMENT NO. 1565 IN BOOK D1834 PAGE 731, OFFICIAL RECORDS.

PARCEL B2:

AN EASEMENT FOR RIGHT OF WAY FOR ROAD PURPOSES TO BE USED IN COMMON WITH OTHERS WITH THE RIGHT TO GRANT THE SAME, ON, OVER AND ACROSS THOSE PORTIONS OF SAID LAND GRANTED TO S.G. JOHNSON, AGDA M. JOHNSON, EDWARD H. JOHNSON, AND ALMA O. JOHNSON IN DEED RECORDED IN BOOK 5132 PAGE 106, OFFICIAL RECORDS.

PARCEL C:

PARCEL 45 AS SHOWN ON A RECORD OF SURVEY, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, FILED IN BOOK 15 PAGES 8 AND 9 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID PARCEL 45, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL 45; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 45, NORTH 51 DEGREES 40 MINUTES 57 SECONDS EAST 101.67 FEET AND NORTH 4 DEGREES 45 MINUTES 24 SECONDS EAST 1.17 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY LINE NORTH 81 DEGREES 50 MINUTES 12 SECONDS WEST 556.63 FEET TO THE WESTERLY LINE OF SAID PARCEL 46.

PARCEL C:

AN EASEMENT FOR RIGHT OF WAY FOR ROAD PURPOSES TO BE USED IN COMMON WITH OTHERS WITH THE RIGHT TO GRANT THE SAME, ON, OVER AND ACROSS THOSE PORTIONS OF SAID LAND GRANTED TO H.H. LEHMKUHL AND BERTHA LEHMKUHL IN DEED RECORDED IN BOOK 3110 PAGE 373, OFFICIAL RECORDS.

PARCEL D:

PARCEL 46 AS SHOWN ON A RECORD OF SURVEY, FILED IN BOOK 15 PAGES 8 AND 9 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID PARCEL 46 LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHEASTERLY CORNER OF PARCEL 45; THENCE ALONG THE EASTERLY LINE OF PARCEL 45, NORTH 51 DEGREES 40 MINUTES 57 SECONDS EAST 101.67 FEET AND NORTH 4 DEGREES 45 MINUTES 24 SECONDS EAST 1.17 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY LINE NORTH 81 DEGREES 50 MINUTES 12 SECONDS WEST 556.63 FEET TO THE WESTERLY LINE OF SAID PARCEL 46, AS DESCRIBED IN DEEDS, RECORDED IN BOOK D1710 PAGE 471, OFFICIAL RECORDS AND IN BOOK D1710 PAGE 474 OF OFFICIAL RECORDS.

PARCEL DI:

AN EASEMENT FOR RIGHT OF WAY FOR ROAD PURPOSES TO BE USED IN COMMON WITH OTHERS WITH THE RIGHT TO GRANT THE SAME, ON, OVER AND ACROSS THOSE PORTIONS OF SAID LAND GRANTED TO BERTHA LEHMKUHL IN DEED RECORDED IN BOOK 5166 PAGE 90, OFFICIAL RECORDS.

PARCEL E:

THAT PORTION OF THE LICENSED SURVEYORS MAP, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 15 PAGES 8 AND 9 OF LICENSED SURVEYORS RECORDS OF LOS ANGELES COUNTY, BEING 1.216 ACRES KNOWN AS MEDIO CREEK ADJOINING PARCEL 45 ON THE EAST.

EXCEPT THAT PORTION OF SAID LAND CONVEYED TO STATE OF CALIFORNIA, BY DEED RECORDED JULY 18, 1962 AS INSTRUMENT NO. 1275 FOR ROAD PURPOSES.

PARCEL F:

PARCEL 2 OF PARCEL MAP NO. 21288, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 253

PAGES 97 AND 98 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL FI:

AN EASEMENT FOR RIGHT OF WAY FOR ROAD PURPOSES TO BE USED IN COMMON WITH OTHERS WITH THE RIGHT TO GRANT THE SAME, ON, OVER AND ACROSS THOSE PORTIONS OF SAID LAND GRANTED TO BRUCE WARING AND MADGE BLUNT WARING IN DEED RECORDED IN BOOK 3422 PAGE 147 OF OFFICIAL RECORDS, NOW KNOWN AS "CANWOOD STREET, (PRIVATE STREET)".

PARCEL G:

PARCEL 1 OF PARCEL MAP 23844, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 266 PAGES 24 AND 25 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL H: **INTENTIONALLY OMITTED.**

PARCEL I: **INTENTIONALLY OMITTED.**

DENNY'S PROPERTY

PARCEL 2 OF PARCEL MAP NO. 23844, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 266 PAGES 24 AND 25 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

CITY PARCEL

PARCEL 1 OF PARCEL MAP NO. 21288 AS RECORDED IN BOOK 253, PAGES 97 AND 98 OF PARCEL MAPS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF LOS ANGELES.



LEAD SHEET

02 1753177

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA

8:41 AM JUL 26 2002

SPACE ABOVE THIS LINE FOR RECORDERS USE

TITLE(S)

FEE

D.T.T.

FREE X

43

CODE

20

CODE

19

CODE

9

Assessor's Identification Number (AIN)

To Be Completed By Examiner OR Title Company In Black Ink

Number of Parcels Shown

2

RECORDING REQUEST BY
City of Agoura Hills

02 1753177

WHEN RECORDED MAIL TO

NAME Carol E. Tubelis
City Clerk
MAILING City of Agoura Hills
ADDRESS 30001 Ladyface Court
CITY, STATE Agoura Hills CA
ZIP CODE 91301

NO RECORDING FEE/PUBLIC ENTITY (Govt Code 6103)

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLES

**DEVELOPMENT AGREEMENT
City of Agoura Hills & SL Agoura Hills, LLC**

3

02 1753177

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Agoura Hills
30101 Agoura Court, #102
Agoura Hills, California 91301
Attn: City Clerk

No Recording Fee (Government Code Section 6103)

(Space above for recorder's use)

DEVELOPMENT AGREEMENT

by and between

CITY OF AGOURA HILLS,
a municipal corporation

and

SL AGOURA HILLS, LLC,
a California limited liability company

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EXHIBIT LIST

- Exhibit "A" - Description of Property
- Exhibit "B" - Site Map
- Exhibit "C" - Developer Fees

02-1753177

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made and entered into by and between the CITY OF AGOURA HILLS, a municipal corporation ("City"), and SL AGOURA HILLS, LLC, a California limited liability company. The City and each Developer 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) Developer holds the right to acquire certain real property which is located in the City, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereafter "Property"); and

(b) Developer desires to construct the Project (as hereafter defined); and

(c) Concurrently with or prior to approval of this Agreement, Developer has submitted and received approval of the Project Approvals (as hereinafter defined) allowing the construction and operation of the Project; and

(d) The Project is fully described in the EIR (as hereinafter defined) and the Project Approvals, which are on file with the City; and

(e) Developer's Project Approvals allowing the construction and operation of the Project were conditionally approved, and the Conditions of Approval thereon have been accepted by Developer as being lawfully imposed thereon; and

(f) Developer has applied to the City for approval of this mutually binding Agreement, pursuant to the provisions of the Development Agreement Act (as hereinafter defined), the Enabling Resolution (as hereinafter defined) and other applicable laws; and

(g) The City is authorized pursuant to the Development Agreement Act 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; and

(h) The City desires to obtain the binding agreement of the Developer for the development of the Project in accordance with the provisions of this Agreement; and

(i) Developer desires to obtain the vested right from the City to allow Developer to develop the Project 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; and

(j) 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 Project, or any Phase (as hereinafter defined) thereof, except as expressly provided for in this Agreement; and

(k) 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 Section 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), the General Plan (as hereinafter defined), and the Specific Plan (as hereinafter defined); and

(l) An environmental review has been conducted and completed with regard to the Project and a final Environmental Impact Report ("EIR") has been prepared, circulated and certified in accordance with CEQA (as hereinafter defined) and State and local guidelines; and

(m) 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; and

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

(o) 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; and

(p) This Agreement will provide Developer with the assurance that it can complete the Project and that the Project will not be changed, delayed or modified after the Effective Date of this Agreement (as hereinafter defined), except pursuant to the provisions of this Agreement; and

(q) This Agreement will permit Developer to develop the Project in accordance with the Applicable Rules, the Conditions of Approval imposed upon the Project Approvals and the terms and provisions of this Agreement; and

(r) The Project will provide substantial benefits to the City, by providing, without limitation, increased tax and other revenues, the dedication of land to public improvements both on-site and off-site, including the realigned and expanded right of way for Canwood Street, and the creation of job opportunities for residents of the City; and

(s) 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 Project; and

(t) 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 Enabling Resolution, and in consideration of the premises and 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 Effective Date of this Agreement. 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 5(e) and 5(f) of this Agreement.

(b) "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 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.

(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 Section 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 "C" 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 (Sections 65864 through 65869.5) of the California Government Code.
- (g) "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.
- (h) "Effective Date of this Agreement" shall mean the date this Agreement, fully executed, is recorded in the official records of the Los Angeles County Recorder.
- (i) "Enabling Resolution" means Resolution No. 02-1245 adopted by the City Council on June 12, 2002.
- (j) "EIR" shall mean the final Environmental Impact Report (SCH#20000111155) which was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA, as supplemented by that Addendum to Environmental Impact Report dated May, 2002. "EIR Mitigation Measures" shall mean the mitigation measures imposed upon the Project pursuant to the EIR and the Conditions of Approval.
- (k) "General Plan" means the General Plan of the City, as it exists as of the Effective Date of this Agreement.
- (l) "Ministerial Permit(s), or "Ministerial Approval(s)" means a permit or approval, including, but not limited to, building permits, grading permits, zone clearances, 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.
- (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 Project developed by the Developer, 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, street vacations, inspection fees, certificates of occupancy and plan check fees. Processing Fees shall not mean or include Developer Fees.

(p) "Project" means the Project as defined in the EIR.

(q) "Project Approvals" shall mean, collectively, General Plan Amendment 01-GPA-003, Zone Change 01-ZC-003, Tentative Tract Map No. 53752, Conditional Use Permit 01-CUP-009 and Oak Tree Permit 01-OTP-003, approved by the City with respect to the Project and shall include any Subsequent Project Approvals (as hereinafter defined).

(r) "Property" means the real property described on Exhibit "A".

(s) "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 to be necessary to protect the residents of the Project or the residents of the City from a condition that is imminently dangerous to public health and safety; and (ii) are generally applicable to all properties in the City, which are similar in circumstance to the Property; and (iii) do not prevent or unreasonably delay development of the Project 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 Project (whether enacted previous or subsequent to the Effective Date of this Agreement); or

(3) constitute increases in existing Processing Fees imposed or required by the City to cover its actual costs in processing applications, permit requests and approvals of the Project or in monitoring compliance with the Applicable Rules, Conditions of Approval and/or EIR Mitigation Measures; or

(4) represent increases to existing Developer Fees under the Applicable Rules as permitted pursuant to Section 5(f) below.

(t) "Site Map" means the site plan for the Project attached hereto as Exhibit "B" and generally depicting the development of the Site contemplated pursuant to the Project Approvals.

(u) "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 Mayor, City Council, Planning Commission or any other board, agency, commission or department of City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project.

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

(w) "Term" means the term of this Agreement, which shall commence on the Effective Date of this Agreement and shall terminate upon the earlier of the date of completion of the entire Project or ten (10) calendar years from and after the Effective Date of this Agreement, unless the Term is otherwise modified or extended as set forth in this Agreement or by mutual written consent of the Parties hereto.

(x) "Zoning Regulations" shall mean the official zoning regulations of the City 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 to the consumer, 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.

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(b) City Procedures and Actions. Pursuant to the authorization set forth in Section 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 Enabling Resolution.

In accordance with the Enabling Resolution, 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. 02-313 approving this Agreement which Ordinance becomes effective on July 26, 2002.

(c) The Property. The Developer is under contract to purchase approximately forty (40) 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 "B".

(d) The Project. It is the Developer's intent to subdivide and develop the Property as described in the Project Approvals and the EIR subject to the Applicable Rules, the Conditions of Approval and this Agreement. The Parties hereby agree that, for the Term of this Agreement, the permitted uses, the density and intensity 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 Project.

(e) Public Objectives. In accordance with the legislative findings set forth in Section 65864 of the Development Agreement Act, City wishes to attain certain public objectives that will be furthered by this Agreement. Development of this Project in accordance with this Agreement will provide for the orderly development of the Property 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 Project, 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, Developer 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, Developer agrees that it will use commercially reasonable efforts, in accordance with its own sole and subjective business judgment taking into account

market conditions and economic considerations, to develop the Project in accordance with the terms set forth in this Agreement, the Project Approvals and the Applicable Rules. Developer may develop the Property or any portion thereof with a development of lesser height or density than the Project, provided that such development otherwise complies with the Applicable Rules, including the EIR, the Project Approvals and this Agreement.

(b) Timing of the Development. The Parties acknowledge that the Developer cannot at this time predict when or the rate at which the Project would be developed. Such decisions depend upon numerous factors which are not all within the control of the Developer, such as market orientation and demand, interest rates, absorption, completion, availability of financing and other similar factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.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 Developer and City to hereby cure that defect by acknowledging and providing that the Developer shall have the right to develop the Property consistent with the Project Approvals and the Conditions of Approval in such order and at such rate and at such times as the Developer deems appropriate within the exercise of its 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 Property with the permitted uses of land and the density and intensity 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 Property, 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 or subdivision 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 Property 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) Sale of City Property. In consideration of the purchase price to be paid for that property, concurrent with the execution of this Agreement, the City and the Developer have entered into an Agreement for Purchase and Sale (the "City Purchase Agreement") for certain property and easements for access appurtenant thereto (the "City Parcel") owned by the City and to be incorporated into the Project by Developer. In accordance with the terms set forth in the City Purchase Agreement, Developer shall acquire the City Parcel for the amount of Five Hundred and Fifty Thousand Dollars (\$550,000.00) (representing the fair market value of the City Parcel) and shall close upon the City Parcel upon fifteen (15) days prior written notice from the Developer but, in any event, not later than the earlier of (i) issuance of the grading permit for rough grading of the Project, or (ii) one (1) year from the effective date of the City Purchase

Agreement, as more specifically provided in the City Purchase Agreement. In connection with the execution of this Development Agreement, the Parties hereby ratify and affirm their obligations under the City Purchase Agreement.

(e) Dedication of Right of Way. In connection with the development of the Project and as provided in the Project Approvals, following Developer's acquisition of the Property and concurrent with recordation of the subdivision map creating the legal parcels contemplating development of the Project (or, within thirty (30) days after written notice from the City to Developer following acquisition of the Property but prior to such map recordation if conveyance of the right of way is required to obtain third party funding or Cal Trans approval for the contemplated right of way improvements), the Developer will dedicate to the City approximately two and six-tenths (2.6) acres of property as shown on the Site Map attached hereto as Exhibit "B" (the "Canwood Street Right of Way") in order to enable the City to realign, widen and replace Canwood Street substantially as shown on the Site Map. City acknowledges that these dedications will be used for the construction of traffic improvements that exceed the mitigation necessary to address the impacts of the Project and that, in order to provide these dedications, the Developer will be required to dedicate a material portion of its development parcel. Prior to dedication, the Developer shall clear the Canwood Street Right of Way of any structures and/or improvements at the Developer's sole cost and expense. In recognition and consideration of these required dedications in excess of those reasonably necessary to mitigate the impacts of the Project, the City agrees that it will not assess, and the City hereby waives, any excess density or impact fees or other mitigation measures or requirements that would otherwise be applicable to the Project under Section 9574.2 of the Municipal Code or other like City requirement or ordinance, and City hereby finds that the Canwood Street Right of Way dedication constitutes an item of benefit to the community that is economically equivalent to what would otherwise have been required by the specified step increases in Section 9574.2 of the Municipal Code of the City.

(f) Improvement of Canwood Right of Way. Concurrent with construction of the Project, the Developer will improve or cause the improvement of the Canwood Street Right of Way with the contemplated Canwood Street improvements substantially as shown on the Site Map, including installation of all roadway improvements, traffic signals, lighting, curb, gutter, sidewalk, landscaping improvements and extension or installation of all applicable wet and dry utilities contemplated for the realignment and improvement of Canwood Street as of the date of this Agreement (the foregoing are collectively referred to as the "Canwood Street Improvements"). In connection with the performance of the foregoing work, City shall promptly and fully cooperate with Developer, including, issuance of all necessary Ministerial Approvals, assignment of any plans, specifications, contracts or other like matters requested by Developer, and performance of such other actions and execution of such other documents as required to complete the Canwood Street Improvements, or applicable portion thereof. Although Developer will assume responsibility for construction of the Canwood Street Improvements in order to expedite completion of those improvements and to coordinate the construction of those improvements with the development of the adjacent Project, City shall reimburse Developer for a portion of the direct and indirect costs and expenses incurred in connection with the Canwood Street Improvements (the "Canwood Street Costs") upon the following terms and in the following manner: (i) Developer shall be entitled to credit and offset the first Canwood Street

Costs which are incurred against the traffic impact fees ("TIF") as specified in Exhibit C that would otherwise be payable with respect to the Project in the approximate amount of One Million Five Hundred Fifty-Five Thousand Dollars (\$1,555,000.00); (ii) following application of the first Canwood Street Costs against that TIF amount and the exhaustion of that credit, the City shall reimburse the Developer for the next Five Hundred and Fifty Thousand Dollars (\$550,000) in Canwood Street Costs as incurred by Developer; (iii) following exhaustion of the credits and reimbursements in (i) and (ii) above in the approximate cumulative amount of Two Million One Hundred Thousand Dollars (\$2,100,000.00), all additional Canwood Street Costs up to the total amount of Three Million Dollars (\$3,000,000) (i.e., approximately the next Nine Hundred Thousand Dollars (\$900,000.00) in Canwood Street Costs) shall be split 50/50 by the City and the Developer, with the City share to be reimbursed to the Developer as those costs are incurred, and (iv) any Canwood Street Costs in excess of Three Million Dollars total shall be borne solely by the Developer. With respect to reimbursements due from the City, the City shall pay the amount due to the Developer within twenty (20) working days after receipt from the Developer of a copy of the invoice documenting the amount incurred and the Developer's written certification that the work for which reimbursement is requested has been performed. Upon City's written request, Developer shall also provide such further documentation as City shall reasonably request concerning the Canwood Street Costs and the construction of the Canwood Street Improvements. Any amount not paid to Developer when due shall thereafter bear interest at the legal rate until paid. City shall reasonably cooperate with Developer in the design and construction of the Canwood Street Improvements, including, without limitation, value engineering of those improvements as necessary to keep the total Canwood Street Costs below a projected total cost of Three Million Dollars (\$3,000,000). If City fails to reimburse the Developer for any Canwood Street Costs when due under the foregoing provisions, then, without limitation of any other of its rights hereunder, the Developer shall have the right to credit and offset such amounts against any other payments thereafter due from Developer to the City, including, without limitation, any amounts thereafter due under Section 3(g) below. The City specifically acknowledges and agrees that the completion of new freeway on and off ramps contemplated in connection with the Canwood Street Improvements is not a part of the Canwood Street Improvements and is not a condition to Developer's construction or occupancy of the Project and no approvals, permits, inspections or other like matters, including, without limitation, certificates of occupancy shall be withheld, delayed or conditioned upon completion of those freeway on and off ramps. Without limitation of the foregoing, the City agrees that, until the Canwood Street Improvements are completed, City shall reasonably cooperate with the Developer in providing temporary access to the Project in such locations and upon such conditions as are necessary and appropriate to the effective operation of the Project, including access both from Kanan Road to the west and Clareton Street to the east of the Project.

(g) Low and Moderate Income Housing. City and Developer acknowledge and agree that, in connection with development of the Project, Developer shall pay inclusionary housing in-lieu fees as specified in Exhibit C hereto pursuant to Section 9133.4 of the City's Municipal Code, and, that, based upon the payment of those fees, the Project will not be required to include any low, moderate or other restricted income housing. City hereby finds and determines that neither on-site or off-site mitigation by Developer is economically feasible and that payment of the in lieu fees is the necessary and appropriate alternative. Notwithstanding anything herein or in the Applicable Rules to the contrary, the in-lieu fees shall be paid on a

building by building basis, with the fee applicable to the units within each residential building paid upon issuance of a certificate of occupancy for the first unit within that building. In addition, concurrent with payment of each portion of the above-described in-lieu fee, Developer shall pay to the City an amount equal to ten percent (10%) of the current in-lieu fee payment then being made, which additional amount shall be used by the City to cover the costs of administering the in-lieu housing fees arising from this and other projects within the City.

(h) Removal of Billboards and Existing Structures. Developer shall be responsible for removal of the existing billboards and other structures on the Property including, without limitation, the existing restaurant signage and "A" frame structures. Developer shall exercise its best efforts to cause such removal to be completed prior to the scheduled date for commencement of grading on the portion of the Property containing those billboards. The City shall have no responsibility or liability for the billboard removal, which shall be accomplished at the Developer's sole cost and expense.

(i) Infrastructure Phasing Flexibility. Notwithstanding the provision of any phasing requirements in the Project Approvals or any Subsequent Project Approvals, Developer 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, City and Developer hereby agree that should it become necessary or desirable to develop any portion of the Project's infrastructure in an order that differs from the order set forth in the Project Approvals or any Subsequent Project Approvals, Developer and City shall collaborate and City shall permit any modification reasonably requested by Developer so long as the modification continues to ensure adequate infrastructure is available to serve that portion of the Project being then developed.

(j) Environmental Equivalency. To the extent permitted by law, if Developer cannot acquire real property that is required in order to implement any Condition of Approval or if Developer cannot complete a Condition of Approval for any other reason and City elects not to acquire such real property or to take such other actions as are required to enable Developer to complete such Condition of Approval and such Condition of Approval is not physically required for the Project to operate, the Developer shall be allowed to complete the Project without performing such infeasible Condition of Approval; provided that, in that event, if the City so elects, Developer shall implement such substitute measure or measures as are required by the City so long as such substitute measures (i) constitute an environmental equivalent (as defined in the EIR Mitigation Measures) to the infeasible Condition of Approval, (ii) has a nexus to the Project, and (iii) does not exceed the cost to the Developer of the infeasible Condition of Approval.

(k) City Services. Subject to Developer's installation of infrastructure in accordance with the requirements of the Project Approvals and any Subsequent Project Approvals, City hereby acknowledges that it will have sufficient capacity in its infrastructure and services to accommodate the Project. City hereby agrees that it will provide all applicable City controlled services to the Project and that there shall be no restriction by City on hookups or service for the Project with respect to said items.

(l) Issuance of Permits. City agrees to cooperate with Developer in the issuance of permits on an expedited basis and at the earliest feasible date, including, separate and sequential issuance of demolition, grading and building permits and, if applicable, issuance of permits prior to recordation of tract maps for the Project; provided Developer's applications for such permits comply with all Applicable Rules applying to the subject matter of the applicable permit and with the Project Approvals and Conditions of Approval.

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

(1) Easements. Easements dedicated for pedestrian use 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.

Section 4. Warranties.

(a) City Warranties. The City hereby warrants to Developer as follows:

(1) Entitlement to Develop. City has the authority to permit Developer to develop the Project, subject to, and in accordance with: (a) the EIR; (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 Project in accordance with the uses, densities, heights, and terms of development incorporated and agreed to herein.

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

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

(b) Developer Warranties. Developer warrants to City that it has the legal authority and financial ability to enter into and implement this Agreement.

Section 5. Changes in Applicable Rules.

(a) Nonapplication 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 Project or construction of all or any part of the Project) or the imposition of any new fee or exaction (except for the increases in the Processing Fees and/or 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 the City, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with or be more restrictive than the Applicable Rules, Developer's entitlements under the Project Approvals, or this Agreement, shall not be applied to the Project unless such changes represent an exercise of the City's Reserved Powers. Developer may, at its election, give City written notice of its election to have any Subsequent Land Use Regulations applied to its portion of the Property, in which case such Subsequent Land Use Regulation shall be deemed to be an Applicable Rule with respect to such portion of the Project.

(b) Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the provisions of the 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 Project, if such changes or additions are specifically mandated to be applied to developments such as the Project, by applicable State or Federal laws or regulations. Where City or Developer believes that such a change or addition exists that 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 Party 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 and the Developer agree to preserve the terms of this Agreement and the rights of the Developer 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 its 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 Developer 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. Developer, 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 Developer 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 5(c) above.

(e) Changes in Processing Fees Under Applicable Rules. The Project shall be subject to any increase in Processing Fees imposed by the City, provided that no such change shall be applicable to the Project unless: (a) the City Council shall first conduct a duly noticed public hearing on such matter; and (b) such increased Processing Fees are not imposed in a manner so as to discriminate against Developer or the Project; and (c) the increased Processing Fees do not exceed the estimated reasonable cost of providing the service for which they are imposed.

(f) Applicable Developer Fees. The Project shall be subject 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 Section 66000, et seq., and other applicable law.

(g) Developer's Right to Contest Increases in Fees. Nothing in this Agreement shall prevent Developer 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, and the Developer hereby agrees to pay the same 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 with respect to the Project and shall not withhold or delay issuance of those Project or Ministerial Approvals based upon any pending protest or appeal with respect to such fee.

(h) Ministerial Permits. The City shall not require Developer to obtain any Ministerial Permits or Approvals for the development of the Project 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 Project, which does not materially change, modify or alter the Project, shall be governed by the Applicable Rules. Any such subsequent Discretionary Action or Discretionary Approval which materially and substantially changes, modifies or alters the Project, shall be subject to the Applicable Rules and any applicable Subsequent Land Use Regulations. Notwithstanding anything to the contrary contained herein,

no subsequent Discretionary Action or Discretionary Approval shall require further CEQA review unless the City finds, based on substantial evidence, that such further CEQA review is legally required.

(j) Timely City Actions. The City agrees to 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. The City further agrees that, if Developer satisfactorily complies with all preliminary procedures, actions, payments of applicable Processing and Developer Fees, and criteria generally required of developers by the City for processing applications for such Discretionary Actions or Discretionary Approvals that the 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 or any conditions, terms, restrictions and requirements of any such Subsequent Project Approval implementing the Project, shall not prevent development of the Project for the uses and in accordance with the maximum density or intensity of development set forth in this Agreement. Without limiting the generality of the foregoing, the City agrees 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 Property and that, except as required by the Reserved Powers or as Developer may otherwise consent, no additional conditions of approval, exactions, dedications, mitigations or other like matters shall be required from or imposed upon Developer in connection with any Subsequent Project Approval required or sought by Developer in connection with the implementation of the Project approved in the Project Approvals.

(k) Interim Uses. City agrees that, until development of the Project, the Developer may use the Property for any use which is otherwise permitted by the then applicable General Plan, zoning code and other City rules, requirements and procedures then in effect, subject to the City's normal permit and hearing requirements, if any.

(l) Processing and Time Period of Tentative Map and Other Project Approvals. Notwithstanding anything to the contrary in the Applicable Rules or otherwise, Developer may file applications for tentative maps for the Project at any time as determined necessary or appropriate for the expeditious development of the Property. As provided in California Government Code Sections 66452.6 and 65863.9, the term of any tentative, vesting tentative or parcel map hereafter approved with respect to the Project 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(w) above or the date such approval would otherwise be in effect under applicable law, whichever is later.

(m) Additional Staffing. If, in the reasonable discretion of the City Manager or his/her designee, the 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 Developer's schedules, the City shall, after consultation with the Developer, hire sufficient temporary plan check, inspection, engineering and other personnel or additional consultants for such actions as reasonably necessary to meet Developer's requirements, at Developer's sole cost and expense. The City shall consult in good faith with the Developer as to any additional consultants to be hired pursuant to this Section provided that the City shall retain the sole discretion as to selection of any such parties. In order to provide the City with advance notice of upcoming applications for Ministerial Permits and Approvals, Developer 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 Project under this Section and Developer reimburses 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, the Developer shall be entitled to a credit for such consultant fees or special staff reimbursement charges against the standard Processing Fees paid by Developer or which normally would have been otherwise required to be paid by Developer. Developer shall pay all reimbursements to the City required under this Agreement within thirty (30) days after the Developer receives an invoice identifying such reimbursable expenses; provided, the Developer shall have the right to audit such costs, at its expense, upon request.

(n) Amendments to Entitlements. It is contemplated by City and Developer that the Developer may, from time to time, seek amendments to one or more of the Project Approvals applicable to its Property. Any such amendments are contemplated by City and Developer as being 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 6. Default Provisions. In the event either City or Developer does not perform its material obligations under the 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. It is understood and agreed between the Parties hereto that, 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 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 Section 1119.

(1) Mediation. In the event any Claim is not resolved by an informal negotiation between the City and the Developer, within thirty (30) days after either Party receives written notice from the other 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 7 (jj) below. Judgment upon the award may be entered in any court having jurisdiction thereof.

(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, 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 Section 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 Property, approved prior to the effective date of termination. Notwithstanding anything herein to the contrary, City shall not have the right to specifically enforce against Developer the provisions of Section 3(a), nor in any way to compel Developer to either start or complete the Project, nor to seek any monetary damages from the Developer for Developer's failure to start or complete the Project; provided, that, City shall have the right (i) to compel Developer 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, and (ii) to require Developer 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 Property pursuant to this Agreement

Section 7. General Provisions.

(a) Expiration. 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 Property approved prior to the effective date of the termination, and all representations and warranties set forth herein shall survive such termination.

(b) Developer's Right to Terminate upon Specified Events. Notwithstanding any other provisions of this Agreement to the contrary, the Developer retains the right to terminate this Agreement upon thirty (30) days written notice to the City in the event that the Developer determines that continued development of the Project has become economically infeasible due to changed market conditions, increased development costs, or burdens imposed, consistent with this Agreement, by the City or other governmental or quasi-governmental entity or agency as conditions to Subsequent Project Approvals or the City's exercise of its Reserved Powers in a way deemed by the Developer to be inconsistent with the development of the Project. In the event the Developer exercises this right, it shall nonetheless be responsible for mitigation of those impacts to City resulting from development that has occurred on the Property prior to the notice of termination, and within the thirty (30) day notice period City and the Developer 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 all matters except for the remaining mitigation obligation in dispute, and with respect thereto the Parties shall proceed as provided in Section 6 above. In the event the Developer exercises this right of termination, Developer 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); 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.

(d) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) Amendments. This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement, or their successors and assigns, and in accordance with all applicable laws.

(f) Assignment.

(1) Right to Assign. Developer shall have the right to sell, transfer or assign its interest in the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 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 Property, the seller, transferor or assignor shall be released of all obligations under this Agreement that relate to the portion of the Property 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 Property acquired by such transferee. In connection with each such transfer, transferor shall require the transferee to assume in writing all of the obligations under this Agreement that relate to the portion of the Property 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 Property 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 Property. All provisions of the Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with respect to development of the Property: (i) is for the benefit of and is a burden upon the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof.

(h) Cooperation and Implementation.

(1) Processing. Upon Developer's completion of all required preliminary actions and payment of appropriate Processing Fees, including the fee for processing this Agreement, the City shall commence and thereafter diligently process all required steps necessary for the implementation of this Agreement. Developer shall, in a timely manner, provide the City with all documents, plans and other information required under the Applicable Rules which are necessary for the City to carry out its processing obligations. The provisions of this Agreement require a close degree of cooperation between City and Developer and the refinement and further development of the Project may demonstrate that clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Attorney shall be authorized to make the determination whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification 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.

(2) Other Governmental Permits. Developer shall apply for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with Developer in its 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.

(3) 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 hereby agree to affirmatively cooperate with one another in defending said action. If litigation is filed contesting the validity of this Agreement or the right of Developer to construct

the Project in accordance with the provisions of this Agreement or the granting of any Project Approvals or the terms thereof, the City, as well as Developer, shall be entitled to appear and to defend against the allegations made in such litigation provided that Developer, pursuant to the Conditions of Approval, shall reimburse City for all of its expenditures actually incurred 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 Developer's consent, which consent shall not be unreasonably withheld. This City shall cooperate with Developer's defense of any such litigation, and shall make its records (other than documents privileged from disclosure) and personnel available to Developer's counsel as may be reasonably requested in connection with such litigation.

(i) Relationship of the Parties. The Parties acknowledge and agree that the Developer is not acting as an agent, joint venturer or partner of the City, but is, in fact, an independent contractual party and not in any way under the control or direction of the 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

DEVELOPER: SL Agoura Hills, LLC
c/o JH Snyder Co.
5757 Wilshire Boulevard, Penthouse 30
Los Angeles, California 90036
Attn: Jerome H. Snyder
Facsimile No.: (323) 857-7042

WITH A COPY TO: Brown, Winfield & Canzoneri, Inc.
300 South Grand Avenue, Suite 1500
Los Angeles, California 90071
Attn: Dennis Roy, Esq.
Facsimile No.: (213) 687-2149

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 (provided that any such notice delivered after 5:00 p.m. shall be deemed received on the next business day).

(k) Recordation. As provided in Government Code Section 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 both Parties. Developer shall reimburse the City for all costs of such recording, if any.

(l) 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.

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

(n) 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.

(o) No Third Party Beneficiaries. The only Parties to this Agreement are the City and Developer 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.

(p) 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.

(q) 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 either of the Parties in its capacity as draftsperson, but in accordance with its fair meaning.

(r) 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".

(s) 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 therefor. 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.

(t) Mortgagee Protection. This Agreement shall not prevent or limit Developer, in any manner, at its sole discretion, from encumbering the portion of the Property owned by it, or any portion thereof or any improvement thereon, by any mortgage, deed of trust, or other security device securing financing with respect to such portion of the Property. The City acknowledges that the lenders providing such financing may require certain Agreement interpretations and/or modifications and agrees upon request, from time to time, to meet with the Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. The City will 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 Property, or any portion thereof, made in good faith and for value.

(2) The Mortgagee of any mortgage or deed of trust encumbering the Property, 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 the Developer in the performance of its obligations under this Agreement.

(3) If the City timely receives a request from a Mortgagee requesting a copy of any notice of default or notice of non-compliance given to the Developer under the terms of this Agreement, the City shall provide a copy of that notice to the Mortgagee within ten (10) calendar days of sending the notice of default to the Developer, 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 Property or any portion thereof to effectuate a cure, if the Mortgagee commences foreclosure proceedings to acquire title to the Property 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 Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement and shall automatically succeed to the Developer's rights hereunder, provided, however, in no event shall such Mortgagee or its successors and assigns be (a) liable for any monetary defaults of the Developer under the Agreement arising prior to acquisition of title to the Property, or portion thereof, by such Mortgagee, or (b) obligated to complete construction of the Project or any component thereof, except as expressly provided in Section 6(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.

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

(v) Warranty. Developer warrants to the City that, as of the Effective Date of this Agreement, it owns the Property or has the right to acquire the Property.

(w) Indemnity. The Developer does hereby agree to 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 the Developer, or its contractors, subcontractors, employees or agents in connection with the development of the Project; provided, that in no event shall the foregoing be construed to mean that the Developer shall hold the City or any of the other above parties 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

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or omissions of the party seeking indemnification. This indemnification, defense and hold harmless requirement shall survive the termination or expiration of this Agreement. City reserves the right, in cases subject to this indemnity, to reasonably approve the attorney selected by Developer to defend Developer and City in any such action.

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

(y) Entitlement to Develop. Developer is hereby granted the vested right to develop the Project on the Property to the extent and in the time and manner provided in this Agreement. City acknowledges and agrees that all of the development allowed under the Project Approvals is hereby vested specifically with the Developer, and may not be utilized by any other subsequent owner or lessee of a portion of the Developer's property except with the express written assignment of the Developer (e.g., by recordation of CC&Rs allowing such development), and then only to the extent of such assignment; provided, however, that nothing herein shall be deemed to preclude a subsequent owner or lessee of a parcel or parcels of the Property from seeking additional entitlements to development to the extent that such entitlements are additive to, and not a reduction of, the development rights hereby vested with the Developer, and, in that event, such additional development rights shall not be governed by this Agreement and shall not be vested under this Agreement.

(z) Periodic Reviews.

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

(2) Special Reviews. In addition, the City Council of the City may order a special periodic review of Developer's compliance with this Agreement at any time. The cost of such special reviews shall be borne by the City, unless such a special review demonstrates that Developer is not acting in good faith compliance with the provisions of this Agreement. In such cases, Developer 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, Developer is found to be in substantial compliance with this Agreement, City shall, upon request of the Developer, issue a Certificate of Agreement Compliance ("Certificate") in such form as Developer may reasonably request stating that, after the most recent annual and special review, this Agreement remains in effect and Developer is not in default. At Developer's

request, such Certificate shall be in recordable form and may be recorded against the Property. City's failure to timely conduct any annual review shall not constitute or be construed as a breach or default under this Agreement.

(aa) 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.

(bb) Reimbursement. Nothing in this Agreement precludes City and Developer 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 Project.

(cc) Processing During Third Party Litigation. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals, any Subsequent Project Approvals or other development issues or approvals affecting the Property shall not delay or stop the development, processing or construction of the Project, 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.

(dd) Record of Applicable Rules. Prior to the Effective Date of this Agreement, City and Developer shall use reasonable efforts to identify two identical sets of the Applicable Rules, one set for City and one set for Developer, 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 both Parties.

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

(ff) 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.

(gg) Effective Date. The Effective Date of this Agreement shall be the date of its recordation with the Los Angeles County Recorder.

(hh) Future Litigation Expenses.

(1) Payment of Prevailing Party. If City or Developer brings an action or proceeding (including, without limitation, any motion, order to show cause, cross-complaint, counterclaim, third-party claim 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. 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.

[SIGNATURES FOLLOW ON NEXT PAGE]

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

CITY:

CITY OF AGOURA HILLS,
a municipal corporation

By: [Signature]

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:

By: [Signature]
Craig A. Steele, City Attorney

DEVELOPER:

SL AGOURA HILLS, LLC,
a California limited liability company

By: [Signature]
Its: Authorized Member

02 1753177

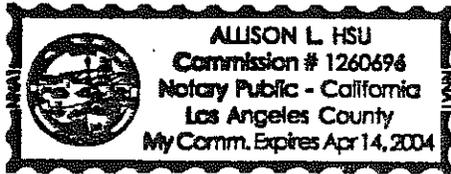
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STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

On JULY 8, 2002, before me,
ALLISON L. HSU, a Notary Public, personally appeared
CLIFFORD P. GOLDSTEIN, personally known to me (or proved to
me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to
the within instrument, and acknowledged to me that he/~~she~~/they executed the same in
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]



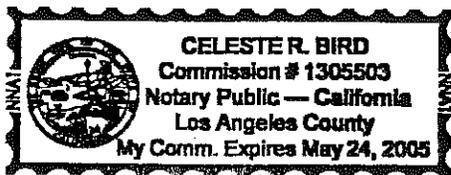
[Signature]
Notary Public

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

On July 11, 2002, before me,
Celeste R. Bird, a Notary Public, personally appeared
Denis Weber, personally known to me (~~or proved to~~
~~me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/are subscribed to
the within instrument, and acknowledged to me that he/~~she~~/they executed the same in
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]



Celeste R. Bird
Notary Public

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EXHIBIT "A"

Description of the Property

SHAW PROPERTY

PARCEL A:

THOSE PORTIONS OF LOTS G AND H, IN THE RANCHO LOS VIRGINES, AS SHOWN ON THE MAP OF THE PARTITION OF SAID RANCHO ON FILE, IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY IN CASE NO. 2898 OF THE SUPERIOR COURT OF SAID COUNTY. A PORTION OF SAID LOTS ALSO BEING SHOWN ON A RECORD OF SURVEY MAP, FILED IN BOOK 82 PAGE 53 RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE NORTHEAST TERMINUS OF THAT CERTAIN COURSE IN THE EASTERLY BOUNDARY OF THE LAND AS DESCRIBED IN PARCEL 3-30.2 (AS AMENDED) IN THE DECREE OF CONDEMNATION, A CERTIFIED COPY OF WHICH WAS RECORDED ON NOVEMBER 17, 1966, AS INSTRUMENT NO. 2380 IN BOOK D3485 PAGE 91 OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS SHOWN ON MAP OF TRACT 30907 IN SAID COUNTY AND STATE AS PER MAP RECORDED IN BOOK 799 PAGES 27 TO 33 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS HAVING BEARING AND LENGTH "NORTH 61 DEGREES 38 MINUTES 24 SECONDS EAST 50 FEET", THENCE ALONG SAID EASTERLY BOUNDARY AND ALONG SAID COURSE AS FOLLOWS; SOUTH 61 DEGREES 38 MINUTES 24 SECONDS WEST 50 FEET, NORTH 28 DEGREES 21 MINUTES 36 SECONDS WEST 18.39 FEET, SOUTH 31 DEGREES 21 MINUTES 24 SECONDS WEST 122.21 FEET, SOUTH 44 DEGREES 45 MINUTES 15 SECONDS WEST 187.92 FEET, SOUTH 4 DEGREES 28 MINUTES 21 SECONDS WEST 185.07 FEET, SOUTH 56 DEGREES 15 MINUTES 08 SECONDS WEST 162.90 FEET, SOUTH 45 DEGREES 56 MINUTES 59 SECONDS WEST 127.48 FEET, AND SOUTH 31 DEGREES 55 MINUTES 27 SECONDS WEST 95.65 FEET TO THE MOST SOUTHEASTERLY CORNER OF SAID DECREE AND BEING IN THE NORTHERLY LINE OF THE LAND SHOWN ON A LICENSED SURVEYOR'S MAP FILED IN BOOK 15 PAGES 8 AND 9 OF RECORD OF SURVEYS, SAID NORTHERLY LINE ALSO SHOWN ON SAID MAP OF TRACT 30907; THENCE ALONG SAID NORTHERLY LINE SOUTH 86 DEGREES 56 MINUTES 11 SECONDS EAST 936.50 FEET TO THE SOUTHWEST CORNER OF LOT 94 OF SAID TRACT 30907; THENCE ALONG THE WESTERLY BOUNDARY OF SAID LOT 94 AND THE WESTERLY BOUNDARY OF SAID TRACT 30907 AS FOLLOWS; NORTH 3 DEGREES 03 MINUTES 49 SECONDS EAST 57.68 FEET, NORTHWESTERLY ALONG A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 400 FEET, THROUGH A CENTRAL ANGLE OF 30 DEGREES 41MINUTES 30 SECONDS AN ARC DISTANCE OF 214.27 FEET, NORTH 27 DEGREES 37 MINUTES 41 SECONDS WEST 128.08 FEET, SOUTH 62 DEGREES 22 MINUTES 19 SECONDS WEST 95 FEET, NORTH 27 DEGREES 37 MINUTES 41 SECONDS WEST

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152.78 FEET, NORTH 62 DEGREES 22 MINUTES 19 SECONDS EAST 12 FEET, NORTH 27 DEGREES 37 MINUTES 41 SECONDS WEST 304.23 FEET, AND SOUTH 61 DEGREES 38 MINUTES 24 SECONDS WEST 8.66 FEET TO THE POINT OF BEGINNING.

PARCEL B:

PARCEL 44 ON A LICENSED SURVEYORS MAP, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 15 PAGES 8 AND 9 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION DESCRIBED AS PARCEL 1 IN THE DEED TO THE STATE OF CALIFORNIA RECORDED NOVEMBER 27, 1962 AS INSTRUMENT NO. 1565 IN BOOK D1834 PAGE 731, OFFICIAL RECORDS.

PARCEL B1:

THE NORTH 20 FEET OF THAT PORTION OF PARCEL 1 OF THE LAND DESCRIBED IN DEED FROM TITLE INSURANCE AND TRUST COMPANY TO BRUCE WARING AND MADGE BLUNT WARING RECORDED IN BOOK 3422 PAGE 147, OFFICIAL RECORDS, LYING BETWEEN THE SOUTHERLY PROLONGATION OF THE EAST AND WEST LINES, RESPECTIVELY, OF PARCEL 1 ABOVE DESCRIBED.

EXCEPT THAT PORTION DESCRIBED AS PARCEL 1 IN THE DEED TO THE STATE OF CALIFORNIA RECORDED NOVEMBER 27, 1962 AS INSTRUMENT NO. 1565 IN BOOK D1834 PAGE 731, OFFICIAL RECORDS.

PARCEL B2:

AN EASEMENT FOR RIGHT OF WAY FOR ROAD PURPOSES TO BE USED IN COMMON WITH OTHERS WITH THE RIGHT TO GRANT THE SAME, ON, OVER AND ACROSS THOSE PORTIONS OF SAID LAND GRANTED TO S.G. JOHNSON, AGDA M. JOHNSON, EDWARD H. JOHNSON, AND ALMA O. JOHNSON IN DEED RECORDED IN BOOK 5132 PAGE 106, OFFICIAL RECORDS.

PARCEL C:

PARCEL 45 AS SHOWN ON A RECORD OF SURVEY, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, FILED IN BOOK 15 PAGES 8 AND 9 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID PARCEL 45, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL 45; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 45, NORTH 51 DEGREES 40 MINUTES 57 SECONDS EAST 101.67 FEET AND NORTH 4 DEGREES 45 MINUTES 24 SECONDS EAST 1.17 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY LINE NORTH 81 DEGREES 50 MINUTES 12 SECONDS WEST 556.63 FEET TO THE WESTERLY LINE OF SAID PARCEL 46.

PARCEL C1:

AN EASEMENT FOR RIGHT OF WAY FOR ROAD PURPOSES TO BE USED IN COMMON WITH OTHERS WITH THE RIGHT TO GRANT THE SAME, ON, OVER AND ACROSS THOSE PORTIONS OF SAID LAND GRANTED TO H.H. LEHMKUHL AND BERTHA LEHMKUHL IN DEED RECORDED IN BOOK 3110 PAGE 373, OFFICIAL RECORDS.

PARCEL D:

PARCEL 46 AS SHOWN ON A RECORD OF SURVEY, FILED IN BOOK 15 PAGES 8 AND 9 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID PARCEL 46 LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHEASTERLY CORNER OF PARCEL 45; THENCE ALONG THE EASTERLY LINE OF PARCEL 45, NORTH 51 DEGREES 40 MINUTES 57 SECONDS EAST 101.67 FEET AND NORTH 4 DEGREES 45 MINUTES 24 SECONDS EAST 1.17 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY LINE NORTH 81 DEGREES 50 MINUTES 12 SECONDS WEST 556.63 FEET TO THE WESTERLY LINE OF SAID PARCEL 46, AS DESCRIBED IN DEEDS, RECORDED IN BOOK D1710 PAGE 471, OFFICIAL RECORDS AND IN BOOK D1710 PAGE 474 OF OFFICIAL RECORDS.

PARCEL D1:

AN EASEMENT FOR RIGHT OF WAY FOR ROAD PURPOSES TO BE USED IN COMMON WITH OTHERS WITH THE RIGHT TO GRANT THE SAME, ON, OVER AND ACROSS THOSE PORTIONS OF SAID LAND GRANTED TO BERTHA LEHMKUHL IN DEED RECORDED IN BOOK 5166 PAGE 90, OFFICIAL RECORDS.

PARCEL E:

THAT PORTION OF THE LICENSED SURVEYORS MAP, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 15 PAGES 8 AND 9 OF LICENSED SURVEYORS RECORDS OF

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LOS ANGELES COUNTY, BEING 1.216 ACRES KNOWN AS MEDIO CREEK ADJOINING PARCEL 45 ON THE EAST.

EXCEPT THAT PORTION OF SAID LAND CONVEYED TO STATE OF CALIFORNIA, BY DEED RECORDED JULY 18, 1962 AS INSTRUMENT NO. 1275 FOR ROAD PURPOSES.

PARCEL F:

PARCEL 2 OF PARCEL MAP NO. 21288, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 253 PAGES 97 AND 98 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL F1:

AN EASEMENT FOR RIGHT OF WAY FOR ROAD PURPOSES TO BE USED IN COMMON WITH OTHERS WITH THE RIGHT TO GRANT THE SAME, ON, OVER AND ACROSS THOSE PORTIONS OF SAID LAND GRANTED TO BRUCE WARING AND MADGE BLUNT WARING IN DEED RECORDED IN BOOK 3422 PAGE 147 OF OFFICIAL RECORDS, NOW KNOWN AS "CANWOOD STREET, (PRIVATE STREET)".

PARCEL G:

PARCEL 1 OF PARCEL MAP 23844, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 266 PAGES 24 AND 25 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL H: INTENTIONALLY OMITTED.

PARCEL I: INTENTIONALLY OMITTED.

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DENNY'S PROPERTY

PARCEL 2 OF PARCEL MAP NO. 23844, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 266 PAGES 24 AND 25 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

CITY PARCEL

PARCEL 1 OF PARCEL MAP NO. 21288 AS RECORDED IN BOOK 253, PAGES 97 AND 98 OF PARCEL MAPS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF LOS ANGELES.

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EXHIBIT "B"

Site Map

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EXHIBIT "C"

Developer Fees

Traffic Impact Fees

Residential Unit - \$2,440/Unit
Retail Service or Restaurant - \$6,588/1,000 gross square feet
Office - \$6,149/1,000 gross square feet

Inclusionary Housing Fee

\$4,541 per unit plus a 10% per unit administrative fee.

Art in Public Places Fee

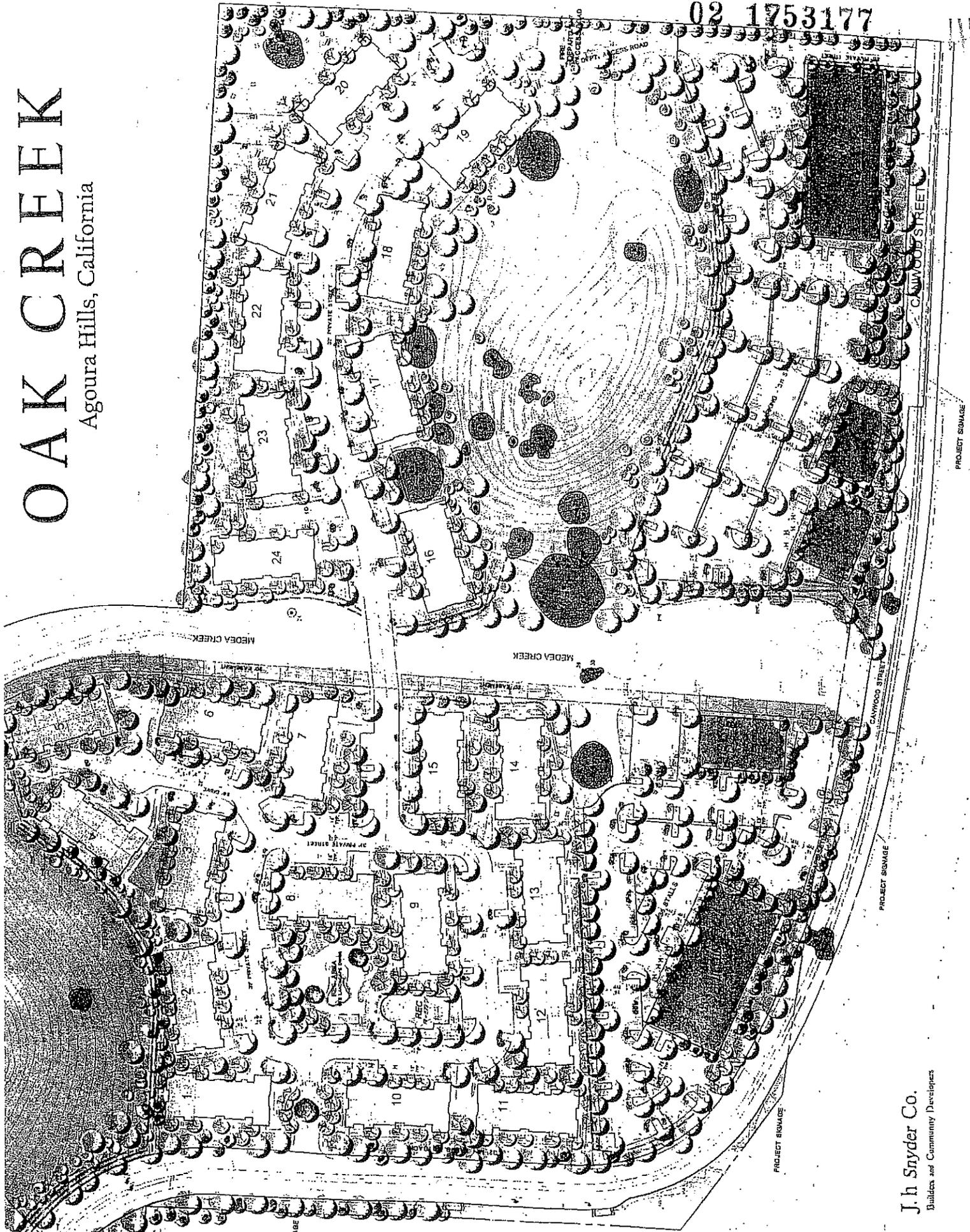
Art provided on site equal to one (1) percent of building valuation as computed using the latest building valuation data as set forth by the International Conference of Building Officials (ICBO) or a fee of

1.25 percent of building valuation as computed using the latest building valuation data as set forth by the International Conference of Building Officials (ICBO), at Developer's election

OAK CREEK

Agoura Hills, California

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J. h Snyder Co.
Builders and Community Developers