



AGENDA
REGULAR CITY COUNCIL /
REDEVELOPMENT AGENCY MEETING
TUESDAY, JANUARY 11, 2011, 7:00 P. M.
MULTI-PURPOSE ROOM
SENIOR CITIZEN/COMMUNITY CENTER
201 E. BONITA AVE.

CITY COUNCIL:

Mayor Curtis W. Morris
Mayor Pro Tem John Ebner
Councilmember Emmett Badar
Councilmember Denis Bertone
Councilmember Jeff Templeman

1. CALL TO ORDER AND FLAG SALUTE

2. RECOGNITIONS

- Recognize San Dimas Little League Teams and Coaches

3. ANNOUNCEMENTS/PRESENTATIONS

- a. Pui-Ching Ho, Manager, San Dimas Library
- b. Soroptimist International of San Dimas-La Verne presentation on Stop Human Trafficking

4. ORAL COMMUNICATIONS (Members of the audience are invited to address the City Council on any item not on the agenda. Under the provisions of the Brown Act, the legislative body is prohibited from taking or engaging in discussion on any item not appearing on the posted agenda. However, your concerns may be referred to staff or set for discussion at a later date. If you desire to address the City Council on an item on this agenda, other than a scheduled public hearing item you may do so at this time and ask to be heard when that agenda item is considered. Comments on public hearing items will be considered when that item is scheduled for discussion. The Public Comment period is limited to 30 minutes. Each speaker shall be limited to three (3) minutes.)

- a. Members of the Audience

5. CONSENT CALENDAR

(All items on the Consent Calendar are considered to be routine and will be enacted by one motion unless a member of the City Council requests separate discussion.)

- a. Resolutions read by title, further reading waived, passage and adoption recommended as follows:

(1) **RESOLUTION NO. 2011-01, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS, CALIFORNIA, APPROVING CERTAIN DEMANDS FOR THE MONTHS OF DECEMBER 2010 AND JANUARY, 2011.**

- b. Tax Sharing Resolutions approving and accepting negotiated exchange of property tax revenues resulting from annexation to County Sanitation District No. 21 (Annexation No. 732) Lot 4 of Tract 43086 on Rebecca Drive.

END OF CONSENT CALENDAR

6. PUBLIC HEARING

(The following items have been advertised and/or posted. The meeting will be opened to receive public testimony.)

- a. Performance Report for FY 2009-10 and FY 2010-11 CDBG Program Years and Proposed FY 2010-11 Projected Use of funds.
- b. Precise Plan 10-01, a request to construct a 674 square foot addition for a deli/sandwich shop and a 656 square foot covered patio for outdoor eating area in conjunction with an existing fruit stand business at 264 E. Foothill Blvd. (APN: 8661-014-030) Applicant: Steve Rudy, Strawberry Farms. (TO BE CONTINUED TO JANUARY 25, 2011.)
 - 1) **RESOLUTION NO. 2010-70**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING PRECISE PLAN NO. 10-01, A REQUEST TO CONSTRUCT A 674 SQUARE FOOT ADDITION FOR A DELI/SANDWICH SHOP AND A 656 SQUARE FOOT COVERED PATIO FOR OUTDOOR EATING AREA IN CONJUNCTION WITH AN EXISTING FRUIT STAND BUSINESS AT 264 E. FOOTHILL BLVD. (APN: 8661-014-030).
- c. Consideration of Tentative Tract Map 70583, a request to develop 61 Single Family Residential lots, seven common area lots, one 83-acre parcel for potential open space, and related infrastructure for the Brasada Residential Project, located on 270± acres in the western portion of the Northern Foothills of San Dimas. Applicant: NJD, Ltd.
 - 1) **RESOLUTION NO. 2010-69**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING TENTATIVE TRACT MAP NO. 70583, A REQUEST TO SUBDIVIDE APPROXIMATELY 270 ACRES INTO 61 RESIDENTIAL LOTS ON THE PROPERTY LOCATED AT NORTHERLY EXTENSION OF CATARACT AVENUE INTO THE NORTHERN FOOTHILLS (BRASADA RESIDENTIAL DEVELOPMENT).
- d. Consideration of Development Agreement, a request to enter into a statutory development agreement vesting certain land use entitlements and approvals granted by the City if the proposed project is approved, for the Brasada Residential Project, located on 270± acres in the western portion of the Northern Foothills of San Dimas. Applicant: NJD, Ltd.
 - 1) **ORDINANCE NO. 1202**, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING A DEVELOPMENT AGREEMENT RELATING TO THE APPROVAL OF A RESIDENTIAL DEVELOPMENT FOR 61 SINGLE-FAMILY RESIDENTIAL LOTS IN THE NORTHERN FOOTHILLS OF SPECIFIC PLAN NO. 25. **FIRST READING AND RE-INTRODUCTION**

7. ORDINANCES

- a. Ordinances read by title, further reading waived, passage and adoption recommended as follows:
 - (1) **ORDINANCE NO. 1201**, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING MUNICIPAL CODE TEXT AMENDMENT 08-04, AMENDING THE MAXIMUM ALLOWABLE DENSITY AND OTHER DEVELOPMENT STANDARDS IN SPECIFIC PLAN NO. 25 IN THE NORTHERN FOOTHILLS AREA. **SECOND READING AND ADOPTION**

8. PLANNING/DEVELOPMENT SERVICES

- a. Request for deferral of Park Land Dedication (Quimby) in-lieu fee for Loma Bonita Residences, (Tract 69609), an affordable housing project of 156 apartments to be located at the northwest corner of East Bonita Avenue and San Dimas Canyon Road.

9. SAN DIMAS REDEVELOPMENT AGENCY

- a. Oral Communications (This is the time set aside for members of the audience to address the Board. Speakers are limited to three minutes.)
- b. Approval of minutes for meeting of December 14, 2010.
- c. Executive Director
 - 1) Project status update.
- d. Members of the Agency

10. ORAL COMMUNICATIONS

- a. Members of the Audience (Speakers are limited to five (5) minutes or as may be determined by the Chair.)
- b. City Manager
 - 1) Update on City Hall, Civic Center, and Stanley Plummer expansion and renovation project.
- c. City Attorney
- d. Members of the City Council
 - 1) Councilmembers' report on meetings attended at the expense of the local agency.
 - 2) Individual Members' comments and updates.

11. CLOSED SESSION

Recess to a City/Redevelopment Agency closed session pursuant to Government Code Section 54957:

- a. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION.**
Title: City Manager
- b. Report on closed session items.

12. ADJOURNMENT

The next meeting is January 25, 2011, 7:00 p.m.

AGENDA STAFF REPORTS: COPIES OF STAFF REPORTS AND/OR OTHER WRITTEN DOCUMENTATION PERTAINING TO THE ITEMS ON THE AGENDA ARE ON FILE IN THE OFFICE OF THE CITY CLERK AND ARE AVAILABLE FOR PUBLIC INSPECTION DURING THE HOURS OF 8:00 A.M. TO 5:00 P.M. MONDAY THROUGH FRIDAY. INFORMATION MAY BE OBTAINED BY CALLING (909) 394-6216. CITY COUNCIL MINUTES AND AGENDAS ARE ALSO AVAILABLE ON THE CITY'S HOME PAGE ON THE INTERNET:
<http://www.cityofsandimas.com/minutes.cfm>.

SUPPLEMENTAL REPORTS: AGENDA RELATED WRITINGS OR DOCUMENTS PROVIDED TO A MAJORITY OF THE SUBJECT BODY AFTER DISTRIBUTION OF THE AGENDA PACKET SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION AT THE CITY CLERK'S OFFICE AT 186 VILLAGE COURT DURING NORMAL BUSINESS HOURS. [PRIVILEGED AND CONFIDENTIAL DOCUMENTS EXEMPTED]

HEARING ASSISTANCE: THE CITY OF SAN DIMAS CITY COUNCIL CHAMBERS IS EQUIPPED WITH A HEARING ASSISTANCE SYSTEM. PLEASE CONTACT THE CITY CLERK (909) 394-6216 TO CHECK OUT A RECEIVER.

POSTING STATEMENT: ON JANUARY 7, 2011, A TRUE AND CORRECT COPY OF THIS AGENDA WAS POSTED ON THE BULLETIN BOARDS AT 201 EAST BONITA AVENUE (SAN Dimas SENIOR CITIZEN/COMMUNITY CENTER); 186 VILLAGE COURT (SAN DIMAS TEMPORARY CITY HALL) 145 NORTH WALNUT AVENUE (LOS ANGELES COUNTY PUBLIC LIBRARY, SAN DIMAS BRANCH); AND 300 EAST BONITA AVENUE (UNITED STATES POST OFFICE) AND AS A COURTESY, AT THE VONS SHOPPING CENTER (Puente/Via Verde) AND THE CITY'S WEBSITE AT www.cityofsandimas.com/minutes.cfm.

RESOLUTION NO. 2011-01

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SAN DIMAS, CALIFORNIA, APPROVING
CERTAIN DEMANDS FOR THE MONTHS OF
DECEMBER 2010 AND JANUARY 2011

WHEREAS, the following listed demands have been audited by the Director of Finance;
and

WHEREAS, the Director of Finance has certified as to the availability of funds for
payment thereto; and

WHEREAS, the register of audited demands have been submitted to the City Council for
approval.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Dimas
does hereby approve Prepaid Warrant Register: 12/31/2010; 21681 through 21754; in the
amount of \$3,708,993.60; Warrant Register: 12/29/2010; 134120 through 134268; in the amount
of \$1,844,823.09; Warrant Register: 01/14/2011; 134269 through 134357; in the amount of
\$240,508.94.

PASSED, APPROVED AND ADOPTED THIS 11th DAY OF JANUARY, 2011.

Curtis W. Morris, Mayor of the City of San Dimas

ATTEST:

Ina Rios, CMC, City Clerk

I HEREBY CERTIFY that the foregoing Resolution was adopted by vote of the City
Council of the City of San Dimas at its regular meeting of January 11, 2011, by the following
vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ina Rios, CMC, City Clerk

52(1)



***THE WARRANT DISBURSEMENT
JOURNAL IS NOT AVAILABLE TO
VIEW THROUGH LASERFICHE***

***A PAPER COPY IS AVAILABLE IN THE
FINANCE DEPARTMENT***

SORRY FOR ANY INCONVENIENCES.

DOCUMENT IMAGING DEPT.



Agenda Item Staff Report

To: Honorable Mayor and Members of the City Council
For the meeting of January 11, 2011

From: Blaine Michaelis, City Manager *BM*

Initiated by: Ina Rios, CMC, City Clerk

Subject: Tax Sharing Resolutions Approving and accepting negotiated Exchange of property tax revenues resulting from annexation to County Sanitation District No. 21 (Annexation No. 21-732)

SUMMARY

This action provides for the annexation into the County Sanitation District for sewer service of one existing single-family home on Rebecca Drive. The acceptance of the exchange agreement and the annexation for sewer services are routine procedures.

RECOMMENDATION:

Adopt Tax Sharing Resolutions.



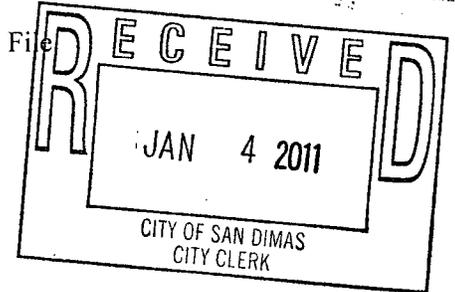
COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

STEPHEN R. MAGUIN
Chief Engineer and General Manager

December 27, 2010

General Annexation File



Ms. Ina Rios, City Clerk
City of San Dimas
245 East Bonita Avenue
San Dimas, CA 91773

Dear Ms. Rios:

Tax Sharing Resolutions

Thank you for signing and returning the last joint resolutions that were submitted to your office for tax sharing purposes.

Enclosed, in triplicate, is a Joint Tax Sharing Resolution (resolution) involving your city and others. The applicant has requested, in writing, annexation of his property into County Sanitation District No. 21 (District) in order to receive off-site disposal of sewage. Please see the table below for the annexation and its associated project. The annexation process requires that a resolution for property tax revenue exchange be adopted by all the affected local agencies before an annexation may be approved. For any jurisdictional change which will result in a special district providing new service not previously provided to an area, the law requires the governing bodies of all local agencies that receive an apportionment of the property tax from the area to determine by resolution the amount of the annual tax increment to be transferred to the special district (Revenue and Taxation Code Section 99.01). Please note that by sharing the property tax increment with the District resulting from this annexation, your city will not lose any existing ad valorem tax revenue it currently receives from the affected territory. Your city would only be giving up a portion of the revenues it would receive on increased assessed valuation.

<u>Annexation No.</u>	<u>Type of Project</u>
21-732	one existing single-family home

Also, attached for the annexation is a copy of the applicable worksheet and map showing the location of the annexation. The worksheet lists the annual tax increment to be exchanged between your city, other affected taxing entities, and the District. The tax sharing ratios listed in the worksheet were calculated by the County Auditor Controller by specific Tax Rate Area (TRA). For example, if the annexing territory were to lie within two separate TRAs, there would be a worksheet for each TRA. The Los Angeles County Chief Executive Office (CEO) is requiring the District to implement the worksheet for all District annexations in order to increase efficiency for the calculation of property tax sharing ratios.

The resolution is being distributed to all parties for signature in counterpart. Therefore, you will only be receiving a signature page for your city. Enclosed are three sets of the resolution. One set of the resolution is for your files and the other two sets of the resolution need to be returned to the District.

DOC# 1772365

Ms. Ina Rios

2

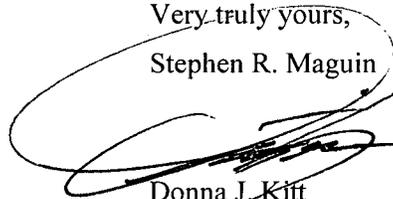
December 27, 2010

Please execute the two sets of the resolution and return them to the undersigned within 60 days as required by the Government Code. In addition, the County CEO's legal counsel is also requesting that the signature pages be properly executed from all affected agencies. Therefore, please have the Attest line signed by the appropriate person. Upon completion of the annexation process, your office will receive a fully executed copy of the tax sharing resolution for your files.

Your continued cooperation in this matter is very much appreciated. If you have any questions, please do not hesitate to call me at (562) 908-4288, extension 2708.

Very truly yours,

Stephen R. Maguin

A handwritten signature in black ink, appearing to read "Donna J. Kift", is written over the typed name. The signature is stylized and somewhat illegible due to the cursive and overlapping lines.

Donna J. Kift
Customer Service Specialist
Facilities Planning Department

DK:eg

Enclosures: 21-732

JOINT RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES
ACTING IN BEHALF OF

Los Angeles County General Fund

Los Angeles County Library

Los Angeles County Consolidated Fire Protection District

Los Angeles County Flood Control

THE BOARD OF DIRECTORS OF COUNTY SANITATION DISTRICT NO. 21 OF LOS ANGELES
COUNTY, AND THE GOVERNING BODIES OF

City of San Dimas

Three Valleys Municipal Water District

San Dimas Lighting District-Zone B

APPROVING AND ACCEPTING NEGOTIATED EXCHANGE OF PROPERTY TAX REVENUES
RESULTING FROM ANNEXATION TO COUNTY SANITATION DISTRICT NO. 21.

“ANNEXATION NO. 732”

WHEREAS, pursuant to Section 99 and 99.01 of the Revenue and Taxation Code, prior to the effective date of any jurisdictional change which will result in a special district providing a new service, the governing bodies of all local agencies that receive an apportionment of the property tax from the area must determine the amount of property tax revenues from the annual tax increment to be exchanged between the affected agencies and approve and accept the negotiated exchange of property tax revenues by resolution; and

WHEREAS, the governing bodies of the agencies signatory hereto have made determinations of the amount of property tax revenues from the annual tax increments to be exchanged as a result of the annexation to County Sanitation District No. 21 entitled *Annexation No. 732*;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The negotiated exchange of property tax revenues resulting from the annexation of territory to County Sanitation District No. 21 in the annexation entitled *Annexation No. 732* is approved and accepted.

2. For each fiscal year commencing on and after July 1, 2010, or after the effective date of this jurisdictional change, whichever is later, the County Auditor shall transfer to County Sanitation District No. 21 a total of 0.4235918 percent of the annual tax increment attributable to the land area encompassed within *Annexation No. 732* as shown on the attached Worksheet.

3. No additional transfer of property tax revenues shall be made from any other taxing agencies to County Sanitation District No. 21 as a result of annexation entitled *Annexation No. 732*.

4. No transfer of property tax increments from properties within a community redevelopment project, which are legally committed to a Community Redevelopment Agency, shall be made during the period that such tax increment is legally committed for repayment of the redevelopment project costs.

5. If at any time after the effective date of this resolution, the calculations used herein to determine initial property tax transfers or the data used to perform those calculations are found to be incorrect thus producing an improper or inaccurate property tax transfer, the property tax transfer shall be recalculated and the corrected transfer shall be implemented for the next fiscal year, and any amounts of property tax received in excess of that which is proper shall be refunded to the appropriate agency.

The foregoing resolution was adopted by the Board of Supervisors of the County of Los Angeles, the Board of Directors of County Sanitation District No. 21 of Los Angeles County, and the governing bodies of City of San Dimas, Three Valleys Municipal Water District, and San Dimas Lighting District-Zone B, signatory hereto.

CITY OF SAN DIMAS

SIGNATURE

PRINT NAME AND TITLE

ATTEST:

Secretary

Date

(SIGNED IN COUNTERPART)

ANNEXATION TO: CO.SANITATION DIST.NO 21 DEBT S.
 ACCOUNT NUMBER: 066.80
 TRA: 05087
 EFFECTIVE DATE: 07/01/2011
 ANNEXATION NUMBER: 732 PROJECT NAME: A-21-732
 DISTRICT SHARE: 0.007427754

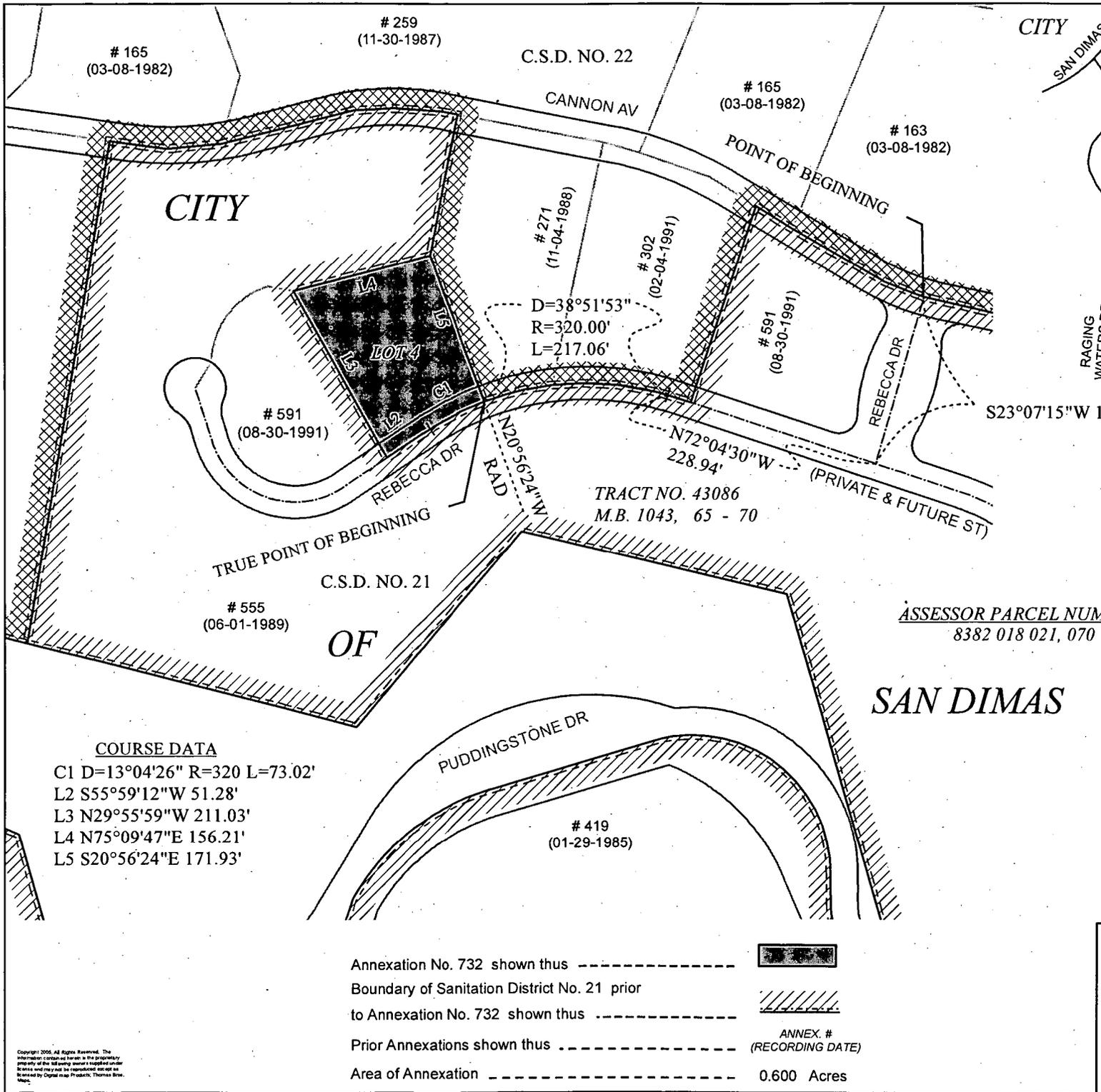
ACCOUNT #	TAXING AGENCY	CURRENT TAX SHARE	PERCENT	PROPOSED DIST SHARE	ALLOCATED SHARE	
001.05	LOS ANGELES COUNTY GENERAL	0.285274472	28.5284 %	0.007427754	0.002118956	-0
001.20	L.A. COUNTY ACCUM CAP OUTLAY	0.000106801	0.0106 %	0.007427754	0.000000793	0
003.01	L A COUNTY LIBRARY	0.021500237	2.1500 %	0.007427754	0.000159698	-0
007.30	CONSOL. FIRE PRO.DIST.OF L.A.CO.	0.164144242	16.4144 %	0.007427754	0.001219223	-0
007.31	L A C FIRE-FFW	0.006552083	0.6552 %	0.007427754	0.000048667	0
030.10	L.A.CO.FL.CON.DR.IMP.DIST.MAINT.	0.001563661	0.1563 %	0.007427754	0.000011614	-0
030.70	LA CO FLOOD CONTROL MAINT	0.008848881	0.8848 %	0.007427754	0.000065727	-0
241.01	CITY-SAN DIMAS TD #1	0.070380261	7.0380 %	0.007427754	0.000522767	-0
241.62	CITY-SAN DIMAS LT DIST ZN B	0.007993671	0.7993 %	0.007427754	0.000059375	-0
365.05	THREE VALLEY MWD ORIG AREA	0.003917546	0.3917 %	0.007427754	0.000029098	-0
400.00	EDUCATIONAL REV AUGMENTATION FD	0.072845328	7.2845 %	0.007427754	0.000541077	
400.01	EDUCATIONAL AUG FD IMPOUND	0.155376505	15.5376 %	0.007427754	0.001154098	
400.15	COUNTY SCHOOL SERVICES	0.001323927	0.1323 %	0.007427754	0.000009833	
400.21	CHILDREN'S INSTIL TUITION FUND	0.002627569	0.2627 %	0.007427754	0.000019516	
809.04	MT.SAN ANTONIO COMMUNITY COLLEGE	0.028358502	2.8358 %	0.007427754	0.000210639	
809.20	MT SAN ANTONIO CHILDRENS CTR FD	0.000273786	0.0273 %	0.007427754	0.000002033	
830.03	BONITA UNIFIED SCHOOL DISTRICT	0.161453265	16.1453 %	0.007427754	0.001199235	
830.06	CO.SCH.SERV.FD.- BONITA	0.006712330	0.6712 %	0.007427754	0.000049857	
830.07	DEV.CTR.HDCPD.MINOR-BONITA	0.000746933	0.0746 %	0.007427754	0.000005548	

ANNEXATION NUMBER: 732

PROJECT NAME: A-21-732

TRA: 05087

ACCOUNT #	TAXING AGENCY	CURRENT TAX SHARE	PERCENT	PROPOSED DIST SHARE	ALLOCATED SHARE	ADJUST
***066.80	CO.SANITATION DIST.NO 21 DEBT S.	0.000000000	0.0000 %	0.007427754	0.000000000	0.000
TOTAL:		1.000000000	100.0000 %		0.007427754	-0.004



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JOINT RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES
ACTING IN BEHALF OF

Los Angeles County General Fund

Los Angeles County Library

Los Angeles County Consolidated Fire Protection District

Los Angeles County Flood Control

THE BOARD OF DIRECTORS OF COUNTY SANITATION DISTRICT NO. 21 OF LOS ANGELES
COUNTY, AND THE GOVERNING BODIES OF

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San Dimas Lighting District-Zone B

APPROVING AND ACCEPTING NEGOTIATED EXCHANGE OF PROPERTY TAX REVENUES
RESULTING FROM ANNEXATION TO COUNTY SANITATION DISTRICT NO. 21.

“ANNEXATION NO. 732”

WHEREAS, pursuant to Section 99 and 99.01 of the Revenue and Taxation Code, prior to the effective date of any jurisdictional change which will result in a special district providing a new service, the governing bodies of all local agencies that receive an apportionment of the property tax from the area must determine the amount of property tax revenues from the annual tax increment to be exchanged between the affected agencies and approve and accept the negotiated exchange of property tax revenues by resolution; and

WHEREAS, the governing bodies of the agencies signatory hereto have made determinations of the amount of property tax revenues from the annual tax increments to be exchanged as a result of the annexation to County Sanitation District No. 21 entitled *Annexation No. 732*;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The negotiated exchange of property tax revenues resulting from the annexation of territory to County Sanitation District No. 21 in the annexation entitled *Annexation No. 732* is approved and accepted.

2. For each fiscal year commencing on and after July 1, 2010, or after the effective date of this jurisdictional change, whichever is later, the County Auditor shall transfer to County Sanitation District No. 21 a total of 0.4235918 percent of the annual tax increment attributable to the land area encompassed within *Annexation No. 732* as shown on the attached Worksheet.

3. No additional transfer of property tax revenues shall be made from any other taxing agencies to County Sanitation District No. 21 as a result of annexation entitled *Annexation No. 732*.

4. No transfer of property tax increments from properties within a community redevelopment project, which are legally committed to a Community Redevelopment Agency, shall be made during the period that such tax increment is legally committed for repayment of the redevelopment project costs.

5. If at any time after the effective date of this resolution, the calculations used herein to determine initial property tax transfers or the data used to perform those calculations are found to be incorrect thus producing an improper or inaccurate property tax transfer, the property tax transfer shall be recalculated and the corrected transfer shall be implemented for the next fiscal year, and any amounts of property tax received in excess of that which is proper shall be refunded to the appropriate agency.

The foregoing resolution was adopted by the Board of Supervisors of the County of Los Angeles, the Board of Directors of County Sanitation District No. 21 of Los Angeles County, and the governing bodies of City of San Dimas, Three Valleys Municipal Water District, and San Dimas Lighting District-Zone B, signatory hereto.

SAN DIMAS LIGHTING DISTRICT-ZONE B

SIGNATURE

PRINT NAME AND TITLE

ATTEST:

Secretary

Date

(SIGNED IN COUNTERPART)

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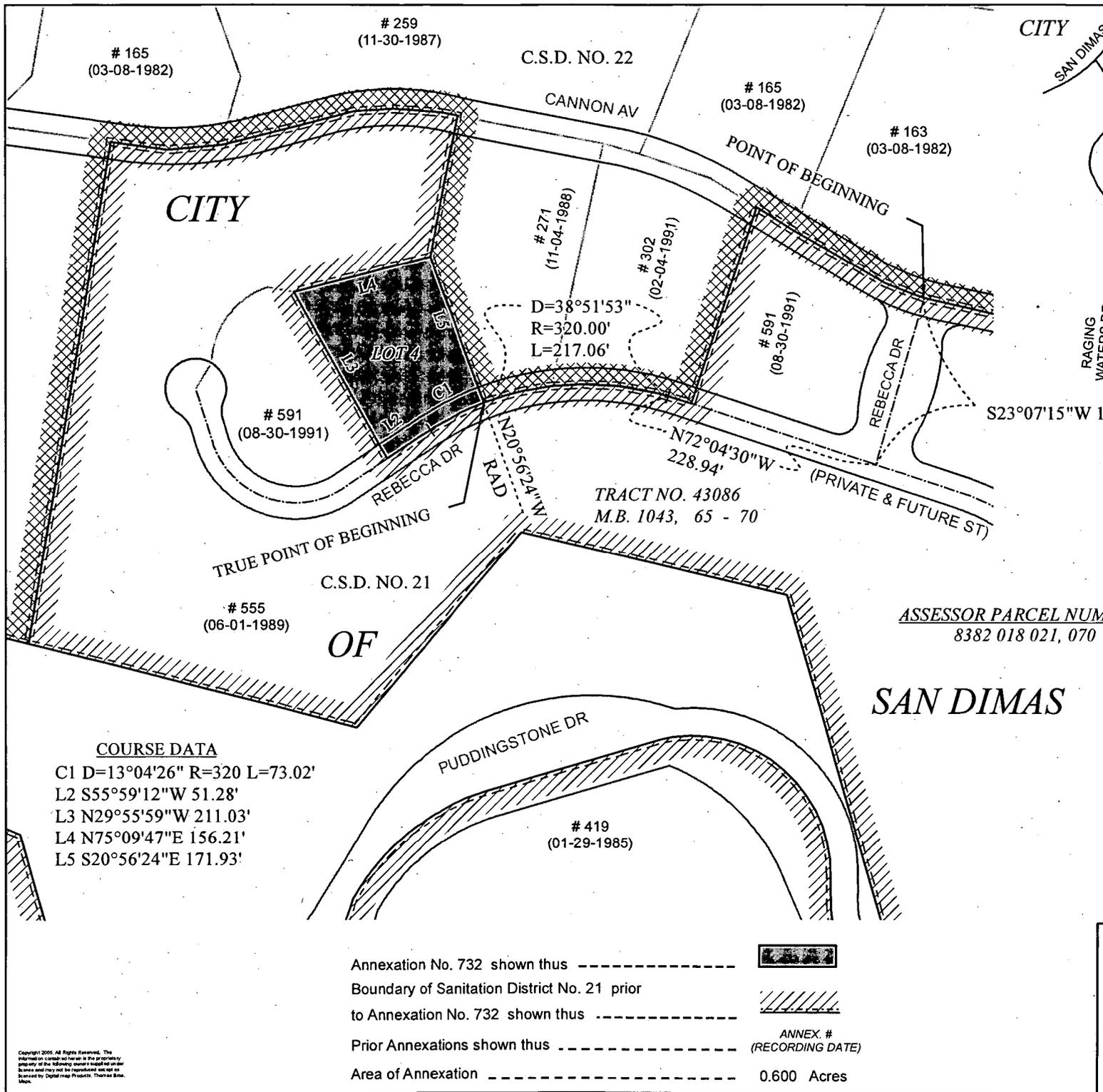
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ANNEXATION NUMBER: 732

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AGENDA ITEM STAFF REPORT

TO: Honorable Mayor and Members of the City Council
For the Meeting of January 11, 2011

FROM: Blaine Michaelis, City Manager *BM*

INITIATED BY: Administration Department

SUBJECT: Performance Report for FY 2009-10 and FY 2010-11 CDBG Program Years
and Proposed FY 2011-12 Projected Use of Funds

SUMMARY

The Housing Division is in the process of planning activities for FY 2011-12 Community Development Block Grant Program (CDBG) Year.

The proposed FY 2011-12 programs is greatly influenced by the City's limited allocation of CDBG funds and the success of implementing good viable CDBG projects for FY 2009-10 and FY 2010-11.

BACKGROUND

Each year, Community Development Block Grant (CDBG) funds are allocated to cities by the Department of Housing and Urban Development (HUD) which is administered through the Los Angeles County Community Development Commission (CDC). Participating cities receive funding based upon the number of cities participating in the County's program, community development need, and a city's commitment to provide housing, economic and community development opportunities.

Projects must be implemented according to the 1974 Housing and Community Development Act and the National Affordable Housing Act passed by Congress in 1990. Consequently, our preparation for the FY 2011-12 program year will be regulated in a manner consistent with these laws.

Activities carried out with CDBG funds must address at least one of the national objectives of the CDBG program which include:

- ✓ Benefiting low and moderate income persons,
- ✓ Addressing slum or blight; or,
- ✓ Meeting a particular urgent community development need.

Activities may include, but are not limited to, public facilities and improvements, acquisition and relocation, public services and housing improvement/rehabilitation programs. Applicable statutes and regulations place specific requirements on certain activities such as a limitation on the amount of CDBG funds which may be used for public services, planning and administration costs.

DISCUSSION/ANALYSIS

The City of San Dimas strives to maintain a safe, decent and sanitary environment for all of its residents. Therefore, the grant amount is spent only on those activities that will enhance the ability to achieve this goal. The four projects outlined in this section will detail the program benefits and accomplishments.

6a

Housing Rehabilitation Program - Continuing City Project

The Housing Rehabilitation Program assists eligible households with the high cost of repairing their residences. The program also reimburses Administration staff costs and retention of asbestos professionals to determine and mitigate asbestos hazards. The Rehabilitation Programs have been most successful and highly supported by the residents of San Dimas. The program provides support to City code enforcement efforts to correct substandard housing conditions.

Housing Rehabilitation												
Type of Assistance	Recipient Characteristics by Income (Households)										Total Accomplishments (Households)	
	Very Low Income		Low Income		Moderate Income		Over 62 yrs		Female head of hshd.	Female head of hshd.	FY 09-10	*FY 10-11
	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11
Grants (Up to \$3000)	9	2	26	8	18	10	30	16	32	10	53	20
Deferred Loans (Average \$10,000)	1	0	0	0	0	1	0	1	1	0	1	1
TOTALS	10	2	26	8	18	11	30	17	33	10	54	21

*Accomplishments through second quarter ending 12/31/2010.

Lead Based Paint Assessment/Interim Control Project – Continuing City Project

This program assists housing rehabilitation applicants with the lead-based assessment and interim control process. The Lead-Based Paint Project will continue to fund the costs of retaining a lead-based paint professional to inspect, test, and provide rehab oversight and clearance of each project. Most importantly the project will assist in protecting children from lead exposure which can result in lead poisoning.

Lead Based Paint Assessment Project												
Type of Assistance	Recipient Characteristics by Income (Households)										Total Accomplishments	
	Very Low Income		Low Income		Moderate Income		Female head of household		Over 62 yrs		FY 09-10	*FY 10-11
	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11
Lead Inspections/Lead Control	3	0	4	5	5	5	8	4	7	5	12	10

*Accomplishments through second quarter ending 12/31/2010.

Administration

Remaining funds were expended in FY 2009-10 and FY 2010-11 for Administration and Finance staff engaged in CDBG program administration and management. Staff maintained and accomplished proposed CDBG activity numbers and program goals for FY 2009-10 and anticipates similar productivity goals for FY 2010-11.

**SHARES (Seniors Housing Alternatives, Resources, Education, and Support) –
Continuing City Public Service Project**

San Dimas SHARES provides information and referral, case assessment and shared housing services in addition to informative workshops to seniors. The program reimburses the salary of a full-time coordinator and administration costs associated with program. The table below details all persons 55 years of age and older assisted through San Dimas SHARES.

SHARES (Senior Housing Alternatives, Resources, Education, and Support)										
Type of Assistance	Recipient Characteristics by Income (Persons)								Total Accomplishments* (Persons)	
	Homeless		Home Share Match Assistance		Referrals**		Female head of hshd.	Female head of hshd.	FY 09-10	***FY 10-11
	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11	FY 09-10	*FY 10-11		
Case Assessment/Information/Referral	4	4	8	8	201	77	66	34	101	55

*Unduplicated count required by Los Angeles County Community Development Commission.

**Duplicated count of multiple inquires made by the same person.

***Accomplishments through second quarter ending 12/31/2010.

FY 2009-10 and FY 2010-11 PERFORMANCE

The following table summarizes the actual FY 2009-10 and FY 2010-11 CDBG program budgets and their accomplishments.

Program Budgets and Accomplishments				
PROJECT	FY 2009-10	Accomplishments	FY 2010-11	Accomplishments*
Housing Rehabilitation	\$ 191,708	53 grants 1 loan	\$ 179,450	20 grants 1 loan
Lead Base Paint/Assessment	\$ 25,000	12	\$ 25,000	10
SHARES	\$ 25,000	101 Persons (P)	\$ 25,000	100 Persons (P)
Administration	\$ 20,000	CDBG Management	\$ 20,000	CDBG Management
TOTALS	\$ 261,708	66 (H) and 101 (P)	\$ 249,450	31 (H) and 100 (P)

*Accomplishments through second quarter ending 12/31/2010.

PROPOSED FY 2011-2012

The FY 2011-12 grant allocation of \$220,882 represents about a 1% reduction compared to the FY 2010-11 funding level of \$249,450. For FY 2010-11, staff is proposing to allocate 90% of the City's total program budget to activities benefiting low to moderate income persons and maintain HUD's public service cap of fifteen percent (15%) of annual grant allotment.

Proposed Projects FY 2010-11			
Program	Budget	% of Budget	Estimated Accomplishments
Housing Rehabilitation	\$ 153,794	70	38 households, 2 loans
Lead Base Paint Assessment/ Interim Control	\$ 20,000	9	10 households
SHARES	\$ 25,000	11	100 persons
Administration	\$ 22,088	10	CDBG program management
TOTALS	\$ 220,882	100%	50 households and 100 persons

As customary, additional funding from prior year carryover and paybacks are reallocated to the Housing Rehabilitation program when financial closeout is completed.

CONCLUSIONS

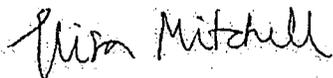
Staff believes the proposed projects enhance the ability to achieve our goals of maintaining a safe, decent and sanitary environment for our residents and provides for the continuation of successful viable projects. In the event final CDBG allocation funds vary from the \$220,882 estimate, the proposed projects and budgets will be adjusted accordingly.

Staff is prepared to support any recommendations Council may provide within the scope, objectives and mandated requirements of the CDBG program.

RECOMMENDATION

Administration Department recommends that the City Council approve the proposed FY 2011-12 CDBG program as outlined in the staff report and authorize the City Manager to execute any and all documents necessary to further the projects approved herein, including but not limited to amendments and modifications thereto for CDBG projects with the Los Angeles County Community Development Commission.

Prepared By:



Elisa Mitchell
Housing Coordinator



MEMORANDUM

TO: Honorable Mayor and Members of City Council
For the Meeting of January 11, 2011

FROM: Blaine Michaelis, City Manager

INITIATED BY: Kristi Grabow, Associate Planner

SUBJECT: **Precise Plan 10-01** - A request to construct a 674 square foot addition for a deli/sandwich shop and a 656 square foot covered patio for outdoor eating area in conjunction with an existing fruit stand business at 264 E. Foothill Blvd. (APN: 8661-014-030)

SUMMARY

Precise Plan 10-01 is a request to construct an addition to expand the existing business located at 264 East Foothill Boulevard in the Commercial Highway Zone with the Scenic Highway Overlay Zone.

The applicant and Staff are requesting that this item be continued to the January 25, 2011 City Council Meeting.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Kristi Grabow", is written over the typed name.

Kristi Grabow
Associate Planner

Handwritten initials "bb" in black ink, located in the bottom right corner of the page.



Agenda Item Staff Report

TO: Honorable Mayor and Members of City Council
For the Meeting of January 11, 2011

FROM: Blaine Michaelis, City Manager

INITIATED BY: Community Development Department

SUBJECT: Tentative Tract Map 70583 – A subdivision of approximately 270 acres in the Northern Foothills northerly of Cataract Avenue into 61 residential lots.

SUMMARY

The hearing was continued from the December 14, 2010 meeting to address concerns about emergency access and other unresolved details of several recommended conditions. Updates are included in this report.

The Tentative Tract Map would result in the approval of a 61 lot residential subdivision on the 270 acre subject property. This would include primary access via the northerly extension of Cataract. It would also include preservation in its natural state of large portions of the property. There are a number of issues that require resolution with secondary access as a requirement among them.

The Planning Commission recommends approval of Tentative Tract Map 70583.

The Staff recommends revisions associated with grading and the number of residential lots.

BACKGROUND

See December 14, 2010 Staff Report for detailed background information.

ANALYSIS

This discussion is limited to updates on outstanding matters and a detailed Analysis is included in the previous Staff Report dated December 14, 2010.

6C (1)

Secondary Emergency Access:

At the December 14, 2010 hearing the Applicant provided information to support their contention that the project should be approved as a single means of access without a requirement for a secondary emergency access even though they would voluntarily provide it. At that time it appeared that the Council consensus was to require a secondary emergency access but it was determined that further consultation between the City Engineer and the County Fire Department was needed. This issue is primarily addressed in Condition #12 and 12a.

The Applicant has constructed a 20 foot wide all weather roadway through his Glendora property and has provided a draft restrictive covenant regarding its continued availability and maintenance. Both the City Engineer and the County Fire Department have inspected this roadway in its present condition.

Both the City Engineer and the County Fire Department support the need to require a secondary emergency access as part of this TTM. There is not currently a final conclusion that the existing roadway meets all standard requirements. Standards being evaluated include:

- Width: The roadway is generally 20 feet wide. The County Fire Code requires a minimum of 20 feet but in recent years they have typically requested 24 feet. The City Engineer is inclined to support 20 feet unless the County Fire Department can persuasively convince him that 24 feet is essential. The recommended condition requires a minimum of 20 feet subject to final determination by the City Engineer.
- Profile/Grade: The roadway appears to be no greater than 8% grade. The Fire Department may require paving when road grades are greater than 12% or in certain soils. Both the County Fire Department and the City Engineer believe the road grades are acceptable but the Fire Department is still reviewing the profile that was just submitted.
- Load Capacity: The road is decomposed granite (dg) and represented as all weather. With proper drainage and maintenance dg is an acceptable material for all weather. The County Fire Department has some concern that the road will satisfy road capacity and loading requirements for its equipment and desires to review engineering calculations to verify its acceptability. The City Engineer prefers to have Fire Department input on this matter prior to making a final determination on the acceptability of the existing improvements.
- Maintenance/Long Term Availability: Both the City Engineer and the County Fire Department believe that there should be adequate provisions to maintain the road in safe and useable condition and assure its continued availability (until the Glendora property develops). The

Restrictive Covenant is being reviewed to incorporate both of these requirements.

- Jurisdictional Matters: This off-site improvement is located in the City of Glendora. Glendora has reviewed the current improvement and has not to date requested permits or approvals for the work. If further improvements are required a need for a permit and/or their approval may be triggered. The condition accommodates this potential need but the Applicant is reticent regarding any actions which Glendora may require.

Staff believes the condition as written assures an adequate secondary emergency access would be provided. The existing improvement is close to the anticipated standards but is not fully accepted by the City engineer pending additional consultation with the County Fire Department.

Other Issues:

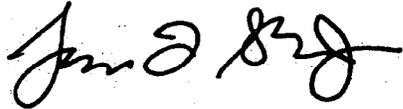
Staff has met with Applicant and made additional modifications to a number of conditions to address their concerns. Changes have been made to Condition Nos. 21, 25, 26, 30, 31, 40, 56c, 58 and 59. The Applicant has not seen the final language for these changes but they do resolve a number of the differences raised previously.

- Condition 25 – We have eliminated any specific reference to drainage acceptance letters. Standard County Flood Control and City protocols will determine if they are needed or not.
- Condition 26 – Council previously concluded that the condition should provide for general surety and not specifically for a bond. The condition allows third party submittal to assist in determining the amount if that is found to be necessary. We believe the applicant still prefers a bond and an alternative that requires the City to seek additional funds if it is required to step in and perform maintenance.
- Condition 40 – This allows the City Engineer to temporarily withhold recording and allow mass grading if he deems that to be appropriate and should address concerns raised by the Applicant.
- Condition 56c – This condition relates to a potential trail connection near Lot 20. Staff believes it is sufficient to preserve a future right if needed. The Applicant is still concerned about its economic impact to Lot 20's value.
- Conditions 57 & 58 – These conditions require street lights along existing Cataract and within the project. The Applicant prefers these requirements to not be mandatory. Staff believes they are essential.
- Condition 59 – Revised to reflect Council discussion.

RECOMMENDATION

Approve the attached Resolution approving the TTM.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Larry Stevens". The signature is written in a cursive, flowing style with a large initial "L" and "S".

Larry Stevens
Assistant City Manager for Community Development

Attachments: Resolution No. 2010-69

RESOLUTION NO. 2010-69

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING TENTATIVE TRACT MAP NO. 70583, A REQUEST TO SUBDIVIDE APPROXIMATELY 270 ACRES INTO 61 RESIDENTIAL LOTS ON THE PROPERTY LOCATED AT NORTHERLY EXTENSION OF CATARACT AVENUE INTO THE NORTHERN FOOTHILLS (BRASADA RESIDENTIAL DEVELOPMENT)

WHEREAS, an application for a Tentative Tract Map has been duly filed
by:

NJD Limited
3300 East First Avenue, Suite 510
Denver, CO 80206

Representative: Stan Stringfellow

WHEREAS, the applicant is requesting the Tentative Tract Map to:

subdivide approximately 270 acres into 61 single-family residential lots (or "numbered lots"); nine common area lots (or "lettered lots"), including private roadways and an 83 acre parcel that is anticipated to remain open space and/or habitat conservation land that would be offered for dedication to the City of San Dimas or a conservancy, and related infrastructure (including entry gates, utilities, water quality control basins and a water storage facility).

WHEREAS, the property to be subdivided is described as follows:

Approximately 270 acres at the northerly terminus of Cataract Avenue located at the southwesterly portion of the Northern Foothills

WHEREAS, the Tentative Tract Map was submitted to appropriate agencies as required under Section 17.12.030 of the San Dimas Municipal Code with a request for their report and recommendations; and

WHEREAS, the Planning Commission held public hearings on November 17, 2010 and December 1, 2010 at the hour of 7:00 p.m. and has approved Resolution PC-1430 recommending approval of the Tentative Tract Map; and

WHEREAS, notice was duly given of the public hearing on the matter and that public hearing was held on December 14, 2010 and on January 11, 2011 at

the hour of 7:00 p.m., with all testimony received being made a part of the public record; and

WHEREAS, all requirements of the California Environmental Quality Act and the City's Environmental Guidelines have been met for the consideration of whether the project will have a significant effect on the environment.

NOW, THEREFORE, in consideration of the evidence received at the hearing, and for the reasons discussed by the Councilmembers at the hearing, and subject to the Conditions attached as "Exhibit A", the City Council now finds as follows:

- A. The proposed Tentative Tract Map is consistent with the General Plan, as amended pursuant to General Plan Amendment 08-02, and Specific Plan No. 25, as amended pursuant to Municipal Code Text Amendment 08-04.

The proposed subdivision is consistent with the City of San Dimas General Plan. The property is designated as Northern Foothills, a designation that would allow 0.225 units per acre, or 61 residential lots.

The proposed 61 lots are consistent with Specific Plan No. 25.

- B. The design or improvement of the proposed subdivision is consistent with the General Plan as amended pursuant to General Plan Amendment 08-02 and Specific Plan No. 25 as amended pursuant to Municipal Code Text Amendment 08-04.

The proposed map is consistent with Specific Plan No. 25. The conceptual grading, street layout and lot arrangement are consistent with zoning requirements and development standards set forth therein.

- C. The site is physically suitable for the type of development proposed.

The 270 acre site is adequate in size for the proposed 61 lots and associated open space including designated "no build" areas on residential development lots and other lots designated for open space and habitat conservation.

- D. The site is physically suitable for the proposed density of the development.

The proposed 0.225 units per acre is at the maximum allowable density set forth in the General Plan with lots generally clustered in flatter portions of the site and provision made to preserve large portions of the property in its natural undisturbed condition.

- E. The design of the proposed subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantial and unavoidable injury to wildlife or their habitat.

Based on the Environmental Impact Report prepared for the project, the mitigations proposed and the conditions imposed, this project has been determined to have no significant negative environmental impact on wildlife or their habitat.

- F. The design of the proposed subdivision and the type of improvements are not likely to cause serious public health problems.

Based on the Environmental Impact Report prepared for the project, the mitigations proposed and the conditions imposed, this project has been determined to have no significant negative environmental impact on public health problems except for identified short term construction impacts on air quality.

- G. The design of the subdivision and type of improvements will not conflict with easements, acquired by the public at large, for access through or use of the property within the proposed subdivision.

Provision has been made to include public access through portions of the site for equestrian trails. Adequate provision has been made to protect other public easements through the conditions of approval.

- H. The discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board. Conditions are imposed the public health, safety and general welfare and to implement the purpose and intent of the General Plan.

The project mitigations and the conditions imposed are done so as to protect the public health, safety and general welfare and to implement the intent and purpose of the General Plan. The project will meet all requirements of the Regional Water Quality Control Board.

PURSUANT TO THE ABOVE FINDINGS, IT IS RESOLVED that the City Council approves Tentative Tract Map No. 70583 subject to compliance with the Conditions in Exhibit "A" attached hereto and incorporated herein.

PASSED, APPROVED and ADOPTED, the 11th day of January, 2011 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Curt Morris, Mayor

ATTEST:

Ina Rios, City Clerk

EXHIBIT A

Conditions of Approval

Tentative Tract Map 70583

PLANNING DIVISION - (909) 394-6250

GENERAL

1. The applicant shall agree to defend at his sole expense any action brought against the City, its agents, officers or employees because of the issuance of such approval, or in the alternative, to relinquish such approval. The applicant shall reimburse the City, its agents, officers or employees for any Court costs and attorney's fees which the City, its agents, officers or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his obligations under this condition.
2. This approval is granted contingent upon City Council approval of General Plan Amendment 08-02 and Municipal Code Amendment 08-04 and certification of the Final Environmental Impact Report.
3. The developer shall comply with all applicable requirements of Specific Plan No. 25.
4. The project shall fully incorporate all project features identified in the Final Environmental Impact Report and no changes shall be made unless approved by the Assistant City Manager for Community Development.
5. The applicant shall revise the tentative tract map to increase the size of Lots 6, 29 and 40 to a minimum of 0.50 acres.
6. The applicant shall designate on the final map(s) that the following lots shall be allowed two story structures, not to exceed thirty five (35) feet in height:

Lots 2, 3, 4, 6, 7, 23, 25, 26, 39, 40, 41, 47, 48, 59, 60 and 61

All lot numbers refer to the numbering on the Tentative Tract Map. All other lots shall include deed restrictions prohibiting two story structures or structure exceeding twenty five (25) feet in height.

7. The applicant shall designate on the final map(s) that the following lots shall be allowed for equestrian use:

Lots 19-22 & 49-53

Said lots shall comply with all applicable City standards for horsekeeping in Specific Plan No. 25.

All lot numbers refer to the numbering on the Tentative Tract Map. All other lots shall include deed restrictions prohibiting equestrian uses.

8. The approval of this Tentative Tract Map shall be valid for 24 months, unless otherwise extended automatically by operation of law. The applicant may apply for a 12-month extension based on Chapter 17.12 of the San Dimas Municipal Code. If a Development Agreement is approved granting additional time, then those time limits shall prevail, provided that notwithstanding the Development Agreement the Developer shall still be entitled to any automatic extensions that are granted by operation of law.
9. The Final Map and all improvement plans for this project shall incorporate all applicable mitigations included in the Final Environmental Impact Report and Mitigation Monitoring and Reporting Program for this project.
10. The applicant shall sign an affidavit accepting all Conditions and all Standard Conditions before recordation of the final map.
11. The applicant shall comply with all City of San Dimas Business License requirements and shall provide a list of all contractors and subcontractors that are subject to business license requirements.
12. Los Angeles County Fire Department recommendations shall be incorporated as set forth in the attachment appended at the end of the listed conditions, except that the City Engineer may approve revisions where deemed appropriate provided that said revisions still provide adequate fire safety, and shall also include the following:
 - a. Applicant shall provide a minimum of one emergency access road to the project proceeding in a westerly direction from the double-turnaround on Brasada Lane to the nearest public street in the City of Glendora. Said access shall be a minimum of 20 feet wide and be improved to an all-weather standard deemed acceptable by the City Engineer after conferring with the LA County Fire Department. Jurisdictional approval shall be obtained from the City of Glendora, if required by their ordinances. A restrictive covenant or similar appropriate documentation to guarantee continued use, maintenance and availability of said access shall be reviewed and approved by the City Attorney and City Engineer.
13. The developer shall be responsible for the preparation of Covenants, Conditions and Restrictions (CC&R's) establishing a Homeowner's Association and budget for the maintenance and operation of the common areas, including but not limited to, private streets, project entry gates, landscaping, open space, water quality basins, drainage systems, and retention/detention basins. The developer shall be responsible for all City Attorney costs incurred by the City. This Condition shall be completed and recorded prior to or concurrent with the recordation of the Final Map for the first phase.

- The CC&R's shall be signed and acknowledged by all parties having any record title interest in the property to be developed, and shall make the City a party thereto, and shall be enforceable by the City. The CC&R's shall be reviewed and approved by the City and recorded prior to or concurrent with the recordation of the Final Tract Map for the first phase.
 - The CC&R's shall be in the form and content approved by the Assistant City Manager of Community Development and the City Attorney and shall include such provisions as are required by this approval and as said officials deem necessary to protect the interests of the City and its property owners.
 - The CC&R's shall provide for the effective establishment, operation, management, use, repair and maintenance of all easement areas and facilities.
 - The CC&R's shall provide that the property be developed, operated, and maintained so as not to create a public nuisance.
 - The CC&R's shall provide that if the property is not maintained in the condition required by the CC&R's, then the City, after making due demand and giving reasonable notice, may enter the property and perform, at the owner's sole expense, any maintenance required thereon by the CC&R's or the City's ordinances. The property shall be subject to a lien in favor of the City to secure any such expense not promptly reimbursed.
 - The CC&R's shall include a declaration that shall contain language and an exhibit showing exactly what areas are to be maintained in perpetuity by the Homeowner's Association.
 - The CC&Rs shall include provisions for architectural design guidelines and enforcement thereof.
 - The CC&Rs shall include any provisions specified as project features and/or mitigation measures as appropriate and shall include an approved building envelope on each pad.
14. A non-revocable deed restriction shall be recorded for all non-buildable areas, including designated "no build" areas on the residential development lots, where applicable.
15. The developer shall install a view fence or other permanent markers defining the boundaries of the non-buildable areas prior to issuance of a residential building permit for a lot.
16. Prior to recordation of final tract map, the developer shall submit architectural design guidelines, which shall include a community fencing plan and a building envelope, for review and approval pursuant to Section 18.542.600 et seq of Specific Plan No. 25.

LANDSCAPE

17. The developer shall submit to the Planning Division, prior to the issuance of building permits, detailed landscaping and automatic irrigation plan prepared by a State registered Landscape Architect. All landscaping and automatic irrigation

shall be installed and functional prior to occupancy of the building(s), in accordance with the plans approved by the Planning Division.

18. The developer shall show all proposed transformers on the landscape plan. All transformers shall be screened with landscape treatment such as trellis work or block walls with climbing vines or City approved substitute.
19. All manufactured slopes over three (3) feet in vertical height shall be irrigated and landscaped as approved by the Planning Division.
20. Water efficient landscapes shall be implemented in all new and rehabilitated landscaping for developer-installed landscaping in single-family and multi-family projects, and in private development projects that require a grading permit, building permit or use permit, as required by Chapter 18.14 of the San Dimas Municipal Code.

ENGINEERING DIVISION – (909) 394-6250

21. Rough and/or precise grading plans shall be submitted to the City of San Dimas for review and approval pursuant to Section 18.542.600 et seq of Specific Plan No. 25. Any approval shall generally conform to the conceptual grading plan submitted in conjunction with the Tentative Tract Map. Any off-site grading that may occur shall be subject to review and approval by the adjacent property owner and/or the City of Glendora as appropriate.
22. The developer shall submit public sanitary sewer improvement plans to be reviewed and approved by the City Engineer to serve the development per specifications of the City of San Dimas and the Los Angeles County Department of Public Works Consolidated Sewer Maintenance Division. Proof of payment/clearance is required before the City will issue any sewer permit. The proposed development shall be annexed into the Los Angeles County Sanitation District, including payment of any required annexation fees. All required connection fees shall be paid to the County of Los Angeles Department of Public Works, Sewer Maintenance Division prior to annexation. All required connection fees shall be paid to the City of San Dimas as set forth in Section 14.12.040 of the San Dimas Municipal Code.
23. The developer shall provide an access easement, a all necessary utilities and associated utility easements and 20-foot wide reciprocal access easement to the southerly end of Lot 20 (or along the private road and equestrian easement extending southerly from Stony Ridge Lane) to facilitate future development of the property south of the project to the satisfaction of the City Engineer and the Director of Public Works. This condition may be waived or revised, as deemed appropriate by the City Engineer and Director of Public Works.

24. The developer shall request, in writing, a flood hazard report from the City Engineer, and meet all conditions as set forth in Title 15, Chapter 15.60 of the San Dimas Municipal Code.
25. The developer shall provide drainage improvements to carry runoff of storm waters in the area proposed to be developed, and for contributory drainage from adjoining properties to the satisfaction of the City Engineer. The proposed drainage improvements including the debris/infiltration/detention basins shall be based on the detailed hydrology study conforming to the then applicable Los Angeles County methodology. The developed flows outletting into the existing downstream system(s) from this project cannot exceed the pre-existing storm flows.

The storm drain and debris/detention basin improvement plans shall be approved by the City Engineer. The large debris/detention basin at the southwest of the property shall be approved by the Flood Control District prior to the recordation of the final tract map, and shall be transferred to the Los Angeles County Flood Control District for maintenance. The developer shall pay the City all of the current transfer and processing fees of the MTD system to the County.

The developer shall secure all required permits for impacts to the designated "blue line stream" across the developments to allow for the encroachment of the detention basins, streets, and proposed grading from Fish and Game, Regional Water Quality Board, U.S. Army Corps of Engineers and/or any other State or Federal agency with jurisdiction prior to issuance of any grading permit.

Those proposed debris/detention basins requiring a permit from the State Division of Dam Safety shall be reviewed by the State Division of Dam Safety for compliance and maintenance requirements prior to issuance of any permits and/or City approvals.

All required debris and detention basins not maintained by any governmental agencies shall be maintained by the HOA. The CC&R's shall include provisions of maintenance plans with an action plan with sufficient dedicated maintenance funds approved by the City for major storm clean-up and debris removal to the satisfaction of the City Engineer and the Director of Public Works.

26. To guarantee the maintenance of the three on-site debris and/or detention basins (with event capacity ranging from 30,240 to 64,800 cubic feet) improvements, to protect the City in case the developer or Homeowners Association is in default of the obligations to maintain such on-site drainage facilities and to provide sufficient funds for ongoing maintenance of all the on-site debris and/or detention basin that are to be maintained by the Homeowner's Association, the developer shall post surety satisfactory to the City Engineer in an amount determined to be satisfactory by the City Engineer. In the event of a disagreement in the amount of the deposit a third party review may be conducted, at the developer's expense, for consideration by the City Engineer. The deposit shall be released at such time when the Homeowners' Association has equal amount of funds for the maintenance of the said facilities. If the HOA does not have enough funds to perform the annual maintenance of the facilities and adequate reserves for a major event as described within three years of the

completion and acceptance by the City Engineer and Director of Public Works, the funds will be called and enforced by the City and utilized for ongoing maintenance and emergency cleanup needs of the aforementioned facilities.

27. For projects which disturb soil during wet season, applicant must submit a signed certification statement declaring that contractor will comply with Minimum Best Management Practices (BMPs) required by the National Pollutant Discharge Elimination System (NPDES), and also submit a Local Storm Water Pollution Prevention Plan/Wet Weather Erosion Control Plan.
28. The developer shall provide street improvements on all streets within the limits of the development. All work adjacent to or within the public or private right-of-way must meet the requirements specified in the Standard Specification for Public Works Construction (The Greenbook) and shall be subject to review and approval of the City Engineer.
29. Private Street "A" and all other labeled streets shall be shown on the Tentative Tract Map as a private street and shall be fully improved with curbs and gutters for drainage as generally set forth in the Tentative Tract Map, A.C. pavement, service vehicle turnout and guest parking spaces to the satisfaction of the City Engineer and in accordance with City Standards. Provisions for the maintenance of the private street shall be included in the CC&R's of the HOA for the development.
30. Beyond the existing Cataract Avenue right of way, developer shall ensure that the private street prior to the private gate entry shall provide turnaround capability to the general public by providing an easement for the benefit of the general public for such purposes. The street shall have right-of-way width of thirty feet (30') and curb-to-curb width of twenty-six feet (26'). The Homeowners Association will maintain all improvements within said easement area, including the landscaping, to the satisfaction of the Director of Public Works and the City Engineer.
31. The developer shall provide off-site street improvements for that portion of Cataract Avenue within the City of San Dimas from the limits of the development to Foothill Boulevard in accordance with City Standards. Improvements shall include replacement of damaged curbs and gutters, westerly curb transition, removal and replacement of slotted cross gutter at Foothill Boulevard, slurry top coat and/or paving, signing and striping, with the timing of said improvements to be determined as part of the approval of the phasing plan. All work adjacent to or within the right-of-way must meet the requirements specified in the Standard Specifications for Public Works Construction (the Greenbook) with Los Angeles County Amendments and shall be subject to review and approval of the City Engineer. Pavement design and construction to be approved by the City Engineer and the Director of Public Works.
32. If provided, parking bump-outs shall be revised from the current design to accommodate better usability of the spaces. Any final design shall be approved by the City Engineer. Adequate provision in architectural guidelines shall be made for necessary on-site guest parking.

33. Curb radii shall be twenty-five (25) feet for local street intersection and thirty-five (35) feet for intersections with major or secondary highways.
34. The developer shall provide decorative mailboxes that are agreeable to the developer and the City of San Dimas. The developer shall obtain approval from the Postmaster General for the group mailbox drop-off/pick-up area prior to the issuance of C of O's.
35. The developer shall submit water plans to be reviewed and approved by Golden State Water Company, the City Engineer and the Los Angeles County Fire Department.
36. Provide utility sewer, drainage, and reciprocal access easements for the development to the satisfaction of the City Attorney, City Engineer, and the Director of Public Works.
37. The Developer shall be responsible for any repairs within the limits of the development, including streets and paving, curbs and gutters, and street lights, or the installation of same where not existing, as determined by the City Engineer and the Director of Public Works.
38. The developer shall underground all new utilities and shall underground all existing overhead utilities to the closest power pole off-site. The developer shall coordinate the installation of underground cable TV lines with the City approved cable television company.
39. All site, grading, landscape, irrigation, and street improvement plans shall be coordinated for consistency prior to issuance of any permits (such as grading, tree removal, encroachment, building, etc.) or prior to final map approval.
40. A Final Tract Map prepared by or under the direction of a Registered Civil Engineer or Licensed Land Surveyor must be processed through the City Engineer prior to being filed with the County Recorder. The Final Tract Map for Phase One shall be recorded prior to issuance of any grading or building permits except that the City Engineer may determine to hold the Final Map for recordation and issue grading permits prior to such recordation if the Final Tract Map is submitted to the City and all associated requirements for recordation have been satisfactorily met. If so held, the City Engineer shall determine the time for the City to record the Final Map.
41. All easements existing at the time of the Final Tract Map approval must be accounted for on the approved tentative tract map. This includes the location, owner, purpose, and recording reference for all existing easements. If an easement is blanket in nature or indeterminate in nature, a statement to that effect must be shown on the tentative map in lieu of its location.
42. For projects one (1) acre or greater, project must be covered under a General Construction Activity Stormwater Permit (GCASP). Developer must submit a Notice of Intent and Waste Discharger's Identification (WDID) number as evidence of having applied for a GCASP before the City will issue a grading permit.

43. For all projects subject to Standard Urban Stormwater Mitigation Plan (SUSMP) regulations, applicant must submit a site-specific drainage concept and stormwater quality plan to mitigate post-development stormwater. A fully executed "Maintenance Covenant for SUSMP Requirements" shall be recorded with the L.A. County Registrar/Recorder and submitted to the City prior to the issuance of Certificate of Occupancy.
44. Construction plans for any activity in the area of Metropolitan Water District's pipelines or facilities, shall be submitted to MWD for review and written approval prior to the issuance of grading permits. The Final Tract Map and Construction plans shall clearly identify all of the existing MWD's facilities and rights-of-way.
45. Adequate line-of-sight shall be maintained at all driveways to the satisfaction of the City Traffic Engineer and City Engineer.
46. The applicant shall obtain written permission from the adjacent property owners allowing the proposed grading and/or construction of any temporary or permanent facilities within the abutting property. The maintenance mechanism for those improvements shall be identified. If prior to grading permits or written permission cannot be obtained, the grading shall be modified such that no off-site grading occurs.
47. All infrastructure necessary to serve the proposed development for each construction phase, (water, sewer, storm drain, and streets) shall be in operation prior to the issuance of Certificates of Occupancy, or equivalent occupancy releases for the applicable construction phase.
48. Improvement plans and necessary letters of credit, cash and/or bonds to secure the phased construction of all streets, storm drains, detention basins, water, sewer, grading, traffic signals and landscaping shall be submitted and approved by the City Engineer and Director of Public Works prior to the recordation of the Final Tract Map for each phase.
49. Easements for Private Driveways and Fire Lanes, equestrian trails, and all utilities, including water, sewer, storm drains, and retention basins shall be provided on the Final Tract Map for each phase to the satisfaction of the City Engineer, City Attorney, and the Director of Development Services.
50. The applicant shall provide all-weather vehicular access to all public and private facilities including all sewer manholes, storm drain manholes, drainage inlets, and drainage outlets.
51. All of the water quality basins shall be fully improved per applicable storm water quality standards and practices to the satisfaction of the City Engineer and the Director of Public Works. Provisions for the maintenance of the private water quality basins shall be included in the CC&R's of the HOA development.
52. The applicant shall designate on the Final Tract Map the open space areas of the development as "Restricted Use Areas for Natural Open Space Purposes" to the satisfaction of the City Engineer and the Director of Development Services.

53. Lot I consisting of approximately 83.97 acres shall be designated as a lettered lot, not a Remainder parcel, on the Tentative and Final Tract Maps. Lot I shall be offered for dedication to the City of San Dimas. No portion of any area required to be maintained through a Fuel Modification Plan shall extend into Lot I. Adequate provision shall be made to allow access for maintenance and similar purposes.
54. The boundaries of the Tentative Tract Map shall be modified to include 40 acres, now designated "Not A Part" to identify this 40 acres as a "remainder parcel."
55. The type and color of material for all proposed retaining walls shall be reviewed and approved by the Director of Development Services prior to the issuance of grading permits.
56. A public equestrian trail(s) shall be provided through as follows:
 - a. As shown on the Tentative Tract Map extending along Stoney Ridge Lane from the emergency access turnaround to the south property line.
 - b. As shown on the Tentative Tract Map along Sycamore Canyon Road in the northeasterly corner of the property.
 - c. Per an exhibit to be attached to these conditions extending southerly from the south property line in the proximity of Lot 20 and along Stoney Ridge Lane easterly to the trail identified in (a) above to provide adequate trail linkage.
 - d. Per an exhibit to be attached to these conditions extending along the existing fire road (Wildwood Motorway) from the east property line, thence along the driveway serving Lots 26 & 27 to the Brasada Lane cul-de-sac, thence along Brasada Lane to the connecting road between Brasada Lane and Chimney ridge Lane, thence along said connecting road to Chimney Ridge Lane, thence following Chimney ridge Lane to Hidden Ridge Lane and extending to Ferguson Motorway.

All such trails shall be available for public use, shall be improved to meet City of San Dimas standards, and shall be dedicated to the City for maintenance upon satisfactory completion.

In lieu thereof on-site equestrian trails may be replaced by adjacent off-site trails subject to the review and approval of said alternate trail system by the Equestrian and Planning Commissions if they find and determine that the alternate system provides equivalent or similar public benefit.

57. The developer shall install street lights on the public portion of Cataract Avenue to meet current City standards and to the satisfaction of the City Engineer and Director of Public Works.
58. The developer shall install street lights on the private streets at all intersections, ends of the streets, and at sharp curves, as necessary for public safety, to the satisfaction of the City Engineer and Director of Public Works. The design of street lights shall be subject to review and approval by the City Engineer as part of the street improvement plans. Any street lights shall conform to limited and directed lighting mitigation measures in the EIR.

59. Street name signs and stop signs shall be installed at location as determined by the City Engineer and in accordance with City Standards. Street names shall be as follows:

Names Shown on TTM	Approved Street Names
Brasada Lane	Brasada Lane
Stoney Ridge Lane	Canyon Oaks Lane
Lookout Point Lane	Country Point Lane
Hidden Ridge Road	Spur Ridge Trail
Spur Ridge Road	Canyon Oaks Lane
Trail Ridge Road	Trail Ridge Lane
Chimney Ridge Lane	Same or Chimney Oaks Lane
Unnamed extension to Lots 21 & 22	Sage Ridge Trail

60. All required concrete terrace drains and downdrains shall be constructed with an earth-tone color to the satisfaction of the City Engineer and the Director of Development Services.
61. During construction, the developer shall maintain vehicular and pedestrian access to all adjacent existing residences at all times.
62. Obtain all required permits from US Army Corps, Fish & Game, Regional Water Quality Board and any other State or Federal Agency with jurisdiction.
63. The project may be completed in phases, with multiple final maps being filed. The number of phased final maps shall not exceed six. The phasing plan shall be submitted for review and approval by the City Engineer.
64. The final map shall be in substantial conformance with the Tentative Tract Map as determined by the City Engineer and the Director of Development Services.

PARKS & RECREATION – (909-394-6230)

65. The developer shall comply with City regulations regarding property park development impact fee. Fees shall be paid prior to issuance of building permits.
66. The developer shall comply with Chapter 17.36 of the San Dimas Municipal Code regarding Park Land Dedication (Quimby Act). The City may require fees in lieu of land or a combination thereof based on the market value of the land to be dedicated. Fees shall be paid prior to recordation.

Fire Department Recommendations (See Condition # 12)

SUBDIVISION, WATER AND ACCESS REQUIREMENTS

ADDITIONAL PAGE

SUBDIVISION NO.

PAGE NO. **1**

- 1 Single family detached homes shall require a minimum fire flow of 1,250 gallons per minute at 20 pounds per square inch residual pressure for a two-hour duration. When there are five or more units taking access on a single driveway, the minimum fire flow shall be increased to 1,500 gallons per minute at 20 pounds per square inch residual pressure for a two-hour duration. Homes which are in excess of 5,000 square feet shall provide fire flows as determined by Los Angeles County Fire Department Regulation #8, Table 1. Fire hydrant spacing shall be 600 feet and shall meet the following requirements:
 * No portion of lot frontage shall be more than 450 feet via vehicular access from a public fire hydrant for lots less than one acre.
 * Lots which are larger than one acre shall have no portion of a structure placed on a lot where it exceeds 750 feet via vehicular access from a properly spaced public fire hydrant.
 * When cul-de-sac depth exceeds 450 feet on a residential street, hydrants shall be required at the corner and mid-block.
 * Additional hydrants will be required if hydrant spacing exceeds specified distances.
 - 2 Road profiles shall be submitted for review and comment prior to the clearance of the tentative. Gated entries shall be provided with approved emergency opening devices in compliance with Los Angeles County Fire Department Regulation #5 and shall be applied to both sides of the proposed gated entries as shown on the tentative map. Divided entries and gated entries shall provide for a minimum width of 20' for both ingress and egress.
 - 3 It is the recommendation of the Fire Department to maintain the proposed map street connections to the easterly and westerly property boundaries for secondary access. The tentative map indicates an easement listed as C-12, provide additional clarification on its use and if it is above or below. The proposed water tank locations shall be provided with 15' of paved access and a turnaround area at the tank location.
 - 4 The proposed Chimney Ridge shall be increased to 24' in width and provide an approved Fire Department turnaround in accordance with all applicable codes. Hidden Ridge Lane shall be increased in width to provide a minimum access width of 24'.
 - 5 Lot 48 shall provide a Fire Department turnaround onto the tentative map in compliance with all applicable codes. A Fire Department approved turning area shall be provided for all driveways exceeding 150 feet in length and at the end of all cul-de-sacs. Cul-de-sac designs shall provide a minimum turning radius of 32' while the cross gradient shall not exceed 3%.
 - 6 Clearly indicate the on-site access for Lot 47. On-site access shall be a minimum width of 20'. Lots which provide two habitable units at separate elevations shall provide for 20' of all weather access for emergency purposes.
- FIRE DEPARTMENT HOLD** on the tentative map shall remain until verification from the Los Angeles County Fire Dept. Planning Section is received, stating adequacy of service. Contact (323) 881-2404.
 - Access shall comply with Section 503 of the Fire Code, which requires all weather access. All weather access may require paving.
 - Fire Department Access shall be extended to within 150 feet distance of any exterior portion of all structures.
 - Where driveways extend further than 150 feet and are of single access design, turnarounds suitable for fire protection equipment use shall be provided and shown on the final map. Turnarounds shall be designed, constructed and maintained to insure their integrity for Fire Department use. Where topography dictates, turnarounds shall be provided for driveways that extend over 150 feet in length.

- Private driveways shall be indicated on the final map as "Private Driveway and Firelane" with the widths clearly depicted and shall be maintained in accordance with the Fire Code. All required fire hydrants shall be installed, tested and accepted prior to construction.
- Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. All required fire hydrants shall be installed, tested and accepted prior to construction.
- This property is located within the area described by the Fire Department as "Very High Fire Hazard Severity Zone" (formerly Fire Zone 4). A "Fuel Modification Plan" shall be submitted and approved prior to final map clearance. (Contact Fuel Modification Unit, Fire Station #32, 605 North Angeleno Avenue, Azusa, CA 91702-2904, Phone (626) 969-5205, for details).
- Provide Fire Department or City approved street signs and building access numbers prior to occupancy.
- Additional fire protection systems shall be installed in lieu of suitable access and/or fire protection water.
- The final concept map, which has been submitted to this department for review, has fulfilled the conditions of approval recommended by this department for access only.
- These conditions shall be secured by a C.U.P. and/or Covenant and Agreement approved by the County of Los Angeles Fire Department prior to final map clearance.
- The Fire Department, Land Development Unit has no additional requirements for this division of land at this time. Additional Fire Department requirements will be required when this land is further subdivided and/or during the building permit process.

Comments: THIS PROJECT AS SUBMITTED IS NOT CLEARED FOR PUBLIC HEARING.
ACCESS NOT APPROVED.
REFER TO ATTACHED ADDITIONAL SHEET INDICATE COMPLIANCE ON THE TENTATIVE MAP, AND
RESUBMIT FOR REVIEW/APPROVAL.

WATER SYSTEM REQUIREMENTS – INCORPORATED

Subdivision No: Tract 70583 Map Date 07-07-2010
 Revised _____ City San Dimas

- Provide water mains, fire hydrants and fire flows as required by the County of Los Angeles Fire Department, for all land shown on map which shall be recorded.
- The required fire flow for public fire hydrants at this location is _____ gallons per minute at 20 psi for a duration of _____ hours, over and above maximum daily domestic demand. _____ Hydrant(s) flowing simultaneously may be used to achieve the required fire flow.
- The required fire flow for private on-site hydrants is _____ gallons per minute at 20 psi. Each private on-site hydrant must be capable of flowing _____ gallons per minute at 20 psi with two hydrants flowing simultaneously, one of which must be the furthest from the _____.

- Fire hydrant requirements are as follows:
- Install ____ public fire hydrant(s). Upgrade / Verify ____ existing Public fire hydrant(s).
Install ____ private on-site fire hydrant(s).
- All hydrants shall measure 6" x 4" x 2-1/2" brass or bronze, conforming to current AWWA standard C503 or approved equal. on-site hydrants shall be installed a minimum of 25' feet from a structure or protected by a two (2) hour rated firewall.
- Location: As per map on file with the office.
 Other location: ____
- All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval. Vehicular access be provided and maintained serviceable throughout construction.
- The County of Los Angeles Fire Department is not setting requirements for water mains, fire hydrants and fire flows as a condition of approval for this division of land as presently zoned and/or submitted.
- Additional water system requirements will be required when this land is further subdivided and/or during the building permit process.
- Hydrants and fire flows are adequate to meet current Fire Department requirements.
- Fire hydrant upgrade is not necessary, if existing hydrant(s) meet(s) fire flow requirements. Submit original water availability form to our office.

SUBMIT COMPLETED (ORIGINAL ONLY) FIRE FLOW AVAILABILITY FORM TO THIS OFFICE FOR REVIEW.

COMMENTS: WATER SYSTEM REQUIREMENTS TO BE DETERMINED UPON APPROVED ACCESS.

All hydrants shall be installed in conformance with Title 20, County of Los Angeles Government Code and County of Los Angeles Fire Code, or appropriate City regulation. This shall include minimum six-inch diameter mains. Arrangements to meet these requirements must be made with the water purveyor serving the area.

By Inspector Clayton S. Soren

Date 07-07-2010

Land Development Unit - Fire Prevention Division - (323) 890-4243, Fax (323) 890-9783

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MEMORANDUM

TO: The Honorable Mayor and Members of the City Council
FROM: J. Kenneth Brown, City Attorney
DATE: January 7, 2011
RE: Ordinance No. 1202 – Approval of Development Agreement

At the December 14, 2010 City Council meeting, and after the public hearing was closed, the City Council approved the Environmental Impact Report, the General Plan Amendment, the Specific Plan Amendment, and the Tentative Tract Map. It also approved the Development Agreement (the "Agreement") and introduced Ordinance No. 1202. During the discussion regarding the Agreement, I said that we were still in discussions with the Developer and the Developer's attorney regarding the equestrian trails, the open-space dedication and other matters. Over the past weeks we have had those discussions and reached agreement on almost all of the issues.

I attach the Agreement that we are recommending to the City Council for approval. It shows all of the changes from the Agreement that was presented at the meeting on December 14, 2010. Because there are substantive changes to the Agreement from that which was previously presented to you, it is my recommendation, and I have discussed this with the Developer's attorney, that the City Council again approve the Agreement and re-introduce Ordinance No. 1202.

Although there is agreement on almost all of the issues, there are three further changes that the Developer requests be made to the Agreement. They intend to address these points at the January 11, 2011 meeting. The Developer's requested additional changes and the specific wording of those changes are attached. They are the following:

Section 4.6.1. This provision requires the Developer to approve a temporary irrevocable license agreement now over the existing motorways that traverse the Developer's property. The Developer objects to granting the license at this time preferring to wait until the first final map has been recorded and the public improvements are installed. These would include the equestrian trails required under the terms of the tentative tract map approvals. The Developer is however willing to grant a license over the McHenry Property after that escrow closes.

6d(1)

Section 4.7. This provision addresses the time when the Developer conveys to the City the approximately 84 acre tract of undeveloped land which would be used for approved limited uses and permanent open space. The existing provision provides that the City can request this transfer to the City at any time after the challenge period has past. The Developer requests that the transfer not take place until the recording of the first final map; and

Section 7.32. The Developer request that an attorneys fee clause be provided so if there is litigation regarding any term of the Agreement, the prevailing party, be that the City or the Developer, would be entitled to recover its attorneys fees

We do not recommend that the attorneys fees provision be included in the Agreement. It is a policy question as to when the City Council wishes to obtain the transfer of the 84 acres, be that at the time when the first map is recorded or sometime prior thereto and it is also a policy question for the City Council to determine whether the existing motorways on the Developer's Property (not the McHenry Property), utilized as they are at the present time but without permission from the owner – shall be licensed for use now.

In addition the Developer is requesting that if the 84 acre Open Space Parcel is conveyed to the City and the Agreement is terminated before the First Phase Map is recorded and the Developer elects to pursue an alternate project in accordance with any then applicable governmental rules and requirements, then in connection with that alternate development, Developer shall be provided credit for the Open Space Parcel as if Developer retained ownership of the parcel for purposes of calculating density for the property. This request is equitable since the City would own the 84 acres and the Developer would be starting over.

After the City Council has given direction regarding these items, we recommend that the City Council waive further reading and introduce:

ORDINANCE NO. 1202, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING A DEVELOPMENT AGREEMENT RELATING TO THE APPROVAL OF A RESIDENTIAL DEVELOPMENT FOR 61 SINGLE-FAMILY RESIDENTIAL LOTS IN THE NORTHERN FOOTHILLS OF SPECIFIC PLAN NO. 25.

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement” or “Development Agreement”) is made and entered into as of _____, 2010, by and between the CITY OF SAN DIMAS, a general law city and municipal corporation (“City”), and NJD, LTD., a Texas limited partnership (“Developer”) pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7, Sections 65864 through 65869.5 of the California Government Code. The City and 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 is the owner of certain real property which is located in the City, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference and is shown on the location map attached hereto as Exhibit B (hereafter “Property”); and

(b) Developer has contractual rights to acquire approximately 76.7 acres of property in the City adjacent to the Property, commonly known as Assessor’s Parcel Numbers (“APN”) 8665-001-004 and 8165-001-005, which property is depicted on Exhibit B-1 and more particularly described in Exhibit B-2 attached hereto and incorporated herein by reference (the “Additional Property”). Developer’s rights to acquire the Additional Property are established by that certain Option Agreement and Right of First Refusal, as amended (“Option Agreement”), as evidenced by that recorded Amendment to Memorandum of Option Agreement and Right of First Refusal recorded as Instrument No. 2008-1872650 in Los Angeles County, California. County Official Records on October 21, 2008. As provided by Sections 4.3 and 4.4 of that Option Agreement, Developer is entitled to seek Project-related approvals and the current fee owner is obligated to cooperate in seeking such approvals. At such time that Developer becomes fee owner of the Additional Property an approximately 40-acre portion of the Additional Property, as depicted on Exhibit B-1, shall become part of the “Property” for purposes of this Agreement. The Parties agree that this is a sufficient beneficial interest for an approximately 40 acre portion of the Additional Property to be included in this Agreement.

(c) Developer desires to construct a Project (as hereinafter defined) on the Property consisting, among other improvements and amenities, of sixty-one (61) single family homes and approximately eighty-four (84) acres of open space; and

(d) Developer and City are also parties to that certain Settlement Agreement & Release dated as of December 21, 2004 (the “Settlement Agreement”), pursuant to which the current Project is being processed; and

(e) Concurrently with or prior to approval of this Agreement, City has approved and/or adopted the General Plan Amendment, the Specific Plan Amendment, the TTM, and the other Project Approvals (as all of the foregoing terms are hereinafter defined) applicable to the Project; and

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

(g) Developer's TTM and other Project Approvals allowing construction of the Project have been conditionally approved concurrently herewith, and the Conditions of Approval (as hereinafter defined) applicable thereto have been accepted by the Developer as being lawfully imposed thereon; and

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

(i) 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 as therein described; and

(j) 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

(k) Developer desires to obtain the vested right from the City to allow Developer to develop the Project in accordance with the provisions and requirements of this Agreement, the Project Approvals, the Conditions of Approval and the Applicable Rules (as hereinafter defined), including only those modifications, changes or additions to those Applicable Rules permitted or required by this Agreement; and

(l) The Planning Commission and the 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 General Plan (as hereinafter defined), and the Specific Plan; and

(m) An environmental review has been conducted and completed with regard to the Project and a FEIR was certified by the City Council on _____, _____, December 14, 2010, in accordance with CEQA (as hereinafter defined), including all State and local guidelines, which FEIR contemplates a development agreement and its execution by the Parties as one component of the Project; and

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

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

(p) This Agreement will serve to eliminate uncertainty in planning and will provide for the orderly development of the Project in a manner consistent with the Applicable Rules and the General Plan and Specific Plan; and

(q) 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 (as hereinafter defined) of this Agreement, except pursuant to the provisions of this Agreement; and

(r) The Project will provide substantial benefit to the City by providing, without limitation, increased tax and other revenues, the construction and dedication of public improvements, the offer for dedication to permanent public open space of approximately eighty-four (84) acres, the provision for dedication and improvement of equestrian trails connecting Horse Thief Canyon Park and the Sycamore Canyon trail system, and the creation of job opportunities for residents of the City.

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. Incorporation of Recitals.

The foregoing recitals are hereby acknowledged and affirmed by the Parties and are incorporated herein as a substantive term of this Agreement.

Section 2. 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 set forth below:

2.1 “Applicable Rules” means, as provided in Government Code Section 65866, the rules, regulations, and official policies, including but not limited to those contained in the City’s General Plan (as Amended by the Project Approvals), Municipal Code (as Amended by the Project Approvals), Specific Plan No. 25 (as amended by the Project Approvals) and Zoning Regulations (defined below), governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications applicable to development of the Property, whether adopted by the City Council or the voters in an initiative, which are in force as of the Effective Date of this Agreement. During the term of this Agreement and except as otherwise expressly provided herein, (1) the permitted uses of the Property; (2) the density or intensity of that use; (3) the maximum height and size of proposed buildings on the Property; and (4) the provisions for reservation or dedication of land for public purposes applicable to the Property shall be those provided by the “Project Approvals” (as defined below), including, without limitation, the “General Plan” (as defined below), the “Specific Plan” (as defined below), and the TTM. Applicable Rules shall also mean and include all Developer Fees (as hereinafter defined) and Processing Fees (as hereinafter defined) in effect from time to time during the term of this Agreement and there shall be no limit upon the Developer Fees and the Processing Fees payable with respect to the Project by virtue of this Agreement; provided that, as further provided in this Agreement below, so long as this

Agreement remains in effect, no new Development Fees other than those shown on Exhibit C attached hereto shall be imposed upon the Project in connection with its development. Notwithstanding anything above contained in the definition of the Applicable Rules which appears to be to the contrary, (i) this Agreement shall not prevent the City, in subsequent actions applicable to the Property, from applying new rules, regulations and policies which do not conflict with the Project Approvals or Applicable Rules applicable to the Property as set forth herein ("New Rules"), nor prevent the City from denying or conditionally approving any subsequent development project application on the basis of such New Rules (except this shall not apply to Minor Modifications), (ii) this Agreement shall not prevent the City from imposing reasonable conditions or restrictions on future tentative subdivision or parcel maps and/or conditional use permits where such conditions or restrictions are necessary to avoid putting the residents of the Project or the area immediately surrounding the Project in a condition which would adversely impact their health or safety, or both, based on objective and identified health and safety standards, and (iii) this Agreement shall not prevent the City from requiring that the Project meet all applicable requirements of the Los Angeles County Flood Control District ~~with respect to changes to the Project required by revisions to the approved drainage plan.~~ Notwithstanding anything above to the contrary, the term "Applicable Rules" shall not limit the application to the Project of new rules, regulations, and official policies of the City governing design, improvement and construction standards and specifications (each a "Design Rule") if (i) such change is a citywide change applying uniformly throughout the City, and (ii) except for update or adoption of uniform codes pursuant to the next sentence (which shall apply to the Project in any event), such change does not impose a material adverse financial impact upon the overall Project or the development thereof as contemplated by this Agreement and the Project Approvals; provided, further, that the additional time, if any, necessary to comply with a change in a Design Rule (as opposed to the additional cost or expense of compliance) shall not, in itself, constitute a material adverse financial impact. Notwithstanding anything herein to the contrary, the Developer Parties specifically acknowledge and agree that the construction of the Project shall be subject to (i) any adoption or update of building, electrical, mechanical, fire, pool or other similar uniform codes of citywide scope which are based on the recommendations of a multi-state professional organization and become applicable throughout the City, including all applicable California Building Standards Codes (as defined below) and (ii) all City-wide laws, regulations or ordinances relating to energy and/or resource conservation (so-called "sustainability" or "green building" laws, regulations or ordinances). Nothing in this Agreement deprives Developer of any rights it may have under Government Code Section 66474.2(a) and nothing in this Agreement constitutes a waiver by Developer of such rights.

2.2 "California Building Standards Codes" means those building, electrical, mechanical, fire, pool and other similar regulations, which are mandated by state law and which become applicable throughout the City, including, but not limited to, the California Building Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, and the California Fire Code (including those amendments to the promulgated California codes which reflect local modification to implement requirements justified by local conditions, as allowed by state law, and which are applicable City-wide).

2.3 "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 21000, et seq.) (the "Act") and the guidelines promulgated by the

Governor's Office of Planning and Research in accordance with said Act (the "Guidelines"), as they now exist or may hereafter be amended.

2.4 "City Manager" shall mean the City Manager of the City, or his designee.

2.5 ~~2.4~~ "Conditions of Approval" shall mean those conditions of approval imposed by the City upon the Project Approvals as of the date hereof, as they may be amended or modified by the City upon NJD'S application prior to recording of the Final Map in order to comply with the requirements of other approving agencies (e.g., without limit, USFWS, CDFG, Division of Dam Safety) including all requirements of any applicable Mitigation Monitoring Program, and any additional conditions of approval hereafter imposed on the Project consistent with Section 5.1.2 below.

2.6 ~~2.5~~ "Developer Fees" 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 or any third party fees imposed by other agencies or jurisdictions even if collected by the City on behalf of those entities, such as, Regional Congestion Mitigation Fees, (if approved) Regional Water Quality Control Board fees, school fees and similar third party fees. The Developer Fees in effect as of the Effective Date of this Agreement are listed on Exhibit C, which is incorporated into this Agreement by this reference. The Developer Fees listed on Exhibit C are the only Developer Fees that the City may impose or levy on the Project and no new Developer Fees first adopted by the City after the Effective Date of this Agreement shall be applicable to the Project during the Term of this Agreement; provided, that nothing herein shall be construed or applied to limit any increases in the Developer Fees and the Project shall be subject to any properly adopted increase in those existing Developer Fees after the date of this Agreement.

2.7 ~~2.6~~ "Development Agreement" or "Agreement" means this Agreement.

2.8 ~~2.7~~ "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.

2.9 ~~2.8~~ "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.

2.10 ~~2.9~~ "Effective Date" shall mean the date this Agreement, fully executed, is recorded in the Office of the Recorder of Los Angeles County.

2.11 ~~2.10~~ "Enabling Resolution" means Resolution No. 2010-62 adopted by the City Council on November 23, 2010 (Exhibit D hereto).

2.12 ~~2.11~~ “FEIR” shall mean that certain Final Environmental Impact Report (FEIR) (SCH#2010051020) which was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA. “Mitigation Monitoring Program” shall mean the mitigation measures imposed upon the Project pursuant to the FEIR and the Conditions of Approval.

2.13 ~~2.12~~ “General Plan” means that certain ~~the~~ General Plan 99-1, of the City, as amended by the City prior to or concurrent with this Agreement.

2.14 ~~2.13~~ “General Plan Amendment” means that certain General Plan Amendment approved by the City Council by Resolution No. 2010-68.

2.15 ~~2.14~~ “Ministerial Permit(s)” or “Ministerial Approval(s)” mean a permit or approval including, but not limited to, building permits, grading permits, zone clearances and certificates of occupancy, which require 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.

2.16 ~~2.15~~ “Mortgagee” means a mortgagee of a mortgage or a beneficiary under a deed of trust encumbering all or a portion of the Property.

2.17 ~~2.16~~ “Phase” shall mean any discrete portion or part of the Project developed by the Developer or any successor in interest thereto.

2.18 ~~2.17~~ “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, inspection fees and certificates of occupancy. Processing Fees shall not mean or include Developer Fees.

2.19 ~~2.18~~ “Project” means the project as described in the General Plan Amendment, the Specific Plan Amendment, the TTM and the other Project Approvals.

2.20 ~~2.19~~ “Project Approvals” shall mean, collectively, the Specific Plan Amendment, the General Plan Amendment, the TTM, this Agreement and any other plans, maps, permits and entitlements of every kind and nature specifically applicable to the Project, and shall also include any subsequent project specific approvals obtained by the Developer. To the extent that any of the Project Approvals are amended, from time to time, “Project Approvals” shall include, if Developer and City agree in writing, such matters as so amended. If this Agreement is required by law to be amended in order for “Project Approvals” to include any such amendments, then “Project Approvals” shall not include such amendments unless and until this Agreement is so amended.

2.21 ~~2.20~~ “Property” means the real property described on Exhibit A and shown on the Location Map attached as Exhibit B. Upon Developer obtaining fee title to the Additional Property, ~~an~~ the approximately 40-acre northern portion of the Additional Property, as

depicted on Exhibit B-1 and described on Exhibit B-2, shall be deemed part of the "Property" for the purpose of this Agreement.

2.22 ~~2.21~~ "Reserved Powers" means the rights and authority excepted from this Agreement's restrictions on the City's police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date with respect to development or use of the Project that may be in conflict with the Applicable Rules, but are: (1) necessary to prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety based on objective and identified health and safety standards; (2) necessary to implement California Building Standards Codes; (3) necessary to comply with state or federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court; (4) Design Rule changes described in Section 2.1 above; (5) agreed to or consented to by Developer; (6) are City-wide fees or charges of general applicability other than new Developer Fees which are inapplicable to the Project in accordance with the provisions of this Agreement; or (7) are City-wide laws, regulations or ordinances relating to energy and/or resource conservation (so-called "sustainability" or "green building" laws, regulations, or ordinances).

2.23 ~~2.22~~ "Specific Plan" means Specific Plan No. 25, as amended, as approved by the City prior to or concurrent with this Agreement pursuant to Ordinance No. 1201.

2.24 ~~2.23~~ "Specific Plan Amendment" means _____the amendment to Specific Plan No. 25 resulting from and as approved by Ordinance No. 1201.

2.25 ~~2.24~~ "Term" means the term of this Agreement, which shall commence on the Effective Date of this Agreement and shall terminate fourteen (14) years from and after the Effective Date of this Agreement unless modified or extended as set forth in this Agreement or by mutual written consent of the Parties hereto. If any party other than Developer initiates litigation that challenges the Project or the Existing Project Approvals, then Developer will have the right to toll commencement of the Term. The tolling shall commence upon receipt by the City of written notice from Developer invoking this right to tolling. The tolling shall terminate when (1) a final order is issued in said litigation that upholds the Project and the Project Approvals or (2) the litigation is dismissed with prejudice by all parties; whichever occurs first; provided that any tolling shall not exceed twenty-four (24) months unless the City consents thereto.

2.26 ~~2.25~~ "TTM" means that certain Tentative Tract Map No. 70583, as ~~submitted on August 28, dated October 27, 2010~~, for the subdivision of the Property and a portion of the Additional Property into 61 residential lots, lettered common area lots, and related improvements, approved by the City Council pursuant to Resolution No. _____2010-69.

2.27 ~~2.26~~ "Zoning Regulations" shall mean the official zoning regulations of the City.

Section 3. Recitals of Premises, Purpose and Intent.

3.1 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 authorized 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 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 costs of development.”

3.2 Intentionally Omitted

3.3 Property Ownership. The Developer is the owner of the Property and has a legal and equitable interest in the Additional Property and thus is qualified to enter into and be a party to this Agreement. Upon becoming fee title owner of the Additional Property, an approximately 40 acre portion of such property generally depicted on Exhibit B-1 shall be deemed part of the Property. The remainder of the Additional Property shall not be governed by or encumbered by this Agreement or the Project Approvals. After approval of the TTM, the parties shall execute such documents as necessary to cause this Agreement to be removed from record title to the remainder of the Additional Property.

3.4 Development of the Property. It is the Parties’ understanding that Developer intends to develop the Property as described in the Project Approvals. The Parties hereby agree that, for the Term of this Agreement, the Developer shall have a vested right to develop the Property and the Project in accordance with, and to the extent of, the Project Approvals, the Applicable Rules, the Conditions of Approval and this Agreement.

3.5 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 the 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 in a manner which is consistent with the surrounding community. Moreover, this Agreement will eliminate uncertainty in planning for and will secure orderly development of the Project, assure installation of necessary

improvements, and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted.

Section 4. Project Development.

4.1 Project Development; Entitlement to Develop. Developer may develop the Property or any portion thereof with a development of lesser height or density than that currently approved, provided that such development otherwise complies with the Applicable Rules, the Project Approvals, the Conditions of Approval and this Agreement.

The City has determined that the Project is consistent with the General Plan (as amended) and the Specific Plan (as amended). Notwithstanding anything herein to the contrary, including anything contained in Section 4.2 below, as a condition to the continued effectiveness of this Agreement, (i) Developer shall have recorded a final subdivision map with respect to at least forty-four percent (44%) of the residential lots contained in the Project (and shall have entered into all required subdivision improvement agreements and posted all required subdivision bonds in connection therewith) prior to the tenth anniversary of the Effective Date of this Agreement (“First Phase Map Condition Precedent”), and (ii) prior to the twelfth anniversary of the Effective Date, Developer shall substantially complete all subdivision improvements that are required to be constructed as a result of that map recordation, including the backbone road (identified as Brasada Lane on the TTM), equestrian trails (except that, with the approval of the City Manager, ~~or his designee~~, trails on non-backbone roads may be completed to a less finished form as agreed to by the City), backbone infrastructure and other like public improvements (“First Phase Improvement Condition Precedent”). At the time of completing those first phase improvements, Developer shall also complete the dedication and improvement of the equestrian trails described in Section 4.6 below if that dedication and improvement has not previously occurred. If Developer fails to record that map or complete those improvements by the outside dates set forth above, City may, at any time prior to completion of those actions, terminate this Agreement upon written notice to the Developer; provided that the City’s only remedy for Developer’s failure to timely record that map or complete those improvements by those outside dates set forth above shall be such termination and City shall not have the right to compel Developer to complete those actions by an action for specific performance.

4.2 Timing of Development and Allotment. The Project may be developed incrementally or in Phases and, except as otherwise specifically provided in this Agreement, Developer is under no obligation to commence or complete the Project in any particular timeframe or at all. The Parties acknowledge that the Developer cannot at this time predict when or the rate at which the Project would be developed and they acknowledge that the actual rate of development will 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, except as otherwise provided by the Project Approvals, Applicable Rules or this Agreement, including Section 4.1 above, the Developer shall have the right to develop the Property 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. 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, the Conditions of Approval and the terms of this Agreement.

4.3 Moratorium. No City-imposed moratorium or other limitation (including, without limit, limitations relating to the rate, timing or sequencing of the development or construction of all or any part of the Property or any Phase thereof, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City 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 or Project Approvals 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 or to the City's exercise of its Reserved Powers.

4.4 City Services. Subject to Developer's installation of infrastructure in accordance with the requirements of the Project Approvals, Conditions of Approval, Applicable Rules and any subsequent additional Discretionary Approvals, if any, sought by Developer to implement the Project under any New Rules or Design Rules, City has determined and hereby finds that it will have sufficient capacity in its infrastructure, services and utility systems, including, as applicable, traffic circulation, storm drainage, sewer collection, sewer treatment, sanitation service and water supply, treatment, distribution and service, to accommodate the Project. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no restriction on hookups or service for the Project.

4.5 Partial Termination. Developer shall have the right to request that the City approve a partial termination of this Agreement to release a portion(s) of the Property from the Agreement's obligations and benefits ("Partial Termination"). A Partial Termination may be approved by the City if Developer demonstrates to the City's satisfaction, in its sole and independent judgment, that the portion of the Property to be released from the Agreement obligations is not needed to satisfy any of the obligations established in the Agreement. If the City makes such a determination, such released Property shall not be subject to any of the obligations created in this Agreement, and similarly, will not receive any of the benefits created in this Agreement. Notwithstanding anything in this Agreement, the obligations of Developer in this Agreement are not intended to and shall not encumber any portion of the Property that has been finally subdivided, constructed and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user as a residential lot. Upon any such sale or lease, the residential lot shall be automatically and without further need for approval by the Parties be released from the duties and obligations of the Developer under this Agreement. Despite the intention of the Parties for this paragraph to be self-executing, the City shall execute a recordable

instrument sufficient to release the Developer's obligations in this Agreement from a residential lot within thirty (30) days of a written request by Developer or any person with ownership rights to such residential lot. No such owner of an individual lot shall have the right to assert any rights of Developer under this Agreement, and Developer shall remain the responsible party for purposes of exercising any of those rights.

4.6 Equestrian Trails.

4.6.1 ~~Upon the later of (i) Unless such requirement is waived by the City, acting in its sole discretion, within thirty (30) days after the approval of this Agreement and the expiration of any period for bringing a legal challenge to that approval~~ the Project Approvals with no challenge being filed, or, if such a challenge is timely filed, upon the resolution of that challenge in a manner that upholds the terms of this Agreement ~~Project Approvals (the foregoing event is referred to herein as the "Closure of the Challenge Period"), or (ii) the sixtieth (60th) day after Developer closes escrow for the acquisition of the Additional Property, the Developer shall provide to the City, for the benefit and use of the public, a temporary irrevocable license (subject to those terms and conditions contained in the license) for the use and maintenance of the existing service or access trails or roads through the Property and/or which are known as the motorways and are located generally as shown on Exhibit E attached hereto. In addition, following the later of (i) the Closure of the Challenge Period, or (ii) the sixtieth (60th) day after Developer closes escrow for the acquisition of the Additional Property, the Developer shall, upon the City's written request, provide to the City, for the benefit and use of the public, a temporary irrevocable license (subject to the terms and conditions contained in the license) for the use and maintenance of the existing service or access trails or roads traversing north-south through the Additional Property (or such portion thereof) that the City reasonably determines are appropriate for equestrian use and over which it elects to receive a temporary license. The City shall bear all costs and all risk associated with the use of such license(s) and any maintenance required as a result of such use. Subject to the terms of the license, including the obligation of City, or its designee, to maintain those license areas, such license(s) shall continue until superseded by the dedication of the permanent equestrian trails serving the same area. Such license(s) shall be in a form acceptable to both Parties; provided that agreement upon the form of that license upon the request of either Party and the prompt execution and delivery of that license upon the occurrence of the applicable trigger date set forth above shall constitute conditions to the continued effectiveness of this Agreement, and, if those requirements are not met, either Party shall have the right to terminate this Agreement upon thirty (30) days written notice to the other Party until such requirements are met. The City shall have no right to assign or designate a designee for receipt of the license(s) or otherwise transfer its rights in the license(s) described above in this Section without obtaining the Developer's prior written consent, which consent shall not be unreasonably withheld.~~

4.6.2 In addition to the temporary license described above, concurrent with satisfaction of the First Phase Map Condition Precedent (and without limitation of the requirements of the Conditions of Approval and the Project Approvals), the Developer shall (i) offer for dedication (or convey to a third party designated by the City if the City so elects), and (ii) improve, consistent with the TTM and the Conditions of Approval, a permanent equestrian trail(s) within the Property ~~substantially as shown on Exhibit E attached hereto~~ in accordance with the requirements of the Project Approvals and the Conditions of Approval applicable

thereto. The Developer shall have no obligation to maintain these trails following improvement by the Developer, and such maintenance shall be performed by either the City or a third party designated by the City following dedication or transfer thereof as provided above; provided, however, that if the City elects to designate a third party to maintain the trails, the City shall first obtain the Developer's written consent to the identity and qualifications of the third party, which consent shall not be unreasonably withheld. The permanent equestrian trails shall meet all requirements of the Project Approvals and all Conditions of Approval applicable thereto.

4.6.3 In addition to performance of the above obligations and as additional consideration to the City for its execution of this Agreement, within thirty (30) days after the Closure of the Challenge Period, the Developer shall deliver to the City readily available funds in the amount of \$8000, which the City shall retain and deposit into a City trust account and which the City shall thereafter use for equestrian trail maintenance anywhere in the City, as determined by the City in its sole discretion.

4.7 Dedication or Transfer of Open Space Parcel. At such time as City shall direct following the Closure of the Challenge Period (as defined above) but in no event later than the expiration of the Term, Developer shall convey to the City for use by the public (or convey to a third party designated by the City if the City so elects) an approximately eighty-four (84) acre tract of undeveloped property as permanent public open space area (the "Open Space Parcel"). If the City elects to designate a third party to receive conveyance of the Open Space Parcel, the City shall first obtain the Developer's written consent to the identity and qualifications of the third party, which consent shall not be unreasonably withheld. If, prior to the City's request that the Developer transfer the Open Space Parcel pursuant to this Section, the Developer has delivered a notice of default to the City and the City is not contesting, in good faith, the existence of such alleged default and any actual default has not been cured, then the Developer shall not be required to complete the conveyance of the Open Space Parcel until such default is cured. Any dedication or conveyance by Developer pursuant to this Section shall be free of all monetary liens or encumbrances but shall be subject to a Section 1542 waiver and release for Developer's benefit with respect to all disclosed or unknown conditions. The City or approved third party designee shall take title subject to, and Developer shall have a right to record prior to conveyance, a deed restriction on the Open Space Parcel restricting the uses of this parcel from development that would materially impair the successful development, marketing, sale and use of the Project. Such deed restriction shall include, without limitation, restrictions prohibiting the operation of motorized recreational or passenger vehicles, open space use restrictions, easements for the benefit of the Property for access and such other matters as the Parties may agree to. The Parties shall not unreasonably withhold, delay or condition their consent to the form of the deed restriction. Agreement upon the form of the deed restriction shall be a condition to the continued effectiveness of this Agreement and if the Parties are unable to agree upon the form of that restriction, then either Party may terminate this Agreement upon thirty (30) days written notice to the other until agreement upon the form of that restriction is achieved. The approximate location of the Open Space Parcel is shown on Exhibit B attached hereto. City shall not have any obligation to issue certificates of occupancy with respect to any improvements constructed on the Property until this condition has been satisfied or the City elects, in its sole and absolute discretion, to waive or defer that requirement; provided, however, if Developer is otherwise entitled to certificates of occupancy and City has not yet tendered its direction to Developer to offer the Open Space Parcel for dedication, then City shall have thirty (30) days from

Developer's request for certificates of occupancy to do so. If a written request for dedication is not delivered to Developer within such thirty (30) day period then the condition requiring dedication prior to the issuance of those requested certificates of occupancy shall be waived; provided, however, that such Open Space Parcel's dedication obligation shall continue as otherwise provided in this Agreement and shall apply prior to the issuance of any further certificates of occupancy; provided further that if additional certificates of occupancy are sought then the previous sentence concerning the final thirty (30) day window for demanding transfer of the Open Space Parcel shall likewise apply to such certificates of occupancy. If the City has not directed Developer in writing to complete such conveyance prior to expiration of the Term, then Developer shall provide the City with written notice thereof, and if the City does not direct Developer to make such conveyance within thirty (30) days thereafter, the obligation of Developer in this Section 4.7 shall be deemed waived.

Section 5. Changes.

5.1 Nonapplication of Changes; Additional Conditions of Approval and Other Exceptions.

5.1.1 Nonapplication of Changes to Applicable Rules Without Developer Consent. The adoption of any change in the Applicable Rules, adopted or becoming effective after the Effective Date of this Agreement, shall not be applied to the Project, unless the Developer gives written notice to the City of its election to have such change in the Applicable Rules applied to the Project, which it may grant or withhold in Developer's sole and absolute discretion, or unless such change in the Applicable Rules constitutes a lawful exercise of the City's Reserved Powers or is otherwise expressly authorized by this Agreement.

5.1.2 Additional Conditions of Approval. Although no additional conditions or dedications shall be imposed by the City on the development of the Project, the Parties acknowledge and agree that, in approving any tentative subdivision maps with respect to the Property filed after the date of this Agreement, the City reserves its right to impose normal and customary dedications pursuant to the Applicable Rules for rights of way or easements for public access, utilities, water, sewers, and drainage necessary for the Property. In addition, nothing in this Section 5.1 shall preclude the City from requiring further conditional use permits, planned unit development permits, site plan reviews, architectural review, precise plan grading review and other approvals required by Specific Plan No. 25 as amended, and other development permits and Discretionary Approvals with respect to the Project that are provided for by the Applicable Rules.

5.1.3 Changes in Building Codes. As set forth above in Section 2.1, notwithstanding any provision of this Agreement to the contrary, any Project improvements that are not yet issued building permits shall be subject to changes occurring from time to time resulting from the City's adoption of building regulations based on the recommendations of a multi-state professional organization and which become applicable throughout the City, including, but not limited to, the California Building Standards Codes and other similar or related uniform codes.

5.1.4 Changes Mandated by Federal or State Laws or Regulations. In the event that any Federal, State, County or multi-jurisdictional laws or regulations (collectively "Federal or State law or regulation") enacted after the Effective Date but prior to the issuance of a building permit for the applicable improvements prevents or precludes compliance with one or more of the provisions of this Agreement or the Applicable Rules, such provisions of this Agreement or the Applicable Rules shall be modified or changed as necessary to comply with such Federal or State law or regulation in a manner that minimizes, so far as reasonably possible, the adverse impact to the Project. In the event City has discretion to do so, the City shall interpret and implement a Federal, State, County or multi-jurisdictional law or regulation in a manner that minimizes, so far as reasonably possible, the adverse impact to the Developer's rights in the Project Approvals or under this Agreement. Where City or Developer believes that such modification or change is required, that Party shall take the following actions:

(a) Notice and Copies. The Party which believes a change or addition is required 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.

(b) 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 consistent with the provisions of Section 5.1.4 above. In such discussions, the City and the Developer agree to preserve the terms of this Agreement and the rights of the Developer and the City derived from this Agreement to the maximum feasible extent while resolving the conflict. ;

(c) 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 this Agreement or 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 most convenient 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.

5.1.5 Cooperation in Securing Permits. Upon Developer's request, the City shall cooperate in good faith with Developer, at no cost or expense to the City, in the securing of any permits or approvals of other governmental agencies having jurisdiction over the Project required for the development of the Project, including, without limitation, any permits or approvals required as a result of a modification pursuant to Section 5.1.4 above.

5.1.6 Changes in Processing Fees and Developer Fees. Notwithstanding anything herein to the contrary, development of the Property and construction of the Project shall

be subject to payment of all applicable Processing Fees and Developer Fees which may be in effect from time to time and which are then applicable to the Project in accordance with the terms thereof; provided, that the Developer Fees listed on Exhibit C are the only categories of Developer Fees that the City may impose or levy on the Project during the Term of this Agreement, as such Developer Fees may be adjusted from time to time subject to City's compliance with any applicable laws relating to the enactment of fee increases.

5.1.7 Developer's Right to Contest New or Increased Fees, Charges or Assessments. Nothing in this Agreement shall prevent Developer from contesting, in any appropriate forum, the imposition or the amount of any Processing Fees, Developer Fees, or other fees, charges or assessments, or any increase therein. Such right of protest shall not extend to the existence or current amount of any Developer Fees identified on Exhibit C, or any Processing Fees in effect as of the Effective Date of this Agreement, and the Developer hereby agrees to cause to be paid the same pursuant to City's normal fee payment schedule without objection thereto. Notwithstanding any pending good faith contest of such new or increased fees, charges or assessments, City shall proceed with issuance of all required Ministerial Approvals with respect to the Project and shall not withhold or delay issuance of those Ministerial Approvals based upon any pending protest or appeal with respect to such fee, charges or assessments; provided any contested amount has been paid to City under protest with a reservation of rights.

5.1.8 Ministerial Permits. The City shall not require Developer to obtain any Ministerial Permits for the development of the Project in accordance with this Agreement other than those required by the Applicable Rules or by agencies unrelated to the City. Any Ministerial Permit required under the Applicable Rules shall be governed by the Applicable Rules.

5.1.9 Discretionary Approvals. Any approval involving a Discretionary Action or Discretionary Approval and required or needed after the Effective Date in order to commence or complete the approved Project, which does not materially change, modify or alter the Project, shall be governed by the Applicable Rules. Any subsequent Discretionary Action or Discretionary Approval sought by Developer in connection with a modification which materially changes, modifies or alters the Project shall be subject to all then applicable governmental rules, regulations and requirements without limitation to the Applicable Rules. 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 required in order to comply with CEQA.

5.1.10 Timely City Actions. The City agrees to timely consider and 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 implementing the approved Project. City's obligations in this Section 5.1.10 are conditioned upon Developer satisfactorily complying 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 or Ministerial Permits/Ministerial Approvals.

If the City fails to timely act in the manner specified above, then upon written notice by Developer of such unreasonable delay and the identification of the specific cause(s) thereof and continuing so long as such delay continues, Developer's rights under this Agreement shall be extended on a day-for-day basis from the date of such notice until the delay has been remedied.

5.1.11 Interim Uses. City agrees that, until development of the Project, the Developer may continue the present use and operation of the Property.

5.1.12 Additional Staffing. If standard City staffing fails to result in processing of any permits or approvals as promptly as reasonably required for timely development of the Project by Developer, then the City agrees, upon request of Developer, to reasonably cooperate with Developer in hiring additional staff or consultants as City determines appropriate to process required Ministerial Permits and Approvals or Discretionary Actions and Approvals. The Developer shall reimburse the City for all direct and indirect costs of such additional staff or consultants, and any required training thereof, and all direct and indirect costs of the existing City staff in the supervision, review and coordination of such additional staff or consultants, within thirty (30) days after Developer receives an invoice identifying such reimbursable expenses; provided, the Developer shall have the right to audit such costs, at its expense, upon request. The City shall not charge a surcharge for such staffing in addition to such actual direct and indirect costs of City staff and such additional staff and consultants, nor shall the City charge any other separate fee for such additional staffing.

5.1.13 Term of Project Approvals. 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 2.22 above.

5.1.14 Minor Modifications. It is contemplated that Developer may in the future desire to change or modify the Project based on, without limitation, precise planning, precise grading, structure siting on lots, road or trail configuration, drainage patterns or drainage needs and infrastructure, changes in market demand, or other factors in a manner that will not lead to a material increase in the severity of environmental impacts or materially change the Project as approved ("Minor Modifications"). Such Minor Modifications 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. The Parties agree that such Minor Modifications in Project Approvals that do not materially alter the Project may be agreed to in writing by the City Manager and the Developer. All Minor Modifications will require approval in accordance with the Applicable Rules. The Parties agree that any such Minor Modifications shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

Section 6. Default Provisions.

6.1 Default by Developer. In the event the Developer does not perform its obligations under this Agreement ("Defaults") in a timely manner, the City shall have all rights and remedies provided herein or under applicable law, which shall include, but not be limited to,

compelling the specific performance of the material obligations of Developer under this Agreement, or modifying or terminating this Agreement, provided that (i) except for recovery of any amounts, including attorneys' fees, owed to City under the terms of any indemnities ~~provided for herein~~ Sections 7.10 and 7.23 for the benefit of the City, the City hereby knowingly, willingly and intelligently waives any right to seek monetary damages from Developer for such breach, including any monetary damages for the failure to start or complete the Project and (ii) with respect to any remedy the City has first complied with the following procedure:

(1) Notice of Default. The City shall give to Developer written notice of default identifying with specificity Developer's alleged Default(s).

(2) Period to Cure Non-Compliance. Twenty (20) days after service of the notice of default, Developer shall forthwith commence to cure the identified Default(s), and Developer shall complete the cure of such Default(s) within a reasonable period of time not to exceed sixty (60) days thereafter ("Developer Cure Period"). If a Default cannot be reasonably cured within sixty (60) days, the Developer Cure Period shall be extended for the period necessary to complete the cure so long as Developer has timely commenced to cure such Default(s) and continues to diligently pursue curing such Default(s) to completion within not more than one hundred twenty (120) days after service of the notice.

(3) Failure to Cure Default. If, after the Developer Cure Period (or any extension thereof) has elapsed, the City Council finds and determines that Developer remains in Default, the City Council may terminate or modify this Agreement, after compliance with the provisions of Section 65864 et seq. of the Government Code. Before ordering the termination of this Agreement, the City ~~Clerk~~Manger shall ~~set~~have the matter ~~set~~ for hearing at its next most convenient meeting, and shall give not less than ten (10) days written notice of the time and place of such hearing to the Developer. The City Council shall conduct a public hearing to determine whether this Agreement should be terminated as authorized by Section 65864 et seq. of the Government Code and the provisions of this Agreement. The decision of the City Council to terminate or modify this Agreement shall be final and conclusive subject only to judicial review.

(4) Termination; City Remedies. If the City Council terminates this Agreement, after a final determination is made by City Council that the Developer is in Default and has not cured the Default within the Developer Cure Period, such termination of this Agreement shall not affect any right or duty of either party arising from entitlements or approvals, including the Projects Approvals, on the Property approved prior to the effective date of the City Council's order of termination. Notwithstanding termination of this Agreement, 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, including, without limitation, bringing an action against any bonds posted to secure the construction of those improvements, and (ii) to require Developer to dedicate any property required for public improvements 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, and (iii) so long as such termination is not due to a City default, to compel Developer by an action for

specific performance to complete the dedication and improvement of the equestrian trail easements contemplated in Section 4.6 and the open space dedication or conveyance contemplated in Section 4.7.

6.2 Default by the City; Notice of Default. In the event the City does not timely accept, process, or render a decision on necessary development permits, entitlements, or other land or building approvals for use of the Property as provided in this Agreement or by the Project Approvals under the Applicable Rules, or if the City otherwise fails to perform its obligations under this Agreement in a timely fashion, Developer shall have the right to specifically enforce the City's obligations hereunder, provided that Developer shall first serve on City a written notice of default stating with specificity those obligations which it believes City has not performed. The City shall commence to cure the identified default(s) within twenty (20) days after receipt of the notice of default and shall complete the cure of any default within sixty (60) days after receipt of the notice of default ("City Cure Period"). If a Default cannot be reasonably cured within sixty (60) days, the City Cure Period shall be extended for the period necessary to complete the cure so long as City has timely commenced to cure such Default(s) and continues to diligently pursue curing such Default(s) to completion within not more than one hundred twenty (120) days after service of the notice. Where the City fails to cure a default within the City Cure Period, Developer may, in addition to the specific performance remedy provided for above, forthwith terminate this Agreement and all further rights and obligations of the Parties hereunder; provided such termination shall not affect or release any obligations of a Party that have accrued as of the date of such termination. The Parties agree that Developer's obligations in Sections 4.6 and 4.7 shall not be deemed to be "accrued" for the purpose of the prior sentence if the Agreement is being terminated because of the City's uncured default. As a result, if Developer exercises its rights to terminate this Agreement upon an uncured City default and if the City has not yet accepted dedication or conveyance of the property in Sections 4.6 and 4.7 prior to such termination, then Developer's termination of this Agreement shall terminate any remaining obligations or rights in Sections 4.6 or 4.7; provided, that such termination of this Agreement shall not waive or limit any Conditions of Approval or the Developer's obligation to comply therewith in connection with any further development of the Property pursuant to the Project Approvals. If, prior to Developer's recordation of the first final map with respect to the Project, the City defaults and fails to cure such default after the Open Space Parcel has been conveyed to the City or a third party designee pursuant to Section 4.7 or after the temporary license for equestrian trails has been conveyed to the City or a third party designee pursuant to Section 4.6.1, then, upon such subsequent default and failure to cure, the temporary equestrian trail license shall automatically and without any further need for action by the Parties terminate and the Open Space Parcel shall without any need for further action revert in fee title to Developer's ownership. If a termination or reversion described in the previous sentence occurs, the City shall take any action reasonably necessary to provide Developer clear title to the Open Space Parcel and equestrian trails (including without limitation execution of quitclaim deeds and removal of any liens occurring after the date of such conveyance to City and caused by the actions of the City); provided, that such termination or reversion shall not waive or limit any Conditions of Approval or the Developer's obligation to comply therewith in connection with any further development of the Property pursuant to the Project Approvals. Notwithstanding anything to the contrary in the Applicable Rules or otherwise, 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 2.24 above or the date such approval would otherwise be in effect under applicable law, whichever is later. In connection with the statement of the Developer's remedies in this Section, Developer acknowledges, and hereby knowingly, willingly and intelligently waives any right to seek monetary damages against the City for the City's default under this Agreement.

Section 7. General Provisions.

7.1 Termination. 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 right or duty of a Party hereto, arising out of any Project Approval or the provisions of this Agreement, in effect on or prior to the effective date of such termination. The Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from the occurrence of any of the events set forth in Section 7.2 below, provided that the extension of the Agreement pursuant to this sentence shall not cumulatively exceed a period of five (5) years.

7.2 Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, whenever a period of time is designated within which a 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 actually prevented from, or is unreasonably interfered with, 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; terrorist acts; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs, such as an annual review); any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs, such as the annual review); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; extraordinary unavailability of goods or materials necessary for the Project or similar bases for excused performance which are not within the reasonable control of the Party to be excused. Economic constraints, or lack of available funding or financing, shall not constitute grounds for extension under this Section 7.2. Any Party wishing to obtain an extension under this Section 7.2 shall notify the other Party of the cause for that extension within ten (10) days of the Party's actual knowledge of the force majeure event, and the period of extension shall be from the delivery of that notice until the cessation of that specified event.

7.3 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 reasonably 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 another governmental entity as conditions to subsequent project approvals. In the event the Developer exercises this right, it shall nonetheless be responsible for mitigation of impacts to City resulting from development

that may have occurred on the Property prior to the notice of termination, on a fair share or nexus basis, 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. Notwithstanding anything herein to the contrary, if at any time during the term of this Agreement the Developer elects to abandon development of the portion of the Project located on the Property it owns or terminate this Agreement as provided in this Section 7.3, the Developer shall nevertheless be obligated to execute and deliver the offers of dedication and/or conveyance required under Sections 4.6 and 4.7 above with respect to the equestrian trail easements and open space dedication or conveyance described therein. The preceding sentence is not applicable in cases of a termination of this Agreement due to a City default as provided in Section 6.2 above.

7.4 Venue. Any legal action arising out of this Agreement must be filed in the Los Angeles County Superior Court.

7.5 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed in the State of California.

7.6 Amendments. This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement and in accordance with all applicable laws.

7.7 Assignment. In executing this Agreement, City has relied upon the financial capabilities of Developer to construct and operate the Project. Accordingly, except for transfers to an affiliate, parent, or subsidiary entity of Developer or its partners which is controlled by Developer or such partners (which shall not require any consent from the City but which Developer shall notify City of in writing concurrent therewith), the rights and obligations of Developer under this Agreement may not be transferred or assigned in whole or in part by Developer (collectively an "Assignment") without the prior consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. The Parties agree that any sale or lease of residential lots as provided in Section 4.5 shall not constitute an Assignment that requires City consent. City shall respond to such request in writing within ten (10) days after receipt and, in the event of any disapproval, set forth the reasons therefor. If City fails to respond within said ten (10) day period, the proposed assignment shall be deemed disapproved. The City Manager is hereby authorized to act upon any request for approval under the foregoing provision, and any approval granted by the City Manager shall constitute the action of and be binding upon the City.

7.8 Release of Transferring Owner. Upon any Assignment of the entirety of this Agreement or the rights hereunder approved by the City, the transferor shall be released of all obligations under this Agreement that relate to the Property or portion thereof being transferred to the extent arising from and after the date of the Assignment, 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 Property or portion thereof acquired by such transferee. Except as otherwise provided in Section 4.5, in connection with each transfer of any

portion of the Property or portion thereof, transferor shall require the transferee to assume in writing all of the obligations under this Agreement that relate to the portion of the Property or portion thereof being transferred. Notwithstanding anything above to the contrary (except as provided in Section 4.5), the rights and obligations under this Agreement are non-severable and if any buyer, transferee or assignee Defaults under this Agreement, such Default shall constitute a Default by the owner of each other portion of the Property and shall entitle City to terminate this Agreement in its entirety if such Default is not timely cured. Each transferee shall be responsible for the reporting and annual review requirements relating to the portion of the property owned by such transferee.

7.9 Covenants. Until expiration of the Term, 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.

7.10 Cooperation and Implementation.

(1) Processing. Upon Developer's completion of all required preliminary actions and the tender of payment (whether under protest or not) of appropriate Processing Fees, including the fee for processing this Agreement, the City shall promptly 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 require 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 in connection with the development of, or provision of services to, the Project. The City shall cooperate, communicate and coordinate in good faith with Developer and any such third party agencies in connection with Developer's endeavors to obtain such permits.

(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 any provision of this Agreement, 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, the City, as well as Developer, shall be entitled to appear and defend against the allegations made in such litigation provided that Developer 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 and shall indemnify, defend and hold City and its representatives harmless from any such claim, action or proceeding and all costs arising therefrom or any judgment obtained in such action or proceeding. In connection with the conduct of such litigation, the City, the City Attorney and Developer shall meet and confer upon the request of the other party to formulate legal strategy for the conduct of such litigation and to control its cost. Developer shall have the right to provide input on the reasonableness of strategy and methods to ensure such costs are efficiently controlled as litigation pursuant to this subsection (3) proceeds, but any final decisions with respect to strategy and staffing of the City shall be made by City.

7.11 Relationship of the Parties. The Parties acknowledge and agree that Developer is not an agent, joint venturer or partner of the City.

7.12 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 or its lawful successor in interest, postage prepaid, Registered or Certified Mail, or by reputable overnight courier or by electronic transmittal addressed to the Parties as follows:

CITY: City of San Dimas
245 East Bonita Avenue
San Dimas, CA 91773
Attn: City Manager and Director
Planning & Community Development
Facsimile:

WITH A COPY TO: McKenna Long & Aldridge LLP
300 South Grand Avenue, Suite 1400
Los Angeles, CA 90071-3124
Attn: J. Kenneth Brown, Esq.
Facsimile: (213) 687-2149

DEVELOPER: NJD, LTD., a Texas limited partnership
3300 East First Avenue, Suite 510
Denver, CO 80206
Facsimile: (303) 399-3929

WITH A COPY TO: Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626
Attn: Michael R. W. Houston, Esq.
Facsimile: (714) 546-9035

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) upon receipt of a electronic transmittal confirmation, provided such transmittal occurs on a business day before 5:00 p.m. at the location of the Party receiving notice, otherwise such transmittal shall be deemed to occur at 9:00 a.m. the following business day., and provided such electronic transmittal is followed by a notice sent within forty-eight (48) hours thereafter by one of the methods provided above.

7.13 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.

7.14 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.

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

7.16 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.

7.17 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.

7.18 Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties with respect to the subject matter expressly contained in this Agreement. The Parties specifically acknowledge that this Agreement and the Project Approvals are intended to implement and satisfy, in full, the City's responsibilities and obligations under Sections 2 and 5 of the Settlement Agreement. Upon the Closure of the Challenge Period, the NJD Release set forth in Section 6a of the Settlement Agreement shall be deemed reaffirmed and extended to any claims for compensation for any interest in real or personal property, improvements to the realty, fixtures, equipment, inventory, lost business goodwill, relocation benefits, severance damage, precondemnation damages, litigation expenses, (including attorneys' fees and costs), or any other compensation or damage resulting from any acts, omissions, events or circumstances occurring on or before the Effective Date of this Agreement. The Parties agree however that this Section does not affect the rights of the Parties relative to the allocation of costs that may be subject to the provisions of the Settlement Agreement as well as those costs provided in Sections 10 (2) and (3) of the Developer Reimbursement Agreement dated June 11, 2010.

7.19 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.

7.20 Certificate of Compliance. At any time during the term of this Agreement, any lender or Party may request the other 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.

7.21 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 the representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, the City will not unreasonably withhold its consent to any such requested interpretation or modification provided City determines, in its sole good faith judgment, that such interpretation or modification is consistent with the intent and purposes of this Agreement and does not adversely impact the City's rights or obligations hereunder. 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 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 Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed Developer under this Agreement, or (ii) sixty (60) days from delivery of the notice to Mortgagee.

(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, provided, however, in no event shall such Mortgagee or its successors and assigns be (a) liable for any monetary defaults of 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 7.3 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, including the right to terminate this Agreement. In the event any Mortgagee seeks to develop or use portion of the Property acquired by such Mortgagee, such Mortgagee shall strictly comply with all of any the terms, conditions and requirements of this Agreement and the Project Approvals applicable to the Property or such part thereof acquired by the Mortgagee.

7.22 Processing of Modification. The Developer shall reimburse the City for its actual costs incurred in connection with any modification to this Agreement initiated by Developer or its Mortgagee.

7.23 Indemnity.

7.23.1 General. Developer shall indemnify the City, its officers, employees, and agents against, and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "Claims or Liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the work, operations, or activities of Developer, its agents, employees, subcontractors, or invitees, hereunder, upon the Property, except to the extent such claims are excepted as provided below in Section 7.23.2.

(a) Developer will defend any action or actions filed in connection with any of said Claims or Liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Developer will promptly pay any final judgment (subject to Developer's or City's rights to appeal from such final judgment) rendered against the City, its officers, agents, or employees for any such Claims or Liabilities arising out of or in connection with the indemnity in this Section 7.23.1, and Developer agrees to save and hold the City, its officers, agents, and employees harmless therefrom.

(c) In the event the City, its officers, agents, or employees is made a party to an action or proceeding filed or prosecuted for Claims or Liabilities described in the indemnity in this Section 7.23.1, the City shall promptly tender its defense to Developer, who pursuant to (a) above will defend the City, its officers, agents, or employees with attorneys selected by Developer and reasonably approved by City; Developer shall bear any and all costs and expenses in such action or proceeding, including but not limited to legal costs and attorneys' fees incurred in defending the City.

7.23.2 Exceptions. The foregoing indemnity shall not include Claims or Liabilities arising solely from the gross negligence or willful misconduct of the City, its officers, agents, or employees.

7.23.3 Loss and Damage. Except as provided in Section 7.23.2, City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. Except as provided in Section 7.23.2, City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature.

7.23.4 Period of Indemnification. The obligations for indemnity under this Section 7.23 shall begin upon the Effective Date of this Agreement and shall terminate upon termination of this Agreement; provided, that any obligations that have accrued as of the date of such termination shall survive that termination and remain enforceable by the City.

7.23.5 Waiver of Subrogation. Developer agrees that it shall not make any claim against, or seek to recover from City or its agents, servants, or employees, for any Claims or Liabilities to Developer or any other person or property, except as specifically provided in this Agreement and Developer shall give notice to any insurance carrier of the foregoing waiver of subrogation, and obtain from such carrier, a waiver of right to recovery against City, its agents and employees.

7.24 Insurance.

7.24.1 Types of Insurance.

(a) Public Liability Insurance. Prior to commencement and until completion of construction by Developer on the Property, Developer shall at its sole cost and expense keep or cause to be kept in force for the mutual benefit of City and Developer broad form commercial general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property or for property damage, providing protection of a least Three Million Dollars (\$3,000,000) per occurrence for bodily injury, death or property damage combined for any one accident or occurrence, which limits shall be subject to increases in amount as City may reasonably require from time to time.

(b) Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that (1) any loss shall be payable notwithstanding any act of negligence (but not willful or intentional violations of law) of City or Developer that might otherwise result in the forfeiture of the insurance, (2) the insurer waives the right of subrogation against City and against City's agents and representatives; (3) the policies are primary and noncontributing with any insurance that may be carried by City; and (4) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. City shall be named as an additional insured on all policies of insurance required to be procured by the terms of this Agreement. The City's Risk Manager acknowledges and agrees that the insurance requirements above have been established based on contemplated use and activities on the Property.

7.24.2 Failure to Maintain Insurance and Proof of Compliance. Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:

(a) For insurance required above, within thirty (30) days after the Effective Date.

(b) For any renewal or replacement of a policy already in existence, at least thirty (30) days prior to expiration of the existing policy.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that that insurance has been procured and is in force and paid for, such failure or refusal shall be a default hereunder after giving notice and an opportunity to cure.

7.25 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. The Parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable.

7.26 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 the Enabling Resolution (“Annual Review(s)”). The cost of each annual review conducted during the term of this Agreement shall be reimbursed to City by Developer. The annual review fee will initially be \$2500 per year, payable in advance by Developer prior to initiation of the review. The annual fee shall be increased after five years by the percentage increase in the Consumer Price Index for Los Angeles/Long Beach/Anaheim between the date of this Agreement and the month prior to the commencement of the applicable sixth year review. In addition, if the annual review results in a finding of default or breach by the Developer, the Developer shall reimburse the City upon demand for all actual and documented direct and indirect costs of staff or consultants attributable to such annual review to the extent those costs exceed the base annual review fee paid by Developer for that year.

(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 (“Special Review(s)”). The cost of such Special Reviews shall be borne by the City, unless the City Council determines as a result of such Special Review that Developer is not acting in good faith compliance with the material provisions of this Agreement. In such cases, Developer shall reimburse City for all actual and reasonable costs, direct and indirect, incurred in conjunction with such a Special Review.

(3) Conduct of Reviews. The City Manager, ~~or designee, or the City Council,~~ shall cause the Annual and Special Reviews to be conducted; provided, that the City’s failure to timely conduct any Annual review shall not constitute or be construed as a breach or default under this Agreement. Any review by a party other than the City Council shall be provided to the City Council. A review concluding the Developer has complied with the terms of this Agreement may be considered by the City Council as a consent calendar item. Any review that recommends a finding that the Developer has not acted in good faith compliance with the provisions of this Agreement shall require City Council ratification and adoption at a public meeting at which the Developer shall be entitled to appear.

7.27 Record of Applicable Rules. Upon the Developer’s written request to the City delivered within one hundred and twenty (120) days after the Effective Date of this Agreement, and at the Developer’s sole cost and expense, 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.

7.28 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

7.29 Binding Effect. All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the City and Developer, and any lawful successor in interest of the Parties. Whenever the term "Developer" is used herein, such term shall include any other lawfully approved successor in interest of Developer. Nothing in this Section shall limit or waive the restrictions in Section 7.7 above.

7.30 Conflicts of Interest. The City represents and warrants that, to the actual knowledge of the City Manager, no member, official or employee of the City has any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested.

7.31 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.

[SIGNATURES FOLLOW ON NEXT PAGE]

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

McKenna Long & Aldridge LLP

By: _____

CITY:

CITY OF SAN DIMAS,
a municipal corporation

By: _____

Name: _____

Title: _____

DEVELOPER:

NJD, LTD., a Texas limited partnership

By: _____

Name: _____

Title: _____

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

EXHIBIT A

Description of the Property

EXHIBIT B

Location Map

EXHIBIT B-1

Location of Additional Property

EXHIBIT B-2

Description of Additional Property

EXHIBIT C

Developer Fees as of Effective Date

CITY OF SAN DIMAS DEVELOPMENT IMPACT FEES

DESCRIPTION	WHERE APPLICABLE?	PER UNIT	AMOUNT	x	QUANTITY	=	TOTAL FEE AMOUNT
Park, Recreation & Open Space Development (San Dimas Municipal Code Chapter 3.26 and Council Resolution No. 90-8) <i>Purpose is to finance development of facilities to reduce the impacts of increased use caused by new development.</i>							
	All Residential Zones	1 bedroom home	\$400.				\$0.00
	All Residential Zones	2 bedroom home	\$500.				\$0.00
	All Residential Zones	3 bedroom home	\$600.				\$0.00
	All Residential Zones	4 bedroom home	\$700.				\$0.00
	All Residential Zones	5 bedroom home	\$800.				\$0.00
	All Residential Zones	6 bedroom home	\$900.				\$0.00
Quimby Act (San Dimas Municipal Code Chapter 17.36) - Either dedication of park land OR in lieu fee OR combination thereof, as decided by City Council. <i>Purpose is to develop new or rehabilitate existing park and recreational facilities to serve future residents of such subdivision.</i>							
DEDICATION OPTION							
	All subdivisions	Single-family home			643 sf		0.00
	All subdivisions	Multiple-family home			457 sf		0.00
IN-LIEU FEE OPTION							
Land Value is the fair-market value of land (assessed value at the time of filing the final map), modified to equal market value in accordance with current practices of county assessor.							
	All subdivisions - on subdivisions of 50 lots or less, only the payment of in-lieu fees shall be required.	Fee paid based upon entire subdivision.					
Property Development Tax (San Dimas Municipal Code Chapter 3.24) <i>Purpose is to enable new development to pay its appropriate share of the cost of maintaining and improving the environmental quality of our community.</i>							
	All Residential Zones	1 bedroom home	\$275.00				\$0.00
	All Residential Zones	2 bedroom home	\$350.00				\$0.00
	All Residential Zones	3 bedroom home	\$425.00				\$0.00
	All Residential Zones	4 bedroom home	\$500.00				\$0.00
	All Residential Zones	5 bedroom home	\$575.00				\$0.00
	All Residential Zones	6 bedroom home	\$650.00				\$0.00
Sewer (San Dimas Municipal Code Chapter 14.12) <i>Purpose is to provide for construction and expansion of sanitary sewer system and to assure said costs are borne by those who receive the benefits thereof.</i>							
	All Residential Zones	Dwelling unit	\$160.00				\$0.00
	All Residential Zones	Dwelling unit per frontage (in feet) of lot	\$12.00				\$0.00
	Commercial	Frontage length (in feet) of lot	\$12.00				\$0.00
	Commercial	Plumbing fixture	\$50.00				\$0.00
	Commercial	Trap	\$75.00				\$0.00
	Call (562) 699-7411 for amount						
School (State law - payable directly to Bonita Unified School District) <i>Purpose is to enable new development to pay its appropriate share of the cost of construction of new schools to serve future residents of said development.</i>							
	All Residential Zones	Dwelling unit	\$2.97				\$0.00

EXHIBIT D

Enabling Resolution

RESOLUTION NO. 2010-62

**A RESOLUTION OF THE CITY OF SAN DIMAS
ESTABLISHING PROVISIONS FOR THE PROCESSING OF
DEVELOPMENT AGREEMENTS**

WHEREAS, an application for development of property in the foothills has been received, and the applicant has requested that in conjunction therewith the City approve a development agreement; and

WHEREAS, Government Code Section 65864 et. seq. provides for the approval of development agreements; and

WHEREAS, the City desires to establish procedures and requirements for consideration of development agreements.

NOW, THEREFORE, the San Dimas City Council does hereby find, determine and declare as follows:

PURPOSE

(1) This Resolution is adopted to establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of property owners or other persons having a legal or equitable interest in the property proposed to be subject to the agreement. In this regard, it is intended that the provisions of this chapter should be fully consistent, and in full compliance, with the provisions of Article 2.5 of Chapter 4 of Division 1 of Title 7 (commencing with Section 65864) of the California Government Code, and shall be so construed.

(2) In construing the provisions of any development agreement entered into pursuant to this chapter, those provisions shall be read to fully effectuate, and to be consistent with, the language of this chapter, Article 2.5 of the California Government Code, cited above, and the agreement itself. Should any apparent discrepancies between the meaning of these documents arise, then the documents shall control in construing the development agreement in the following order of priority:

1. The plain terms of the development agreement itself;
2. The provisions of this chapter, and
3. The provisions of Article 2.5 of the California Government Code, cited above.

Section 2. Applications.

A. Any owner of real property or other person having a legal or equitable interest in the property may request and apply through the director of planning for the city to enter into a development agreement provided that:

1. The property proposed to be subject to the agreement shall be not less than five acres in size;
2. The status of the applicant as an owner of, or holder of legal or equitable interest in, the property is established to the satisfaction of the director; and

3. The applicant agrees to pay the fees incurred by the City in preparation of the development agreement and provide all other required documents, materials and information.

B. The director of planning shall review, process and prepare, together with his recommendations, for planning commission and city council consideration, as applicable, all applications for development agreements. Other departments of the city shall assist in a timely manner.

C. Processing fees, as established by resolution of the city council, shall be charged for any application for a development agreement made pursuant to the provisions of this chapter, and shall also be so established and charged for periodic reviews as required.

Section 3. Public Hearings.

A. When an application for a development agreement is deemed complete by the director of planning, the application shall be set for public hearing, together with his recommendations relating to it, before the planning commission. Following conclusion of public hearing by the commission, the commission may recommend to the city council that it approve, conditionally approve, or disapprove the application.

B. After the planning commission action, the city clerk shall set the application for public hearing before the city council. Following conclusion of the public hearing by the city council, the city council shall approve, conditionally approve or deny the application.

C. Notice of the hearings set forth in Subsections A and B of this Section shall be given in the form of a notice of intention to consider adoption of a development agreement as required by Section 65867 of the California Government Code.

D. The City Council's approval of the development agreement shall be confirmed by Ordinance.

E. The ordinance shall set forth findings, and the facts supporting them, that the development agreement is consistent with the San Dimas General Plan and any and all specific plans and that it will promote the welfare and public interest of the city of San Dimas.

F. The ordinance maybe subject to referendum in the manner provided bylaw.

Section 4. Content of Development Agreement.

A. Mandatory contents. A development agreement entered into pursuant to this chapter must contain provisions that:

1. Specify the duration of the agreement;
2. Specify the permitted uses of the property;
3. Specify the density or intensity of use;
4. Set forth the maximum height and size of proposed buildings; and

5. Set forth provisions, if any, for reservation or dedication of land for public purposes.

B. Permissive contents. A development agreement entered into pursuant to this chapter may:

1. Include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement;

2. Provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time;

3. Include such other terms, conditions and requirements as the city council may deem necessary and proper, including, but not limited to, a requirement for assuring, to the satisfaction of the city, performance of all provisions of the agreement in a timely fashion by the applicant/contracting party.

Section 5. Execution and Recordation.

A. The city shall not execute any development agreement until on or after the date upon which the ordinance approving the agreement becomes effective.

B. An executed development agreement shall be recorded in the office of the recorder of the county of Los Angeles no later than ten (10) days after it is entered into.

Section 6. Environmental Review.

The approval or conditional approval of a development agreement pursuant to this Resolution shall be consistent with provisions of the California environmental quality act.

Section 7. Periodic Review.

A. Every development agreement approved and executed pursuant to this chapter shall be periodically reviewed during the term of the agreement every year following the date of its execution.

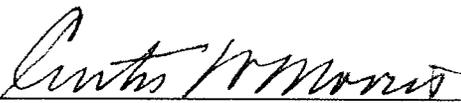
B. The purpose of the reviews conducted pursuant to this section shall be to determine whether the applicant/contracting party or its successor in interest has complied in good faith with the terms of the development agreement. The burden shall be on the applicant/contracting party or its successor to demonstrate such compliance to the full satisfaction of, and in a manner as prescribed by the city.

C. If, as a result of periodic review pursuant to this section, the city council finds and determines, on the basis of substantial evidence, that the applicant/contracting party or its successor in interest has not complied in good faith with terms or conditions of the agreement, the city council may order, after hearing, that the agreement be terminated or modified.

Section 8. Effect of Development Agreement.

Unless otherwise provided by the development agreement, rules, regulations and official policies governing permitted uses of the land, governing density, and governing design, improvement and construction standards and specifications, applicable to development of the property subject to a development agreement, are the rules, regulations and official policies in force at the time of execution of the agreement. A development agreement does not prevent the city, in subsequent actions applicable to the property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the property under the development agreement, nor does a development agreement prevent the city from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

Passed, Approved and Adopted this 23rd day of November, 2010.


Curtis W. Morris, Mayor of the City of San Dimas

Attest


Ina Rios, CMC, City Clerk

I, INA RIOS, CITY CLERK of the City of San Dimas, do hereby certify that Resolution 2010-62 was passed at the regular meeting of the City Council held on November 23, 2010 by the following vote:

AYES: Councilmembers Badar, Bertone, Ebner, Templeman, Morris
NOES: None
ABSTAIN: None
ABSENT: None



Ina Rios, CMC, City Clerk

CITY OF SAN DIMAS DEVELOPMENT IMPACT FEES

DESCRIPTION	WHERE APPLICABLE?	PER UNIT	AMOUNT	x	QUANTITY	=	TOTAL FEE AMOUNT	
Park, Recreation & Open Space Development (San Dimas Municipal Code Chapter 3.26 and Council Resolution No. 90-8)								
<i>Purpose is to finance development of facilities to reduce the impacts of increased use caused by new development.</i>								
	All Residential Zones	1 bedroom home	\$400.				\$0.00	
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	All Residential Zones	3 bedroom home	\$600.				\$0.00	
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	All Residential Zones	5 bedroom home	\$800.				\$0.00	
	All Residential Zones	6 bedroom home	\$900.				\$0.00	
Quimby Act (San Dimas Municipal Code Chapter 17.36) - Either dedication of park land OR in lieu fee OR combination thereof, as decided by City Council.								
<i>Purpose is to develop new or rehabilitate existing park and recreational facilities to serve future residents of such subdivision.</i>								
DEDICATION OPTION								
	All subdivisions	Single-family home		AMOUNT OF LAND TO BE DEDICATED	x	# UNITS	=	TOTAL DEDICATION
	All subdivisions	Multiple-family home		643 sf		0.00		0.00
	All subdivisions - on subdivisions of 50 lots or less, only the payment of in-lieu fees shall be required.			457 sf		0.00		0.00
IN-LIEU FEE OPTION								
<i>Land Value is the fair-market value of land (assessed value at the time of filing the final map), modified to equal market value in accordance with current practices of county assessor.</i>								
				AMOUNT OF LAND TO BE DEDICATED	x	LAND VALUE (per sq ft)	=	FEE
		Single-family home				0.00		\$0.00
		Multiple-family home				0.00		\$0.00
<i>Fee paid based upon entire subdivision.</i>								
Property Development Tax (San Dimas Municipal Code Chapter 3.24)								
<i>Purpose is to enable new development to pay its appropriate share of the cost of maintaining and improving the environmental quality of our community.</i>								
	All Residential Zones	1 bedroom home	\$275.00				\$0.00	
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Sewer (San Dimas Municipal Code Chapter 14.12)								
<i>Purpose is to provide for construction and expansion of sanitary sewer system and to assure said costs are borne by those who receive the benefits thereof.</i>								
	All Residential Zones	Dwelling unit	\$160.00				\$0.00	
	All Residential Zones	Dwelling unit per frontage (in feet) of lot	\$12.00				\$0.00	
	Commercial	Frontage length (in feet) of lot	\$12.00				\$0.00	
	Commercial	Plumbing fixture	\$50.00				\$0.00	
	Commercial	Trap	\$75.00				\$0.00	
	Call (562) 699-7411 for amount						\$0.00	
School (State law - payable directly to Bonita Unified School District)								
<i>Purpose is to enable new development to pay its appropriate share of the cost of construction of new schools to serve future residents of said development.</i>								
	All Residential Zones	Dwelling unit	\$2.97				\$0.00	

EXHIBIT E

Equestrian Trail Location

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of San Dimas
245 East Bonita Avenue
San Dimas, California 91773
Attn: City Clerk

No Recording Fee (Government Code Section 6103)

(Space above for recorder's use)

Agreement No. 2010-
DEVELOPMENT AGREEMENT

by and between

CITY OF SAN DIMAS,
a general law city and municipal corporation

and

NJD, LTD.,
a Texas limited partnership

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EXHIBITS

- Exhibit A Description of the Property
- Exhibit B Location Map
- Exhibit B-1 Location of Additional Property
- Exhibit B-2 Description of Additional Property
- Exhibit C Developer Fees as of Effective Date
- Exhibit D Enabling Resolution
- Exhibit E Equestrian Trail Location

DEVELOPER REQUESTED REVISIONS

The three remaining material differences between the Developer requested revisions and the City draft are shown by the redlined revisions submitted by the Developer with respect to Sections 4.6.1, 4.7 and 7.32. Those Developer requested revisions are attached below. The requested revisions raise the following three points: (i) Section 4.6.1--the Developer does not want to provide a temporary license over the existing Motorways on the Property; the Developer is only willing to provide a temporary license over the north south trails in the Additional Property following the Developer's acquisition of that property; (ii) Section 4.7--the Developer does not want to be obligated to convey the Open Space Parcel to the City until the first phase final map is recorded on the Site; and (iii) Section 7.32--the Developer is requesting inclusion of an attorneys' fee provision providing for recovery of attorneys' fees in the event of a legal action to enforce or apply the Development Agreement.

4.6.1 Upon the later of (i) the approval of this Agreement and the expiration of any period for bringing a legal challenge to ~~that approval~~the Project approvals with no challenge being filed, or, if such a challenge is timely filed, upon the resolution of that challenge in a manner that upholds the ~~terms of this Agreement~~Project Approvals (the foregoing event is referred to herein as the "Closure of the Challenge Period"), or (ii) the sixtieth (60th) day after Developer closes escrow for the acquisition of the Additional Property, the Developer shall provide to the City, for the benefit and use of the public, a temporary irrevocable license (subject to those terms and conditions contained in the license) for the use and maintenance of the existing service or access trails or roads traversing north-south through the Property and/or the Additional Property (or such portion thereof) that the City determines, in consultation with Developer and with Developer's consent, are appropriate for equestrian use and over which it elects to receive a temporary license. The City shall bear all costs and all risk associated with the uses and the maintenance provided in the license. Subject to the terms of the license, including the obligation of City, ~~or its designee,~~ to maintain those license areas, such license shall continue until superseded by the dedication of the permanent equestrian trails serving the same area. Such license shall be in a form acceptable to both Parties; provided that agreement upon the form of that license upon the request of either Party and the prompt execution and delivery of that license upon the occurrence of the trigger date set forth above shall constitute conditions to the continued effectiveness of this Agreement, and, if those requirements are not met, either Party shall have the right to terminate this Agreement upon thirty (30) days written notice to the other Party until such requirements are met. The City shall have no right to assign or otherwise transfer its rights in the license described in this section without obtaining Developer's prior written consent, which may be granted or withheld in Developer's sole discretion.

4.7 Dedication or Transfer of Open Space Parcel. At such time as City shall direct following the ~~Closuresatisfaction~~of the Challenge PeriodFirst Phase Map Condition Precedent (as defined above) but in no event later than the expiration of the Term, Developer shall convey to the City for use by the public (or convey to a third party designated by the City if the City so elects) an approximately eighty-four (84) acre tract of undeveloped property as permanent public open space area (the "Open Space Parcel"). If the City elects to designate a third party to receive

conveyance of the Open Space Parcel, the City shall first obtain the Developer's written consent to the identity and qualifications of the third party, which consent shall not be unreasonably withheld. If, prior to the City's request that the Developer transfer the Open Space Parcel pursuant to this Section, the Developer has delivered a notice of default to the City and the City is not contesting, in good faith, the existence of such alleged default and any actual default has not been cured, then the Developer shall not be required to complete the conveyance of the Open Space Parcel until such default is cured. Any dedication or conveyance by Developer pursuant to this Section shall be free of all monetary liens or encumbrances but shall be subject to a Section 1542 waiver and release for Developer's benefit with respect to all disclosed or unknown conditions. The City or approved third party designee shall take title subject to, and Developer shall have a right to record prior to conveyance, a deed restriction on the Open Space Parcel restricting the uses of this parcel from development that would materially impair the successful development, marketing, sale and use of the Project. Such deed restriction shall include, without limitation, restrictions prohibiting the operation of motorized recreational or passenger vehicles, open space use restrictions, easements for the benefit of the Property for access and such other matters as the Parties may agree to. The Parties shall not unreasonably withhold, delay or condition their consent to the form of the deed restriction. Agreement upon the form of the deed restriction shall be a condition to the continued effectiveness of this Agreement and if the Parties are unable to agree upon the form of that restriction, then either Party may terminate this Agreement upon thirty (30) days written notice to the other until agreement upon the form of that restriction is achieved. The approximate location of the Open Space Parcel is shown on Exhibit B attached hereto. City shall not have any obligation to issue certificates of occupancy with respect to any improvements constructed on the Property until this condition has been satisfied or the City elects, in its sole and absolute discretion, to waive or defer that requirement; provided, however, if Developer is otherwise entitled to certificates of occupancy and City has not yet tendered its direction to Developer to offer the Open Space Parcel for dedication, then City shall have thirty (30) days from Developer's request for certificates of occupancy to do so. If a written request for dedication is not delivered to Developer within such thirty (30) day period then the condition requiring dedication prior to the issuance of those requested certificates of occupancy shall be waived; provided, however, that such Open Space Parcel's dedication obligation shall continue as otherwise provided in this Agreement and shall apply prior to the issuance of any further certificates of occupancy; provided further that if additional certificates of occupancy are sought then the previous sentence concerning the final thirty (30) day window for demanding transfer of the Open Space Parcel shall likewise apply to such certificates of occupancy. If the City has not directed Developer in writing to complete such conveyance prior to expiration of the Term, then Developer shall provide the City with written notice thereof, and if the City does not direct Developer to make such conveyance within thirty (30) days thereafter, the obligation of Developer in this Section 4.7 shall be deemed waived.

7.3.2 Attorneys Fees. In the event of any action between City and Developer seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorney's fees.

ORDINANCE NO. 1202

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING A DEVELOPMENT AGREEMENT RELATING TO THE APPROVAL OF A RESIDENTIAL DEVELOPMENT FOR 61 SINGLE-FAMILY RESIDENTIAL LOTS IN THE NORTHERN FOOTHILLS OF SPECIFIC PLAN NO. 25

THE CITY COUNCIL OF THE CITY OF SAN DIMAS DOES ORDAIN AS FOLLOWS:

SECTION 1. Approval of a Development Agreement as set forth in attached Exhibit A.

SECTION 2. This Ordinance shall take effect 30 days after its final passage, and within 15 days after its passage the City Clerk shall cause it to be published in the Inland Valley Daily Bulletin, a newspaper of general circulation in the City of San Dimas hereby designated for that purpose.

PASSED, APPROVED AND ADOPTED THIS xx DAY OF xx, 20XX.

Curtis W. Morris, Mayor of the City of San Dimas

ATTEST:

Ina Rios, CMC, City Clerk

I, INA RIOS, CITY CLERK of the City of San Dimas, do hereby certify that Ordinance No. 1202 was regularly introduced at the regular meeting of the City Council on _____, 2011 and was thereafter adopted and passed at the regular meeting of the City Council held on _____, 2011 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

I DO FURTHER CERTIFY that within 15 days of the date of its passage, I caused a copy of Ordinance No. 1202 to be published in the Inland Valley Daily Bulletin.

Ina Rios, CMC, City Clerk

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement” or “Development Agreement”) is made and entered into as of _____, 2010, by and between the CITY OF SAN DIMAS, a general law city and municipal corporation (“City”), and NJD, LTD., a Texas limited partnership (“Developer”) pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7, Sections 65864 through 65869.5 of the California Government Code. The City and 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 is the owner of certain real property which is located in the City, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference and is shown on the location map attached hereto as Exhibit B (hereafter “Property”); and

(b) Developer has contractual rights to acquire approximately 76.7 acres of property in the City adjacent to the Property, commonly known as Assessor’s Parcel Numbers (“APN”) 8665-001-004 and 8165-001-005, which property is depicted on Exhibit B-1 and more particularly described in Exhibit B-2 attached hereto and incorporated herein by reference (the “Additional Property”). Developer’s rights to acquire the Additional Property are established by that certain Option Agreement and Right of First Refusal, as amended (“Option Agreement”), as evidenced by that recorded Amendment to Memorandum of Option Agreement and Right of First Refusal recorded as Instrument No. 2008-1872650 in Los Angeles County, California. County Official Records on October 21, 2008. As provided by Sections 4.3 and 4.4 of that Option Agreement, Developer is entitled to seek Project-related approvals and the current fee owner is obligated to cooperate in seeking such approvals. At such time that Developer becomes fee owner of the Additional Property an approximately 40-acre portion of the Additional Property, as depicted on Exhibit B-1, shall become part of the “Property” for purposes of this Agreement. The Parties agree that this is a sufficient beneficial interest for an approximately 40 acre portion of the Additional Property to be included in this Agreement.

(c) Developer desires to construct a Project (as hereinafter defined) on the Property consisting, among other improvements and amenities, of sixty-one (61) single family homes and approximately eighty-four (84) acres of open space; and

(d) Developer and City are also parties to that certain Settlement Agreement & Release dated as of December 21, 2004 (the “Settlement Agreement”), pursuant to which the current Project is being processed; and

(e) Concurrently with or prior to approval of this Agreement, City has approved and/or adopted the General Plan Amendment, the Specific Plan Amendment, the TTM, and the other Project Approvals (as all of the foregoing terms are hereinafter defined) applicable to the Project; and

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

- (g) Developer's TTM and other Project Approvals allowing construction of the Project have been conditionally approved concurrently herewith, and the Conditions of Approval (as hereinafter defined) applicable thereto have been accepted by the Developer as being lawfully imposed thereon; and
- (h) Developer has applied to the City for approval of this Agreement pursuant to the provisions of the Development Agreement Act (as hereinafter defined), the Enabling Resolution (as hereinafter defined), and other applicable laws; and
- (i) 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 as therein described; and
- (j) 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
- (k) Developer desires to obtain the vested right from the City to allow Developer to develop the Project in accordance with the provisions and requirements of this Agreement, the Project Approvals, the Conditions of Approval and the Applicable Rules (as hereinafter defined), including only those modifications, changes or additions to those Applicable Rules permitted or required by this Agreement; and
- (l) The Planning Commission and the 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 General Plan (as hereinafter defined), and the Specific Plan; and
- (m) An environmental review has been conducted and completed with regard to the Project and a FEIR was certified by the City Council on _____, _____, December 14, 2010, in accordance with CEQA (as hereinafter defined), including all State and local guidelines, which FEIR contemplates a development agreement and its execution by the Parties as one component of the Project; and
- (n) This Agreement is in furtherance of the public health, safety and welfare of the residents of the City and the surrounding region, and will serve the public interest, convenience and necessity of the City and its residents and the surrounding region; and
- (o) The City Council has specifically considered and approved the impact and benefits of the Project upon the welfare of the City and the region; and
- (p) This Agreement will serve to eliminate uncertainty in planning and will provide for the orderly development of the Project in a manner consistent with the Applicable Rules and the General Plan and Specific Plan; and
- (q) 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 (as hereinafter defined) of this Agreement, except pursuant to the provisions of this Agreement; and
- (r) The Project will provide substantial benefit to the City by providing, without limitation, increased tax and other revenues, the construction and dedication of public improvements, the offer for dedication to permanent public open space of

approximately eighty-four (84) acres, the provision for dedication and improvement of equestrian trails connecting Horse Thief Canyon Park and the Sycamore Canyon trail system, and the creation of job opportunities for residents of the City.

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. Incorporation of Recitals.

The foregoing recitals are hereby acknowledged and affirmed by the Parties and are incorporated herein as a substantive term of this Agreement.

Section 2. 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 set forth below:

2.1 “Applicable Rules” means, as provided in Government Code Section 65866, the rules, regulations, and official policies, including but not limited to those contained in the City’s General Plan (as Amended by the Project Approvals), Municipal Code (as Amended by the Project Approvals), Specific Plan No. 25 (as amended by the Project Approvals) and Zoning Regulations (defined below), governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications applicable to development of the Property, whether adopted by the City Council or the voters in an initiative, which are in force as of the Effective Date of this Agreement. During the term of this Agreement and except as otherwise expressly provided herein, (1) the permitted uses of the Property; (2) the density or intensity of that use; (3) the maximum height and size of proposed buildings on the Property; and (4) the provisions for reservation or dedication of land for public purposes applicable to the Property shall be those provided by the “Project Approvals” (as defined below), including, without limitation, the “General Plan” (as defined below), the “Specific Plan” (as defined below), and the TTM. Applicable Rules shall also mean and include all Developer Fees (as hereinafter defined) and Processing Fees (as hereinafter defined) in effect from time to time during the term of this Agreement and there shall be no limit upon the Developer Fees and the Processing Fees payable with respect to the Project by virtue of this Agreement; provided that, as further provided in this Agreement below, so long as this Agreement remains in effect, no new Development Fees other than those shown on Exhibit C attached hereto shall be imposed upon the Project in connection with its development. Notwithstanding anything above contained in the definition of the Applicable Rules which appears to be to the contrary, (i) this Agreement shall not prevent the City, in subsequent actions applicable to the Property, from applying new rules, regulations and policies which do not conflict with the Project Approvals or Applicable Rules applicable to the Property as set forth herein (“New Rules”), nor prevent the City from denying or conditionally approving any subsequent development project application on the basis of such New Rules (except this shall not apply to Minor Modifications), (ii) this Agreement shall not prevent the City from imposing

reasonable conditions or restrictions on future tentative subdivision or parcel maps and/or conditional use permits where such conditions or restrictions are necessary to avoid putting the residents of the Project or the area immediately surrounding the Project in a condition which would adversely impact their health or safety, or both, based on objective and identified health and safety standards, and (iii) this Agreement shall not prevent the City from requiring that the Project meet all applicable requirements of the Los Angeles County Flood Control District with respect to changes to the Project required by revisions to the approved drainage plan. Notwithstanding anything above to the contrary, the term “Applicable Rules” shall not limit the application to the Project of new rules, regulations, and official policies of the City governing design, improvement and construction standards and specifications (each a “Design Rule”) if (i) such change is a citywide change applying uniformly throughout the City, and (ii) except for update or adoption of uniform codes pursuant to the next sentence (which shall apply to the Project in any event), such change does not impose a material adverse financial impact upon the overall Project or the development thereof as contemplated by this Agreement and the Project Approvals; provided, further, that the additional time, if any, necessary to comply with a change in a Design Rule (as opposed to the additional cost or expense of compliance) shall not, in itself, constitute a material adverse financial impact. Notwithstanding anything herein to the contrary, the Developer Parties specifically acknowledge and agree that the construction of the Project shall be subject to (i) any adoption or update of building, electrical, mechanical, fire, pool or other similar uniform codes of citywide scope which are based on the recommendations of a multi-state professional organization and become applicable throughout the City, including all applicable California Building Standards Codes (as defined below) and (ii) all City-wide laws, regulations or ordinances relating to energy and/or resource conservation (so-called “sustainability” or “green building” laws, regulations or ordinances). Nothing in this Agreement deprives Developer of any rights it may have under Government Code Section 66474.2(a) and nothing in this Agreement constitutes a waiver by Developer of such rights.

2.2 “California Building Standards Codes” means those building, electrical, mechanical, fire, pool and other similar regulations, which are mandated by state law and which become applicable throughout the City, including, but not limited to, the California Building Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, and the California Fire Code (including those amendments to the promulgated California codes which reflect local modification to implement requirements justified by local conditions, as allowed by state law, and which are applicable City-wide).

2.3 “CEQA” means the California Environmental Quality Act (California Public Resources Code Section 21000, et seq.) (the “Act”) and the guidelines promulgated by the Governor’s Office of Planning and Research in accordance with said Act (the “Guidelines”), as they now exist or may hereafter be amended.

2.4 “City Manager” shall mean the City Manager of the City, or his designee.

2.5 2.4-“Conditions of Approval” shall mean those conditions of approval imposed by the City upon the Project Approvals as of the date hereof, as they may be amended or modified by the City upon NJD’S application prior to recording of the Final Map in order to comply with the requirements of other approving agencies (e.g., without limit, USFWS, CDFG, Division of Dam Safety) including all requirements of any applicable Mitigation Monitoring

Program, and any additional conditions of approval hereafter imposed on the Project consistent with Section 5.1.2 below.

2.6 ~~2.5~~—“Developer Fees” 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 or any third party fees imposed by other agencies or jurisdictions even if collected by the City on behalf of those entities, such as, Regional Congestion Mitigation Fees, (if approved) Regional Water Quality Control Board fees, school fees and similar third party fees. The Developer Fees in effect as of the Effective Date of this Agreement are listed on Exhibit C, which is incorporated into this Agreement by this reference. The Developer Fees listed on Exhibit C are the only Developer Fees that the City may impose or levy on the Project and no new Developer Fees first adopted by the City after the Effective Date of this Agreement shall be applicable to the Project during the Term of this Agreement; provided, that nothing herein shall be construed or applied to limit any increases in the Developer Fees and the Project shall be subject to any properly adopted increase in those existing Developer Fees after the date of this Agreement.

2.7 ~~2.6~~—“Development Agreement” or “Agreement” means this Agreement.

2.8 ~~2.7~~—“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.

2.9 ~~2.8~~—“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.

2.10 ~~2.9~~—“Effective Date” shall mean the date this Agreement, fully executed, is recorded in the Office of the Recorder of Los Angeles County.

2.11 ~~2.10~~—“Enabling Resolution” means Resolution No. 2010-62 adopted by the City Council on November 23, 2010 (Exhibit D hereto).

2.12 ~~2.11~~—“FEIR” shall mean that certain Final Environmental Impact Report (FEIR) (SCH#2010051020) which was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA. “Mitigation Monitoring Program” shall mean the mitigation measures imposed upon the Project pursuant to the FEIR and the Conditions of Approval.

2.13 ~~2.12~~—“General Plan” means ~~that certain the~~ General Plan 99-1, of the City, as amended by the City prior to or concurrent with this Agreement.

2.14 ~~2.13~~—“General Plan Amendment” means that certain General Plan Amendment approved by the City Council by Resolution No. 2010-68.

2.15 ~~2.14~~–“Ministerial Permit(s)” or “Ministerial Approval(s)” mean a permit or approval including, but not limited to, building permits, grading permits, zone clearances and certificates of occupancy, which require 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.

2.16 ~~2.15~~–“Mortgagee” means a mortgagee of a mortgage or a beneficiary under a deed of trust encumbering all or a portion of the Property.

2.17 ~~2.16~~–“Phase” shall mean any discrete portion or part of the Project developed by the Developer or any successor in interest thereto.

2.18 ~~2.17~~–“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, inspection fees and certificates of occupancy. Processing Fees shall not mean or include Developer Fees.

2.19 ~~2.18~~–“Project” means the project as described in the General Plan Amendment, the Specific Plan Amendment, the TTM and the other Project Approvals.

2.20 ~~2.19~~–“Project Approvals” shall mean, collectively, the Specific Plan Amendment, the General Plan Amendment, the TTM, this Agreement and any other plans, maps, permits and entitlements of every kind and nature specifically applicable to the Project, and shall also include any subsequent project specific approvals obtained by the Developer. To the extent that any of the Project Approvals are amended, from time to time, “Project Approvals” shall include, if Developer and City agree in writing, such matters as so amended. If this Agreement is required by law to be amended in order for “Project Approvals” to include any such amendments, then “Project Approvals” shall not include such amendments unless and until this Agreement is so amended.

2.21 ~~2.20~~–“Property” means the real property described on Exhibit A and shown on the Location Map attached as Exhibit B. Upon Developer obtaining fee title to the Additional Property, ~~an~~the approximately 40-acre northern portion of the Additional Property, as depicted on Exhibit B-1 and described on Exhibit B-2, shall be deemed part of the “Property” for the purpose of this Agreement.

2.22 ~~2.21~~–“Reserved Powers” means the rights and authority excepted from this Agreement’s restrictions on the City’s police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date with respect to development or use of the Project that may be in conflict with the Applicable Rules, but are: (1) necessary to prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety based on objective and identified health and safety standards; (2) necessary to implement California Building Standards Codes; (3) necessary to comply with state or federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a

court order or judgment of a state or federal court; (4) Design Rule changes described in Section 2.1 above; (5) agreed to or consented to by Developer; (6) are City-wide fees or charges of general applicability other than new Developer Fees which are inapplicable to the Project in accordance with the provisions of this Agreement; or (7) are City-wide laws, regulations or ordinances relating to energy and/or resource conservation (so-called "sustainability" or "green building" laws, regulations, or ordinances).

2.23 ~~2.22~~—"Specific Plan" means Specific Plan No. 25, as amended, as approved by the City prior to or concurrent with this Agreement pursuant to Ordinance No. 1201.

2.24 ~~2.23~~—"Specific Plan Amendment" means the amendment to Specific Plan No. 25 resulting from and as approved by Ordinance No. 1201.

2.25 ~~2.24~~—"Term" means the term of this Agreement, which shall commence on the Effective Date of this Agreement and shall terminate fourteen (14) years from and after the Effective Date of this Agreement unless modified or extended as set forth in this Agreement or by mutual written consent of the Parties hereto. If any party other than Developer initiates litigation that challenges the Project or the Existing Project Approvals, then Developer will have the right to toll commencement of the Term. The tolling shall commence upon receipt by the City of written notice from Developer invoking this right to tolling. The tolling shall terminate when (1) a final order is issued in said litigation that upholds the Project and the Project Approvals or (2) the litigation is dismissed with prejudice by all parties; whichever occurs first; provided that any tolling shall not exceed twenty-four (24) months unless the City consents thereto.

2.26 ~~2.25~~—"TTM" means that certain Tentative Tract Map No. 70583, as ~~submitted on August 28, dated October 27,~~ 2010, for the subdivision of the Property and a portion of the Additional Property into 61 residential lots, lettered common area lots, and related improvements, approved by the City Council pursuant to Resolution No. 2010-69.

2.27 ~~2.26~~—"Zoning Regulations" shall mean the official zoning regulations of the City.

Section 3. Recitals of Premises, Purpose and Intent.

3.1 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 authorized 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 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 costs of development."

3.2 Intentionally Omitted

3.3 Property Ownership. The Developer is the owner of the Property and has a legal and equitable interest in the Additional Property and thus is qualified to enter into and be a party to this Agreement. Upon becoming fee title owner of the Additional Property, an approximately 40 acre portion of such property generally depicted on Exhibit B-1 shall be deemed part of the Property. The remainder of the Additional Property shall not be governed by or encumbered by this Agreement or the Project Approvals. After approval of the TTM, the parties shall execute such documents as necessary to cause this Agreement to be removed from record title to the remainder of the Additional Property.

3.4 Development of the Property. It is the Parties' understanding that Developer intends to develop the Property as described in the Project Approvals. The Parties hereby agree that, for the Term of this Agreement, the Developer shall have a vested right to develop the Property and the Project in accordance with, and to the extent of, the Project Approvals, the Applicable Rules, the Conditions of Approval and this Agreement.

3.5 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 the 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 in a manner which is consistent with the surrounding community. Moreover, this Agreement will eliminate uncertainty in planning for and will secure orderly development of the Project, assure installation of necessary improvements, and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted.

Section 4. Project Development.

4.1 Project Development; Entitlement to Develop. Developer may develop the Property or any portion thereof with a development of lesser height or density than that currently approved, provided that such development otherwise complies with the Applicable Rules, the Project Approvals, the Conditions of Approval and this Agreement.

The City has determined that the Project is consistent with the General Plan (as amended) and the Specific Plan (as amended). Notwithstanding anything herein to the contrary, including anything contained in Section 4.2 below, as a condition to the continued effectiveness of this Agreement, (i) Developer shall have recorded a final subdivision map with respect to at least forty-four percent (44%) of the residential lots

contained in the Project (and shall have entered into all required subdivision improvement agreements and posted all required subdivision bonds in connection therewith) prior to the tenth anniversary of the Effective Date of this Agreement ("First Phase Map Condition Precedent"), and (ii) prior to the twelfth anniversary of the Effective Date, Developer shall substantially complete all subdivision improvements that are required to be constructed as a result of that map recordation, including the backbone road (identified as Brasada Lane on the TTM), equestrian trails (except that, with the approval of the City Manager, or his designee, trails on non-backbone roads may be completed to a less finished form as agreed to by the City), backbone infrastructure and other like public improvements ("First Phase Improvement Condition Precedent"). At the time of completing those first phase improvements, Developer shall also complete the dedication and improvement of the equestrian trails described in Section 4.6 below if that dedication and improvement has not previously occurred. If Developer fails to record that map or complete those improvements by the outside dates set forth above, City may, at any time prior to completion of those actions, terminate this Agreement upon written notice to the Developer; provided that the City's only remedy for Developer's failure to timely record that map or complete those improvements by those outside dates set forth above shall be such termination and City shall not have the right to compel Developer to complete those actions by an action for specific performance.

4.2 Timing of Development and Allotment. The Project may be developed incrementally or in Phases and, except as otherwise specifically provided in this Agreement, Developer is under no obligation to commence or complete the Project in any particular timeframe or at all. The Parties acknowledge that the Developer cannot at this time predict when or the rate at which the Project would be developed and they acknowledge that the actual rate of development will 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, except as otherwise provided by the Project Approvals, Applicable Rules or this Agreement, including Section 4.1 above, the Developer shall have the right to develop the Property 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. 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, the Conditions of Approval and the terms of this Agreement.

4.3 Moratorium. No City-imposed moratorium or other limitation (including, without limit, limitations relating to the rate, timing or sequencing of the development or construction of all or any part of the Property or any Phase thereof, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City 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 or Project Approvals 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 or to the City's exercise of its Reserved Powers.

4.4 City Services. Subject to Developer's installation of infrastructure in accordance with the requirements of the Project Approvals, Conditions of Approval, Applicable Rules and any subsequent additional Discretionary Approvals, if any, sought by Developer to implement the Project under any New Rules or Design Rules, City has determined and hereby finds that it will have sufficient capacity in its infrastructure, services and utility systems, including, as applicable, traffic circulation, storm drainage, sewer collection, sewer treatment, sanitation service and water supply, treatment, distribution and service, to accommodate the Project. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no restriction on hookups or service for the Project.

4.5 Partial Termination. Developer shall have the right to request that the City approve a partial termination of this Agreement to release a portion(s) of the Property from the Agreement's obligations and benefits ("Partial Termination"). A Partial Termination may be approved by the City if Developer demonstrates to the City's satisfaction, in its sole and independent judgment, that the portion of the Property to be released from the Agreement obligations is not needed to satisfy any of the obligations established in the Agreement. If the City makes such a determination, such released Property shall not be subject to any of the

obligations created in this Agreement, and similarly, will not receive any of the benefits created in this Agreement. Notwithstanding anything in this Agreement, the obligations of Developer in this Agreement are not intended to and shall not encumber any portion of the Property that has been finally subdivided, constructed and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user as a residential lot. Upon any such sale or lease, the residential lot shall be automatically and without further need for approval by the Parties be released from the duties and obligations of the Developer under this Agreement. Despite the intention of the Parties for this paragraph to be self-executing, the City shall execute a recordable instrument sufficient to release the Developer's obligations in this Agreement from a residential lot within thirty (30) days of a written request by Developer or any person with ownership rights to such residential lot. No such owner of an individual lot shall have the right to assert any rights of Developer under this Agreement, and Developer shall remain the responsible party for purposes of exercising any of those rights.

4.6 Equestrian Trails.

4.6.1 ~~Upon the later of (i) unless such requirement is waived by the City, acting in its sole discretion, within thirty (30) days after the approval of this Agreement and the expiration of any period for bringing a legal challenge to that approval~~ the Project Approvals with no challenge being filed, or, if such a challenge is timely filed, upon the resolution of that challenge in a manner that upholds the terms of this Agreement ~~Project Approvals (the foregoing event is referred to herein as the "Closure of the Challenge Period"), or (ii) the sixtieth (60th) day after Developer closes escrow for the acquisition of the Additional Property, the Developer shall provide to the City, for the benefit and use of the public, a temporary irrevocable license (subject to those terms and conditions contained in the license) for the use and maintenance of the existing service or access trails or roads through the Property and/or which are known as the motorways and are located generally as shown on Exhibit E attached hereto. In addition, following the later of (i) the Closure of the Challenge Period, or (ii) the sixtieth (60th) day after Developer closes escrow for the acquisition of the Additional Property, the Developer shall, upon the City's written request, provide to the City, for the benefit and use of the public, a temporary irrevocable license (subject to the terms and conditions contained in the license) for the use and maintenance of the existing service or access trails or roads traversing north-south through the Additional Property (or such portion thereof) that the City reasonably determines are appropriate for equestrian use and over which it elects to receive a temporary license. The City shall bear all costs and all risk associated with the use of such license(s) and any maintenance required as a result of such use. Subject to the terms of the license, including the obligation of City, or its designee, to maintain those license areas, such license(s) shall continue until superseded by the dedication of the permanent equestrian trails serving the same area. Such license(s) shall be in a form acceptable to both Parties; provided that agreement upon the form of that license upon the request of either Party and the prompt execution and delivery of that license upon the occurrence of the applicable trigger date set forth above shall constitute conditions to the continued effectiveness of this Agreement, and, if those requirements are not met, either Party shall have the right to terminate this Agreement upon thirty (30) days written notice to the other Party until such requirements are met. The City shall have no right to assign or designate a designee for receipt of the license(s) or otherwise transfer its rights in the license(s) described above in this Section without obtaining the Developer's prior written consent, which consent shall not be unreasonably withheld.~~

4.6.2 In addition to the temporary license described above, concurrent with satisfaction of the First Phase Map Condition Precedent (and without limitation of the requirements of the Conditions of Approval and the Project Approvals), the Developer shall (i) offer for dedication (or convey to a third party designated by the City if the City so elects), and (ii) improve, consistent with the TTM and the Conditions of Approval, a permanent equestrian trail(s) within the Property ~~substantially as shown on Exhibit E attached hereto~~ in accordance with the requirements of the Project Approvals and the Conditions of Approval applicable thereto. The Developer shall have no obligation to maintain these trails following improvement by the Developer, and such maintenance shall be performed by either the City or a third party designated by the City following dedication or transfer thereof as provided above; provided, however, that if the City elects to designate a third party to maintain the trails, the City shall first obtain the Developer's written consent to the identity and qualifications of the third party, which consent shall not be unreasonably withheld. The permanent equestrian trails shall meet all requirements of the Project Approvals and all Conditions of Approval applicable thereto.

4.6.3 In addition to performance of the above obligations and as additional consideration to the City for its execution of this Agreement, within thirty (30) days after the Closure of the Challenge Period, the Developer shall deliver to the City readily available funds in the amount of \$8000, which the City shall retain and deposit into a City trust account and which the City shall thereafter use for equestrian trail maintenance anywhere in the City, as determined by the City in its sole discretion.

4.7 Dedication or Transfer of Open Space Parcel. At such time as City shall direct following the Closure of the Challenge Period (as defined above) but in no event later than the expiration of the Term, Developer shall convey to the City for use by the public (or convey to a third party designated by the City if the City so elects) an approximately eighty-four (84) acre tract of undeveloped property as permanent public open space area (the "Open Space Parcel"). If the City elects to designate a third party to receive conveyance of the Open Space Parcel, the City shall first obtain the Developer's written consent to the identity and qualifications of the third party, which consent shall not be unreasonably withheld. If, prior to the City's request that the Developer transfer the Open Space Parcel pursuant to this Section, the Developer has delivered a notice of default to the City and the City is not contesting, in good faith, the existence of such alleged default and any actual default has not been cured, then the Developer shall not be required to complete the conveyance of the Open Space Parcel until such default is cured. Any dedication or conveyance by Developer pursuant to this Section shall be free of all monetary liens or encumbrances but shall be subject to a Section 1542 waiver and release for Developer's benefit with respect to all disclosed or unknown conditions. The City or approved third party designee shall take title subject to, and Developer shall have a right to record prior to conveyance, a deed restriction on the Open Space Parcel restricting the uses of this parcel from development that would materially impair the successful development, marketing, sale and use of the Project. Such deed restriction shall include, without limitation, restrictions prohibiting the operation of motorized recreational or passenger vehicles, open space use restrictions, easements for the benefit of the Property for access and such other matters as the Parties may agree to. The Parties shall not unreasonably withhold, delay or condition their consent to the form of the deed restriction. Agreement upon the form of the deed restriction shall be a condition to the continued effectiveness of this Agreement and if the Parties are unable to agree upon the form of that restriction, then either Party may terminate this Agreement upon thirty (30) days written notice

to the other until agreement upon the form of that restriction is achieved. The approximate location of the Open Space Parcel is shown on Exhibit B attached hereto. City shall not have any obligation to issue certificates of occupancy with respect to any improvements constructed on the Property until this condition has been satisfied or the City elects, in its sole and absolute discretion, to waive or defer that requirement; provided, however, if Developer is otherwise entitled to certificates of occupancy and City has not yet tendered its direction to Developer to offer the Open Space Parcel for dedication, then City shall have thirty (30) days from Developer's request for certificates of occupancy to do so. If a written request for dedication is not delivered to Developer within such thirty (30) day period then the condition requiring dedication prior to the issuance of those requested certificates of occupancy shall be waived; provided, however, that such Open Space Parcel's dedication obligation shall continue as otherwise provided in this Agreement and shall apply prior to the issuance of any further certificates of occupancy; provided further that if additional certificates of occupancy are sought then the previous sentence concerning the final thirty (30) day window for demanding transfer of the Open Space Parcel shall likewise apply to such certificates of occupancy. If the City has not directed Developer in writing to complete such conveyance prior to expiration of the Term, then Developer shall provide the City with written notice thereof, and if the City does not direct Developer to make such conveyance within thirty (30) days thereafter, the obligation of Developer in this Section 4.7 shall be deemed waived.

Section 5. Changes.

5.1 Nonapplication of Changes; Additional Conditions of Approval and Other Exceptions.

5.1.1 Nonapplication of Changes to Applicable Rules Without Developer Consent. The adoption of any change in the Applicable Rules, adopted or becoming effective after the Effective Date of this Agreement, shall not be applied to the Project, unless the Developer gives written notice to the City of its election to have such change in the Applicable Rules applied to the Project, which it may grant or withhold in Developer's sole and absolute discretion, or unless such change in the Applicable Rules constitutes a lawful exercise of the City's Reserved Powers or is otherwise expressly authorized by this Agreement.

5.1.2 Additional Conditions of Approval. Although no additional conditions or dedications shall be imposed by the City on the development of the Project, the Parties acknowledge and agree that, in approving any tentative subdivision maps with respect to the Property filed after the date of this Agreement, the City reserves its right to impose normal and customary dedications pursuant to the Applicable Rules for rights of way or easements for public access, utilities, water, sewers, and drainage necessary for the Property. In addition, nothing in this Section 5.1 shall preclude the City from requiring further conditional use permits, planned unit development permits, site plan reviews, architectural review, precise plan grading review and other approvals required by Specific Plan No. 25 as amended, and other development permits and Discretionary Approvals with respect to the Project that are provided for by the Applicable Rules.

5.1.3 Changes in Building Codes. As set forth above in Section 2.1, notwithstanding any provision of this Agreement to the contrary, any Project improvements that

are not yet issued building permits shall be subject to changes occurring from time to time resulting from the City's adoption of building regulations based on the recommendations of a multi-state professional organization and which become applicable throughout the City, including, but not limited to, the California Building Standards Codes and other similar or related uniform codes.

5.1.4 Changes Mandated by Federal or State Laws or Regulations. In the event that any Federal, State, County or multi-jurisdictional laws or regulations (collectively "Federal or State law or regulation") enacted after the Effective Date but prior to the issuance of a building permit for the applicable improvements prevents or precludes compliance with one or more of the provisions of this Agreement or the Applicable Rules, such provisions of this Agreement or the Applicable Rules shall be modified or changed as necessary to comply with such Federal or State law or regulation in a manner that minimizes, so far as reasonably possible, the adverse impact to the Project. In the event City has discretion to do so, the City shall interpret and implement a Federal, State, County or multi-jurisdictional law or regulation in a manner that minimizes, so far as reasonably possible, the adverse impact to the Developer's rights in the Project Approvals or under this Agreement. Where City or Developer believes that such modification or change is required, that Party shall take the following actions:

(a) Notice and Copies. The Party which believes a change or addition is required 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.

(b) 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 consistent with the provisions of Section 5.1.4 above. In such discussions, the City and the Developer agree to preserve the terms of this Agreement and the rights of the Developer and the City derived from this Agreement to the maximum feasible extent while resolving the conflict.

(c) 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 this Agreement or 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 most convenient 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.

5.1.5 Cooperation in Securing Permits. Upon Developer's request, the City shall cooperate in good faith with Developer, at no cost or expense to the City, in the

securing of any permits or approvals of other governmental agencies having jurisdiction over the Project required for the development of the Project, including, without limitation, any permits or approvals required as a result of a modification pursuant to Section 5.1.4 above.

5.1.6 Changes in Processing Fees and Developer Fees. Notwithstanding anything herein to the contrary, development of the Property and construction of the Project shall be subject to payment of all applicable Processing Fees and Developer Fees which may be in effect from time to time and which are then applicable to the Project in accordance with the terms thereof; provided, that the Developer Fees listed on Exhibit C are the only categories of Developer Fees that the City may impose or levy on the Project during the Term of this Agreement, as such Developer Fees may be adjusted from time to time subject to City's compliance with any applicable laws relating to the enactment of fee increases.

5.1.7 Developer's Right to Contest New or Increased Fees, Charges or Assessments. Nothing in this Agreement shall prevent Developer from contesting, in any appropriate forum, the imposition or the amount of any Processing Fees, Developer Fees, or other fees, charges or assessments, or any increase therein. Such right of protest shall not extend to the existence or current amount of any Developer Fees identified on Exhibit C, or any Processing Fees in effect as of the Effective Date of this Agreement, and the Developer hereby agrees to cause to be paid the same pursuant to City's normal fee payment schedule without objection thereto. Notwithstanding any pending good faith contest of such new or increased fees, charges or assessments, City shall proceed with issuance of all required Ministerial Approvals with respect to the Project and shall not withhold or delay issuance of those Ministerial Approvals based upon any pending protest or appeal with respect to such fee, charges or assessments; provided any contested amount has been paid to City under protest with a reservation of rights.

5.1.8 Ministerial Permits. The City shall not require Developer to obtain any Ministerial Permits for the development of the Project in accordance with this Agreement other than those required by the Applicable Rules or by agencies unrelated to the City. Any Ministerial Permit required under the Applicable Rules shall be governed by the Applicable Rules.

5.1.9 Discretionary Approvals. Any approval involving a Discretionary Action or Discretionary Approval and required or needed after the Effective Date in order to commence or complete the approved Project, which does not materially change, modify or alter the Project, shall be governed by the Applicable Rules. Any subsequent Discretionary Action or Discretionary Approval sought by Developer in connection with a modification which materially changes, modifies or alters the Project shall be subject to all then applicable governmental rules, regulations and requirements without limitation to the Applicable Rules. 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 required in order to comply with CEQA.

5.1.10 Timely City Actions. The City agrees to timely consider and 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 implementing the approved Project. City's obligations in this Section 5.1.10 are conditioned upon Developer satisfactorily complying 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 or Ministerial Permits/Ministerial Approvals. If the City fails to timely act in the manner specified above, then upon written notice by Developer of such unreasonable delay and the identification of the specific cause(s) thereof and continuing so long as such delay continues, Developer's rights under this Agreement shall be extended on a day-for-day basis from the date of such notice until the delay has been remedied.

5.1.11 Interim Uses. City agrees that, until development of the Project, the Developer may continue the present use and operation of the Property.

5.1.12 Additional Staffing. If standard City staffing fails to result in processing of any permits or approvals as promptly as reasonably required for timely development of the Project by Developer, then the City agrees, upon request of Developer, to reasonably cooperate with Developer in hiring additional staff or consultants as City determines appropriate to process required Ministerial Permits and Approvals or Discretionary Actions and Approvals. The Developer shall reimburse the City for all direct and indirect costs of such additional staff or consultants, and any required training thereof, and all direct and indirect costs of the existing City staff in the supervision, review and coordination of such additional staff or consultants, within thirty (30) days after Developer receives an invoice identifying such reimbursable expenses; provided, the Developer shall have the right to audit such costs, at its expense, upon request. The City shall not charge a surcharge for such staffing in addition to such actual direct and indirect costs of City staff and such additional staff and consultants, nor shall the City charge any other separate fee for such additional staffing.

5.1.13 Term of Project Approvals. 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 2.22 above.

5.1.14 Minor Modifications. It is contemplated that Developer may in the future desire to change or modify the Project based on, without limitation, precise planning, precise grading, structure siting on lots, road or trail configuration, drainage patterns or drainage needs and infrastructure, changes in market demand, or other factors in a manner that will not lead to a material increase in the severity of environmental impacts or materially change the Project as approved ("Minor Modifications"). Such Minor Modifications 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. The Parties agree that such Minor Modifications in Project Approvals that do not materially alter the Project may be agreed to in writing by the City Manager and the Developer. All Minor Modifications will require approval in accordance with the Applicable Rules. The Parties agree that any such Minor Modifications shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

Section 6. Default Provisions.

6.1 Default by Developer. In the event the Developer does not perform its obligations under this Agreement (“Defaults”) in a timely manner, the City shall have all rights and remedies provided herein or under applicable law, which shall include, but not be limited to, compelling the specific performance of the material obligations of Developer under this Agreement, or modifying or terminating this Agreement, provided that (i) except for recovery of any amounts, including attorneys’ fees, owed to City under the terms of any indemnities ~~provided for herein~~ in Sections 7.10 and 7.23 for the benefit of the City, the City hereby knowingly, willingly and intelligently waives any right to seek monetary damages from Developer for such breach, including any monetary damages for the failure to start or complete the Project and (ii) with respect to any remedy the City has first complied with the following procedure:

(1) Notice of Default. The City shall give to Developer written notice of default identifying with specificity Developer’s alleged Default(s).

(2) Period to Cure Non-Compliance. Twenty (20) days after service of the notice of default, Developer shall forthwith commence to cure the identified Default(s), and Developer shall complete the cure of such Default(s) within a reasonable period of time not to exceed sixty (60) days thereafter (“Developer Cure Period”). If a Default cannot be reasonably cured within sixty (60) days, the Developer Cure Period shall be extended for the period necessary to complete the cure so long as Developer has timely commenced to cure such Default(s) and continues to diligently pursue curing such Default(s) to completion within not more than one hundred twenty (120) days after service of the notice.

(3) Failure to Cure Default. If, after the Developer Cure Period (or any extension thereof) has elapsed, the City Council finds and determines that Developer remains in Default, the City Council may terminate or modify this Agreement, after compliance with the provisions of Section 65864 et seq. of the Government Code. Before ordering the termination of this Agreement, the City Clerk Manger shall set have the matter set for hearing at its next most convenient meeting, and shall give not less than ten (10) days written notice of the time and place of such hearing to the Developer. The City Council shall conduct a public hearing to determine whether this Agreement should be terminated as authorized by Section 65864 et seq. of the Government Code and the provisions of this Agreement. The decision of the City Council to terminate or modify this Agreement shall be final and conclusive subject only to judicial review.

(4) Termination; City Remedies. If the City Council terminates this Agreement, after a final determination is made by City Council that the Developer is in Default and has not cured the Default within the Developer Cure Period, such termination of this Agreement shall not affect any right or duty of either party arising from entitlements or approvals, including the Projects Approvals, on the Property approved prior to the effective date of the City Council’s order of termination. Notwithstanding termination of this Agreement, 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, including, without limitation, bringing an action against any bonds posted to secure the construction of those improvements, and (ii) to require Developer to dedicate any property required for public improvements 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, and (iii) so long as such termination is not due to a City default, to compel Developer by an action for specific performance to complete the dedication and improvement of the equestrian trail easements contemplated in Section 4.6 and the open space dedication or conveyance contemplated in Section 4.7.

6.2 Default by the City; Notice of Default. In the event the City does not timely accept, process, or render a decision on necessary development permits, entitlements, or other land or building approvals for use of the Property as provided in this Agreement or by the Project Approvals under the Applicable Rules, or if the City otherwise fails to perform its obligations under this Agreement in a timely fashion, Developer shall have the right to specifically enforce the City's obligations hereunder, provided that Developer shall first serve on City a written notice of default stating with specificity those obligations which it believes City has not performed. The City shall commence to cure the identified default(s) within twenty (20) days after receipt of the notice of default and shall complete the cure of any default within sixty (60) days after receipt of the notice of default ("City Cure Period"). If a Default cannot be reasonably cured within sixty (60) days, the City Cure Period shall be extended for the period necessary to complete the cure so long as City has timely commenced to cure such Default(s) and continues to diligently pursue curing such Default(s) to completion within not more than one hundred twenty (120) days after service of the notice. Where the City fails to cure a default within the City Cure Period, Developer may, in addition to the specific performance remedy provided for above, forthwith terminate this Agreement and all further rights and obligations of the Parties hereunder; provided such termination shall not affect or release any obligations of a Party that have accrued as of the date of such termination. The Parties agree that Developer's obligations in Sections 4.6 and 4.7 shall not be deemed to be "accrued" for the purpose of the prior sentence if the Agreement is being terminated because of the City's uncured default. As a result, if Developer exercises its rights to terminate this Agreement upon an uncured City default and if the City has not yet accepted dedication or conveyance of the property in Sections 4.6 and 4.7 prior to such termination, then Developer's termination of this Agreement shall terminate any remaining obligations or rights in Sections 4.6 or 4.7; provided, that such termination of this Agreement shall not waive or limit any Conditions of Approval or the Developer's obligation to comply therewith in connection with any further development of the Property pursuant to the Project Approvals. If, prior to Developer's recordation of the first final map with respect to the Project, the City defaults and fails to cure such default after the Open Space Parcel has been conveyed to the City or a third party designee pursuant to Section 4.7 or after the temporary license for equestrian trails has been conveyed to the City or a third party designee pursuant to Section 4.6.1, then, upon such subsequent default and failure to cure, the temporary equestrian trail license shall automatically and without any further need for action by the Parties terminate and the Open Space Parcel shall without any need for further action revert in fee title to Developer's ownership. If a termination or reversion described in the previous sentence occurs, the City shall take any action reasonably necessary to provide Developer clear title to the Open

Space Parcel and equestrian trails (including without limitation execution of quitclaim deeds and removal of any liens occurring after the date of such conveyance to City and caused by the actions of the City); provided, that such termination or reversion shall not waive or limit any Conditions of Approval or the Developer's obligation to comply therewith in connection with any further development of the Property pursuant to the Project Approvals. Notwithstanding anything to the contrary in the Applicable Rules or otherwise, 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 2.24 above or the date such approval would otherwise be in effect under applicable law, whichever is later. In connection with the statement of the Developer's remedies in this Section, Developer acknowledges, and hereby knowingly, willingly and intelligently waives any right to seek monetary damages against the City for the City's default under this Agreement.

Section 7. General Provisions.

7.1 Termination. 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 right or duty of a Party hereto, arising out of any Project Approval or the provisions of this Agreement, in effect on or prior to the effective date of such termination. The Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from the occurrence of any of the events set forth in Section 7.2 below, provided that the extension of the Agreement pursuant to this sentence shall not cumulatively exceed a period of five (5) years.

7.2 Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, whenever a period of time is designated within which a 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 actually prevented from, or is unreasonably interfered with, 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; terrorist acts; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs, such as an annual review); any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs, such as the annual review); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; extraordinary unavailability of goods or materials necessary for the Project or similar bases for excused performance which are not within the reasonable control of the Party to be excused. Economic constraints, or lack of available funding or financing, shall not constitute grounds for extension under this Section 7.2. Any Party wishing to obtain an extension under this Section 7.2 shall notify the other Party of the cause for that extension within ten (10) days of the Party's actual knowledge of the force majeure event, and the period of extension shall be from the delivery of that notice until the cessation of that specified event.

7.3 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 reasonably 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 another governmental entity as conditions to subsequent project approvals. In the event the Developer exercises this right, it shall nonetheless be responsible for mitigation of impacts to City resulting from development that may have occurred on the Property prior to the notice of termination, on a fair share or nexus basis, 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. Notwithstanding anything herein to the contrary, if at any time during the term of this Agreement the Developer elects to abandon development of the portion of the Project located on the Property it owns or terminate this Agreement as provided in this Section 7.3, the Developer shall nevertheless be obligated to execute and deliver the offers of dedication and/or conveyance required under Sections 4.6 and 4.7 above with respect to the equestrian trail easements and open space dedication or conveyance described therein. The preceding sentence is not applicable in cases of a termination of this Agreement due to a City default as provided in Section 6.2 above.

7.4 Venue. Any legal action arising out of this Agreement must be filed in the Los Angeles County Superior Court.

7.5 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed in the State of California.

7.6 Amendments. This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement and in accordance with all applicable laws.

7.7 Assignment. In executing this Agreement, City has relied upon the financial capabilities of Developer to construct and operate the Project. Accordingly, except for transfers to an affiliate, parent, or subsidiary entity of Developer or its partners which is controlled by Developer or such partners (which shall not require any consent from the City but which Developer shall notify City of in writing concurrent therewith), the rights and obligations of Developer under this Agreement may not be transferred or assigned in whole or in part by Developer (collectively an "Assignment") without the prior consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. The Parties agree that any sale or lease of residential lots as provided in Section 4.5 shall not constitute an Assignment that requires City consent. City shall respond to such request in writing within ten (10) days after receipt and, in the event of any disapproval, set forth the reasons therefor. If City fails to respond within said ten (10) day period, the proposed assignment shall be deemed disapproved. The City Manager is hereby authorized to act upon any request for approval under the foregoing provision, and any approval granted by the City Manager shall constitute the action of and be binding upon the City.

7.8 Release of Transferring Owner. Upon any Assignment of the entirety of this Agreement or the rights hereunder approved by the City, the transferor shall be released of all obligations under this Agreement that relate to the Property or portion thereof being transferred to the extent arising from and after the date of the Assignment, 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 Property or portion thereof acquired by such transferee. Except as otherwise provided in Section 4.5, in connection with each transfer of any portion of the Property or portion thereof, transferor shall require the transferee to assume in writing all of the obligations under this Agreement that relate to the portion of the Property or portion thereof being transferred. Notwithstanding anything above to the contrary (except as provided in Section 4.5), the rights and obligations under this Agreement are non-severable and if any buyer, transferee or assignee Defaults under this Agreement, such Default shall constitute a Default by the owner of each other portion of the Property and shall entitle City to terminate this Agreement in its entirety if such Default is not timely cured. Each transferee shall be responsible for the reporting and annual review requirements relating to the portion of the property owned by such transferee.

7.9 Covenants. Until expiration of the Term, 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.

7.10 Cooperation and Implementation.

(1) Processing. Upon Developer's completion of all required preliminary actions and the tender of payment (whether under protest or not) of appropriate Processing Fees, including the fee for processing this Agreement, the City shall promptly 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

WITH A COPY TO: McKenna Long & Aldridge LLP
300 South Grand Avenue, Suite 1400
Los Angeles, CA 90071-3124
Attn: J. Kenneth Brown, Esq.
Facsimile: (213) 687-2149

DEVELOPER: NJD, LTD., a Texas limited partnership
3300 East First Avenue, Suite 510
Denver, CO 80206
Facsimile: (303) 399-3929

WITH A COPY TO: Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626
Attn: Michael R. W. Houston, Esq.
Facsimile: (714) 546-9035

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) upon receipt of a electronic transmittal confirmation, provided such transmittal occurs on a business day before 5:00 p.m. at the location of the Party receiving notice, otherwise such transmittal shall be deemed to occur at 9:00 a.m. the following business day., and provided such electronic transmittal is followed by a notice sent within forty-eight (48) hours thereafter by one of the methods provided above.

7.13 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.

7.14 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.

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

7.16 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.

7.17 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.

7.18 Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties with respect to the subject matter expressly contained in this Agreement. The Parties specifically acknowledge that this Agreement and the Project Approvals are intended to implement and satisfy, in full, the City's responsibilities and obligations under Sections 2 and 5 of the Settlement Agreement. Upon the Closure of the Challenge Period, the NJD Release set forth in Section 6a of the Settlement Agreement shall be deemed reaffirmed and extended to any claims for compensation for any interest in real or personal property, improvements to the realty, fixtures, equipment, inventory, lost business goodwill, relocation benefits, severance damage, precondemnation damages, litigation expenses, (including attorneys' fees and costs), or any other compensation or damage resulting from any acts, omissions, events or circumstances occurring on or before the Effective Date of this Agreement. The Parties agree however that this Section does not affect the rights of the Parties relative to the allocation of costs that may be subject to the provisions of the Settlement Agreement as well as those costs provided in Sections 10 (2) and (3) of the Developer Reimbursement Agreement dated June 11, 2010.

7.19 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 draftsman, but in accordance with its fair meaning.

7.20 Certificate of Compliance. At any time during the term of this Agreement, any lender or Party may request the other 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.

7.21 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 the representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, the City will not unreasonably withhold its consent to any such requested interpretation or modification provided City determines, in its sole good faith judgment, that such interpretation or modification is consistent with the intent and purposes of this Agreement and does not adversely impact the City's rights or obligations hereunder. 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 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 Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed Developer under this Agreement, or (ii) sixty (60) days from delivery of the notice to Mortgagee.

(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, provided, however, in no event shall such Mortgagee or its successors and assigns be (a) liable for any monetary defaults of 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 7.3 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, including the right to terminate this Agreement. In the event any Mortgagee seeks to develop or use portion of the Property acquired by such Mortgagee, such Mortgagee shall strictly comply with all of any the terms, conditions and requirements of this Agreement and the Project Approvals applicable to the Property or such part thereof acquired by the Mortgagee.

7.22 Processing of Modification. The Developer shall reimburse the City for its actual costs incurred in connection with any modification to this Agreement initiated by Developer or its Mortgagee.

7.23 Indemnity.

7.23.1 General. Developer shall indemnify the City, its officers, employees, and agents against, and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "Claims or Liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the work, operations, or activities of Developer, its agents, employees, subcontractors, or invitees, hereunder, upon the Property, except to the extent such claims are excepted as provided below in Section 7.23.2.

(a) Developer will defend any action or actions filed in connection with any of said Claims or Liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Developer will promptly pay any final judgment (subject to Developer's or City's rights to appeal from such final judgment) rendered against the City, its officers, agents, or employees for any such Claims or Liabilities arising out of or in connection with the indemnity in this Section 7.23.1, and Developer agrees to save and hold the City, its officers, agents, and employees harmless therefrom.

(c) In the event the City, its officers, agents, or employees is made a party to an action or proceeding filed or prosecuted for Claims or Liabilities described in the indemnity in this Section 7.23.1, the City shall promptly tender its defense to Developer, who pursuant to (a) above will defend the City, its officers, agents, or employees with attorneys selected by Developer and reasonably approved by City; Developer shall bear any and all costs and expenses in such action or proceeding, including but not limited to legal costs and attorneys' fees incurred in defending the City.

7.23.2 Exceptions. The foregoing indemnity shall not include Claims or Liabilities arising solely from the gross negligence or willful misconduct of the City, its officers, agents, or employees.

7.23.3 Loss and Damage. Except as provided in Section 7.23.2, City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. Except as provided in Section 7.23.2, City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature.

7.23.4 Period of Indemnification. The obligations for indemnity under this Section 7.23 shall begin upon the Effective Date of this Agreement and shall terminate upon termination of this Agreement; provided, that any obligations that have accrued as of the date of such termination shall survive that termination and remain enforceable by the City.

7.23.5 Waiver of Subrogation. Developer agrees that it shall not make any claim against, or seek to recover from City or its agents, servants, or employees, for any Claims or Liabilities to Developer or any other person or property, except as specifically provided in this Agreement and Developer shall give notice to any insurance carrier of the foregoing waiver of subrogation, and obtain from such carrier, a waiver of right to recovery against City, its agents and employees.

7.24 Insurance.

7.24.1 Types of Insurance.

(a) Public Liability Insurance. Prior to commencement and until completion of construction by Developer on the Property, Developer shall at its sole cost and expense keep or cause to be kept in force for the mutual benefit of City and Developer broad form commercial general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property or for property damage, providing protection of a least Three Million Dollars (\$3,000,000) per occurrence for bodily injury, death or property damage combined for any one accident or occurrence, which limits shall be subject to increases in amount as City may reasonably require from time to time.

(b) Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that (1) any loss shall be payable notwithstanding any act of negligence (but not willful or intentional violations of law) of City or Developer that might otherwise result in the forfeiture of the insurance, (2) the insurer waives the right of subrogation against City and against City's agents and representatives; (3) the policies are primary and noncontributing with any insurance that may be carried by City; and (4) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. City shall be named as an additional insured on all policies of insurance required to be procured by the terms of this Agreement. The City's Risk Manager acknowledges and agrees that the insurance requirements above have been established based on contemplated use and activities on the Property.

7.24.2 Failure to Maintain Insurance and Proof of Compliance. Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:

(a) For insurance required above, within thirty (30) days after the Effective Date.

(b) For any renewal or replacement of a policy already in existence, at least thirty (30) days prior to expiration of the existing policy.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that that insurance has been procured and is in force and paid for, such failure or refusal shall be a default hereunder after giving notice and an opportunity to cure.

7.25 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. The Parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable.

7.26 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 the Enabling Resolution ("Annual Review(s)"). The cost of each annual review conducted during the term of this Agreement shall be reimbursed to City by Developer. The annual review fee will initially be \$2500 per year, payable in advance by Developer prior to initiation of the review. The annual fee shall be increased after five years by the percentage increase in the Consumer Price Index for Los Angeles/Long Beach/Anaheim between the date of this Agreement and the month prior to the commencement of the applicable sixth year review. In addition, if the annual review results in a finding of default or breach by the Developer, the Developer shall reimburse the City upon demand for all actual and documented direct and indirect costs of staff or consultants attributable to such annual review to the extent those costs exceed the base annual review fee paid by Developer for that year.

(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 ("Special Review(s)"). The cost of such Special Reviews shall be borne by the City, unless the City Council determines as a result of such Special Review that Developer is not acting in good faith compliance with the material provisions of this Agreement. In such cases, Developer shall reimburse City for all actual and reasonable costs, direct and indirect, incurred in conjunction with such a Special Review.

(3) Conduct of Reviews. The City Manager, ~~or designee, or the City Council,~~ shall cause the Annual and Special Reviews to be conducted; ~~provided, that the City's failure to timely conduct any Annual review shall not constitute or be construed as a breach or default under this Agreement.~~ Any review by a party other than the City Council shall be provided to the City Council. A review concluding the Developer has complied with the terms of this Agreement may be considered by the City Council as a consent calendar item. Any review that recommends a finding that the Developer has not acted in good faith compliance with the provisions of this Agreement shall require City Council ratification and adoption at a public meeting at which the Developer shall be entitled to appear.

7.27 Record of Applicable Rules. Upon the Developer's written request to the City delivered within one hundred and twenty (120) days after the Effective Date of this Agreement, and at the Developer's sole cost and expense, 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.

7.28 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

7.29 Binding Effect. All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the City and Developer, and any lawful successor in interest of the Parties. Whenever the term "Developer" is used herein, such term shall include any other lawfully approved successor in interest of Developer. Nothing in this Section shall limit or waive the restrictions in Section 7.7 above.

7.30 Conflicts of Interest. The City represents and warrants that, to the actual knowledge of the City Manager, no member, official or employee of the City has any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested.

7.31 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.

[SIGNATURES FOLLOW ON NEXT PAGE]

ATTEST:

_____, City Clerk

**APPROVED AS TO FORM:
McKenna Long & Aldridge LLP**

By: _____

**CITY:
CITY OF SAN DIMAS,
a municipal corporation**

By: _____

Name: _____

Title: _____

**DEVELOPER:
NJD, LTD., a Texas limited partnership**

By: _____

Name: _____

Title: _____

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

EXHIBIT A
Description of the Property

EXHIBIT B
Location Map

EXHIBIT B-1
Location of Additional Property

EXHIBIT B-2
Description of Additional Property

EXHIBIT C
Developer Fees as of Effective Date

CITY OF SAN DIMAS DEVELOPMENT IMPACT FEES

DESCRIPTION	WHERE APPLICABLE?	PER UNIT	AMOUNT	x	QUANTITY	=	TOTAL FEE AMOUNT	
Park, Recreation & Open Space Development (San Dimas Municipal Code Chapter 3.26 and Council Resolution No. 90-8) <i>Purpose is to finance development of facilities to reduce the impacts of increased use caused by new development.</i>								
	All Residential Zones	1 bedroom home	\$400.				\$0.00	
	All Residential Zones	2 bedroom home	\$500.				\$0.00	
	All Residential Zones	3 bedroom home	\$600.				\$0.00	
	All Residential Zones	4 bedroom home	\$700.				\$0.00	
	All Residential Zones	5 bedroom home	\$800.				\$0.00	
	All Residential Zones	6 bedroom home	\$900.				\$0.00	
Quimby Act (San Dimas Municipal Code Chapter 17.36) - Either dedication of park land OR in lieu fee OR combination thereof, as decided by City Council. <i>Purpose is to develop new or rehabilitate existing park and recreational facilities to serve future residents of such subdivision.</i>								
DEDICATION OPTION								
	All subdivisions	Single-family home		AMOUNT OF LAND TO BE DEDICATED	x	# UNITS	=	TOTAL DEDICATION
	All subdivisions	Multiple-family home						
	All subdivisions - on subdivisions of 50 lots or less, only the payment of in-lieu fees shall be required.			643 sf				0.00
				457 sf				0.00
IN-LIEU FEE OPTION Land Value is the fair-market value of land (assessed value at the time of filing the final map), modified to equal market value in accordance with current practices of county assessor.								
		Single-family home		AMOUNT OF LAND TO BE DEDICATED	x	LAND VALUE (per sq ft)	=	FEE
		Multiple-family home						
		Fee paid based upon entire subdivision.						
		Single-family home		0.00				\$0.00
		Multiple-family home		0.00				\$0.00
Property Development Tax (San Dimas Municipal Code Chapter 3.24) <i>Purpose is to enable new development to pay its appropriate share of the cost of maintaining and improving the environmental quality of our community.</i>								
	All Residential Zones	1 bedroom home	\$275.00				\$0.00	
	All Residential Zones	2 bedroom home	\$350.00				\$0.00	
	All Residential Zones	3 bedroom home	\$425.00				\$0.00	
	All Residential Zones	4 bedroom home	\$500.00				\$0.00	
	All Residential Zones	5 bedroom home	\$575.00				\$0.00	
	All Residential Zones	6 bedroom home	\$650.00				\$0.00	
Sewer (San Dimas Municipal Code Chapter 14.12) <i>Purpose is to provide for construction and expansion of sanitary sewer system and to assure said costs are borne by those who receive the benefits thereof.</i>								
	All Residential Zones	Dwelling unit	\$160.00				\$0.00	
	All Residential Zones	Dwelling unit per frontage (in feet) of lot	\$12.00				\$0.00	
	Commercial	Frontage length (in feet) of lot	\$12.00				\$0.00	
	Commercial	Plumbing fixture	\$50.00				\$0.00	
		Trap	\$75.00				\$0.00	
	LA County Sanitation	Call (562) 699-7411 for amount					\$0.00	
School (State law - payable directly to Bonita Unified School District) <i>Purpose is to enable new development to pay its appropriate share of the cost of construction of new schools to serve future residents of said development.</i>								
	All Residential Zones	Dwelling unit	\$2.97				\$0.00	

EXHIBIT D
Enabling Resolution

RESOLUTION NO. 2010-62

**A RESOLUTION OF THE CITY OF SAN DIMAS
ESTABLISHING PROVISIONS FOR THE PROCESSING OF
DEVELOPMENT AGREEMENTS**

WHEREAS, an application for development of property in the foothills has been received, and the applicant has requested that in conjunction therewith the City approve a development agreement; and

WHEREAS, Government Code Section 65864 et. seq. provides for the approval of development agreements; and

WHEREAS, the City desires to establish procedures and requirements for consideration of development agreements.

NOW, THEREFORE, the San Dimas City Council does hereby find, determine and declare as follows:

PURPOSE

(1) This Resolution is adopted to establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of property owners or other persons having a legal or equitable interest in the property proposed to be subject to the agreement. In this regard, it is intended that the provisions of this chapter should be fully consistent, and in full compliance, with the provisions of Article 2.5 of Chapter 4 of Division 1 of Title 7 (commencing with Section 65864) of the California Government Code, and shall be so construed.

(2) In construing the provisions of any development agreement entered into pursuant to this chapter, those provisions shall be read to fully effectuate, and to be consistent with, the language of this chapter, Article 2.5 of the California Government Code, cited above, and the agreement itself. Should any apparent discrepancies between the meaning of these documents arise, then the documents shall control in construing the development agreement in the following order of priority:

1. The plain terms of the development agreement itself;
2. The provisions of this chapter, and
3. The provisions of Article 2.5 of the California Government Code, cited above.

Section 2. Applications.

A. Any owner of real property or other person having a legal or equitable interest in the property may request and apply through the director of planning for the city to enter into a development agreement provided that:

1. The property proposed to be subject to the agreement shall be not less than five acres in size;
2. The status of the applicant as an owner of, or holder of, legal or equitable interest in, the property is established to the satisfaction of the director; and

3. The applicant agrees to pay the fees incurred by the City in preparation of the development agreement and provide all other required documents, materials and information.

B. The director of planning shall review, process and prepare, together with his recommendations, for planning commission and city council consideration, as applicable, all applications for development agreements. Other departments of the city shall assist in a timely manner.

C. Processing fees, as established by resolution of the city council, shall be charged for any application for a development agreement made pursuant to the provisions of this chapter, and shall also be so established and charged for periodic reviews as required.

Section 3. Public Hearings.

A. When an application for a development agreement is deemed complete by the director of planning, the application shall be set for public hearing, together with his recommendations relating to it, before the planning commission. Following conclusion of public hearing by the commission, the commission may recommend to the city council that it approve, conditionally approve, or disapprove the application.

B. After the planning commission action, the city clerk shall set the application for public hearing before the city council. Following conclusion of the public hearing by the city council, the city council shall approve, conditionally approve or deny the application.

C. Notice of the hearings set forth in Subsections A and B of this Section shall be given in the form of a notice of intention to consider adoption of a development agreement as required by Section 65867 of the California Government Code.

D. The City Council's approval of the development agreement shall be confirmed by Ordinance.

E. The ordinance shall set forth findings, and the facts supporting them, that the development agreement is consistent with the San Dimas General Plan and any and all specific plans and that it will promote the welfare and public interest of the city of San Dimas.

F. The ordinance maybe subject to referendum in the manner provided bylaw.

Section 4. Content of Development Agreement.

A. Mandatory contents. A development agreement entered into pursuant to this chapter must contain provisions that:

1. Specify the duration of the agreement;
2. Specify the permitted uses of the property;
3. Specify the density or intensity of use;
4. Set forth the maximum height and size of proposed buildings; and

5. Set forth provisions, if any, for reservation or dedication of land for public purposes.

B. Permissive contents. A development agreement entered into pursuant to this chapter may:

1. Include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement;

2. Provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time;

3. Include such other terms, conditions and requirements as the city council may deem necessary and proper, including, but not limited to, a requirement for assuring, to the satisfaction of the city, performance of all provisions of the agreement in a timely fashion by the applicant/contracting party.

Section 5. Execution and Recordation.

A. The city shall not execute any development agreement until on or after the date upon which the ordinance approving the agreement becomes effective.

B. An executed development agreement shall be recorded in the office of the recorder of the county of Los Angeles no later than ten (10) days after it is entered into.

Section 6. Environmental Review.

The approval or conditional approval of a development agreement pursuant to this Resolution shall be consistent with provisions of the California environmental quality act.

Section 7. Periodic Review.

A. Every development agreement approved and executed pursuant to this chapter shall be periodically reviewed during the term of the agreement every year following the date of its execution.

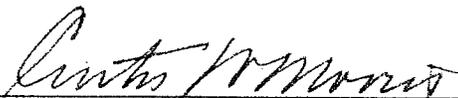
B. The purpose of the reviews conducted pursuant to this section shall be to determine whether the applicant/contracting party or its successor in interest has complied in good faith with the terms of the development agreement. The burden shall be on the applicant/contracting party or its successor to demonstrate such compliance to the full satisfaction of, and in a manner as prescribed by the city.

C. If, as a result of periodic review pursuant to this section, the city council finds and determines, on the basis of substantial evidence, that the applicant/contracting party or its successor in interest has not complied in good faith with terms or conditions of the agreement, the city council may order, after hearing, that the agreement be terminated or modified.

Section 8. Effect of Development Agreement.

Unless otherwise provided by the development agreement, rules, regulations and official policies governing permitted uses of the land, governing density, and governing design, improvement and construction standards and specifications, applicable to development of the property subject to a development agreement, are the rules, regulations and official policies in force at the time of execution of the agreement. A development agreement does not prevent the city, in subsequent actions applicable to the property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the property under the development agreement, nor does a development agreement prevent the city from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

Passed, Approved and Adopted this 23rd day of November, 2010.


Curtis W. Morris, Mayor of the City of San Dimas

Attest


Ina Rios, CMC, City Clerk

I, INA RIOS, CITY CLERK of the City of San Dimas, do hereby certify that Resolution 2010-62 was passed at the regular meeting of the City Council held on November 23, 2010 by the following vote:

AYES: Councilmembers Badar, Bertone, Ebner, Templeman, Morris
NOES: None
ABSTAIN: None
ABSENT: None



Ina Rios, CMC, City Clerk

CITY OF SAN DIMAS DEVELOPMENT IMPACT FEES

DESCRIPTION	WHERE APPLICABLE?	PER UNIT	AMOUNT	x	QUANTITY	=	TOTAL FEE AMOUNT	
Park, Recreation & Open Space Development (San Dimas Municipal Code Chapter 3.26 and Council Resolution No. 90-8)								
<i>Purpose is to finance development of facilities to reduce the impacts of increased use caused by new development.</i>								
	All Residential Zones	1 bedroom home	\$400.				\$0.00	
	All Residential Zones	2 bedroom home	\$500.				\$0.00	
	All Residential Zones	3 bedroom home	\$600.				\$0.00	
	All Residential Zones	4 bedroom home	\$700.				\$0.00	
	All Residential Zones	5 bedroom home	\$800.				\$0.00	
	All Residential Zones	6 bedroom home	\$900.				\$0.00	
Quimby Act (San Dimas Municipal Code Chapter 17.36) - Either dedication of park land OR in lieu fee OR combination thereof, as decided by City Council.								
<i>Purpose is to develop new or rehabilitate existing park and recreational facilities to serve future residents of such subdivision.</i>								
DEDICATION OPTION								
	All subdivisions	Single-family home		AMOUNT OF LAND TO BE DEDICATED	x	# UNITS	=	TOTAL DEDICATION
	All subdivisions	Multiple-family home				643 sf		0.00
	All subdivisions - on subdivisions of 50 lots or less, only the payment of in-lieu fees shall be required.			AMOUNT OF LAND TO BE DEDICATED	x	LAND VALUE (per sq ft)	=	FEE
						457 sf		0.00
IN-LIEU FEE OPTION								
<i>Land Value is the fair-market value of land (assessed value at the time of filing the final map), modified to equal market value in accordance with current practices of county assessor.</i>								
		Single-family home	0.00					\$0.00
		Multiple-family home	0.00					\$0.00
Property Development Tax (San Dimas Municipal Code Chapter 3.24)								
<i>Purpose is to enable new development to pay its appropriate share of the cost of maintaining and improving the environmental quality of our community.</i>								
	All Residential Zones	1 bedroom home	\$275.00				\$0.00	
	All Residential Zones	2 bedroom home	\$350.00				\$0.00	
	All Residential Zones	3 bedroom home	\$425.00				\$0.00	
	All Residential Zones	4 bedroom home	\$500.00				\$0.00	
	All Residential Zones	5 bedroom home	\$575.00				\$0.00	
	All Residential Zones	6 bedroom home	\$650.00				\$0.00	
Sewer (San Dimas Municipal Code Chapter 14.12)								
<i>Purpose is to provide for construction and expansion of sanitary sewer system and to assure said costs are borne by those who receive the benefits thereof.</i>								
	All Residential Zones	Dwelling unit	\$160.00				\$0.00	
	All Residential Zones	Dwelling unit per frontage (in feet) of lot	\$12.00				\$0.00	
	Commercial	Frontage length (in feet) of lot	\$12.00				\$0.00	
	Commercial	Plumbing fixture	\$50.00				\$0.00	
		Trap	\$75.00				\$0.00	
	LA County Sanitation	Call (562) 699-7411 for amount					\$0.00	
School (State law - payable directly to Bonita Unified School District)								
<i>Purpose is to enable new development to pay its appropriate share of the cost of construction of new schools to serve future residents of said development.</i>								
	All Residential Zones	Dwelling unit	\$2.97				\$0.00	

EXHIBIT E
Equestrian Trail Location

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of San Dimas
245 East Bonita Avenue
San Dimas, California 91773
Attn: City Clerk

No Recording Fee (Government Code Section 6103)

(Space above for recorder's use)

Agreement No. 2010-
DEVELOPMENT AGREEMENT

by and between

CITY OF SAN DIMAS,
a general law city and municipal corporation

and

NJD, LTD.,
a Texas limited partnership

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EXHIBITS

- Exhibit A Description of the Property
- Exhibit B Location Map
- Exhibit B-1 Location of Additional Property
- Exhibit B-2 Description of Additional Property
- Exhibit C Developer Fees as of Effective Date
- Exhibit D Enabling Resolution
- Exhibit E Equestrian Trail Location



Agenda Item Staff Report

To: Honorable Mayor and Members of the City Council.
For the meeting of January 11, 2011

From: Blaine Michaels, City Manager

Initiated by: Larry Stevens, Assistant City Manager of Community Development

Subject: **ORDINANCE NO. 1201 SECOND READING AND ADOPTION APPROVING MUNICIPAL CODE TEXT AMENDMENT 08-04 AMENDING THE MAXIMUM ALLOWABLE DENSITY AND OTHER DEVELOPMENT STANDARDS IN SPECIFIC PLAN NO. 25 IN THE NORTHERN FOOTHILLS AREA.**

SUMMARY

Ordinance No. 1201 amends the maximum allowable density and other development standards in Specific Plan No. 25 in the Northern Foothills area.

The City Council introduced Ordinance No. 1201 at their December 14, 2010 meeting, by a 4.1 vote; Councilmember Bertone opposed.

RECOMMENDATION

Staff recommends second reading and adoption of Ordinance No. 1201.

7a⁽¹⁾

ORDINANCE NO. 1201

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS
APPROVING MUNICIPAL CODE TEXT AMENDMENT 08-04,
AMENDING THE MAXIMUM ALLOWABLE DENSITY AND OTHER
DEVELOPMENT STANDARDS IN SPECIFIC PLAN NO. 25
IN THE NORTHERN FOOTHILLS AREA**

**THE CITY COUNCIL OF THE CITY OF SAN DIMAS DOES ORDAIN AS
FOLLOWS:**

SECTION 1. Title 18, Chapter 542 of the San Dimas Municipal Code is hereby amended as set forth in attached Exhibit A.

SECTION 2. This Ordinance shall take effect 30 days after its final passage, and within 15 days after its passage the City Clerk shall cause it to be published in the Inland Valley Daily Bulletin, a newspaper of general circulation in the City of San Dimas hereby designated for that purpose.

PASSED, APPROVED AND ADOPTED THIS 11th DAY OF JANUARY, 2011.

Curtis W. Morris, Mayor of the City of San Dimas

ATTEST:

Ina Rios, CMC, City Clerk

I, INA RIOS, CITY CLERK of the City of San Dimas, do hereby certify that Ordinance No. 1201 was regularly introduced at the regular meeting of the City Council on December 14, 2010, and was thereafter adopted and passed at the regular meeting of the City Council held on January 11, 2011 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

I DO FURTHER CERTIFY that within 15 days of the date of its passage, I caused a copy of Ordinance No. 1201 to be published in the Inland Valley Daily Bulletin.

Ina Rios, CMC, City Clerk

EXHIBIT A

MCTA 08-04 (Specific Plan No. 25)

1. *Amend Section 18.542.010.B by adding the underlined and deleting the strike through:*

The purpose of Specific Plan No. 25 is to provide for managing environmental values and future development within the northern foothills area in order to protect the area's natural environment and existing resources and to ensure that the design of future hillside developments preserves sensitive resources in place, adapts to considers the natural hillside topography and maximizes view opportunities to, as well as from, the developments. Overall, the strategy ~~emphasizes encourages~~ fitting projects into their hillside setting rather than altering the hillside to fit the project. Thus, although individual property rights within the northern foothills area must be recognized, the priority between development and natural resource values should be balanced given to protecting the natural resource.

2. *Amend Section 18.542.010.D.2, 3 and 5 by adding the underlined and deleting the strike through:*

2. To provide an enriched rural low density residential environment with aesthetic cohesiveness, harmonious massing of structures, and interfacing of open space through the utilization of superior land planning and design;

3. To minimize the impact of new development into the surrounding viewshed, especially as seen from public intersection viewpoints in the City adjacent existing development;

5. To protect public health and safety from the potential damaging effect of hillside alteration and to ~~preclude~~ minimize conventional flat land development practices, except in clustered developments;

3. *Add Section 18.542.050. E to read as follows:*

"Clustered Lots" means four or more lots, not less than ½ acre in size, sharing a common road or driveway access.

4. *Amend Section 18.542.100 by adding the underlined:*

In Planning Area Two areas identified for potential development consistent with the goals and objectives of Specific Plan No. 25 are depicted on Exhibit B attached to and located at the end of this Chapter.

5. *Add Section 18.542.105 to read as follows:*

18.542.105 Planning Areas

A. The incorporation of the planning area concept into this specific plan creates the opportunity to apply the maximum allowable density and some development

standards differently to unique parts of this specific plan. This is beneficial due to varying opportunities for clustered development, access and utilities. The two planning areas are depicted as set forth on Exhibit A.

B. Planning Area One (PA1) consists of 270 ± acres comprising a single ownership at the southwesterly portion of the specific plan.

C. Planning Area Two (PA2) consists of over 700 acres comprising the remainder of the specific plan.

6. Amend Section 18.542.110 by adding new subsection A to read as follows, revising subsection B by adding the underlined and deleting the strike through and re-lettering existing subsections B through D to C through E respectively:

A. The maximum allowable density for planning area one shall be 0.225 dwelling units per acre, not to exceed 61 dwelling units.

B. The maximum allowable density for development planning area two shall be as shown in the following table.

7. Amend Section 18.542.120 by adding the underlined:

Primary uses in planning areas one and two of Specific Plan No. 25 are as follows:

8. Amend Section 18.542.130 by adding the underlined:

Conditional uses in planning areas one and two of Specific Plan No. 25 are as follows:

C. Uses which promote environmental preservation, including nature preserves, ponds, and related low activity uses, provided that such uses shall be located on a parcel not less than twenty acres in size.

9. Amend Section 18.542.140 by adding the underlined:

Accessory uses in planning areas one and two of Specific Plan No. 25 are as follows:

10. Amend Section 18.542.150 by adding the underlined:

Temporary uses in planning areas one and two of Specific Plan No. 25 are as follows:

11. Amend Section 18.542.200 by adding the underlined:

This article is intended to provide standards for development of all residential and open space land uses within the specific plan area. Any development standards which are applied differently between planning areas one and two are specifically identified. Where no distinction is made the development standards are applied the same throughout the specific plan.

12. Amend Section 18.542.210 by adding the underlined:

The minimum lot size shall be as set forth in this section. The establishment of minimum lot sizes within Specific Plan No. 25 is intended to set minimum lot size only.

The density of new development, whether it is within a clustered or a non-clustered project, shall not be permitted to exceed the maximum density allowed by the San Dimas General Plan. A clustered development consists of a minimum of four lots grouped together sharing a common access and being similar in lot size.

A. The minimum lot size within planning area one shall be as follows:

0.50 acres in a clustered land division

2 acres in a non-clustered land division

B. The minimum lot size in planning area two shall be as follows:

13. *Amend Section 18.542.230.D by adding the underlined, re-lettering existing subsection D to E which is revised by adding the underlined and with subsections 1 through 8 of existing D to remain unchanged under new heading E:*

Grading of the site shall conform to the standards set forth in this section. Construction grading permits shall not be issued unless the grading plans have first been reviewed and approved by the director of planning and city engineer, according to the terms of the applicable city approvals.

D. Grading is permitted in planning area one under the following guidelines.

1. Grading for the single-family detached lots is permitted under the following guidelines:

a. Slopes are to be contoured and blended to harmonize with natural slopes, where feasible;

b. Significant landform features as determined by the planning division, such as prominent trees, ridgelines and the like shall be preserved, where feasible;

c. Maximum vertical height of cuts and fills exposed or retained by walls from toe to top should not exceed twelve feet whenever possible;

d. The maximum steepness of exposed cuts and fills shall not exceed 2:1, and preferably 3:1 for fills;

e. Berms and or back-cut grading shall be utilized to screen improvements on prominent lots from off-site visibility;

f. No grading of building pads shall be permitted prior to precise plan approval;

2. Grading is not permitted in the open space area or designated "no build" areas except for the following uses:

- a. Fuel modification and access for fire control and emergency vehicle access,
- b. Recreational access for hiking or other open space uses,
- c. Protection of property from the effects of storm runoff, erosion or unstable soils or geologic conditions,
- d. Road access for surrounding circulation,
- e. Construction of underground utilities and water tanks,
- f. Landscaping;

3. Grading for access roadways and driveways shall conform to the following:

- a. Tall retaining walls are required for access roads and are permitted subject to precise plan approval;
- b. Retaining walls shall be designed to use mechanically stabilized earth or similar materials to blend as much as possible into the area.
- c. Where conventional retaining walls are utilized, exterior surfaces shall use materials to achieve a natural finished appearance.
- d. Landscaping shall be incorporated into retaining wall design to soften their appearance where possible.

4. Where grading is warranted as specified in this subsection, the following techniques shall be employed:

- a. Contour grading technique shall be used where the graded areas are visible from off-site areas of development,
- b. Graded slopes shall be concealed where possible and transitions between the graded slopes and natural terrain shall be gradually adjusted and blended.

E. Grading is permitted in planning area two under the following guidelines.

1. Grading shall be restricted to portions of a site with less than a thirty-five percent natural slope, except for the following, where limited grading may be permitted:

- a. Fuel modification and limited access for fire control and emergency vehicles;
- b. Recreational access for riding, hiking and other open space uses;
- c. Protection of property from the effects of storm runoff, erosion, unstable soils or geologic conditions;
- d. Road or driveway access;
- e. Landscaping.

2. All graded slopes are to be contoured and blended to harmonize with natural slopes except where the use of contour grading techniques result in significantly greater exposed graded slopes.
3. The extent of visible exposed cut or fill banks shall be limited to twelve feet except where the use of a specific grading technique minimizes the visual impact or aids in visual screening.
4. Significant landmark features as determined by the planning division, such as prominent trees and areas of special natural beauty, shall be preserved.
5. Where manufactured slopes greater than five feet in height are created, adequate provision shall be made to maintain such slope. A deed restriction shall be recorded acknowledging existence of such slope and the landowner shall indemnify the city from any damages associated with slope failure.
6. Except within bedrock, where manufactured slopes in excess of five vertical feet cannot feasibly be avoided, they shall be landform graded. Grading plans shall identify which slopes are to be landform graded and which are to be conventionally graded (See figures below)
7. No grading of finished building pads shall be permitted prior to precise plan approval.
8. Any retaining wall which may be permitted shall comply with the following:
 - a. The use of retaining walls and structures is encouraged when it significantly reduces site grading.
 - b. Except where employed to facilitate construction of a single story residential dwelling, retaining structures shall be located and restricted to ~~four~~ twelve vertical feet in height so that they do not become a dominating visual feature (see figure below).
 - c. When taller retaining structures are built to accommodate a single-family dwelling unit, the retaining structure shall be located behind the dwelling so as to be screened from view by the house.
 - d. Where retaining walls face or will be visible from public streets, they should be faced with materials that help blend the wall into the natural character of the terrain.
 - e. Large retaining walls in a uniform plane should be avoided. Break retaining walls into elements and terraces, and use landscaping to screen them from view.

NOTE: Figures remain unchanged

14. *Amend Section 18.542.250 by adding the underlined:*

A. Building height shall not exceed one story and a maximum of twenty five (25) feet, not including architectural projections for non-habitable areas, except as follows:

1. Within planning area one, a limited number of two story structures, not exceeding 27% of the total number of parcels thereby created, may be allowed. Such structures shall not exceed 35 feet in overall height. A visual analysis shall be required to demonstrate that the additional height will not increase visual intrusiveness. Lots approved for such height increase shall be determined at time of parcel or tract map review and shall be so designated on the recorded map. Provided further that no other parcels shall be allowed for two story structures after the map is recorded.

2. Within planning area two, on a parcel where a minimum of four parcels are allowed, not more than one parcel may be approved for a two story structure. Such structures shall not exceed 35 feet in overall height. A visual analysis shall be required to demonstrate that the additional height will not increase visual intrusiveness. Any other parcels created in the future shall include a deed restriction prohibiting two story structures.

B. On sloping lots building height shall be determined as follows:

1. Downhill Lot. An overall maximum height of twenty feet, except for approved two story designated lots, is permitted, as measured from finished grade, from the minimum front setback extending towards the rear of the lot. The maximum height at the side setbacks shall be fifteen feet, except for approved two story designated lots, extending towards the center of the lot at a forty-five degree angle to a maximum height of twenty feet as measured from finished grade, except for approved two story designated lots. (See figures below).

2. Uphill Lot. A maximum height of fifteen feet, except for approved two story designated lots, is permitted at the minimum front setback, and shall extend up and toward the rear of the lot at a forty-five degree angle to a maximum overall height of twenty feet, as measured from finished grade, except for approved two story designated lots. The maximum height at the side setbacks shall be fifteen feet extending towards the center of the lot at a forty-five degree angle to a maximum height of twenty feet, as measured from finished grade, except for approved two story designated lots (See figures below).

3. Cross Slope Lots. A maximum height of twenty feet, except for approved two story designated lots, is permitted, as measured from finished grade, from the minimum front setback extending towards the rear of the lot. The maximum height at the side setbacks shall be fifteen feet, except for approved two story designated lots, extending towards the center of the lot at a forty-five degree angle to a maximum height of twenty feet as measured from finished grade, except for approved two story designated lots (See figure below).

NOTE: Figures are unchanged.

15. *Amend Section 18.542.260 by adding the underlined and deleting the strikethrough:*

A. Setbacks for planning area one shall be as follows:

1. Front Yard Setbacks. Front yard setbacks shall be a minimum of twenty feet but a lesser minimum setback may be reviewed and approved by the development plan review board if warranted by topographic conditions or to otherwise comply with the intent of standards set forth in this specific plan.

2. Side Yard Setbacks. Side yard setbacks shall be a minimum of twenty five feet combined but a lesser minimum setback may be reviewed and approved by the development plan review board if warranted by topographic conditions or to otherwise comply with the intent of standards set forth in this specific plan.

3. Setbacks for Accessory Structures. Setbacks for accessory structures shall be as established by the development plan review board, but no less than twenty feet to the side or rear yard property line but a lesser minimum setback may be reviewed and approved by the development plan review board if warranted by topographic conditions or to otherwise comply with the intent of standards set forth in this specific plan.

B. Setbacks for planning area two shall be as follows:

A1. Front Yard Setbacks. Front yard setbacks shall be a minimum of fifty feet but a lesser minimum setback may be reviewed and approved by the development plan review board if warranted by topographic conditions or to otherwise comply with the intent of standards set forth in this specific plan.

B2. Side Yard Setbacks. Side yard setbacks shall be a minimum of forty feet but a lesser minimum setback may be reviewed and approved by the development plan review board if warranted by topographic conditions or to otherwise comply with the intent of standards set forth in this specific plan.

C3. Setbacks for Accessory Structures. Setbacks for accessory structures shall be as established by the development plan review board, but no less than forty feet to the side or rear yard property line but a lesser minimum setback may be reviewed and approved by the development plan review board if warranted by topographic conditions or to otherwise comply with the intent of standards set forth in this specific plan.

16. *Amend Section 18.542.270 by adding the underlined and deleting the strike through:*

~~A. New development shall be designed to fit into the natural character of the area rather than relying on substantial landform modification to create artificial building pads.~~

B. A. The visual intrusiveness of new development shall be minimized.

~~C.B.~~ Site design shall utilize varying setbacks, structure heights, innovative building techniques, and retaining walls to blend structures into the terrain.

~~D.C.~~ Lot and site design shall consider building separation to maintain a rural character and to facilitate privacy between residential structures.

~~E.D.~~ Site design shall allow for different lot shapes and sizes, as well as the provision of split development pads, with the prime determinant being the natural terrain.

~~F. Houses shall not be excessively tall so as to dominate their surroundings. Structures shall be a maximum of one story in height, but may be constructed on split, flat pads contained within a limited envelope parallel to the finished grade, rather than "jutting out" over natural slopes.~~

G. E. Flag lots shall be allowed in areas where it is demonstrated that the end result is the preservation of natural topography by minimizing grading.

H. F. Structures shall be sited in a manner that will fit into the hillside's contour, except in an approved clustered development, and relate to the form of the terrain; retain outward views while maintaining the natural character of the hillside; preserve vistas of natural hillside areas and ridgelines from public places and streets; preserve existing views; and, allow new dwellings access to views similar to those enjoyed from existing dwellings (see figures below).

I. G. Clustered development is encouraged as a means of preserving the natural appearance of the hillside and maximizing the amount of open space. Under this concept, dwelling units are grouped in the more level portions of the site, while steeper areas are preserved in a natural state as "no building" areas. Any clustered development shall comply with the following standards.

~~1. The effect of permitted clustering is to enhance the environmental sensitivity of a development project, and facilitate the permanent protection of key features of the natural environment, such as steep slopes, biological habitats, ridgelines, and scenic areas, including their retention are protected open space areas.~~

~~2. Clustering shall not be used to increase the overall density of an area beyond that which is otherwise permitted by the General Plan and applicable zoning regulations, nor is clustering to be used to create suburban-style subdivisions within the northern foothills area.~~

~~3. All development, including clustered development, shall be rural in character.~~

~~4. The location of clustered units shall be restricted to portions of a site with less than a thirty-five percent natural slope.~~

5. 1. Clustered development must preserve open space in its natural state. Adequate legal provisions shall be made to ensure the preservation of open space areas in perpetuity.

6. 2. When viewed from outside the northern foothills area from the south, southwest and southeast, clustered subdivisions are to have no greater visual impacts than would a non-clustered development, except for required reduction in lot size and closer proximity of home sites.

J. H. Primary and secondary ridgelines are identified on Exhibit C attached and part of this chapter and are subject to the following standards.

1. Primary ridgelines shall be protected from any construction activities including, but not limited to roads, structures, water tanks, antennae, utilities, and other structures or facilities so as to maintain a natural skyline (see figure below). Where the only feasible location for a structure is on a primary ridgeline, the structure shall be sited and designed to minimize any visual intrusiveness.

2. New parcels which have as their only feasible building site a primary ridgeline shall not be created. Where the only feasible building site within an existing

parcel is on a primary ridgeline, the structure shall be sited at the lowest possible elevation on the site, and along the least visible portion of the ridge upon which a structure can feasibly be constructed.

3. Where development is proposed to occur adjacent to a primary ridgeline (a ridge which is visible against the sky as viewed from a public street), it should be set back a sufficient distance so as to be located below the ridgeline. The intent of this requirement is to maintain a natural skyline (see figure below).

4. Planting shall be used along re-contoured secondary (non-skyline) ridges to recreate a natural silhouette, and to act as a backdrop for structures.

Trees shall be planted to create a continuous linear silhouette since gaps in the planting will not give the desired effect (see figure below). Subject to preserving views out; not more than 50%.

NOTE: All figures remain unchanged.

17. Amend Section 18.542.290.A.3 by adding the underlined:

Streets shall follow the natural contours of the hillside to minimize cut and fill, where feasible, (see figures below).

18. Amend Section 18.542.380 by adding the underlined:

A. Horses in planning area one may be quartered on designated lots, as determined in conjunction with a tentative tract map, and maintained subject to the following standards:

1. On each lot or parcel there shall be permitted not more than two horses for each one acre of lot area provided that the number of horses shall not exceed a maximum of five horses unless a conditional use permit is obtained.

2. The horses, including ponies, but excluding foals under twelve months, may be maintained under this section for breeding purposes or for the personal use of the family residing on the lot or parcel.

a. A registered horse breeder may maintain an additional two horses for breeding purposes provided a permit for such purposes has been issued. A permit may be issued to the owner of the stallion for a period of one year subject to the following conditions:

(1). The breeder shall maintain the horses on a lot or parcel of one acre or more in size;

(2). The City shall issue the permit only after the favorable recommendations of the Home Owners Association, the Equestrian Committee appointed by the city council to review the application for the permit and the planning staff. In the absence of the Equestrian Committee, and upon the recommendation of the Home Owners Association and Planning staff, the application for the permit shall be heard by the planning commission for approval or denial.

3. The horses shall be maintained in open corrals containing at least two hundred eighty-eight square feet, e.g., twelve feet by twenty-four feet per horse, or in a stable or enclosed box stalls containing at least one hundred forty-four square feet, e.g., twelve feet by twelve feet per horse. The corral must be no closer than thirty-five feet from any residence located on the same lot or parcel, and at least eighty feet from any residence located on an adjacent lot or parcel. Corrals shall conform to building setbacks from any public or private streets.

4. The corral areas shall consist of fences of at least five feet in height and of such construction so as to confine the horses.

a. The corral shall be constructed in such a manner that manure and refuse shall be contained, stored and/or treated in the area of the corral.

b. Manure shall be removed daily from the corral and stored in a covered manure storage area that is located away from the drainage courses. Manure storage areas will be graded and constructed to minimize contact with runoff, stored on an impervious surface and shall be covered by a roof to minimize contact with precipitation. Manure shall be removed weekly.

5. The property owner shall be responsible for the cleanup of any waste material that the property owner fails to contain and process on the lot. The property owner may be subject to fines or penalties by the State Water Quality Control Board in the event that waste is discharged into the public storm drainage system or the public sewer system.

6. In conjunction with the corrals, box stalls or a stable shall be constructed that shall provide a weatherproof roof of at least sixty-four square feet per horse.

a. The design of stables or box stalls and material used in their construction shall conform with the architectural style of the residence and include a sprinkler system and rain gutters directing runoff away from having contact with manure and refuse.

b. The design shall prevent manure and refuse from entering into the storm water system and allow for the removal of bedding materials.

c. Within the stable or box stall where horses are kept, bedding will be provided to capture as much urine as possible, which will be disposed of in a trash storage area that is covered and elevated to protect urine from rainfall and potential surface runoff.

d. The property owner shall ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter or stormwater storage or treatment systems unless specifically designed to treat such chemicals and other contaminants.

7. All feed, tack or other items used in the feeding, use and maintenance of the horse(s) or corral shall be screened from the sight of neighboring lots, either in an enclosed structure or in an area with sufficient fencing and landscape to prevent them being viewed by the neighboring lots.

.8. Nothing in this chapter shall permit the keeping of horses for any commercial purposes, such as boarding of horses or the keeping of horses not principally for the use of the members of the resident family.

9. The corral and stable areas shall be sprinkled or otherwise treated to a degree so as to prevent the emanation of dust, and in addition, all accumulation of manure, mud or refuse shall be eliminated so as to prevent the breeding of flies.

B. Horses in planning area two may be quartered and maintained subject to the following standards:

A.1. On each lot or parcel there shall be permitted not more than five horses for each one acre of lot area provided that the number of horses shall not exceed a maximum of fifteen horses unless a conditional use permit is obtained.

B.2. The horses, including ponies, but excluding foals under twelve months, may be maintained under this section for breeding purposes or for the personal use of the family residing on the lot or parcel.

4.a. A registered horse breeder may maintain an additional three horses for breeding purposes provided a permit for such purposes has been issued. A permit may be issued to the owner of the stallion for a period of one year subject to the following conditions:

a.(1) The breeder shall maintain the horses on a lot or parcel of one acre or more in size;

b.(2) Upon favorable recommendations of a committee appointed by the city council to review the application for permit.

C.3. The horses shall be maintained in open corrals containing at least two hundred eighty-eight square feet, e.g., twelve feet by twenty-four feet per horse, or in enclosed box stalls containing at least one hundred forty-four square feet, e.g., twelve feet by twelve feet per horse. The corral must be no closer than thirty-five feet from any residence located on the same lot or parcel, and at least eighty feet from any residence located on an adjacent lot or parcel. Corrals shall conform to building setbacks from any public or private streets.

D.4. The corral areas shall consist of fences of at least five feet in height and of such construction so as to confine the horses.

E.5. In conjunction with the corrals, there shall be a weatherproof roof of at least sixty-four square feet per horse.

F.6. Nothing in this chapter shall permit the keeping of horses for any commercial purposes, such as boarding of horses or the keeping of horses not principally for the use of the members of the resident family.

G.7. The corral and stable areas shall be sprinkled or otherwise treated to a degree so as to prevent the emanation of dust, and in addition, all accumulation of manure, mud or refuse shall be eliminated so as to prevent the breeding of flies.

19. Amend Exhibit A delineating planning areas one and two.

18.542.630

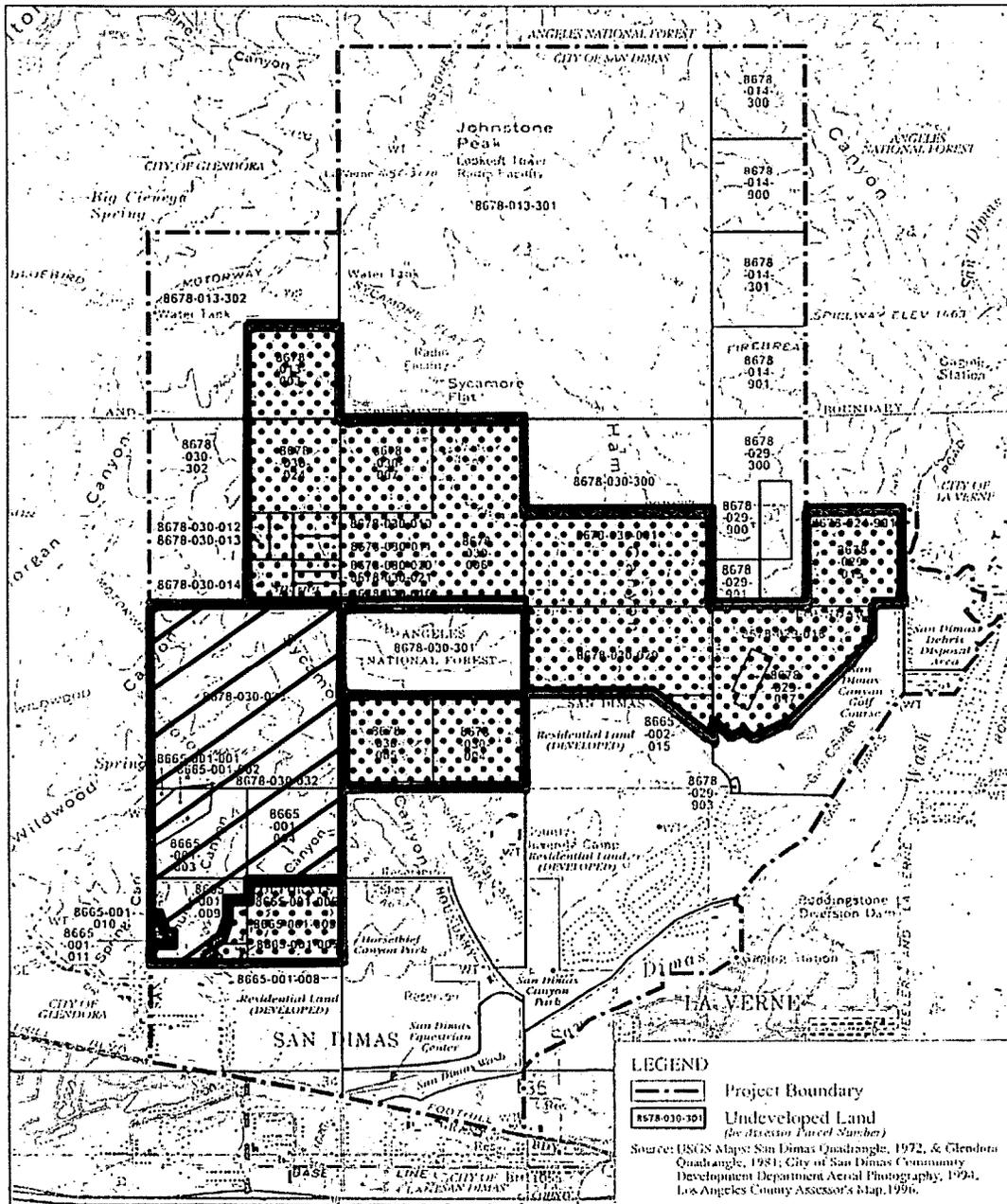


EXHIBIT A
LOCATION MAP



PLANNING AREA ONE

PLANNING AREA TWO



Agenda Item Staff Report

TO: Honorable Mayor and Members of City Council
For the Meeting of January 11, 2011

FROM: Blaine Michaelis, City Manager *BM*

SUBJECT: Request for deferral of Park Land Dedication (Quimby) in-lieu fees for Loma Bonita Residences (Tract 69609), an affordable housing project of 156 apartments to be located at the northwest corner of East Bonita Avenue and San Dimas Canyon Road.

SUMMARY

The developer, VCH San Dimas Company, LLC, is requesting to defer the payment of their Quimby in-lieu fees until project occupancy. The Quimby process is a means to receive resources from new development to provide for their share of additional parks and recreation facilities needed to accommodate their development. The process includes a determination of the amount of land needed for park improvements – the developer can either provide the needed park improvements, or pay an in-lieu fee to address the recreational facilities impact of their development. Quimby in-lieu fees are calculated based upon a formula that uses an agreed upon land value to provide the required land. The city is then required to utilize the in-lieu money within 5 years toward expanded parks and recreational facility needs.

Normally Quimby in-lieu fees are paid when the project final map is submitted for recordation. In June 2008, to accommodate a request from the Grove Station Development, the city adopted provisions that projects with affordable housing requirements could request that the payment of Quimby in-lieu fees could be deferred until any portion of the project is certified for occupancy. Grove Station requested and the city granted a fee payment deferral request allowing Quimby in-lieu fees to be paid at occupancy or within 1 year after a building permit has been issued for the project.

VCH has submitted information that results in the Loma Bonita project paying \$618,102 (\$3,692 per unit) to meet the Quimby in-lieu fee payment requirement. The \$3,962 per unit fee payment is comparable to the Quimby in-lieu fee received from other projects. The deferral of the payment of the fee to occupancy or within 1 year of the building permit for the project is consistent with the Quimby in-lieu payment and deferral the city approved for the Grove Station project.

Staff is favorable to the proposed in-lieu fee amount and fee deferral request.

STAFF RECOMMENDATION:

Receive verbal report from staff – ask questions as desired.

Accept the proposed Quimby in-lieu fee from VCH.

Authorize staff to execute an Agreement with VCH to provide for a deferral of the \$618,102 in-lieu fee payment until final occupancy of any building from the project or within 1 year after the issuance of a building permit for the project – whichever comes first.

Attachments:

Deferral request from VCH San Dimas Company, LLC

Proposed Quimby in-lieu fee calculation

Draft Agreement providing for the deferral of the Quimby in-lieu fee payment

VCH San Dimas Company, LLC

590-G Brunken Ave., Salinas, CA 93901
(831) 753-6487, (831) 753-6480 FAX

October 29, 2010

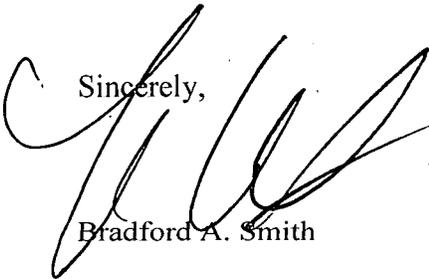
Mr. Blaine Michaelis, City Manager
City of San Dimas
245 E. Bonita Ave.
San Dimas, CA 91773

Re: San Dimas Development Quimby Fee
Condition #47 of City Council Resolutin 09-37

Dear Mr. Michaelis,

At this time we are requesting a deferral of payment of in-lieu fee until the project occupancy per SDMC 17.36.100 subject to City Council approval.

Sincerely,



Bradford A. Smith

cc: Dan Coleman



GORDONKEMPER LLP
ATTORNEYS AT LAW

300 South Grand Avenue
24th floor
Los Angeles, CA 90071
www.gordonkemper.com

File Number: V1000.00003
(530) 887-8622 (Direct) | (916) 337-8414 (Cell)
kevin.kemper@gordonkemper.com (E-mail)

January 5, 2010

VIA EMAIL

Mr. Blaine Michalis
City Manager
City of San Dimas
245 East Bonita Avenue
San Dimas, CA 91773

Re: **Loma Bonita Canyon Project (Tract Map #69609) – Proposed Calculation of Project Quimby Act Fees.**

Dear Mr. Michaelis:

In support our request before the City Council, please consider this letter as the Applicant's proposed estimation of park facilities fees to be paid by the Loma Bonita project pursuant to the Quimby Act. As explained in further detail below, we estimate that the appropriate Quimby Act fee for this project is **\$618,102**.

Under Section 17.36.040 of the Municipal Code, dedication of 457 square feet of land is required for each multi-family unit. The Loma Bonita project as approved would provide 156 units of multi-family housing, 24 of which will be deed-restricted affordable housing units. With a total of 156 multi-family units for calculation purposes, the base land dedication requirement for this project is **71,292 square feet**.

We propose that land valuation for purposes of this assessment be consistent with the recently-approved Grove Station project (Phase I). As approved by the City in 2007, the Grove Station project was assessed a Quimby Act fee based upon a land valuation of \$8.67 per square foot. For the reasons identified in the attached letter of January 4, 2011 from Lee and Associates, this valuation remains reasonable and justifiable under current market conditions and should be applied to this project.

Accordingly, and as shown on the attached calculation form, the Quimby Act fee for this project is proposed as follows:

71,292 square feet of land dedication @ \$8.67 per square foot = \$618,102.

By this letter, we reiterate our request of October 27, 2010 to defer payment of Quimby Act fees until project occupancy, pursuant to Section 17.36.100 of the Municipal Code.

Thank you for your continuing efforts on behalf of this project. If you have any questions, please let us know.

Sincerely yours,

GORDON KEMPER LLP

By:



Kevin M. Kemper

Cc: Bill Pham, Esq., McKenna, Long and Aldridge, LLP.
Mr. Thomas de Regt, VCH San Dimas Company, LLC
Mr. Brad Smith, VCH San Dimas Company, LLC
Mr. Larry Kosmont, Kosmont Companies
Marcia Z. Gordon, Esq.

CITY OF SAN DIMAS
PARKS AND RECREATION DEPARTMENT
245 East Bonita Avenue
San Dimas, CA 91773

Date: January 5, 2011 Tract Map # 69609 - Loma Bonita

Pursuant to City Ordinance No. 795, the City requires anyone who subdivides land to dedicate a portion of such land, pay a fee, or do both for the purpose of developing new or rehabilitating existing public park and recreational facilities to serve future residents of the subdivision.

The City has elected to collect fees in lieu of land on the subject tract. The total fees shall be paid at the time the tract map is submitted to the City Engineer's office for final approval.

The fees are based on the appraised market value of the undeveloped property at the time of filing for final approval. The value is applied to the square footage of land that would otherwise be required for park purposes. The land requirement is based on 643 square feet of land per single family dwelling unit and 457 square feet per multiple dwelling unit.

For expedient service, submit this form to the Parks and Recreation Department for approval. If the appraised value is questionable, the City reserves the right to have the property appraised at the owner's expense, which may delay final approval of the tract map.

The following applies to your tract:

Developer: VCH San Dimas Company LLC Tract # 69609

Address/Location of Property: 101 W. Bonita Avenue

Number of Units:	<u>156</u>	Single Family (@ 643 sq. ft.) Multiple Family (@ 457 sq. ft.)
Total Land Requirement:	<u>71,292</u>	sq. ft. (<u>1.63</u> acre(s))
Appraised Value:	<u>\$8.67 per s.f.</u>	acre(s)
Total Fees:	<u>\$618,102</u>	in lieu of land. (Total Land Requirement x Value)

In addition to the Quimby fees, the City, pursuant to City Ordinance No. 920, requires the developer/owner to pay a Park and Recreation Development Fee, which is payable at the time building permits are issued.

If additional information is needed, please contact Theresa Bruns, Director of Parks and Recreation at (909) 394-6230.

January 4, 2011

Kevin M. Kemper, Esq.
Gordon Kemper LLP
300 South Grand Ave., 24th Floor
Los Angeles, CA 90071

**Re: Loma Bonita Project, City of San Dimas, CA – Opinion of Value in Support of Quimby Act
Fee Calculation**

Dear Mr. Kemper:

At your request, we have prepared this letter to address property valuation issues relative to the calculation of park facilities fees for the Loma Bonita project under the state Quimby Act. As discussed, we consider a Quimby Act fee based upon a property valuation of \$8.67 per square foot to be reasonable and justified based upon current market conditions.

In 2007, the City of San Dimas approved the Grove Station project which, like the Loma Bonita development, is a mixed-use development with high residential density and deed-restricted affordable housing. Planning efforts for both the Grove Station and Loma Bonita projects were commenced in 2004 to 2005, prior to the rapid escalation in real property values that occurred from 2006 through 2008. Property acquisitions for the Grove Station project were completed in 2006, at an average property value of \$8.67 per square foot.

As a consequence of the current economic recession, property values in the San Gabriel Valley region have declined since 2008 and are currently comparable to 2004-05 values. We are informed that appraisals commissioned by the City of San Dimas in 2004-05 for both the Grove Station and Loma Bonita properties indicated a value below \$9.00 per square foot.

With respect to the Grove Station project, the City of San Dimas accepted a valuation of \$8.67 per square foot for Quimby Act fee purposes. Based upon the affordable housing component, the City further approved the deferral of payment of Quimby Act fees to the building permit stage for each phase of the project. Based upon current market conditions following the downturn in real property values, and the similarities between the Grove Station and Loma Bonita projects, it is reasonable and appropriate to utilize a valuation figure of \$8.67 to calculate Quimby Act fees for the Loma Bonita project.

Please be aware that our opinions set forth in this letter represent a generalized assessment based on information provided, and are limited in purpose to the calculation of Quimby Act fees. If you have any questions, please let us know.

Lee & Associates - LA North/Ventura, Inc.
A Member of the Lee & Associates Group of Companies



Craig Stevens
Principal
(818) 933.0332
License #00454919



Craig Stevens

Lee & Associates-LA North/Ventura, Inc.

Corporate ID# 01191898; License ID# 00454919

A Member of the Lee & Associates Group of Companies

15250 Ventura Blvd. Ste. 100 Sherman Oaks, CA 91403

Phone: 310.786.1725 Fax: 310.427.7190

cstevens@lee-re.com

Specialty / Expertise

Craig Stevens, Principal of Lee & Associates-LA North/Ventura, Inc., a member of the Lee & Associates Group of Companies, has built a career on his ability to handle the most challenging assignments including ground up, urban infill commercial and multifamily developments and distressed property sales.

A 35-year veteran of the commercial real estate industry, Mr. Stevens has successfully completed sale and lease transactions valued at more than \$3.5 billion. Since January, 2003, he has sold property and development land comprising more than 3,500 apartments and condominiums.

As an investor himself, Mr. Stevens is able to bring an insider perspective to a project or business plan. Mr. Stevens' extensive network of business relationships include banks and other lending institutions, Fortune 500 companies and REITs along with family trusts and entrepreneurial firms who have relied on him for his strategic advice as well as his transactional acumen.

Career History / Professional Recognition

Mr. Stevens was most recently honored among Lee's Top 10 Performers for his outstanding results in 2009. A respected community leader, Mr. Stevens is a former Vice President of the Board of Directors of the Burbank Chamber of Commerce and the Los Angeles County Economic Development Corporation.

Major Clients (partial list):

- BRE
- Meta Housing Corp.
- Pacific Properties
- Fortress Investment Group
- Citi Ventures
- JPI
- Archstone
- Fairfield Properties
- Bank of America
- First Citizens Bank
- Equity Residential



Notable Apartment / Condominium Transactions (partial list):

Ambassador West Campus Pasadena, CA 70-unit condo development site, 27 apt. units, mansion	*Parc Point 620 Hollywood Way Burbank, CA 243 apartment units	*303,311,325 N. Buena Vista St. Burbank, CA 82 apartment units
*330 North Screenland Dr. Burbank, CA 96 apartment units	23639 San Fernando Rd. Santa Clarita, CA 158 apartment units	*316 North Maple St Burbank, CA 88 apartment units
20600 Ventura Blvd. Woodland Hills, CA 8-acre land parcel	*Wilshire Blvd/Detroit St. Los Angeles, CA 98 apartment units	*11201 Otsego Ave. Burbank, CA 100 apartment units
Ventura Blvd./Chalk Hill Woodland Hills, CA 300 condominium units	Warner Business Park Woodland Hills, CA 10 acres/525 units	*Variel & Erwin Streets Woodland Hills, CA 86-condominium site
Oakwood Village Apts. 491 Gainesborough Road Thousand Oaks, CA 191 units	Wilshire Blvd/Hobart St. Los Angeles, CA 150-apartment site	Ray-Art Studios Warner Center, CA 530 apartment units
*Otsego Ave/Lankershim Blvd. North Hollywood, CA 150 apartment units	Versailles Apartments Los Angeles, CA 225 apartment units	Lakeside Apartments Burbank, CA 750 apartment units

*Denotes development partner on project

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of San Dimas
245 East Bonita Avenue
San Dimas, California 91733

Attention: City Manager

No Recording Fee: Govt. Code § 27383

(Space above this line for Recorder's use)

**DECLARATION OF COVENANT AND AGREEMENT PROVIDING FOR THE
DEFERRAL OF THE PAYMENT OF QUIMBY FEES**

THIS DECLARATION OF COVENANT AND AGREEMENT PROVIDING FOR THE DEFERRAL OF THE PAYMENT OF QUIMBY FEES ("Declaration") is entered into as of January ____, 2011 by and between VCH – SAN DIMAS COMPANY, LLC, a California limited liability company ("Developer") and the CITY OF SAN DIMAS, a municipal corporation ("City"). The Developer and City may sometimes be referred to herein as a "Party" and collectively as the "Parties."

RECITALS

A. Developer is the owner of that certain real property (the "Property") more particularly described as Lots 1, 4, 5, and 6 of Tract No. 69609, as shown on that certain Subdivision Map recorded in Book _____, at Pages ____ through ____, inclusive, of Maps, in the Official Records of Los Angeles County, California.

B. The Property has been approved for development of one hundred fifty-six (156) apartment units ("Project"), of which twenty-four (24) units will be restricted to affordable housing use.

C. City, pursuant to the terms of Ordinance No. 1179, adopted by the City Council of the City on June 24, 2008 (the "Ordinance") and in accordance with Developer's request consistent with the terms of the Ordinance, has agreed to defer payment of the Quimby Fees for the Project as provided herein.

D. This Declaration sets forth the covenant binding upon Developer and any successor thereto (including, without limitation, any lender taking possession of the Property through a foreclosure proceeding or otherwise) to pay the Quimby Fees as provided herein.

AGREEMENT

Therefore, in consideration of the foregoing Recitals and performance by the Parties of the covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Payment of Quimby Fees.** To assist development of projects with an affordable housing component in the City of San Dimas (the "City"), on June 10, 2008, the San Dimas City Council adopted Ordinance 1179 providing that, upon request of the developer of a project with an affordable housing component, the City may approve deferral of payment of Quimby Fees for park development. On October 29, 2010, Developer requested such a deferral for the Project. On January 11, 2011, the City agreed to defer payment of the Quimby Fees for the Project as set forth herein.

The Parties hereby agree that the amount of Quimby Fees applicable to the Project which Developer is required to pay is \$618,102.00.

Developer agrees the Quimby Fees for the Project shall be paid upon the earlier of (a) the date the City releases final occupancy for any building in the Project, or (b) one (1) year after the date of issuance of any building permit for the Project.

The obligation to pay the Quimby Fees for the Project shall be binding upon Developer and any successor-in-interest to the Property, including, without limitation, any lender taking possession of the Property through a foreclosure proceeding or otherwise.

2. **Notices.** All notices to be given under this Declaration must be in writing and delivered with all delivery or postal charges prepaid. Notices may be given personally; by facsimile; by United States first-class mail; by United States certified or registered mail; or by other recognized overnight service with tracking capabilities. Notices shall be deemed received on the date of personal delivery or facsimile transmission; on the date shown on a signed return receipt or acknowledgment of delivery; or, if delivery is refused or notice is sent by regular mail, seventy-two (72) hours after deposit. Until a Party gives notice of a change of address in accordance with this Section, notices must be delivered to the following addresses:

To City: City of San Dimas
 245 East Bonita Avenue
 San Dimas, California 91733
 Attention: City Manager

To Developer: VCH – SAN DIMAS COMPANY, LLC
 590-G Brunken Avenue
 Salinas, CA 93901
 Attention: Mr. Tom deRegt

3. **Event of Default.** If Developer or any future owner of the Property fails to make the Quimby Fees payment as provided herein, the City may, in its sole and absolute discretion,

withhold the release of final occupancy for any final building department approval on any building located on the Property.

4. **Enforcement; Remedies.** If the full Quimby Fees amount is not paid within 15 days after the due date set forth herein, the City shall have the right to initiate and pursue any action and/or proceeding to enforce the provisions of this Declaration or to recover damages for such non-payment.

5. **General Provisions.**

5.1 **Integration.** This Declaration contains the entire agreement and understanding between the parties as to its subject matter. No representations oral or otherwise, express or implied, other than those contained herein, have been made by the parties. All exhibits referred to in this Declaration are hereby incorporated in the Declaration by this reference, regardless of whether or not the exhibits are actually attached to the Declaration. The Recitals to this Declaration are also hereby incorporated in the Declaration by this reference.

5.2 **Additional documents.** Each Party agrees to execute any additional documents that are reasonably necessary to carry out this Declaration or to accomplish its intent.

5.3 **Waiver and amendment.** No provision of this Declaration, or default under any provision, can be waived except in writing. Waiver of any provision or default will not be deemed to be a waiver of any other provision, or of any subsequent default of the same or other provision. This Declaration may be amended, modified or rescinded only by a written agreement signed by the Parties.

5.4 **Successors and assigns.** This Declaration inures to the benefit of and is binding upon, the Parties, and their respective heirs, successors and assigns.

5.5 **Governing law.** This Declaration has been entered into in the State of California and will be interpreted and enforced under California law.

5.6 **Attorneys' fees.** The prevailing Party in any action brought to enforce this Declaration will be entitled to reasonable attorneys' fees and costs.

5.7 **Severability.** If any term, provision, covenant or condition of this Declaration is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect.

5.8 **Counterparts.** This Declaration may be executed in counterparts, each of which when so executed shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

THE PARTIES have caused this Declaration to be executed by the following signatories as of the date first set forth above:

CITY OF SAN DIMAS,
a municipal corporation

By: _____
Blaine Michaelis, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Kenneth Brown, City Attorney

VCH – SAN DIMAS COMPANY, LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)



CITY OF SAN DIMAS
MINUTES
SAN DIMAS REDEVELOPMENT AGENCY MEETING
TUESDAY, DECEMBER 14, 2010
SENIOR CITIZEN/COMMUNITY CENTER
MULTIPURPOSE ROOM, 201 E. BONITA AVENUE

PRESENT:

Chairman Curtis W. Morris
Vice Chairman John Ebner
Mr. Emmett G. Badar
Mr. Denis Bertone
Mr. Jeffrey W. Templeman
Executive Director Blaine Michaelis
Agency Attorney Ken Brown
Secretary Ina Rios
Assistant City Manager of Community Development Larry Stevens
Assistant City Manager Ken Duran
Director of Development Services Dan Coleman
Director of Public Works Krishna Patel
Director of Parks and Recreation Theresa Bruns

CALL TO ORDER

Chairman Morris called the meeting to order at 1:37 a.m.

ORAL COMMUNICATIONS *(This is the time set aside for members of the audience to address the Board. Speakers are limited to three minutes.)*

1) Sid Maksoudian reported ongoing water runoff at Via Verde Park and Golden State Water Company informed him it is not reclaimed water.

Director of Parks and Recreation Bruns said she will confirm that staff is onsite testing.

APPROVAL OF THE MINUTES

It was moved by Mr. Ebner, seconded by Mr. Bertone, to approve the minutes for the meeting of November 23, 2010. The motion carried unanimously.

EXECUTIVE DIRECTOR

There were no comments.

MEMBERS OF THE AGENCY

There were no comments.

ADJOURNMENT

Chairman Morris adjourned the meeting at 1:39 a.m.

Respectfully submitted,

Ina Rios, Secretary

qr