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City of Lake Elsinore
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Lake Elsinore, CA 92530
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DEVELOPMENT AGREEMENT

BY AND BETWEEN THE

CITY OF LAKE ELSINORE AND T.T. GROUP, INC.

(TENTATIVE TRACT MAP NO. 31370)

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EXHIBITS

DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF LAKE ELSINORE AND T.T. GROUP, INC.

(Pursuant To Government Code Sections 65864 -65869.5)

This Development Agreement ("Agreement") is entered into on _____, 2024, between T.T. Group, Inc., a California corporation ("Owner"), and the City of Lake Elsinore, a California municipal corporation ("City"). Owner and City are sometimes singularly referred to herein as a "Party" and are collectively referred to herein as the "Parties."

RECITALS

A. All initially-capitalized words, terms, and phrases used, but not otherwise defined, in the Recitals shall have the meanings assigned to them in Section 1 of this Agreement, unless the context clearly indicates otherwise.

B. 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," Government Code Sections 65864 through 65869.5. The Development Agreement Act authorizes the City to enter into an agreement with any person having a legal or equitable interest in real property regarding the future development of such property and to vest certain development rights therein.

C. Pursuant to the Development Agreement Act, the City Council adopted Ordinance No. 996 (1995) as amended by Ordinance No. 1393 (2018) establishing procedures and requirements for consideration of development agreements as set forth in LEMC Chapter 19.12 (collectively, the "Development Agreement Ordinance").

D. On March 22, 2005, the City Council approved Subsequent Environmental Impact Report (SEIR) (SCH No. 2004071082), Amendment No. 1 to the Tuscany Hills Specific Plan No. 89-3, General Plan Amendment No. 2004-05, Zone Change No. 2004-06, and TTM No. 31370, subdividing 368 acres into 807 single family residential lots, along with community and neighborhood parks, basins, lift station and open space located in the northeast portion of the City commonly known as North Tuscany. On June 13, 2017, the City Council granted a six-year discretionary extension of TTM 31370 to June 1, 2022. Subsequently, TTM 31370 was statutorily extended by the provisions of AB 116 to June 1, 2024.

E. TTM 31370 covers property on the south side of Greenwald Avenue, on both sides of the extension of Summerhill Drive north of the existing Tuscany Hills community, to the west of Canyon Lake and to the east of Bella Vista Drive (Assessor's Parcel Nos.: 349-280-025, -028, -029, -038, -040, -042, -044, -048, -050 and -051; 349-290-017, -018, -026 and -027; 349-390-001 thru -004, -015 and -016).

F. Owner owns a portion of the land within TTM 31370 consisting of Assessor's Parcel Nos.: 349-280-025, -028, -029, -038, -040, -042, -044, -048, and -051; 349-290-017, -018, and -027; 349-390-001 thru -004, -015 and -016) with approximately 584 lots, referred to herein as the "Owner Property". The parcels of land comprising the Owner Property are more particularly described in the Legal Description (Exhibit "A") and depicted in the Vicinity Map (Exhibit "B"). The balance of land within TTM 31370 consisting of Assessor Parcel Numbers 349-280-050 and 349-290-026 with approximately 223 lots are owned by Canadian Pacific Land, LLC, a Florida limited liability company and Strack Farms Land, LLC, a Delaware limited liability company.

G. Development of TTM 31370 is impaired by the lack of adequate infrastructure, particularly roadway improvements providing access to the Owner Property, including the extension of Summerhill Drive from the southern connection at the terminus of the existing Summerhill Drive extending northerly to Greenwald Avenue. The Parties desire to continue discussions regarding the financing and construction of necessary infrastructure improvements and to vest the Owner's land use entitlements during these ongoing discussions.

H. On April 16, 2024, the City of Lake Elsinore Planning Commission held a duly noticed public hearing to consider Owner's application for this Agreement and recommended to the City Council approval of this Agreement.

I. On May 14, 2024, the City Council held a duly noticed public hearing to consider this Agreement and found and determined that this Agreement (a) is consistent with the objectives, policies, general land uses and programs specified in the City's General Plan and any applicable specific plan; (b) is compatible with the uses authorized in, and the regulations prescribed for the Owner Property and the surrounding area and will not adversely affect the orderly development of Owner Property or the preservation of property values; (c) is in conformity with public convenience, general welfare and good land use practices; (d) will have an overall positive effect on the health, safety and welfare of the residents of and visitors to the City; and (e) constitutes a lawful, present exercise of the City's police power and authority under the Development Agreement Act and Development Agreement Ordinance.

J. Based on the findings set forth in Recital I, the City Council entered into this Agreement pursuant to and in compliance with the requirements of the Development Agreement Act and the Development Agreement Ordinance; and did introduce for first reading Ordinance No. __ (the "Enabling Ordinance"). On _____, 2024 the City Council conducted the second reading and adoption of the Enabling Ordinance did thereby approve this Agreement.

K. The foregoing Recitals constitute a substantive part of this Agreement, and the Parties have materially relied upon them as such in their respective determinations to execute this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, obligations, promises, covenants and conditions contained herein and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, and each of them, agree as follows:

1. DEFINITIONS

1.1. "Agreement" means this Development Agreement, including the attached Exhibits. The term "Agreement" shall include any Operating Memoranda and/or amendment properly approved and executed pursuant to Section 6.2 and 6.3, respectively.

1.2. "Applicable Rules" means this Agreement, the Existing Development Approvals, the Existing Land Use Regulations, the Existing Development Impact Fees, and the Development Agreement Ordinance.

1.3. "Building Codes" means standard uniform codes adopted by the City governing construction, including without limitation, the Housing Code, the Building Code, the Energy Code, the Green Building Code, the Plumbing Code, the Electrical Code, the Mechanical Code, and the Fire Code (including amendments thereto by the Riverside Fire Authority), as modified and amended by official action of the City as set forth in Title 15 of the LEMC as may be amended from time to time.

1.4. "CEQA" means the California Environmental Quality Act of 1970 (California Public Resources Code § 21000 et seq.) and the state CEQA Guidelines (California Code of Regulations, Title 14, § 15000 et seq.).

1.5. "City" means the City of Lake Elsinore, a municipal corporation.

1.6. "City Council" means the duly elected City Council of the City.

1.7. "City Manager" means the City Manager of the City and his or her authorized designees.

1.8. "Conditions of Approval" means the conditions imposed by the City in connection with the approval and extension of Tentative Tract Map No. 31370, including the mitigation measures identified in the Supplemental Environmental Impact Report (SCH No. 2004071082) and its Mitigation Monitoring Program which are collectively attached as Exhibit "D." Conditions of approval and any applicable mitigation measures imposed in connection with any Subsequent Approval shall be appended to Exhibit "D" and shall prevail in the event of a conflict with the original Conditions of Approval to the Existing Development Approvals.

1.9. "Day" refers to a calendar day, unless otherwise specified.

1.10. "Dedication" and "Dedicate" shall mean Owner's grant of real property or an interest therein to the City or another governmental, public agency or non-profit entity for a public purpose, including, without limitation, dedication of right-of-way to the City for the public rights of way together with construction, drainage and slope easements associated therewith.

1.11. "Development" means the construction and/or installation of structures, improvements and facilities on the Owner Property as set forth in this Agreement including, without limitation, grading, the construction of infrastructure and public facilities (whether located

within or outside the Owner Property), the construction of buildings and the installation of landscaping.

1.12. "Development Agreement Act" means Government Code Sections 65864 through 65869.5.

1.13. "Development Agreement Fee" is defined in Section 3.3 of this Agreement.

1.14. "Development Agreement Ordinance" means Ordinance No. 996 pursuant to which the City has adopted procedures and requirements for considering, approving and administering development agreements as codified in Section 19.12.005, *et seq.* of the LEMC and as may be amended from time to time.

1.15. "Development Exaction" shall mean and include Development Impact Fees, Dedications, Reservations, and any other obligation to pay money, construct facilities, or provide land as a condition of Development or of obtaining a Development Approval.

1.16. "Development Impact Fees" means any impact fees, linkage fees, or exactions, and other similar impact fees or charges (whether collected as a condition to issuance of grading and/or building permits, or otherwise) imposed by the City on and in connection with Development pursuant to Existing Land Use Regulations. Development Impact Fees do not include (a) Processing Fees and Charges; (b) impact fees, linkage fees, exactions, assessments or fair share charges or other similar fees or charges imposed by other governmental entities regardless of whether the City is required to collect or assess such fees pursuant to applicable laws (e.g., school district impact fees pursuant to Government Code Section 65995), or (c) general or special taxes and assessments.

1.17. "Effective Date" means the date this Agreement and the Enabling Ordinance are approved by the City Council.

1.18. "Enabling Ordinance" is defined in Recital J.

1.19. "Existing Development Approvals" means Tentative Tract Map No. 31370 and the Tuscany Hills Specific Plan No. 89-3 as amended by Amendment No. 1, and any other entitlement relating to the Development of the Owner Property approved by the City prior to the Effective Date in compliance with CEQA and subject to the Conditions of Approval and the City Council's findings and determinations with respect thereto.

1.20. "Existing Development Impact Fees" means the categories of Development Impact Fees in effect as of the Effective Date as set forth in Exhibit "C" to be imposed on the Development of the Owner Property during the Term in such amount as in effect at the time such Development Impact Fees are paid.

1.21. "Existing Land Use Regulations" means the Land Use Regulations in effect as of the Effective Date applicable to the Development of the Owner Property during the Term except as otherwise provided by the Reserved Powers set forth in Section 4.2 *et seq*.

1.22. "Government Code" means the California Government Code.

1.23. “Indemnitees” means the City and its elected and appointed officials, employees, volunteers, agents, and representative.

1.24. “Land Use Regulations” means the City General Plan, the Tuscany Hills Specific Plan, and all ordinances, resolutions, codes, rules, regulations and official policies of the City adopted by ordinance or resolution governing the development and use of land, including zoning, permitted uses, density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, design, improvement and construction standards and specifications, and the provisions for Development Exactions. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing: (a) the conduct of businesses, professions, and occupations except subdivisions; (b) taxes and assessments; (c) the control and abatement of nuisances; and/or (d) the exercise of the power of eminent domain.

1.25. “Law” means any official legislative enactment of a governmental agency, public body, or court that binds the Parties. "Laws" shall include but not be limited to case law, constitutional provisions, statutes, ordinances, initiatives, resolutions, policies, orders, rules, and regulations. A matter is a Law regardless of whether it was imposed by a legislative body (such as the City Council or State Legislature), an administrative agency (such as the Public Utilities Commission), the electorate (as by initiative or referendum), court (by judgment, order or opinion), or any other official body (such as the Planning Commission), and regardless of whether it is federal, state, or local.

1.26. “LEMC” means the Lake Elsinore Municipal Code as amended from time to time.

1.27. “Owner” means T.T. Group, Inc., a California corporation and its permitted successors in interest to the Owner Property, and/or permitted assignees of Owner's rights under this Agreement.

1.28. “Owner Property” means the real property which is the subject of this Agreement and which is described in Recital F, and more particularly described in Exhibit “A” and depicted in Exhibit “B” attached hereto and incorporated by this reference.

1.29. “Parties” means the Owner and the City.

1.30. “Periodic Review” is defined in Section 6.1.

1.31. “Processing Fees and Charges” means all processing fees and charges required by the City in connection with new construction, including, but not limited to, Development Approval application fees, plan-check and inspection fees, fees for monitoring compliance with any Development Approval or for monitoring compliance with environmental impact mitigation measures. “Processing Fees and Charges” shall not include Development Impact Fees or Development Exactions.

1.32. “Project” means the Development of the Owner Property for residential and related ancillary uses and open space uses, proposed by the Owner to include approximately 584

detached single-family homes as set forth in the Applicable Rules, including Conditions of Approval.

1.33. "Reservation" means the setting aside of land for future public use, without any legal right, title or interest being conveyed other than the promise to convey an interest upon payment of fair market value for such land.

1.34. "Reserved Powers" means the rights and authority excluded from the assurances and rights provided to Owner under this Agreement and reserved to the City under Section 4.3 of this Agreement.

1.35. "Subsequent Approvals" shall mean and include any future entitlements, including residential design review and any land use permits, variance, conditional use permit, building permits, grading permits, encroachment permits, landscape and signage plan, subdivision tract maps, parcel maps, lot line adjustments, and other similar permits, required in connection with the Development of the Owner Property approved by the City in compliance with CEQA and the City Council's findings and determinations with respect thereto.

1.36. "Summerhill Drive Extension Project" means the construction of two lanes of Summerhill Drive from the existing terminus at the south extending northerly to Greenwald Avenue in conformance with the final alignment and final plans approved by the City.

1.37. "Term" is defined in Section 5.1.

2. DEVELOPMENT OF THE OWNER PROPERTY.

2.1. Uses.

The Owner Property may be used in accordance with the Existing Development Approvals, all Subsequent Approvals, and the Existing Land Use Regulations.

2.2. Intensity.

Permitted density and intensity of use vested hereby shall be the maximum permitted by the Existing Development Approvals, all Subsequent Approvals, and the Existing Land Use Regulations.

2.3. Size.

The maximum height and size of buildings vested hereby shall be as set forth in the Existing Development Approvals, all Subsequent Approvals, and the Existing Land Use Regulations.

2.4. Slopes.

The City shall encourage and allow the use of the latest technology for spray seeding and drip irrigation of slopes consistent with applicable Laws.

2.5. Tentative Subdivision Map Extensions and Modifications.

In accordance with Government Code §66452.6(a)(1), Tentative, Tentative Tract Map No. 31370 in connection with Development of the Owner Property, shall be granted an extension of time for the greater of the Term of this Agreement (in which case no such extension application to extend the expiration date of the tentative map need be filed) or such time approved in accordance with State law or the Existing Land Use Regulations.

To the extent permitted by applicable Laws, including the Subdivision Map Act (Government Code §66410 *et seq.*), minor modifications to existing tentative tract maps shall be reviewed by the City Engineer or Community Development Director without a public hearing for matters such as moving streets, changes to pad elevations, re-alignment and loss of lots, and related changes that do not increase the number of lots, when such changes are required for compliance with (i)WQMP or drainage related re-design requirements, (ii) MSHCP feasibility reconfiguration, (iii) fire department requirements and/or (iv) other applicable Laws.

2.6. Timing of Development.

In order to avoid the result in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), the City and Owner agree that Owner shall have the right, without obligation, to develop the Project in such order and at such rate and times as Owner deems appropriate within the exercise of its subjective business judgment, subject only to the Existing Development Approvals. Furthermore, the City shall not (whether by City Council action, initiative or otherwise) limit the rate or timing of Development of the Owner Property except as expressly authorized by the Existing Development Approvals. Nothing in this section shall be construed to limit the City's right to require that Owner timely provide all Reservations, Dedications and public improvements in accordance with the Existing Development Approvals and this Agreement.

3. DEVELOPMENT EXACTIONS.

3.1. Reservations, Dedications and Improvements; Summerhill Drive Extension Project Rights of Way.

Reservations and Dedications and the provision of improvements and facilities for public purposes shall be those, and only those, required by the Conditions of Approval adopted by the City in connection with the Existing Development Approvals any and all Subsequent Approvals, the Existing Land Use Regulations, and/or this Agreement, including the Summerhill Drive Extension Project.

To accelerate the construction of the Summerhill Drive Extension Project, the City has advanced funds toward the cost of engineering and design (the "City Advance"). To that end, City has expended approximately Four Hundred Ten Thousand Four Hundred Forty-Two Dollars ($410,442) pursuant to the following agreements: 1) a Professional Services Agreement with Glenn Lukos Associates, Inc. to provide biological and regulatory consulting services for the Summerhill Drive Extension Project, including preparation of a General Biological Report and a Jurisdictional Delineation Report to be used for permitting purposes, and 2) a Professional Services Agreement with Hunsaker and Associates, Inc. to provide civil engineering design services,

including traffic signal, hydrology, storm drain improvements, grading, geotechnical and all other engineering disciplines required to complete a constructible design of the Summerhill Drive Extension Project.

No later than ninety (90) days after the later of (a) the date of approval by City of the final alignment and final plans for the Summerhill Drive Extension Project or (b) the date of approval of this Development Agreement, Owner shall at no cost to the City make an irrevocable offer of dedication of fee interest in the right of way for the Summerhill Extension Project located on the Owner Property together with construction, slope and drainage easements as required by City in connection with the Summerhill Drive Extension Project. Owner may reserve a utility and or other infrastructure easement(s) within the dedicated right of way so long as such reservations do not interfere with the construction, completion and operation of the Summerhill Drive Extension Project.

In the event City obtains funding and completes construction of the Summerhill Drive Extension Project prior to the Owner's development of the Project, Owner shall reimburse City Owner's fair share contribution of the City's Advance and cost of construction of the Summerhill Drive Extension Project prior to issuance by City of the first building permit (not including model homes) for the Project.

If City does not obtain the necessary funding and/or complete the construction of the Summerhill Extension Project prior to the Owner's development of the Project, then Owner shall complete the construction of the Summerhill Drive Extension Project prior to issuance by City of the first building permit (not including model homes) for the Project. During the construction of the Summerhill Extension Project, the City and the Owner will exercise best efforts to coordinate with the construction schedules for EVMWD sewer and water facilities and other infrastructure facilities so as to minimize public inconvenience and disruption of traffic and maximize the efficiency of in-road construction projects.

3.2. Owner's Obligation to Pay Fees.

During the Term of this Agreement, Owner shall pay all Existing Development Impact Fees and all Processing Fees and Charges imposed by City and any other fees and charges imposed by any other regulatory agency with jurisdiction over the Owner Property within the time and in the manner prescribed by such agency or the City, and shall receive such credits and/or reimbursements for improvements constructed in accordance with the provisions set forth in the LEMC. Owner shall pay Existing Development Impact Fees and Processing Fees and Charges at the prevalent rate in effect as of the date such fees and charges are paid.

3.3. Development Agreement Fees.

Upon the City's issuance of each building permit for each residential dwelling unit to be constructed within the Project by Owner, Owner shall pay to City a Development Agreement Fee in the amount of Five Thousand Five Hundred Dollars ($5,500) (each, a "DAG Fee" and collectively, "DAG Fees"). DAG Fees shall be deposited by City into a capital facilities fund to be used toward the construction of capital facilities as determined by City

in its sole and absolute discretion. If a Community Facilities District ("CFD") special tax is requested by the Owner and approved by the City Council acting in its reasonable discretion and in accordance with applicable laws pursuant to Section 3.6 of this Agreement, DAG fees may be paid out of the CFD or reimbursed from the CFD. Owner's obligation to pay DAG Fees shall survive termination of this Agreement.

3.4. Affordable Housing Fee.

Upon issuance of each residential building permit for development on the Owner Property, Owner shall pay to City an affordable housing fee of $2.00 per habitable square foot of residential development ("Affordable Housing Fee"). Owner's obligation to pay the Affordable Housing Fee shall survive termination of this Agreement.

3.5. Participation in CFD 2015-1 and CFD 2015-2.

Owner agrees to annex the Owner Property into City of Lake Elsinore Community Facilities District No. 2015-1 (Law Enforcement, Fire and Paramedic Services) ("CFD No. 2015-1") or into such successor district formed to fund law enforcement, fire and paramedic services pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, and to pay any special taxes associated therewith to offset the annual negative fiscal impacts of the Owner's project on public safety operations in the City. For information purposes only, the special tax rate in effect in Community Facilities District No. 2015-1 as of the Effective Date is approximately Seven Hundred Seventy and 53/100 Dollars ($770.53) per year for each single-family residence and Four Hundred Seventy-One and 32/100 Dollars ($471.32) per year for each multi-family residential unit, subject to an automatic annual adjustment each July 1 equal to the greater of i) the percentage increase in the Consumer Price Index (All Items) for Los Angeles-Riverside-Orange County (1982-84=100) since the beginning of the preceding fiscal year, or ii) four percent (4%). Special taxes shall be levied on a parcel-by-parcel basis, commencing at the time of issuance of building permits for the Owner Property. The Owner may propose alternative equivalent financing mechanisms to fund the annual negative fiscal impacts of the Development on the Owner Property with respect to Law Enforcement, Fire and Paramedic Services the sufficiency of which shall be evaluated by the City Manager. Owner shall make a non-refundable deposit of Fifteen Thousand Dollars ($15,000), or at the current rate in place at the time of annexation, toward the cost of annexation, formation or other mitigation process, as applicable.

Owner agrees to annex the Owner Property into City of Lake Elsinore Community Facilities District No. 2015-2 (Maintenance Services) ("CFD No. 2015-2") or such successor district formed to fund the on-going operation and maintenance of the (i) public right-of-way, including street sweeping, (ii) the public right-of-way landscaped areas and parks to be maintained by the City; and (iii) for street lights in the public right-of-way for which the City will pay for electricity and a maintenance fee to Southern California Edison, including streets, parkways, open space and public storm drains constructed within the Owner Property and federal NPDES requirements pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, and to pay any special taxes associated therewith to fund such on-going operation and maintenance costs to offset the annual negative fiscal impacts of the Owner's project. The special tax shall be levied on a parcel-by-parcel basis, commencing at the time of issuance of building permits for the Owner Property subject to an automatic annual adjustment each July 1 equal to the greater of i)

the percentage increase in the Consumer Price Index (All Items) for Los Angeles-Riverside-Orange County (1982-84=100) since the beginning of the preceding fiscal year, or ii) two percent (2%). The Owner may propose alternative equivalent financing mechanisms to fund the annual negative fiscal impacts of the Development on the Owner Property with respect to Maintenance Services the sufficiency of which shall be evaluated by the City Manager. Fulfillment of applicable Maintenance Services by a homeowner's association under CC&R's for the Owner Property are an acceptable means of equivalent financing mechanism for Maintenance Services; provided however, that the annexation to CFD No. 2015-2 or into such successor district shall be complete, the obligations established thereunder shall remain dormant and special taxes shall not be levied pursuant thereto unless and until activated by the City upon a determination that the homeowner's association has defaulted in its obligation to satisfactorily perform the Maintenance Services. Owner shall make a non-refundable deposit of Fifteen Thousand Dollars ($15,000), or at the current rate in place at the time of annexation, toward the cost of annexation, formation or other mitigation process, as applicable.

Notwithstanding the foregoing, if all or any portion of the Owner Property is already annexed into an existing services community facilities district or other financing district for Law Enforcement, Fire and Paramedic Services or Maintenance Services which overlaps with CFD 2015-1 and/or CFD 2015-2 as to services to be funded, City shall assist Owner in having such CFD dissolved and shall pay the administrative costs of de-annexation from such other financing district in order to enable Owner to annex into CFD 2015-1 and/or CFD 2015-2 with the other participating Owners to avoid duplication of services.

3.6. Financing of Public Facilities; Future CFDs.

City, in cooperation with and at the request of Owner and submittal of the requisite application and formation deposit (including deposit for any non-contingent professional services related to the issuance of bonds), shall initiate and use its commercially reasonable and diligent efforts to cause the City to establish a Mello-Roos Community Facilities District ("CFD") to finance public improvements and facilities to be constructed and installed in conjunction with the Development of the Owner Property in accordance with the provisions of the Mello-Roos Community Facilities Act of 1982 (Government Code §53311 *et seq.)*, as amended ("Mello Roos Act").

The parameters of the CFD(s) shall be as follows or as otherwise required to meet minimum requirements of California law or City policy, as the same may be amended from time to time: (i) a minimum value-to-lien ratio of 3 to 1; (ii) a total effective tax rate (taking into account all ad-valorem taxes, assessments, and special taxes expected to be levied on the end-user, including potential participation by other public agencies by way of a joint community facilities agreement for facilities and/or fees of such other public agencies) not to exceed two percent (2%) of the estimated residential home prices at the time of CFD formation; provided that the City in its sole discretion may impose in the rate and method of apportionment appropriate provisions to reduce taxes at bond issuance to below 2% or reduce the amount of bonds issued in order to ensure tax rates not above 2%; (iii) a debt service coverage ratio equal to 110% (unless adequate credit enhancement is provided to the reasonable satisfaction of the City to allow for a lower ratio); (iv) an annual escalator on the CFD special tax and debt service not to exceed two percent (2%) per year (and subject to appropriate increases in the special tax upon defaults by other

properties within the CFD); and (v) administrative expenses shall not exceed Thirty-Five Thousand Dollars ($35,000) per year, adjusted annually by the greater of i) the percentage increase in the Consumer Price Index (All Items) for Los Angeles-Riverside-Orange County (1982-84=100) since the beginning of the preceding fiscal year, or ii) two percent (2%).

The City shall at all times have discretion as to factors relating to the issuance of bonds in the prudent management of the issuance of tax-exempt securities under laws and conditions then applicable, including, but not limited to, then-applicable marketing conditions and sound municipal financing practices. Prior to the issuance of any CFD bonds, the CFD shall levy special taxes on all parcels of developed property (as defined in the applicable rate and method of apportionment) at the assigned special tax rates and use such funds to pay for the costs of administering the CFD and for the costs of acquiring eligible public improvements or funding Existing Development Impact Fees (as provided for in the applicable rate and method of apportionment and CFD formation documents). The City and Owner agree that the first priority for funding from the proceeds of special taxes and bonds pursuant to such facilities CFDs shall be reimbursement for eligible public improvements; provided, however that the City agrees that payment of Existing Development Impact Fees shall be eligible for CFD funding so long as the City has a reasonable expectation of expending bond proceeds on the corresponding public improvements within three years of the receipt of such funds. In addition, the City agrees to provide reasonable cooperation with other public agencies and to exercise reasonable discretion in evaluating proposed joint community facilities agreement(s) for facilities and/or fees of such other public agencies.

3.7. Compliance with Laws.

Owner shall carry out the design and construction of public improvements in conformity with all applicable Laws, including without limitation, public bidding and construction requirements in accordance with applicable City requirements and applicable federal and state labor Laws which shall include, if appliable, Labor Code § 1720 et seq., including without limitation the payment of prevailing wage and maintenance of payroll records in accordance with Labor Code §§ 1776 and 1812, and employment of apprentices in accordance with Labor Code § 1777.5. Owner further agrees that all public work (as defined in Labor Code § 1720) performed pursuant to this Agreement, if any, shall comply with the requirements of Labor Code § *1770 et seq*. In all bid specifications, contracts and subcontracts for work that is subject to the prevailing wage requirements of Labor Code §1720 et seq., Owner (or its general contractor, in the case of subcontracts) shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the work, and shall include such rates in the bid specifications, contract or subcontract.

3.8. Prevailing Wage Indemnification.

Owner shall indemnify, protect, defend and hold harmless the Indemnitees, with counsel reasonably acceptable to the City, from and against any and all loss, liability, damage, claim, cost, expense and/or "Increased Costs" (including reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) which, in connection with the Development, results or arises from the following: (1) the noncompliance by Owner of any applicable Law, including, without limitation, any applicable federal and/or State labor Laws (including, without limitation,

if applicable, the requirement to pay State prevailing wages and to hire apprentices); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar Law; and/or (3) failure by Owner to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar Law. It is agreed by the Parties that, in connection with the Development, including, without limitation, any and all public works (as defined by applicable Law), Owner shall bear all risks of payment or non-payment of prevailing wages and hiring of apprentices under California Law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar Law. "Increased Costs," as used in this Section 3.8, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing obligations set forth in this Section 3.8 shall survive termination of this Agreement and shall terminate upon the expiration of all statutes of limitation applicable to claims with respect to which Owner is required to indemnify the Indemnitees pursuant to this Section 3.8.

4. VESTED RIGHTS.

4.1. Development of the Owner Property.

During the Term and subject to the Reserved Powers, Owner shall have the vested right to develop and use the Owner Property subject to the terms and conditions of the Applicable Rules and any and all Subsequent Approvals as set forth in this Agreement. The Parties agree and acknowledge that this Agreement itself does not authorize Owner to undertake any Development of the Owner Property nor does this Agreement require the City to approve any Subsequent Approval; provided, however, except as otherwise set forth in this Agreement, the City shall process any Subsequent Approval in accordance with the Existing Land Use Regulations and this Agreement. In the event of conflict between the Existing Development Approvals and this Agreement, this Agreement shall prevail.

Before any Development activity can occur, the Owner shall have satisfied the applicable Conditions of Approval of the Existing Development Approvals for the Owner Property and obtained any necessary Subsequent Approvals for the Owner Property pursuant to the Applicable Rules.

4.2. No New Development Impact Fees.

Owner acknowledges that, in the absence of this Agreement, the Development of the Owner Property would be subject to all Development Impact Fees in place at the time any building permits are issued by the City, or as otherwise required by the LEMC. As consideration for the Owner's obligations hereunder and the benefits to the City, commencing on the Effective Date and continuing during the Term of this Agreement, the Development Impact Fees imposed by the City with respect to the Development of the Owner Property shall be the categories of Existing Development Impact Fees as described and set forth in Exhibit "C."

Upon expiration of the Term, or earlier termination of this Agreement pursuant to Section 5.2, Development of the Owner Property shall be subject to any and all Development Impact Fees and Development Exactions imposed by the City in accordance with

any applicable Law and/or the LEMC as amended from time to time. Nothing in this Agreement is intended to prevent the imposition of fees or other exactions by any governmental entity not affiliated with the City.

4.3. Reserved Powers.

Although the Existing Land Use Regulations and Existing Development Impact Fees will govern Development of the Owner Property, this Agreement will not prevent and shall not be construed to limit the authority of City to apply new rules, regulations and policies set forth in this Section 4.3 *et seq.* ("Reserved Powers") in connection with the Development of the Owner Property.

4.3.1. Processing Fees and Charges.

Processing Fees and Charges as defined in Section 1.31 shall be paid by Owner at the prevalent rate at the time of payment.

4.3.2. Procedural Regulations.

Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

4.3.3. Building Codes.

Regulations, policies and rules governing engineering and construction standards and specifications including without limitation, the Building Codes as defined in Section 1.3 and similar codes and any local amendments adopted by the City.

4.3.4. Non-Conflicting Regulations.

New, rules, regulations and policies which do not conflict with the Existing Land Use Regulations. The term "do not conflict" means new rules, regulations, policies which: (a) do not modify the permitted land uses, the density or intensity of use, the phasing or timing of development, the maximum height and size of proposed buildings on the Owner Property, provisions for dedication of land for public purposes and Development Exactions, except as expressly permitted elsewhere in this Agreement, and standards for design, development and construction on the Owner Property; (b) do not prevent Owner from obtaining any Subsequent Approvals, including, without limitation, all necessary approvals, permits, certificates, and the like, at such dates and under such circumstances as Owner would otherwise be entitled pursuant to the Existing Land Use Regulations; or (c) do not prevent Owner from commencing, prosecuting, and finishing grading of the land, constructing public and private improvements, and occupying the Owner Property, or any portion thereof, all at such dates and schedules as Owner would otherwise be entitled to do so by Development Approvals, Subsequent Approvals, and the Existing Land Use Regulations.

4.3.5. Certain Conflicting Regulations.

Regulations in conflict with the Existing Land Use Regulations, including General Plan land use, zoning and development standards, if the application of such regulations to the Development of the Owner Property has been consented to in writing by the Owner. Application of such conflicting regulations may require Owner to obtain Subsequent Approvals.

4.3.6. Regulations Needed to Protect the Health and Safety.

Any City ordinance, resolution, regulation, or official policy which is reasonably necessary to protect persons from conditions dangerous to their health and/or safety; are permissible provided that any such regulations must constitute a valid exercise of the City's police power, applied and enforced in a uniform, consistent and nondiscriminatory manner.

4.3.7. Regulations by Other Public Agencies.

The Parties acknowledge that other public agencies, not within the control of the City, possess authority to regulate aspects of Development separately from the City. This Agreement does not limit the authority of such other public agencies. Nothing contained in this Agreement shall be construed as limiting, in any way, the authority of such other public agencies to impose any new or increased development impact fees or other fees or charges, even though such impositions may be collected by the City.

4.3.8. General and Special Taxes.

Owner shall pay general or special taxes, including but not limited to, property taxes, sales taxes, transient occupancy taxes, business taxes, which may be applied to the Owner Property or to businesses occupying the Owner Property; provided, however, that the tax is of general applicability Citywide and does not burden the Owner Property disproportionately when compared to the development of other residential uses within the City. Nothing in this Agreement prohibits the adoption and application of a CFD special tax requested by the Owner and approved by the City in accordance with Section 3.6 of this Agreement.

4.3.9. End Users.

Laws of the City that impose, levy, alter or amend fees, charges, or Land Use Regulations relating solely to post-Development conduct of consumers or end users, such as, without limitation, trash can placement, service charges and limitations on vehicle parking, are permissible so long as those later enactments are applied and enforced in a uniform, consistent and non-discriminatory manner and do not impair Owner's vested rights to develop the Owner Property consistent with the Applicable Rules.

4.4. Subsequent Actions and Approvals.

The City shall accept and process with reasonable promptness all completed applications for any Subsequent Approval (including tentative and final tract maps, improvement plans, and decisions relating to the design and location of public improvements on Owner

Property) in accordance with the Existing Land Use Regulations; provided, however, this Agreement will not prevent the City, in subsequent actions applicable to the Owner Property, from applying new rules, regulations and policies which do not conflict with the Existing Land Use Regulations, nor will this Agreement prevent the City from denying or conditionally approving any Subsequent Approval on the basis of such Existing Land Use Regulations or such new rules, regulations or policies. Subsequent Approvals shall, upon approval and as may be amended from time to time, become part of the Applicable Rules and the Owner shall have a "vested right," as that term is defined under California law, in and to such Subsequent Approvals by virtue of this Agreement.

4.5. State and Federal Laws.

If State or Federal laws or regulations enacted after the Effective Date hereof, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement will be modified or suspended as may be necessary to comply with such State or Federal laws or regulations; provided, however that this Agreement will remain in full force and effect to the extent it is not inconsistent with such State or Federal laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

4.6. Police Power and Taxing Power.

The City will not impose, or enact any additional Development Exactions, Conditions of Approval or regulations through the exercise of either the police power or the taxing power with respect to the Development of the Owner Property except as provided in the Existing Land Use Regulations or except as provided in the Reserved Powers set forth in Section 4.2 of this Agreement.

4.7. Supersedure by Subsequent Laws.

If any federal or state law, made or enacted after the Effective Date prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new law. Immediately after enactment or promulgation of any such new law, City and Owner shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. Owner and City shall have the right to challenge the new law preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. At Owner's sole option, the term of this Agreement may be extended for the duration of the period during which such new law precludes compliance with the provisions of this Agreement.

5. DURATION OF AGREEMENT.

5.1. Term.

This Agreement shall commence as of the Effective Date and, unless earlier terminated in accordance with Section 5.2 or another provision hereof, shall automatically expire on the fifth (5^{th}) anniversary thereof (the "Term").

5.2. Termination.

This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events set forth in this Section 5.2 *et seq*.

a. Expiration of the Term.

b. Entry of a final judgment setting aside, voiding or annulling the adoption of the Enabling Ordinance.

c. The adoption of a referendum measure overriding or repealing the Enabling Ordinance. Owner acknowledges that, pursuant to Article 2, Section 11 of the California Constitution and California Elections Code Section 9235, *et seq*. (collectively, the "Referendum Laws"), the electors of the City may, within thirty (30) days after adoption of the Enabling Ordinance, file a petition in accordance with Elections Code Section 9237 to require the City to either repeal such ordinance or hold an election to obtain voter approval of such Enabling Ordinance and this Agreement. In the event a valid referendum petition challenging the validity of the Enabling Ordinance is filed in accordance with the Referendum Laws, the City may, in its sole and absolute discretion, either (1) terminate this Agreement or (2) submit the Enabling Ordinance to the voters for approval in accordance with the Referendum Laws.

d. Termination of this Agreement based on any default of any Party and following the termination proceedings required by Section 9 *et seq.* of this Agreement.

5.3. Effect of Termination.

Termination of this Agreement by one Party due to the default of the other Party in accordance with the provisions of Section 9 et seq. will not affect any right or duty emanating from any then-existing Development Approval and the Conditions of Approval related thereto with respect to the Owner Property, but the rights and obligations of the Parties will otherwise cease as of the date of such termination. If the City terminates this Agreement because of a default of the Owner, then the City will retain any and all benefits including, without limitation, money or land received by the City hereunder before termination. Notwithstanding the foregoing, the following obligations shall survive any termination of this Agreement: (i) Owner to pay the Development Agreement Fee and the Affordable Housing Fee as set forth in Sections 3.3 and 3.4, respectively, and (ii) to indemnify the City as set forth in Section 17.

6. PERIODIC REVIEW; OPERATING MEMORANDA; AMENDMENT.

6.1. Periodic Review.

City shall review this Agreement annually ("Periodic Review") on or before the anniversary of the Effective Date. During each Periodic Review, Owner is required to demonstrate good faith compliance with the terms of this Agreement, and shall furnish such reasonable evidence of good faith compliance as the City, in the exercise of its reasonable discretion, may require. Such Periodic Review shall be conducted administratively by the City Manager and any appropriate department heads designated by the City Manager to perform such Periodic Review. The City Manager shall report the results of such Periodic Review to the City Council within thirty (30) days after the conclusion thereof. No public hearing shall be held by the City Manager or City Council with regard to such Periodic Review; provided, however, that the City Council and/or the Owner shall have the right to appeal the City Manager's findings to the City Council, in which case Owner shall have the right to request a public hearing on the matter. City shall notify Owner in writing of the date for review at least thirty (30) days prior thereto. The City's failure to review the Owner's compliance with this Agreement, at least annually, will not constitute or be asserted by either Party as a breach by the other Party. The requirement for a Periodic Review shall not be deemed to modify or restrict Owner's rights under Section 2.6 to develop the Project in such order and at such rate and times as Owner deems appropriate in view of market conditions and within the exercise of its subjective business judgment, subject only to the Existing Development Approvals.

6.2. Operating Memoranda.

The provisions of this Agreement require a close degree of cooperation between the City and the Owner. The Development of the Owner Property may demonstrate that clarifications to this Agreement and the Existing Land Use Regulations are appropriate with respect to the details of performance of the City and the Owner. To the extent allowable by Law, the Owner shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Agreement, except for those which relate to the (i) term; (ii) permitted uses; or (iii) density or intensity of use. When and if the Owner finds it necessary or appropriate to make changes, adjustments or clarifications to matters, items or provisions not enumerated in (i) through (iii) above, the Parties shall effectuate such changes, adjustments or clarifications through operating memoranda (the "Operating Memoranda") approved by the Parties in writing which reference this Section 6.1. Operating Memoranda are not intended to constitute an amendment to this Agreement but mere ministerial clarifications; therefore public notices and hearings shall not be required. The City Manager shall be authorized, upon consultation with, and approval of, the Owner, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment to this Agreement which requires compliance with the provisions of Section 6.3 below.

6.3 Amendment.

Subject to the notice and hearing requirements of the Government Code, this Agreement may be modified or amended from time to time only with the written consent of

the Owner and the City or their successors and assigns in accordance with the provisions of the Development Agreement Ordinance and the Development Agreement Act.

7. COVENANT OF FURTHER ASSURANCES AND FAIR DEALING.

7.1. Further Assurances.

Each Party covenants on behalf of itself and its successors and assigns to take all actions and do all things, and to execute with acknowledgments or affidavits if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement. Each Party will take all necessary measures to see that the provisions of this Agreement are carried out in full.

7.2. Covenant of Good Faith and Fair Dealing.

Except as may be required by Law, neither Party will do anything which will have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement and each Party will refrain from doing anything which would render performance under this Agreement impossible or impractical. In addition, each Party will do everything which this Agreement describes that such Party will do.

8. PERMITTED DELAYS.

Any period of delay caused by acts of God; civil commotion; war; insurrection; riots; strikes; walk outs; picketing or other labor disputes; unavoidable shortages of labor, materials or supplies; damages to work in progress by reason of fire, flood, earthquake or other casualty; pandemics; epidemics; quarantine restrictions; litigation challenging the validity of this Agreement, the Project or any element thereof or which prohibits, delays or interferes with performance of the Agreement; moratoria; judicial decisions; governmental agency or entity (with the understanding that acts or failures to act of the City shall not excuse performance by the City) or utility; or any other cause which is not within the reasonable control of the Parties may extend the duration of the Agreement. Each Party will promptly notify the other Party of any delay hereunder as soon as possible after the same has been ascertained, and the term of this Agreement will be extended by the period of any such delay. Any claim for delay must be presented within ninety (90) days of knowledge of the cause of such delay or any entitlement to time extension will be deemed waived. Notwithstanding the foregoing, in no event shall Owner be entitled to a permitted delay due to an inability to obtain financing or proceed with development as a result of general market conditions, interest rates, or other similar circumstances that make development impossible, commercially impracticable, or infeasible.

9. DEFAULT.

9.1. Events of Default.

Except for automatic termination pursuant to Section 5.2 and subject to any written extension of time by mutual consent of the Parties or permitted delays pursuant to the provisions of Section 8, the uncured failure of either Party to perform any material term or provision of this Agreement will constitute a default. On written notice to a Party of its failure of

performance, such Party will have thirty (30) days to cure such failure of performance; provided, however that if the nature of the failure of performance is such that it cannot be cured within such period, then the diligent prosecution to completion of the cure will be deemed to be cure within such period. Any notice of default given hereunder will be in writing and specify in detail the nature of the alleged default and the manner in which such default may be satisfactorily cured in accordance with this Agreement. During the time period herein specified for the cure of a failure of performance, the Party charged with such failure of performance will not be considered to be in default for purposes of termination of this Agreement or for purposes of institution of legal proceedings with respect thereto and, if the Owner is the Party that has failed to perform, then the City will not be excused from its performance under this Agreement during that period.

9.2. Remedies.

The Parties acknowledge and agree that the terms of this Agreement render ordinary remedies at law or equity inadequate for a breach of this Agreement. The Parties also acknowledge and agree that it would not be feasible or possible to restore the Owner Property to its natural condition once implementation of the Agreement has begun. Therefore, the Parties agree that upon default and expiration of any applicable cure period, the remedies available to the non-defaulting Party against a defaulting Party shall be limited to one or more of the following: injunctive relief, mandate (traditional and/or administrative), specific performance, and/or termination; provided, however, that in the event of any legal action involving or arising out of this Agreement, the prevailing Party will be entitled to recover from the losing Party, reasonable litigation expenses, attorneys' fees and costs incurred. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

9.3. Institution of Legal Action.

In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any uncured default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof or obtain any remedies consistent with the purpose of this Agreement. In the event of any such legal action involving or arising out of this Agreement, the prevailing Party will be entitled to recover from the losing Party, reasonable litigation expenses, attorneys' fees and costs incurred. The Parties acknowledge that if a breach of this Agreement by the City occurs, irreparable harm is likely to occur to the Owner and damages may be an inadequate remedy. Therefore, to the extent permitted by law, the Parties agree that specific enforcement of this Agreement by the Parties is an appropriate and available remedy, in addition to any and all other remedies which may be available to the Parties under law or at equity.

9.4. No Waiver.

The failure by a Party to insist on the strict performance of any of the provisions of this Agreement by the other Party will not constitute a waiver of such Party's right to demand strict performance by such other Party in the future. All waivers must be in writing to be effective or binding on the waiving Party and no waiver will be implied from any omission by

a Party to take action. No express written waiver of any default will affect any other default or cover any other period of time except that specified in such express waiver.

9.5. Right of Mortgagee To Cure.

Any lender for whom notice has been given pursuant to Section 14.2 shall have the same right to cure a default as Owner. The deadline for a lender to cure a default shall commence with the giving of a notice of default to that lender, rather than pursuant to notice sent to Owner.

10. ESTOPPEL CERTIFICATES.

Either Party may at any time, and from time to time, deliver written notice to the other Party, requesting that the other Party certify in writing to the knowledge of the certifying Party that: (a) this Agreement is in full force and effect and is a binding obligation of the certifying Party; (b) this Agreement has not been amended or modified, except as expressly identified; (c) no default in the performance of the requesting Party's obligations pursuant to Agreement exists, except as expressly identified. A Party receiving a request hereunder will execute and return the requested certificate within thirty (30) days after receipt of the request.

11. INCORPORATION BY REFERENCE.

11.1. Recitals.

The Parties agree that Recitals A through K are true and correct, constitute a substantive part of this Agreement, are hereby incorporated by reference herein as though set forth in full and the Parties have materially relied upon them as such in their respective determinations to execute this Agreement.

11.2. Exhibits.

Each Exhibit to this Agreement is incorporated herein by reference as though fully set forth herein.

12. APPLICABLE LAW.

This Agreement will be construed and enforced in accordance with the laws of the State of California.

13. NO JOINT VENTURE, PARTNERSHIP OR THIRD PARTY BENEFICIARY.

The City and the Owner hereby renounce the existence of any form of joint venture or partnership between them and expressly agree that nothing contained herein or in any document executed in connection herewith will be construed as making the City and the Owner joint venturers or partners. It is understood that the contractual relationship between the City and the Owner is such that the Owner is an independent contractor and not an agent of the City. Furthermore, this Agreement is not intended or construed to create any third party beneficiary rights in any person who is not a party to this Agreement.

14. ENCUMBRANCES AND RELEASES ON REAL PROPERTY.

14.1. Discretion to Encumber.

The Parties agree that this Agreement will not prevent or limit the Owner in any manner, at the Owner's sole discretion, from encumbering the Owner Property, or any part of the same including, without limitation, improvement thereon, by any mortgage, deed of trust or other security device securing financing with respect to the Owner Property. The City further agrees that it will not unreasonably withhold its consent to any modification requested by a lender so long as the modification does not materially alter this Agreement to the detriment of the City.

14.2. Entitlement to Written Notice of Default.

Any lender of the Owner which has filed a written request with the City for notice of default by Owner will be entitled to receive written notification from the City of any uncured default by the Owner in the performance of the obligations of the Owner under this Agreement.

14.3. Property Subject to Pro Rata Claims.

Any mortgagee or beneficiary which comes into possession of the Owner Property or any part thereof, pursuant to foreclosure of a mortgage or deed of trust, or deed in lieu of such foreclosure, will take the Owner Property or part thereof, subject to (i) any pro rata claims for payments or charges against the Owner Property or part thereof secured by such mortgage or deed of trust, which accrued prior to the time that such mortgagee or beneficiary comes into possession of the Owner Property or part thereof; and (ii) the terms and conditions of this Agreement.

15. BINDING EFFECT.

15.1. Entirety of Owner Property.

All of the Property shall be and shall remain subject to this Agreement throughout the Term. All of the terms, provisions, covenants and obligations contained in this Agreement will be binding upon the Parties and their respective successors and assigns, and all other persons or entities acquiring all or any part of the Owner Property, and will inure to the benefit of such Parties and their respective successors and assigns.

15.2. Owner Property and Agreement Remain Linked.

Subject to Section 15.3, Owner shall have the right to sell, transfer or assign the Owner Property and its rights under the Agreement. However, any person acquiring any interest in the Owner Property shall do so subject to this Agreement. Conversely, no sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with a corresponding sale, transfer or assignment as to the Owner Property. If less than all of the Owner Property is sold, the new owner of that portion shall be responsible for all Development, including Dedications and the provision of public facilities, within that portion, and the Owner (or

its successors as to the entire Owner Property) shall remain responsible for all such matters outside that portion of the Owner Property.

15.3. Assignment; Notice; City Consent.

The rights and obligations of Owner hereunder shall not be assigned or transferred, except that (a) transfers by Owner to an affiliated entity that takes title to all or a portion of Owner's Property and assumes Owner's future obligations hereunder with respect to such portion of the Owner's Property shall be permissible without consent of the City, provided Owner shall be released from its obligations under this Agreement only as to that portion of the Owner's Property that is subject to such sale, transfer or conveyance, and (b) on thirty (30) days written notice to City, including submittal of all documentation reasonably required by the City Manager to evaluate the assignee's financial resources, Owner may assign all or a portion of Owner's rights and obligations thereunder to any person or persons, partnership or corporation who purchases all or a portion of Owner's right, title and interest in the Owner Property, provided that (i) such assignee or grantee assumes in writing each and every obligation of Owner hereunder yet to be performed which relates to the portion(s) of the Owner Property being assigned; and (ii) Owner obtains the consent of City through its City Manager to the assignment, which consent shall not be unreasonably withheld. Provided the Owner's thirty (30) day notice includes submittal of all documentation reasonably required by the City Manager to evaluate the assignee's financial resources and the assumption by the assignee or grantee, the consent of the City shall be deemed to occur upon the thirtieth (30th) day of the notice period unless within that period the City provides written notice withholding consent and explaining the reasons it is withholding consent. The notice to City shall include the identity of any such assignee, all documentation reasonably required by the City Manager to evaluate the assignee's financial resources, and a copy of the written assumption of the assignor's obligations hereunder pertaining to the portion assigned or transferred. After such notice and the receipt of such consent, the assignor shall have no further obligations or liabilities hereunder. If any assignee or transferee of a portion of the Owner Property breaches this Agreement, such breach shall not affect the rights and benefits of other assignees or transferees under this Agreement and City shall continue to perform its obligations under in this Agreement with respect thereto.

16. TERMS AND CONSTRUCTION.

16.1. Severability.

If any term, provision, covenant or condition of this Agreement is determined to be invalid, void or unenforceable by judgment or court order, than the remainder of this Agreement will remain in full force and effect, unless enforcement of this Agreement, as so invalidated, would be unreasonable or grossly inequitable under all the circumstances or would frustrate the stated purposes of this Agreement.

16.2. Entire Agreement.

This Agreement contains all representations and terms of agreement by and between the Parties and constitutes the entire agreement between the City and the Owner. Any prior correspondence, memoranda, agreements, warranties or representations, oral or written,

including that certain Development Agreement by and between the City and Centex Homes dated October 14, 2003 and recorded as Instrument No. 2003-960052 in the Official Records of Riverside County and the First and Second Operating Memorandum of Understanding entered into pursuant thereto which expired by their own terms and have no further force or effect, are superseded in total by this Agreement. Upon execution Owner, the final Project Agreement shall supersede the draft Project Agreement attached hereto as Exhibit "C" which fully executed Project Agreement shall be incorporated herein by reference.

16.3. Authority; Counterpart Signature Pages.

Each individual signing this Agreement on behalf of City and Owner warrants and represents that he or she has full authority to execute the same on behalf of City and Owner, respectively, and that he or she is acting within the scope of his or her authority. Each Party further represents that it has the legal authority to enter into this Agreement and to perform all obligations under this Agreement.

For convenience, the signatures of the Parties may be placed and acknowledged on separate pages and, when attached to this Agreement, will constitute this document as one complete Agreement.

16.4. Time.

Time is of the essence in this Agreement and of each and every term and condition hereof.

16.5. Notices.

Any notice shall be in writing and given by delivering the same in person or by sending the same by registered, or certified mail, return receipt requested, with postage prepaid, by overnight delivery, or by facsimile or electronic transmission to the respective mailing addresses, as follows:

If to City:
City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530
Attn: City Manager
Email: jsimpson@Lake-Elsinore.org

With a copy to:
Leibold McClendon & Mann, PC
9841 Irvine Center Drive, Suite 230
Irvine, CA 92618
Attn: Barbara Leibold, Lake Elsinore City Attorney
Email: barbara@ceqa.com

If to Owner: Jennifer Chen
T.T. Group, Inc.
606 N. First Street
San Jose, CA 95112
Email: jennifer5688@gmail.com

With a copy to: Booke & Ajloun
Attn: Victoria Booke
606 N. First Street
San Jose, CA 95112
Email: vbooke@booke.com

Either City or Owner may change its mailing address at any time by giving written notice of such change to the other in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt, air bill or facsimile.

16.6. Construction, Number and Gender.

This Agreement will be construed as a whole according to its common meaning and not strictly for or against either Party in order to achieve the objectives and purposes of the Parties hereunder. Whenever required by the context of this Agreement, the singular will include the plural and vice versa, and the masculine gender will include the feminine and neuter genders. In addition, "will" is the mandatory and "may" is the permissive.

17. INDEMNIFICATION.

The Owner shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City, its officers, agents, employees, consultants, officials, commissions, councils, committees, boards and representatives (collectively referred to individually and collectively as "Indemnitees") harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage which may arise out of the direct or indirect activities of the Owner with respect to the Development of the Owner Property, or arising out of or incident to any acts, omissions, negligence, or willful misconduct of Owner, its employees, contractors, or agents in connection with the performance of this Agreement. This indemnification excludes that portion of any claim to the extent caused by the sole negligence or willful misconduct of City. Owner agrees to and will defend the Indemnitees from any claim, action, or proceeding to attack, set aside, void, or annul an approval by Indemnitees concerning approval, implementation and construction of this Agreement or the Existing Development Approvals in connection with the Development of the Owner Property or any of the proceedings, acts or determinations taken, done, or made prior to the decision, or to determine the reasonableness, legality or validity of any condition attached thereto. The Owner's indemnification is intended to include, but not be limited to, damages, fees and/or costs awarded against or incurred by Indemnitees and costs of suit, claim or litigation, including without limitation attorneys' fees, penalties and other costs, liabilities and expenses incurred by Indemnitees in connection with such proceeding. City shall promptly notify Owner of any such claim, action or proceeding, and City

shall cooperate in the defense. Owner's obligation to indemnify City hereunder shall survive any termination of this Agreement.

18. RECORDATION BY CITY CLERK.

Pursuant to Government Code Section 65868.5, the City Clerk will record a copy of the Agreement in the Records of the County Recorder.

[SIGNATURES ON NEXT PAGE]

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

"CITY"

CITY OF LAKE ELSINORE,
a municipal corporation

By:_____
Steve Manos, Mayor

ATTEST:

_____

Candice Alvarez, MMC, City Clerk

APPROVED AS TO FORM:

By: _____
Barbara Leibold, City Attorney

"OWNER"

T.T. GROUP, INC.,
a California corporation

By: _____
Name: _____
Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) §
County of _____)

On _____, before me, _____ a 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 of Notary

(Affix seal here)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) §
County of _____)

On _____, before me, _____ a 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.

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Signature of Notary

(Affix seal here)

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Signature of Notary

(Affix seal here)

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STATE OF CALIFORNIA)
) §
County of _____)

On _____, before me, _____ a 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 of Notary

(Affix seal here)

EXHIBIT "A"

LEGAL DESCRIPTION OF THE OWNER PROPERTY

[TO BE INSERTED]

EXHIBIT "B"

VICINITY MAP

[TO BE INSERTED]

EXHIBIT "C"

EXISTING DEVELOPMENT IMPACT FEES

[TO BE INSERTED]

EXHIBIT "D"

CONDITIONS OF APPROVAL

[TO BE INSERTED]