

ORDINANCE NO. 996

ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF ROCKLIN APPROVING THE 5<sup>TH</sup> AMENDMENT TO THE  
DEVELOPMENT AGREEMENT FOR WHITNEY RANCH  
BY AND BETWEEN THE CITY OF ROCKLIN  
AND SUNSET RANCHOS INVESTORS, LLC,  
( Sunset Ranchos Planning Area, Liberty Hill, Whitney Ranch / DA-2001-1D)

The City Council of the City of Rocklin does ordain as follows:

Section 1. The City Council of the City of Rocklin finds and determines that:

A. City and Sunset Ranchos Investors, LLC entered into a Development Agreement By And Between The City Of Rocklin And Sunset Ranchos Investors, LLC, Relative To The Development Known As The Sunset Ranchos Planning Area Of The Northwest Rocklin Annexation Area, on July 23, 2002, which was approved by City Council Ordinance No. 859. That Development Agreement has since been amended threes times:

First Amendment by City Ordinance 885 approved on April 4, 2004;  
Second Amendment by City Ordinance 897 approved on May 10, 2005; and  
Third Amendment by City Ordinance 944 approved on January 13, 2009.  
Fourth Amendment by City Ordinance 971 approving the Amended and Restated Development Agreement for Whitney Ranch on January 11, 2011.

The original development agreement approved by Ord. 859, and the subsequent amendments to that original agreement noted above, are collectively the current approved "Development Agreement". The operative date of the Development Agreement is August 22, 2002. The term of the Development Agreement was most recently amended by Ord. 944, and is 20 years from the operative date, therefore the Development Agreement expires at midnight, August 22, 2022.

B. The original applicant for development of the Sunset Ranchos Planning Area project was Grupe Development, who then sold the project to Sunset Ranchos Investors, LLC, a Delaware Limited Liability Company. The Parties to the Development Agreement are the City of Rocklin and Sunset Ranchos Investors, LLC, referred to hereinafter as SRI.

C. The master planned community in the Northwest Rocklin Annexation Area initially called the Sunset Ranchos Planning Area project was later renamed Liberty Hill. The large lot subdivision map for the project is recorded as the Liberty Hill Large Lot Subdivision Map SD-2003-02. Prior to initiating home building within the project, SRI renamed the project Whitney Ranch, and all City planning documents, agreements, and entitlements have used the name Whitney Ranch since 2004.

D. The Parties have determined that it is reasonable and appropriate to make certain additional changes to the Development Agreement, and further agree that the Development Agreement for Whitney Ranch shall be revised for the following reasons:

1. It is in the public interest to clarify the Parties to the Development Agreement and the name of the project, and the significant number of development activities which have been completed as required by the Development Agreement.
2. Since the Development Agreement is a dynamic document with a 20 year life span, it is appropriate and reasonable that continuing amendments are made to the Development Agreement, however as that process has evolved, the Parties are now initiating amendments to the amendments within the Development Agreement, creating a document that is increasingly difficult to track and understand.
3. Due to the economic downturn, the pattern and rate of growth in Whitney Ranch has dramatically slowed in comparison to the rate of construction activity contemplated by the Development Agreement and the Northwest Rocklin Annexation Area Environmental Impact Report, which analyzed the environmental impacts of the planned development of the Northwest Rocklin Annexation Area, which includes the Sunset Ranchos Planning area.
4. Because of the dramatic change in the economy and the resulting slow down of the project build out, the timing of many of the remaining obligations under the Development Agreement are premature creating fiscal challenges for both Parties. Therefore, the timing of payments due from the SRI and time frames for construction of public improvements should be modified to reflect a realistic appraisal of the demand for infrastructure and community amenities, and the ability of the Parties to finance the infrastructure and community amenities contemplated within the Development Agreement.

E. The improvements and activities to be carried out as required by the 5th Amendment to the Development Agreement for Whitney Ranch have been analyzed as required by the California Environmental Quality Act (CEQA). Pursuant to Section 15162 of the CEQA Guidelines the City Council finds that since no new effects will occur and no new mitigation measures will be required to implement the 5th Amendment to the Development Agreement for Whitney Ranch, the 5th Amendment to the Development Agreement for Whitney Ranch is within the scope of the North West Rocklin Annexation EIR, approved and certified by City Council Resolution 2002-230, which includes the addendum approved by City Council Resolution 2008-252. The City Council further finds that the EIR adequately describes the planned development activities for purposes of CEQA and no further environmental review is required.

F. The 5th Amendment to the Development Agreement for Whitney Ranch is consistent with and implements the policies of the City of Rocklin's General Plan, including the Housing Element;

G. The 5th Amendment to the Development Agreement for Whitney Ranch is compatible with the land uses and development regulations prescribed by the development zoning (General Development Plan PDG-99-02, as amended over time) for the site;

H. The 5th Amendment to the Development Agreement for Whitney Ranch will not be detrimental to the health, safety, and welfare of persons residing in the immediate area nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of residents of the city as a whole;

I. The 5th Amendment to the Development Agreement for Whitney Ranch will not adversely affect the orderly development of property or the preservation of property, on or off the project site;

J. The 5th Amendment to the Development Agreement for Whitney Ranch is consistent with the provisions of Government Code Sections 65864 through 65869.5.

Section 2. The City Council of the City of Rocklin hereby approves the 5th Amendment to the Development Agreement for Whitney Ranch, attached hereto and incorporated by reference herein as Exhibit 1.

Section 3. The City Council of the City of Rocklin hereby directs the Mayor to sign the 5th Amendment to the Development Agreement for Whitney Ranch between the City of Rocklin and Sunset Ranchos Investors, LLC, on behalf of the City of Rocklin and directs the City Clerk to record said document with the Placer County Recorder.

Section 4. Within fifteen days of passage of this ordinance, the City Clerk shall cause the full text of the ordinance, with the names of those City Council members voting for and against the ordinance, to be published in the Placer Herald. In lieu of publishing the full text of the ordinance, the City Clerk, if so directed by the City Attorney and within fifteen days, shall cause a summary of the ordinance, prepared by the City Attorney and with the names of the City Council members voting for and against the ordinance, to be published in the Placer Herald, and shall post in the office of the City Clerk a certified copy of the City Council members voting for and against the ordinance. The publication of a summary of the ordinance in lieu of the full text of the ordinance is authorized only where the requirements of Government Code section 36993 (c) (1) are met.

INTRODUCED at a regular meeting of the City Council of the City of Rocklin held on May 28, 2013, by the following vote:

AYES:	Councilmembers:	Yuill, Magnuson, Butler, Janda, Ruslin
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None
ABSTAIN:	Councilmembers:	None

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Rocklin held on June 11, 2013, by the following vote:

AYES:	Councilmembers:	Yuill, Butler, Janda, Magnuson, Ruslin
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None
ABSTAIN:	Councilmembers:	None

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Diana L. Ruslin, Mayor

ATTEST:

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Barbara Ivanusich, City Clerk

First Reading:	5/28/13
Second Reading:	6/11/13
Effective Date:	7/11/13

**5TH AMENDMENT TO THE DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF ROCKLIN AND  
SUNSET RANCHOS INVESTORS, LLC. FOR WHITNEY RANCH**

This 5<sup>th</sup> Amendment to the Development Agreement for Whitney Ranch (the "**Agreement**"), dated for references purposes only, May 28, 2013, is entered into by and between Sunset Ranchos Investors, LLC, a Delaware Limited Liability Company ("Developer"), and the City of Rocklin, a Municipal Corporation of the State of California ("City"), pursuant to the authority of Government Code Section 65865, et seq.

**RECITALS**

A To strengthen the public planning process, encourage private participation in comprehensive long-range planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code §65864, et seq., which authorizes the City to enter into an agreement with any person or business entity having a legal or equitable interest in real property within the City, regarding the development of such property and establishing certain development rights therein.

B. City and Sunset Ranchos Investors, LLC entered into the Development Agreement By And Between The City Of Rocklin And Sunset Ranchos Investors, LLC, Relative To The Development Known As The Sunset Ranchos Planning Area Of The Northwest Rocklin Annexation Area, on July 23, 2002, which was approved by City Council Ordinance No. 859. That Development Agreement has since been amended four prior times:

First Amendment by City Ordinance 885 approved on April 4, 2004;  
Second Amendment by City Ordinance 897 approved on May 10, 2005; and  
Third Amendment by City Ordinance 944 approved on January 13, 2009; and  
Fourth Amendment Amending and Restating the Development Agreement for Whitney Ranch by City Ordinance 971 approved on January 11, 2011.

The original development agreement approved by Ord. 859, and the subsequent amendments to that original agreement noted above, are collectively referred to in this Agreement as the "**Development Agreement**". The effective date and operative date of the Development Agreement was August 22, 2002. The term of the Development Agreement was most recently amended by Ord. 944, and is 20 years from the operative date, therefore the Development Agreement as restated and amended in this Agreement expires at midnight, August 22, 2022.

C. The Parties have determined that it is reasonable and appropriate to make certain additional changes to the Development Agreement, and further agree that the Development Agreement shall be revised and superseded by an 5th Amendment to the Development Agreement for Whitney Ranch for the following reasons:

C.1 It is in the public interest to clarify the Parties to the Development Agreement and the name of the project, and the significant number of development activities which have been completed as required by the Development Agreement.

C.2 Since the Development Agreement is a dynamic document with a 20 year life span, it is appropriate and reasonable that continuing amendments are made to the Development Agreement.

C.3 Due to the economic downturn, the pattern and rate of growth in Whitney Ranch has dramatically slowed in comparison to the rate of construction activity contemplated by the Development Agreement and the Northwest Rocklin Annexation Area Environmental Impact Report, which analyzed the environmental impacts of the planned development of the Northwest Rocklin Annexation Area, which includes the Sunset Ranchos Planning area.

C.4 Because of the dramatic change in the economy and the resulting slow down of the project build out, the timing of many of the remaining obligations under the Development Agreement are premature creating fiscal challenges for both Parties. Therefore, the timing of payments due from the SRI and time frames for construction of public improvements should be modified to reflect a realistic appraisal of the demand for infrastructure and community amenities, and the ability of the Parties to finance the infrastructure and community amenities contemplated within the Development Agreement.

D. City has adopted policies, ordinances, procedures and requirements regarding its consideration of development agreements. This Agreement has been processed, considered and executed in accordance with those City policies, ordinances, procedures and requirements.

E. Developer has a legal or equitable interest in those certain parcels of land consisting of approximately 1,092 acres situated in the City of Rocklin and in unincorporated Placer County, as more particularly described in Exhibit "A," attached hereto and by this reference incorporated herein ("Property"). The nature of this ownership or equitable interest is such that Developer has or will have control of the use of the Property as contemplated by this Agreement. The Property comprises a portion of the Sunset Ranchos Planning Area of the Northwest Rocklin Annexation Area, as described in the Project Approvals.

F. Developer has previously received approval of the entitlements on the Property from City as listed on Exhibit B ("Project Approvals") to this Agreement. The Project Approvals establish, among other things, single-family residential land uses; multi-family residential land uses; commercial uses; business professional uses; three elementary schools; one high school; public parks; and open space (the "Project"). Developer acknowledges that the Project Approvals do not grant the right to develop a specific number of residential units or specific square footage of non-residential projects. Development of the Project will require the review and approval of subsequent discretionary entitlements, including tentative maps and conditional use permits, which review will determine the number of residential lots which ultimately may be developed. The maximum densities established by the Project Approvals denote what the supporting infrastructure and available public utilities and services can accommodate.

G. Development of the Project in accordance with the Project Approvals and this Agreement will provide for the orderly development of the Property consistent with the goals, policies and other provisions of the Rocklin General Plan.

H. City has determined that the development of the Project as provided in the Project Approvals and this Agreement is beneficial to the City, because the Project will provide for the dedication and improvement of land for parks, open space, bike and pedestrian trails; commercial and mixed use development areas, a diversity and balance of housing types, and will otherwise achieve the goals and objectives contained in the Rocklin General Plan.

I. City acknowledges that development of the Project is a large-scale undertaking, involving major investments by Developer, with development occurring in phases over several years. Developer is unwilling to incur the required investment in development and construction of the Project without assurance from the City of the continuity of the Project Approvals and the Developer's vested right to develop the Project as contemplated by, and in accordance with, the Project Approvals. City, in turn, cannot be assured of realizing the benefits of the Project without granting to Developer assurance of continuity of the Project Approvals and the Developer's vested right to develop.

K. In adopting the ordinance approving this Agreement, the City Council of City specifically finds as follows:

K.1 The Agreement and the Project Approvals are consistent with the objectives, policies, general land uses, and programs in the Rocklin General Plan;

K.2 The Agreement and the Project Approvals are consistent with the City's sphere of influence;

K.3 The Agreement and the Project Approvals are compatible with the uses authorized within, and the regulations prescribed for, the land use districts in which the Project is located;

K.4 The Agreement and the Project Approvals are in conformity with the public convenience, general welfare and good land use practices;

K.5 The Agreement and the Project Approvals will not be detrimental to the health, safety and general welfare of persons residing in the general neighborhood of the Project or the City as a whole;

K.6 The Agreement and the Project Approvals will not adversely affect the orderly development of Property or the preservation of property values;

K.7 The Agreement is consistent with and is subject to the provisions of Government Code Sections 65864 through 65869.5.

K.8 Any tentative map prepared for a subdivision relating to this Agreement which meets the definition of a subdivision as defined in Cal. Govt. Code Sec. 66473.7(a)(1) shall comply with all of the applicable provisions of Cal. Govt. Code Sec. 66473.7.

J. City and Developer recognize that the terms and conditions of this Agreement are to bind, and be legally enforceable by, each of them, and/or their respective successors in interest.

## **AGREEMENT**

### **1 DEFINITIONS**

Unless the context requires a different meaning or otherwise defined elsewhere in this Agreement, the terms and phrases used in this Agreement shall have the following meanings:

**1.1** "Agreement" shall mean this 5<sup>th</sup> amendment to the Development Agreement titled the 5th Amendment to the Development Agreement for Whitney Ranch.

**1.2** "City Manager" shall mean the City Manager of the City of Rocklin.

**1.3** "County" shall mean the County of Placer.

**1.4** "Council" shall mean the City Council of the City of Rocklin.

**1.5** "Conditions of Approval" shall mean the conditions attached to the Project Approvals and shall be collectively included in any reference to the Project Approvals.

**1.6** "Development Agreement" means the initial development agreement approved by City Council Ordinance No. 859, on July 23, 2002, titled Development Agreement By And Between The City Of Rocklin And Sunset Ranchos Investors, LLC, Relative To The Development Known As The Sunset Ranchos Planning Area Of The Northwest Rocklin Annexation Area, inclusive of the following four prior amendments:

First Amendment by City Ordinance 885 approved on April 4, 2004;  
Second Amendment by City Ordinance 897 approved on May 10, 2005; and  
Third Amendment by City Ordinance 944 approved on January 13, 2009; and  
Fourth Amendment Amending and Restating the Development Agreement for Whitney Ranch by City Ordinance 971 approved on January 11, 2011.

The original development agreement approved by Ord. 859, and the subsequent amendments to that original agreement noted above, are collectively referred to in this Agreement as the approved "Development Agreement"

**1.7** "Developer Improvements" shall mean those improvements required of Developer under this Agreement, the Project Approvals and any Subsequent Approvals.

**1.8** "Effective Date" shall mean the date the City ordinance authorizing execution of this Agreement is effective, which date was August 22, 2002 (Ord. 859)

**1.9** "EIR" shall mean that certain Final Environmental Impact Report for the Project dated March, 2002, and certified as adequate and complete by the City on May 28,



2002, by Resolution 2002-230, including the Addendum to the Final Environmental Impact Report approved by City Council Resolution 2008-252 on September 23, 2008.

- 1.10** “Financing Plan” means the North West Rocklin Public Facilities Financing and Phasing Plan, prepared for Sunset Ranchos Investors, LLC, prepared by Economic and Planning Systems, Inc. and Terrance E. Lowell and Associates, Inc., dated January 28, 2004, as adopted as part of the Northwest Rocklin Annexation Area General Development Plan as amended.
- 1.11** “General Development Plan” shall mean the Northwest Rocklin Area General Plan, as amended.” <sup>1</sup>
- 1.12** “General Plan” shall mean the General Plan of the City of Rocklin.
- 1.13** “Landowner” means the owner of a parcel which is the subject of a Subsequent Approval (see 5.4.1)
- 1.14** “Parcel K” shall mean the Parcel K Plan Area as described in the General Development Plan.
- 1.15** “Parkway A” means Whitney Ranch Parkway.
- 1.16** “Parkway A/SR65 Interchange” is also referred to as the Whitney Interchange and at times the Whitney Ranch Interchange. <sup>2</sup>
- 1.17** “Phasing Plan” means the North West Rocklin Public Facilities Financing and Phasing Plan, prepared for Sunset Ranchos Investors, LLC, prepared by Economic and Planning Systems, Inc. and Terrance E. Lowell and Associates, Inc., dated January 28, 2004, as adopted as part of the Northwest Rocklin Annexation Area General Development Plan, as amended.
- 1.18** “Project Approvals” shall mean as defined in Recital No. 6, above.
- 1.19** “Street B” means the north/south road connecting Whitney Ranch Parkway to Sunset Boulevard through the Herman Miller site, referred to as Street B in the General Development Plan and now called University Avenue. The names Street B and University Avenue are synonymous.
- 1.20** “Subsequent Approvals” shall mean all approvals by City, whether discretionary or ministerial, requested or agreed to by Developer, required under the Project Approvals, or this Agreement, or required by City laws, rules, regulations, or official policies, which are necessary or desirable for development of the Project and which occur on or after the Effective Date. Subsequent Approvals may include, but are not limited to, tentative and final subdivision maps, improvement agreements and other agreements relating to subdivision maps, conditional use permits, grading permits, improvement plan approvals, encroachment permits, building permits, zoning approvals, boundary adjustments, certificates of

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<sup>1</sup> Amended by Sec. 4 of Ord. 885

<sup>2</sup> Amended by Sec.5 of Ord. 885

occupancy, certificates of compliance, modifications to the current zoning and modifications to the Project Approvals.

**1.21** “Tentative Map” shall mean any tentative subdivision or parcel map or vesting tentative subdivision or parcel map applied for and/or approved for the Project.

**1.22** “Transferee” shall mean any person or entity to whom all or any portion of the Project is transferred subject to the provisions of Section 10.

**1.23** “Whitney interchange” means the freeway interchange to be constructed at the extension of Whitney Ranch Parkway and State Route 65. The Whitney interchange has been referred to in various documents as the Parkway A/SR 65 interchange, the Whitney interchange, and the Whitney Ranch interchange and the names are synonymous.

## **2 GENERAL PROVISIONS**

### **2.1 Term**

**2.1.1** The term of this Agreement shall be twenty (20) years. The term shall commence on the Effective Date and shall extend up to and including the twentieth (20<sup>th</sup>) anniversary of the Effective Date. Upon notice of either party to the other, no later than 180 days prior to the twentieth (20<sup>th</sup>) anniversary of the Effective Date, the parties shall meet to negotiate in good faith an extension of the term for up to an additional five years, if the Parties find the extension to be of benefit to Developer and the public.<sup>3</sup>

**2.1.2** If any litigation affecting the Project is filed challenging the annexation of the Property, Project Approvals, any Subsequent Approvals, or this Agreement, including, but not limited to, any environmental determinations related to any of the foregoing, or challenging the validity and binding nature of this Agreement, the term of this Agreement shall be extended for the period of time such litigation is pending, and upon the conclusion of such litigation by dismissal or entry of final judgment, Developer and City shall indicate the period of such extension by amendment to this Agreement and record a notice of such effect.

## **3 DEVELOPMENT OF THE PROJECT SITE**

**3.1 Permitted Uses** The permitted uses of the Property, the maximum density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, and location of public improvements, and other terms and conditions of development applicable to the Property shall be those set forth in the Project Approvals and this Agreement.

### **3.2 Vested Rights**

#### **3.2.1 Project Approvals**

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<sup>3</sup> Amended by Sec.1 of Ord. 944

Subject to the provisions and conditions of this Agreement, City agrees that City is granting, and grants herewith, a fully vested entitlement and right to develop the Property in accordance with the terms and conditions of this Agreement and the Project Approvals. City acknowledges that the Project Approvals (as set forth in Exhibit "B.") include the following land uses and approximate gross acreages for the Property:

Low and Medium Density Residential	726 acres;
Medium High Density Residential	27 acres;
High Density Residential	58 acres;
RC (Retail Commercial)	37 acres;
Business Professional	9 acres;
Park	64 acres;
R-C Recreation/Conservation	200 acres;
Schools	92 acres;

Such uses shall be developed in accordance with the Project Approvals as such Project Approvals provide on the Effective Date of this Agreement. Developer's vested right to proceed with the development of the Property shall be subject to Subsequent Approvals, provided that any conditions, terms, restrictions and requirements for such Subsequent Approvals shall not prevent development of the Property for the uses, or reduce the density and intensity of development set forth in the Project Approvals, so long as Developer is not in default under this Agreement.

### **3.2.2 Moratoria, Quotas, Restrictions or Other Growth Limitations**

Developer and City intend that, except as otherwise provided in this Agreement, this Agreement shall vest the Project Approvals against any and all later-adopted resolutions, ordinances, and initiatives, whether adopted by the City Council or voter initiative, that directly or indirectly limit the rate, timing, or sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses as set forth in the Project Approvals. Developer shall be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted on a uniformly applied, City-wide or area-wide basis and which directly concerns a public health or safety issue, in which case City shall treat Developer in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by that public health or safety issue. By way of example only an ordinance which precluded the issuance of a building permit because the district providing sewer service had inadequate sewage treatment capacity to meet the demand therefor (either City-wide or in a designated sub-area of the City) would directly concern a public health issue under the terms of this paragraph and would support a denial of a building permit within the Property, so long as City were also

denying City-wide or area-wide all other requests for building permits which require sewage treatment capacity; however, an attempt to limit the issuance of building permits because of a general increase in traffic congestion levels in the City would not directly concern a public health or safety issue under the terms of this paragraph.

### **3.3 Term of Subdivision Map**

The term of any tentative parcel map or tentative subdivision map relating to the Project, including any subsequently approved large-lot or small-lot tentative subdivision map or other parcel map or subdivision map approved by the City as part of the Subsequent Approvals, shall be the longer of the term therefor under the Subdivision Map Act or the remaining Term of this Agreement.

### **3.4 Rules, Regulations and Official Policies**

#### **3.4.1 Inconsistency**

To the extent any future rules, ordinances, regulations or policies applicable to development of the Property are inconsistent with the permitted uses, density or intensity of use, rate or timing of construction, maximum building height and size, or provisions for reservation and dedication of land under the Project Approvals and as provided in this Agreement, the terms of the Project Approvals and this Agreement shall prevail, unless the parties mutually agree to alter this Agreement. To the extent any future rules, ordinances, regulations or policies applicable to development of the Property are not inconsistent with the permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or provisions for reservation or dedication of land under the Project Approvals or under any other terms of this Agreement, such rules, ordinances, fees, regulations or policies shall be applicable. Taxes, fees, and assessments are addressed in and governed by section 3.5. of this Agreement.

#### **3.4.2 Application of Changes**

This section shall not preclude the application to development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or federal laws or regulations. To the extent that such changes in City laws, regulations, plans or policies prevent, delay or preclude compliance with one or more provisions of this Agreement, City and Developer shall take such action as may be required pursuant to Section 4.3. of this Agreement to comply therewith.

#### **3.4.3 Authority of City**

This section shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit discretion of City or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by City or any of its officers or officials, provided that subsequent discretionary actions shall not unreasonably prevent or delay development of the Property for the uses and to the density and intensity of development as provided by the Project Approvals and this Agreement, in effect as of the Effective Date of this Agreement.

### **3.5 City Fees, Taxes and Assessment**

#### **3.5.1 Processing Fees and Charges**

Developer shall pay those processing, inspection, and plan checking fees and charges required by City under then current regulations for processing applications and requests for permits, approvals, and other actions; monitoring compliance with any permits issued, approvals granted, or the performance of any conditions with respect thereto; or any performance required of Developer hereunder.

#### **3.5.2 Taxes, Fees and Assessments**

Development of the Property and the Project under this Agreement shall be subject to all existing and future City fees, taxes and assessments; provided that Developer's obligation to pay future fees is limited to those fees adopted on a City-wide basis or that apply uniformly to all properties within the City of Rocklin that are zoned in the same classification as the Property as set forth in the Project Approvals.

## **4 PROCESSING OF PERMITS AND APPROVALS**

### **4.1 Subsequent Approvals; Application of Development Agreement**

City shall accept for processing, review, and action any and all applications submitted by Developer for Subsequent Approvals, necessary or convenient for the exercise of Developer's rights under the Project Approvals for the use and development of the Property. Upon approval, a Subsequent Approval shall be deemed a Project Approval under this Agreement.

### **4.2 Application of Development Agreement to After – Acquired Real Property**

As of the effective date of this Agreement, Developer intends to acquire legal or equitable interest in certain parcels of land included within the General Development Plan and so indicated in Exhibit A-1. Upon acquisition of legal or equitable interest in any such parcel by Developer, that parcel shall be deemed to be a portion of the Property subject to the Agreement.

### **4.3 City Cooperation**

The City agrees to cooperate with Developer in securing all permits which may be required by City. In the event state or federal laws or regulations are enacted after this Agreement has been executed, or the action of any governmental jurisdiction prevents, delays, or precludes compliance with one or more provisions of this Agreement, or requires changes in plans, maps, or permits approved by City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such State and federal laws or regulations or the regulations of other governmental jurisdictions. Each party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

### **4.4 Design Review Not Required**

Notwithstanding contrary language in either the City of Rocklin Zoning Code, or the approved Northwest Rocklin Annexation Area General Development Plan, all single family residential units consistent with the established Whitney Ranch community design guidelines shall be exempt from the requirements for further design review by the City Planning Commission. Should any conflict arise between the City Zoning Code, or the approved Northwest Rocklin Annexation Area General Development Plan the Design Review exemption stated in this Agreement shall prevail.

## **5 IMPLEMENTATION**

### **5.1 Timing of Projection Construction**

Except as provided in this Agreement or the Project Approvals, Developer shall not be required to develop any portion of the Project or to develop the Project in accordance with any time schedule except the Developer's schedule.

### **5.2 Other Government Permits**

Developer shall be responsible for applying for and obtaining approvals required by other governmental agencies having jurisdiction over, or providing services to the Project. To the extent possible, City shall reasonably cooperate with Developer in obtaining all such approvals in as timely a manner as possible.

### **5.3 Use of Eminent Domain**

City acknowledges that certain rights-of-way and other lands designated for public facilities, which are needed to accomplish development of the Project pursuant to the Project Approvals, are not under ownership of Developer. Where Developer is unable to secure said rights-of-way or lands after good faith effort, City agrees it shall use its best efforts to assist Developer in securing said rights-of-way and lands.

With respect to the SR 65 interchanges and the core components of the vehicular circulation system shown in Figure 7 and 8 of Exhibit C of the General Development Plan, if City and Developer fail to secure said rights of way or lands, while City cannot commit to exercise of its eminent domain authority in a particular case for constitutional and other reasons, City does agree that where appropriate, subject to all required procedures that require exercise of discretion by the City Council, City will cooperate to extent allowable by law through the use of its eminent domain authority.

In the event that the City does determine that it is appropriate to exercise its eminent domain authority with regard to a particular parcel of property, Developer agrees to enter into a funding agreement to pay to City the estimated cost (including, without limitation, attorney fees for in-house and outside counsel, together with expert witness fees) of conducting all required administrative and judicial procedures, plus the appraised value of the property to be acquired. The agreement shall specify that the funding is required prior to City instituting the proceedings. Where only part of the funding is required prior to instituting the proceedings, the balance shall be secured through security acceptable to the City Manager and City Attorney in his or her discretion.

The Parties further understand and agree that the Financing Plan may, for economic or other reasons, be amended in ways that could involve significant increases in

Developer's financial commitments. City agrees to meet and confer with Developer prior to any such amendment, and to endeavor to reach agreement on the terms and conditions associated therewith. Developer agrees that in the event that agreement, in full or in part, cannot be reached between Developer and City, such amendments are within the absolute discretion of the City Council, and that the vesting provisions of the Agreement are inapplicable to Developer's covenant to participate in the Financing Plan as it exists at the time for required performance by Developer of any specific obligation (including but not limited to payment of any fee).<sup>4</sup>

## **5.4 Plans**

### **5.4.1 Financing Plan**

The Development Agreement required Developer to prepare a Financing Plan. The North West Rocklin Public Facilities Financing and Phasing Plan, prepared for Sunset Ranchos Investors, LLC, prepared by Economic and Planning Systems, Inc. and Terrance E. Lowell and Associates, Inc., dated January 28, 2004, as adopted as part of the Northwest Rocklin Annexation Area General Development Plan, complies with and satisfies Developer's obligation to prepare a financing plan as detailed under the title "Implementation," section D.1. and Developer's obligation to prepare a phasing plan as detailed under the title "Implementation," section D.2 of the Development Agreement.<sup>5</sup>

The vesting provisions of this Agreement shall not apply to the Financing Plan. Specifically, Developer shall participate in the Financing Plan as it exists as of the date that Developer is required to perform each specific obligation specified in the Financing Plan (including, without limitation, payment of fees), as made applicable to the development of the Property. By way of example, if building permits are scheduled to be issued for a portion of the Property on January 1, 2005, the development and other fees that Developer must pay as a condition of issuance of those building permits are the adopted fees that are in effect on January 1, 2005.

If fee increases are adopted on February 1, 2005, and additional building permits are scheduled to be issued on July 1, 2005, the development and other fees that Developer must pay as a condition of issuance of the additional building permits are the adopted increased fees. Developer shall faithfully and timely comply with each and every provision of the Financing Plan, including but not limited to those provisions requiring establishment of infrastructure and services financing mechanisms. For purposes of this Agreement, "financing mechanisms" shall include but not be limited to assessments, special taxes, development fees, and other specific or general fees, whether city-wide or not, and exactions.

Approval of any Subsequent Approval may be made subject to the Landowner's participation in and compliance with the Financing Plan. Failure to so participate shall be an event of default to which the default provisions of this Agreement and those specified in City's adopted policies, ordinances, procedures, and requirements relating to approval of development agreements shall apply. For purposes of this Agreement

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<sup>4</sup> Amended by Sec.6 by Ord. 885

<sup>5</sup> Development Agreement is defined in subsection 1.5.

"participate" and "participation" shall mean payment of all monies required by the Financing Plan, and performance of all obligations imposed thereby.<sup>6</sup>

The Financing Plan shall provide a reliable funding mechanism for each improvement addressed to assure that the improvement is constructed and in service as required by the Phasing Plan. The Financing Plan shall address and shall conform to the General Development Plan, all conditions of approval, and all adopted mitigation measures, including, but not limited to, the following:

**5.4.1.1 Mello-Roos Community Facilities District:**

The creation and implementation of one or more financing districts under the authority of the Mello-Roos Community Facilities District law or comparable statutory scheme (Govt. Code section 53311, et seq.) (the "CFD"). The boundaries of the CFD shall include all or a portion of the territory within the boundaries of the General Development Plan, excluding Parcel K. The CFD shall be authorized to issue bonds and levy and collect special taxes for the construction, acquisition, and maintenance of the broadest range of public facilities as authorized under the law.

The total of the maximum authorized special tax for all CFD activities plus all other annual taxes, special taxes, assessments, and other parity liens, per parcel, shall be established in the Financing Plan. The Financing Plan shall demonstrate that the CFD will comply with City's Policies and Procedures for Land Secured Financing as adopted by City Council Resolution No. 99-192 or as may be amended.

At the time of formation of the CFD, Developer and City shall enter into a shortfall agreement, in form and substance acceptable to City, whereby Developer shall covenant to pay for the CFD improvements to the extent that the CFD special taxes and/or bonds do not provide sufficient funding for the completion of the improvements. At the time of entering into this Agreement, the Parties intend the District to contribute to the financing of, among other things, the core components of the vehicular circulation system, as described in the Project Approvals; the Sunset Boulevard/ SR 65 and Whitney/SR 65 interchanges and the north/south road connecting Whitney Ranch Parkway to Sunset Boulevard through the Herman Miller site, referred to as Street B in the General Development Plan; major water and sewer improvements; major drainage facilities; parkway lighting and landscaping; neighborhood park maintenance; community park construction and maintenance; and fire service. In addition, CFD revenues may be made available to reimburse Developer for expenditures made by it to construct or fund public improvements and facilities to serve the Project to the extent funds are available, which determination shall be in the sole discretion of the City.

**5.4.1.2 Northwest Rocklin Area Community Park Fee:**

- (i) A cost analysis for the full improvement of the proposed community park in accordance with the Community Park Master Plan (see 5.4.3).
- (ii) A fee analysis to fully cover the cost of full development of the proposed community park (the "NWRAA Community Park Fee"). The fee analysis shall include an analysis of the territory to be subject to the fee, the relationship

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<sup>6</sup> Amended by Sec.7 of Ord. 885



between the incidence of the fee and the benefit of the improvements to be built in satisfaction of Government Code 66000, et seq., and a plan for adoption and implementation of the fee. The NWRAA Community Park Fee shall not apply to Parcel K. The study shall also address the required changes to the City's Community Park Fee under RMC Chapter 3, Article VI and its relationship, in terms of fee credits, to the NWRAA Community Park Fee. The study shall commence on or before May 20, 2004, and shall be completed within 6 months of the effective date of this Amendment, but in no event later than the recordation of the first small lot subdivision map.<sup>7</sup>

#### **5.4.1.3 Interchanges and University Avenue (Street B)**

A plan for financing the Sunset Boulevard/SR 65 and Whitney/SR 65 interchanges, and University Ave. The Whitney/SR 65 interchange is not covered at this time by the Highway 65 JPA, but will be financed through a combination of Developer contributions and funding provided by the City. In this regard, Developer agrees that it will contribute its share of the cost of the Whitney interchange as determined in accordance with the provisions of the Financing Plan, to be applied by City to the cost of the Whitney interchange ("Developer Contribution").

As of the time of execution of this Agreement, the Developer Contribution is estimated to be the sum of \$4,643.800.00. (Whitney Interchange Fee)

The City Manager or designee shall provide written notice to Developer that the Developer Contribution is due and payable. Within thirty (30) days of mailing of the notice, Developer shall pay the Developer Contribution in full.

#### **5.4.1.4 Fire and Emergency Service**

The calculation, levy, and collection of a CFD special tax to pay the annual cost of operation and maintenance of fire protection and suppression services and emergency medical aid services within the Project, either through the existing Rocklin Community Facilities District No. 1, the new CFD, or the combination of both. The maximum annual special tax for fire service shall not exceed \$210 for single family detached residential structures, \$210 per unit for condominiums, \$315 for multifamily structures with up to four units, \$660 for multifamily structures with five units or more, \$825 for commercial (including business/professional) structures, and \$990 for light industrial structures. These amounts shall be subject to a four percent (4%) annual inflation adjustment. The annual special tax shall be levied on each lot or parcel as determined in the Financing Plan to insure sufficient operating revenues are generated as needed to provide fire and emergency service to the Project. Developer acknowledges that the annual special tax may be levied on undeveloped land.

#### **5.4.1.5 Reimbursement of Planning Costs**

A plan for reimbursement of Developer for a portion of their reasonable planning costs incurred in connection with the original Project approvals proportionate to the benefit received by other landowners within the North West Rocklin Area, excluding Parcel K, of those planning costs, such as the EIR and General Development Plan preparation costs. These excess planning costs shall not include Developer's proportionate share, or any

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<sup>7</sup> Amended by Sec.8 of Ord. 885

costs associated with project delays or changes initiated by Developer which were of no or minimal value to other landowners. The plan shall include a method of levying and collecting an EDU-based fee from the other benefited landowners at the time the benefited landowner obtains development approvals, as well as a method of paying the fees to Developer. The determination of what constitutes “reasonable” costs shall be in the exclusive determination of City.

#### **5.4.1.6 Reimbursement of Certain Roadway Construction Costs**

A plan for reimbursing Developer a portion of the cost borne directly by Developer of fully improving certain arterial roadways which are eligible for funding out of the City’s Traffic Impact Fee (RMC Chapter 3.16 Article IV), and other public improvements which are oversized to benefit property owned by third persons. With respect to arterial roadways, reimbursement from the City shall be limited to the cost of reasonable asphalt paving only (as determined by the City Engineer) those lanes of traffic not needed for the development of the Project Area (that is, which are primarily of City-wide benefit).<sup>8</sup> Reimbursement may be through annual cash payments or Traffic Impact Fee credits to be specified in the Financing Plan.

#### **5.4.1.7 Waiver of claims relating to nexus issues.**

The Financing Plan establishes the need for certain development fees, and calls for the future establishment of other fees and charges, as well as monetary reimbursement requirements and other financing methodologies (collectively, for purposes of this Amendment, “Fees”). Developer understands and agrees that some or all of the Fees are not based upon a nexus analyses or other economic impact studies, either because the Parties have mutually agreed to forego those studies and analyses, or for other legal or practical reasons have determined that they are unduly burdensome or unnecessary. Developer, for itself and all of its heirs, successors, assigns, and Transferees, with full and complete knowledge and understanding of all legal requirements relating to the Fees, and having been fully advised by capable and competent legal counsel, hereby waives any claim of illegality or invalidity, partial or complete, or any other form of defect whatsoever, of or in any Fee included in the Financing Plan, whether adopted by the City Council or not. For purposes of this Amendment, “claim” shall mean and include, but not be limited to, monetary relief or damages, injunctive relief, or other form of legal or equitable remedy. Developer, for itself and all of its heirs, successors, assigns, and Transferees, releases City and its officers, employees, agents and contractors from, and agrees to fully and completely indemnify, defend and hold City and its officers, employees, agents, and contractors harmless from any such claim.”

#### **5.4.1.8 City reimbursement obligations**

Under certain provisions of the Financing Plan City has committed to impose fees upon, and collect reimbursements from, later-developing property owners whose properties have received economic benefit from infrastructure improvements constructed by Developer or its Transferees. The Parties agree that City’s responsibility in that regard is to use its best reasonable efforts to satisfy those commitments. In the event of a City clerical or other error or other failure of performance by City, or any other circumstance that interferes with City’s ability to perform, the sole sources of funding for

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<sup>8</sup> Amended by Sec. 10 of Ord. 885

satisfaction of the City's commitments are the various applicable special funds and sources (including, without limitation, development fee funds) specified in the Financing Plan. Under no circumstances shall the City's General Fund be liable as a source of funding for satisfaction of the City's commitments. If the City's failure to perform in this regard is caused by the intentional or willful misconduct of a City employee, then to the extent permitted by law, City agrees that it will assign to Developer any and all of City's right, title and interest to recover from such employee any shortfalls in the Financing Plan which arose from such employee's intentional or willful misconduct.

#### **5.4.1.9 Sources of reimbursement**

Where Developer's actual eligible construction costs of a facility are funded through fee credits or cash reimbursements, whether from a fee program or otherwise, no reimbursement shall be made from other public funding mechanism(s) (including Mello-Roos bond funds) that may provide funding for the same facility. Where Developer utilizes funds from a Mello-Roos Community Facilities District to finance development fees that the Landowner must pay to a development fee program, Developer shall not receive fee credits or cash reimbursement from the fee program for the fees financed in that manner. In that case, Developer shall be deemed to have paid the required fees to the extent that payment is made from bond funds, and City shall provide Developer with written evidence or certification that the required fees have been paid to the extent that bond funds have been used for prepayment. Where Developer has been reimbursed for eligible construction costs of a facility from bond funds, Developer shall not be entitled to fee credits against fees that are otherwise required by the Financing Plan for purposes of funding those costs.

#### **5.4.1.10 Term of reimbursement and related agreements**

Under the provisions of the Agreement and the Financing Plan, the Parties are required to execute reimbursement and related agreements. Where the term of those agreements extends beyond the term of the Agreement, the Parties agree that the reimbursement and related agreements shall survive the termination of the Agreement, and that the term of those agreements shall apply.

#### **5.4.1.11 Funding shortfalls**

The Parties understand and agree that as development proceeds, infrastructure funding shortfalls may interfere with the appropriate progression of construction of infrastructure required to serve development projects, including but not limited to the Whitney Interchange. In the event of a funding shortfall: (i) there shall be no City General Fund obligation to provide funding to eliminate the shortfall in whole or in part, it being established City policy that development must pay its own way; (ii) the City Manager, subject to the "special circumstances" provisions of this Agreement, shall have the absolute discretion to order that development stop until a plan has been agreed upon for elimination of the shortfall, which plan is reliable, feasible, and includes provisions for adequate security, all in the City Manager's discretion; and (iii) the City Manager may require, in his or her discretion, a shortfall funding agreement that, *inter alia*, specifies security for funding commitments satisfactory to the City Manager and the City Attorney in their sole discretion. In the event that the shortfall occurs due to an actual or predicted decline in residential densities for the Property, Developer agrees that it will fund the resulting shortfall through a mechanism such as reallocating the infrastructure costs over

the remaining undeveloped units so that when build-out occurs the entire infrastructure cost is in fact paid for by the units actually built, or in some other equitable manner.

#### **5.4.1.12 Drainage improvements**

Where drainage improvements (including, but not limited to, detention and retention basins) are required for development of a parcel, funding for those improvements shall be assured as a condition of granting any Subsequent Approvals, through a drainage agreement or other form of agreement. Any such agreement shall include provisions for security, in a form and in an amount acceptable to the City Manager.

#### **5.4.1.13 Accelerated reimbursement**

The parties agree and understand that the Financing Plan contains provisions for accelerated reimbursement to Developer from the non-residential lands within the Financing Plan Area. The City Manager shall, subject to the special circumstances provisions of this Agreement, have the authority to determine in his or her sole and absolute discretion, whether the accelerated reimbursement requirements of the Financing Plan constitute an undue burden on the land that is required to provide advanced reimbursement, and whether and to what extent those acceleration requirements shall be modified. Prior to making his or her decision, the City Manager shall provide reasonable notice to Developer, and shall provide Developer an opportunity to meet and confer with the City Manager within a reasonable time. In the event that Developer exercises its rights under the special circumstances provisions of this Agreement, Developer shall have the right to address the City Council in order to express its position on the issue of the propriety of modification of the accelerated reimbursement provisions.<sup>9</sup>

### **5.4.2 Phasing Plan**

The Development Agreement required Developer to prepare a Phasing Plan prior to City Council approval of any Subsequent Approval. The North West Rocklin Public Facilities Financing and Phasing Plan, prepared for Sunset Ranchos Investors, LLC, prepared by Economic and Planning Systems, Inc. and Terrance E. Lowell and Associates, Inc., dated January 28, 2004, as adopted as part of the Northwest Rocklin Annexation Area General Development Plan, complies with and satisfies Developer's obligation to prepare a phasing plan as detailed under the title "Implementation," section D.2 of the Development Agreement. All obligations required of Developer under subparts 5.4.2.1 through 5.4.2.3 have been completed.

The Phasing Plan, as amended, shall address and shall conform to the General Development Plan, all conditions of approval, and all adopted mitigation measures including, but not limited to, the following:

#### **5.4.2.1 Community Park**

The Plan shall require Developer to make to City an irrevocable offer of dedication of the Community Park site with the first parcel or subdivision map for the Project, shall enter into an agreement to construct Phase I of the Community Park prior to issuance of the

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<sup>9</sup> Amended by Sec.11 of Ord. 885

building permit for the 1000<sup>th</sup> dwelling unit, and shall complete the construction within twelve months of final map approval. The City has received the irrevocable offer of dedication and the construction of Phase I of the Whitney Ranch Community Park has been completed.

#### **5.4.2.2 Interchanges and Vehicular Circulation System**

The plan shall identify the core components of the vehicular circulation system as described in the Project Approvals, the Sunset Boulevard/SR 65 and Whitney/SR 65 interchanges, and the north/south road connecting Whitney Ranch Parkway to Sunset Boulevard through the Herman Miller site, referred to as Street B in the General Development Plan, and shall specify the level of development that can occur, consistent with the General Plan, the General Development Plan, and the EIR, before each component is constructed. The plan shall ensure that development of the Project area is phased in a manner, and at a pace, that will not cause violations of the City's level of service standards as set forth in the General Plan. City and Developer shall revise the street cross section for the portion of Whitney Ranch Parkway beginning at the current terminus of constructed improvements, to the connection point at Park Drive, to show a phased approach to the construction of the ultimate street width. This phased approach shall initially provide for a single travel lane in each direction with a center landscaped median and separated bike and pedestrian trail on one side. Developer's obligation to construct shall be limited to one travel lane in each direction and required frontage improvements, consisting generally of curb, gutter, drainage, separated off street pedestrian bike path, and necessary sidewalks.

#### **5.4.2.3 Other Infrastructure and Public Facilities Improvements**

The plan shall identify all other major infrastructure and public facilities improvements needed to serve the Project and shall establish a construction phasing plan tied to Project development to insure that each is completed in a timely manner. These other major improvements include, but are not limited to, major water and sewer improvements, major drainage facilities, utility service improvements, parking lighting and landscaping, fire station construction, open space and trail system, and neighborhood parks. Developer shall assist City with preparation of a cost sharing plan for the final offsite sewer trunk line improvement. Such assistance may require the preparation of improvement plans and/or cost analysis, all of which shall be funded and prepared by Developer in a timely manner. City shall not withhold any approvals for the construction of Developer's remaining phases solely on the basis of the obligation to construct the final off-site sewer trunk line improvement. City shall use its best efforts to coordinate an agreement between the SPMUD, the City, and the affected landowners to share the costs of the final off-site sewer trunk line improvement, so that no single landowner is required to solely fund the cost of construction. In the event that no sewer agreement is reached by the parties and the Developer is required to fund the offsite sewer trunk line improvements, then the cost of those sewer improvements shall offset (reduce) the Whitney Ranch Interchange funding obligations as set forth in sections 15.16.1 and 15.16.2. In the event that the Developer has advanced all required interchange fees and no sewer agreement is reached by the parties then the City shall advance the funds necessary to allow the construction of the sewer trunk line improvements.

### **5.4.3 Park Master Plans**

Prior to City Council approval of the first final small lot subdivision map on the Property, the Developer shall prepare and obtain City approval of, Park Master Plans detailing the facilities and improvements to be constructed in each of the Neighborhood Parks, in the Community Park, and Open Space and Trail System.<sup>10</sup>

## **5.5 City of Rocklin Community Facilities District No. 10**

City agrees to form and implement the CFD to finance the infrastructure and public facility improvements to be constructed by Developer as detailed in the Financing Plan. The CFD shall be formed consistent with and adhere to the City's standards governing the use and formation of such districts, including Developer's payment of application fees. City and Developer shall cooperate in good faith with each other in the formation of the CFD and the ultimate issuance of bonds thereunder to fund the improvements consistent with the applicable substantive and procedural requirements. The District shall be in place by the dates specified in the Financing Plan.

## **5.6 Neighborhood Parks and Open Space and Trail System**

### **5.6.1 Neighborhood Parks**

Developer shall improve and dedicate to City, at Developer's cost, each of the neighborhood parks identified on the General Development Plan in accordance with the General Development Plan, the Phasing Plan, and the approved Park Master Plan for each site. Developer shall irrevocably offer to City each neighborhood park site and execute the City's standard form Subdivision Improvement Agreement Turn-Key Park for each park as a condition of approval of a Subsequent Approval. In consideration of Developer's obligation to improve and dedicate to City each neighborhood park, development of the Property subject to this Development Agreement shall not be subject to payment of the City's park fee under Rocklin Municipal Code §§16.28.060 – 16.28.160.

### **5.6.2 Open Space Easements Required**

Developer granted to City an Open Space and Conservation Easement over those areas shown in the NWRA General Development Plan as Development Areas 19, 34, and 15 (the Open Space and Trail System).<sup>11</sup> The grant is in substantial conformance with the Grant of Open Space and Conservation Easement with Covenants attached hereto as Exhibit C and by this reference incorporated herein, which provides for public access and use of the trail system.

Developer shall construct the trail system in conformance with the Park Master Plan for the trail system. The trail system shall be maintained by the fee owner in conformance with standards contained in the CC&R's governing the Project and the HOA. The trail system shall be constructed of an all-weather surface suitable for bicycling and hiking

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<sup>10</sup> Amended by Sec.12 of Ord. 885

<sup>11</sup> Amended by Sec.13 of Ord. 885

and shall be designed to provide access to the extent feasible throughout the Open Space Area for public use.

The preliminary location and design of the trail system shall be submitted for approval in phases as part of tentative small lot subdivision map applications; final location and design plans shall be submitted with final map applications. Improvement of the trail system shall be a condition of approval of the tentative maps. Grant of the Open Space and Conservation Easement for the Open Space and Trail System shall be in addition to any and all other land dedications required in the Project Approvals, this Agreement, or by any other law, rule, or regulation of the City.

Upon completion of the improvements, Developer shall dedicate the Open Space and improved Trail System to the public and provide for its operation and maintenance through an appropriate financing district or comparable financing tool.

### **5.7 Community Park**

City agrees to levy the maximum tax for park construction and maintenance in the CFD, beginning with the recording of the first final small lot subdivision map, and make available for acquisition of Phase I proceeds not then needed for park maintenance as determined by the City.<sup>12</sup>

### **5.8 City Recreational Facilities and Off Street Bike Path Contribution**

Developer has paid to City a City-wide recreational facility contribution in the amount of two million dollars (\$2,000,000). City holds the contribution in a separate fund for the construction and/or acquisition of recreational facility(ies) of City's choice.<sup>13</sup> To further enhance the bikeway and pedestrian trail system in Whitney Ranch, the area encompassed by the Northwest Rocklin Annexation Area General Development Plan, and to promote and finance the connectivity of the off street bike trail citywide, Developer shall make an additional contribution for off street bike path funding in the amount of One Hundred thousand dollars (\$100,000.00) The bike path funding contribution shall be due to the City no later than June 15, 2017. In lieu of a cash contribution, Developer, at Developers option, may construct some or all of the off street bike path facilities designated by City, provided such facilities substantially enhance the City's off street bike path goals and relevant citywide bike path master plans, and are not otherwise required under the current project entitlements.

### **5.9 Affordable Housing** (First amended Sec.16 of 885, then Sec. 2 of 944 below.)

At least 10% of the dwelling units constructed in the Project shall be Affordable Units. "Affordable Units" means a combination of very low income (50% of the Placer County median income), low income (80% of the Placer County median income) and moderate income (81% to 120% of the Placer County median income) households. As verified by the Acting Community Development Director by letter to Developer of October 22, 2010, the Developer has satisfied this obligation to produce Affordable Units in Whitney Ranch, unless the type and number of affordable homes which are now available in Whitney Ranch substantially changes prior to termination of this Agreement.

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<sup>12</sup> Amended by Sec.14 of Ord. 885

<sup>13</sup> Amended by Sec. 15 of Ord. 885

### **5.10 High School**

Developer has completed all required improvements for Public Access related to Whitney High School as required in the Development Agreement.<sup>14</sup>

### **5.11 Public Safety Program Contribution<sup>15</sup>**

City and Developer agree Developer's prior financial obligation under this Agreement for a Public Safety Program Contribution is deleted from this Agreement and Developer has completed all duties and obligations towards funding of Rocklin Fire Station No. 4 as of the date of this 5<sup>th</sup> Amendment to the Agreement. Nothing in this Agreement shall relieve the Developer from annexing all of Developer's property into the City's CFD #1.

### **5.12 Update of City Traffic Impact Fee**

City agrees that it shall update its Traffic Impact Fee charged to all development in the City to include the following improvements which City recognizes as necessary for the orderly development of the City: Sunset Boulevard/Blue Oaks Boulevard Intersection, Pacific Street/Sunset Boulevard Intersection, Sunset Boulevard/Atherton Road Intersection, Sunset Boulevard/Atherton Drive Intersection, Sunset Boulevard/West Oaks Boulevard Intersection. City shall use its best efforts in good faith to regularly update the Traffic Impact Fee. .

### **5.13 Fire Protection/California Department of Forestry**

Concurrent with the Operative Date, Developer shall enter into an agreement with City to pay City all charges imposed on City by the California Department of Forestry for providing fire protection and suppression services to all of the territory annexed to the City by adoption of Resolution No. 2002-231.

### **5.14 Phasing**

#### **5.14.1 Requirements to Proceed with Discrete Phases; Timing of Construction**

The parties understand and agree that development of the Property could occur as discrete phases, or as partial development within each planned phase; that development of a project consisting of a particular parcel, subdivision or subdivisions, or portion thereof, can proceed only if all infrastructure required to serve the development project has in fact been built or is assured to the satisfaction of the City Manager in his or her sole discretion; and that uncoordinated and uncontrolled development is detrimental to the public health, safety, and welfare, as well as to the Financing Plan, and is inconsistent with the General Development Plan. For those reasons, notwithstanding any other provision of the Agreement (including, without limitation, the vesting

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<sup>14</sup> Amended by Sec.17 of Ord. 885 and this Agreement.

<sup>15</sup> This section first amended by Sec.18 of 885, then by Operating Memorandum # 1, then with this Agreement



provisions), the City Manager, acting on behalf of City, shall, after meeting and conferring with Developer, have the absolute discretion to determine whether a particular project is timed in a logical manner for the particular applicable development phase under the policies expressed in this section. Accordingly, the City Manager shall have the authority to approve, conditionally approve, or deny approval of the timing for development of the project. The City Manager's decision shall be subject to the "Special Circumstances" provisions of this Amendment. The parties further agree and understand that the General Development Plan Amendments will include a provision that conforms to the provisions of this section.<sup>16</sup>

#### **5.14.2 Further Evaluation of Land Uses**

The parties agree there is a mutual benefit to further evaluation of the desired land use plan of two medium density sites and a seven acre commercial site, designated Parcels 42, 44, and 44B, which are located in and around the intersection of Whitney Ranch Parkway and West Oaks Dr. Both City and Developer shall engage in good faith discussions and analysis regarding the highest and best use for these parcels and agree to modify the City General Plan and/or the NWRAA General Development Plan as necessary to achieve the agreed upon optimized land use plan for these parcels.

#### **5.15 Sunset Blvd. Reconstruction**

SRI has completed its obligations related to the reconstruction of, and cost contribution towards, the Sunset Boulevard reconstruction project.<sup>17</sup>

#### **5.16 Additional Funding for Design and Construction of the Whitney Interchange**<sup>18</sup>

##### **5.16.1 Additional Whitney Interchange Funding Contribution for the Construction of Phase 1A of the SR65/Whitney Interchange.**

In addition to the Whitney Interchange Fee, Developer shall make to City an additional funding contribution for the construction of the SR65 / Whitney Ranch Interchange Phase 1A improvements in the amount of \$4,100,000. One Million Five Hundred Thousand Dollars (\$1,500,000.00) of the additional funding contribution shall be paid to City the later of September 15, 2014, or within 60 days after the City Council awards the contract for the construction of Phase 1A of the SR 65/ Whitney Parkway Interchange. The balance of the additional funding contribution is due to City the later of June 15, 2015 or 12 months after the date the City issues the Notice To Proceed to the constructing contractor for commencement of construction of the Phase 1A interchange improvements. This lump sum contribution is in addition to all other existing fee programs for the construction of the SR65 / Whitney Ranch Interchange.

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<sup>16</sup> Amended by Sec.19 of Ord. 885

<sup>17</sup> Amended by Sec.20 of Ord. 885, and by this Agreement as shown.

<sup>18</sup> First amended by Sec. 1 Ord. 897, then deleted by Sec.3 of Ord. 944, then a New Subsection P added by Sec. 4 of 944, further amended in this Agreement to reflect advance of fees for the Design Contribution.

#### **5.16.2 Additional SR65/Whitney Interchange Funding Contribution If No Phase 1A Construction Approved**

If the Phase 1A concept is not approved by Caltrans, and payments are not made by Developer to City as set forth in subparagraph 5.15.1 above, then Developer shall make to City an additional funding contribution, in addition to the Whitney Interchange Fee, for the construction of the SR65 / Whitney Ranch Interchange improvements in the amount of \$4,100,000. Two Million Dollars (\$2,000,000.00) of the additional funding contribution is due no later than March 1, 2018. The balance of the additional funding contribution is due to City no later than September 1, 2020. This lump sum contribution is in addition to all other existing fee programs for the construction of the SR65 / Whitney Ranch Interchange.

#### **5.17 Community Park Building** <sup>19</sup>

City and Developer agree Developer's prior financial obligation under this Agreement for design of the Whitney Ranch Community Park Building is deleted from this Agreement and Developer has completed all duties and obligations for construction and development of the Whitney Ranch Community Park as of the date of this 5<sup>th</sup> Amendment to the Agreement.

##### **5.17.1**

### **6 AMENDMENT OF AGREEMENT**

This Agreement may be amended from time to time by mutual consent of City and Developer (and/or any successor owner of any portion of the Property, to the extent subject to or affected by the proposed amendment), in accordance with the provisions of the Development Agreement Statute. If the proposed amendment affects less than the entire property, then such amendment need only be approved by the owner(s) in fee of the portion(s) of the Property that is subject to or affected by such amendment. If and when the parties find that clarifications, minor changes or minor adjustments are necessary or appropriate to the implementation of this Agreement or development of the Project, the clarification, minor change or minor adjustment shall be stated in a written operating memorandum agreed to and approved by Developer and City Manager acting on behalf of City. As used in this section, "minor" shall not include an increase in the number of dwelling units otherwise allowed by the Project and applicable rules, regulations, ordinances, and policies, or a reduction in the amount of open space by more than one percent (1%). An operating memorandum under this section, which is consistent with this Agreement, shall not constitute nor require an amendment to this Agreement or prior public notice or hearing to be effective.

### **7 COOPERATION IN THE EVENT OF LEGAL ACTION**

#### **7.1 Third Party Challenge**

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<sup>19</sup> Amended by Sec.2 of Ord. 897, further amended by this Agreement

If any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Project, or Project Approvals, the parties shall cooperate in defending against such challenge. Developer, at Developer's expense, shall defend such action as the real party in interest and assist City in its defense. To the extent that any such action challenges Developer's right to proceed with the Project under this Agreement, Developer shall have the control of the defense of the action or proceeding and may utilize legal counsel of its choice, subject to the approval of City, which approval shall not be unreasonably withheld, conditioned, or delayed. Developer shall reimburse City for reasonable expenses of City's attorneys resulting from representation of City in any such legal action or proceeding. In addition, Developer shall indemnify City for any liability incurred by City as a result of any such action or proceeding, including any award to opposing counsel of attorneys' fees or costs.

## **7.2 Cure, Reapproval**

If any litigation which results in a judgment wherein the courts order the City to reconsider any matter pertaining to this Agreement or Project Approvals, the City and Developer agree that any reconsideration shall be expeditiously performed to remedy any defects noted in such judgment. If such remedy includes the need to readopt any or all of the Project Approvals, City agrees to expeditiously readopt any or all of the Project Approvals in a manner consistent with the requirements of the judgment, and to the extent readoption is in harmony with the spirit and intent of this Agreement, the original Project Approvals, and the public welfare.

## **8 DEFAULT; ANNUAL REVIEW; REMEDIES; TERMINATION**

### **8.1 Defaults**

- 8.1.1** Failure by City or Developer to perform any other material term or provision of this Agreement shall constitute a default under this Agreement.
- 8.1.2** The Party alleging the default shall give the other not less than thirty (30) days' written notice of the default. Any notice of default shall specify the nature of the alleged default and, where appropriate, the manner in which said default may be satisfactorily cured. If notice of default is given, the Parties shall make reasonable efforts to agree to an action plan to cure the default within the thirty (30) days or longer time as agreed.
- 8.1.3** If any default is not cured within the time allowed, the party alleging the default may institute legal action against the party in default or give notice of intent to terminate the agreement pursuant to California Government Code §65868 and regulations of City implementing said Government Code section. Following any default by Developer and notice by City of intent to terminate this Agreement, the matter shall be scheduled for consideration and review by the Council within thirty (30) calendar days in the manner set forth in Government Code §§65865, 65867 and 65868 and City regulations implementing such sections. Developer shall have the right to offer written and oral evidence at such public hearing. Following consideration of evidence presented at such public hearing, either party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

- 8.1.4** Failure or delay in giving notice of default shall not constitute a waiver of any default. Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default of its rights or remedies, and shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
- 8.1.5** No party shall be in default of this Agreement for delays in performance due to war, acts of terrorism, litigation, insurrection, strikes, flood, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, or similar basis beyond the reasonable control of the party to be excused. Any action or proceeding addressing the validity of this Agreement, any Project Approval, or any permit approval, agreement or other entitlement related to the Project, or any action of a governmental agency necessary or desirable to the development of the Project shall create an excusable delay as to Developer or to City.

## **8.2 Remedies**

In addition to any other rights or remedies, either party may institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any other remedies consistent with the foregoing and the purposes of this Agreement. Prior to the initiation of any litigation hereunder, the parties agree to pursue mediation to resolve any disputes.

## **8.3 Annual Review**

- 8.3.1** On or about the first anniversary of the Effective Date, and on or about each anniversary of this Agreement thereafter, City shall conduct a review of the good-faith compliance by Developer with the terms of this Agreement (the "Annual Review"). Said review shall be limited in scope to compliance with the terms of this Agreement pursuant to Section 65865.1 of the Government Code and the Rocklin Municipal Code, Chapter 17.92. The findings of the Annual Review and compliance or non-compliance with this Agreement shall be made available to Developer at the conclusion of the annual Review.
- 8.3.2** City shall notify the Developer that the review will take place. Upon not less than thirty (30) days' written notice by the Planning Director of the City, Developer shall provide such information as may be reasonably requested and deemed to be required by the Planning Director in order to ascertain compliance with this Agreement.
- 8.3.3** City shall pay the appropriate fee for the annual review as established by resolution of the City Council.
- 8.3.4** At the conclusion of the Annual Review, City shall make written findings and determinations on the basis of substantial evidence in the record, regarding whether Developer has complied in good faith with the terms of this Agreement.

If City finds and determines that Developer has not complied with such terms, and that such non-compliance amounts to a default if not cured, then City shall deliver to Developer a notice of default and opportunity to cure, in which case the parties shall proceed as provided in Section 8.1. If notice of default is not sent within thirty (30) days after conclusion of the Annual Review, Developer shall be deemed to be in compliance with this Agreement.

**8.3.5** City shall deliver to Developer, pursuant to Section 9 herein, a copy of all staff reports and documents to be used or relied upon in conducting the Annual Review at least ten (10) days before City's Annual Review. Developer shall be permitted to respond to City's evaluation orally at a public hearing before the City Council, by a written statement, or both.

**8.3.6** If City fails to conduct the Annual Review and Developer is not in default with respect to its performance under this Agreement during the past year as evidenced by the absence of any notice of default being delivered by City to Developer, such failure shall be deemed an approval by the City and Developer's compliance with the terms of this Agreement for that Annual Review period.

#### **8.4 Termination**

This Agreement shall terminate under the following circumstances:

This Agreement shall automatically terminate upon the twentieth (20<sup>th</sup>) anniversary of the Effective Date, unless extended as provided in Section 2.

##### **8.4.1 Automatic Termination Upon Completion and Sale of Residential Unit**

This Agreement shall automatically be terminated, without any further action by either party or need to record any additional document, with respect to any single-family residential lot within a parcel designated by the General Development Plan for residential use upon completion of construction and issuance by the City of a final inspection for a dwelling unit upon such residential lot and conveyance of such improved residential lot by Developer to a bona fide, good-faith purchaser thereof. In connection with its issuance of a final inspection for such improved lot, City shall confirm that all improvements which are required to serve the lot, as determined by City, have been accepted by City. This termination of this Agreement for any such residential lot as provided for in this Section 8.4.1. shall not in any way be construed to terminate or modify any assessment district or Mello-Roos Community Facilities District lien affecting such lot at the time of termination.

##### **8.4.2 Termination Upon Developer Request**

This Agreement may also be terminated, at the election of the then property owner, with respect to any legally subdivided parcel designated by the General Plan for residential or non-residential use (other than parcels designated for public use), when recording a final residential lot subdivision map for such parcel, or receiving a certificate of occupancy or final inspection, whichever is applicable, for a multi-family or non-residential building within such parcel, by giving written notice to City of its election to terminate the Agreement for such parcel, provided that all improvements which are required to serve the parcel, as determined by City, have been accepted by City. City shall cause any

written notice of termination approved pursuant to this subsection to be recorded against the applicable parcel with the County Recorder.

## **8.5 Effect of Termination**

- 8.5.1** If this Agreement is terminated following any event of default of Developer or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement shall prevent Developer from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.
- 8.5.2** Termination of this Agreement shall not affect any of Developer's obligations to comply with City's General Plan, the Project Approvals, any Subsequent Approvals, and all other zoning and subdivision regulations applicable to the Project and the Property..
- 8.5.3** Termination of this Agreement shall not affect any of Developer's obligations which have been expressly made conditions of Subsequent Approvals, unless said obligations are conditioned on the existence of this Agreement.

## **9 NOTICES**

Any notice, demand or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). If given by registered or certified mail, a notice shall be deemed to have been given and received on actual receipt by the addressee. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. A courtesy copy of the notice may be sent by facsimile transmission. Any party may designate any other address in substitution of the address contained hereby by like written notice.

Notices shall be given to the parties at their addresses set forth below:

If to City, to:

City Manager  
City of Rocklin  
3970 Rocklin Road  
Rocklin, California 95677  
Telephone: (916) 632-4050  
Facsimile: (916) 624-8010

with a copy to:

Director of Community Development

If to Developer, to:

Sunset Ranchos Investors  
960 Wildcat Blvd  
Rocklin CA 95765  
Attn: Peter Bridges  
916-235-4950  
Email – pbridges@newlandco.com

with a copy to

DLA Piper  
2000 University Ave

City of Rocklin  
3970 Rocklin Road  
Rocklin, California 95677  
Telephone: (916) 632-4020  
Facsimile: (916) 624-4759

East Palo Alto, CA 94303  
Attn: Jim Anderson  
(650) 833-2078  
  
(650) 833-2001

## **10 ASSIGNMENT**

### **10.1 Right to Assign**

Developer may assign its rights to develop the Project, or any portion or phase thereof, to any successor in interest which acquires any legal or equitable interest in any portion of the Project, which rights shall run with the property on which the Project is constructed. Each successor in interest to Developer shall be bound by all of the terms and provisions hereof applicable to that portion of the Project acquired by it. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties' successors, assigns and legal representatives. Developer shall provide City with written notice of any assignments within ten (10) days after the occurrence thereof.

### **10.2 Release Upon Transfer**

Upon the sale, transfer or assignment in whole or in part of Developer's rights and interests under this Agreement, Developer shall be released from its obligations under this Agreement with respect to the portion of the Project so transferred; provided, however, that (i) Developer is not then in default under this Agreement; (ii) Developer has provided written notice of such transfer to the City; and (iii) subject to the exceptions stated herein below, the transferee executes and delivers to the City a written Assumption Agreement in which (a) the name and address of the transferee is set forth, and (b) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Agreement with respect to the portion of the Project transferred. Developer shall in any event, given written notice to the City of such transferee's address no later than ten (10) days after any such transfer.

## **11 COVENANTS RUN WITH THE LAND**

During the term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, without limitation, Section 1648 of the California Civil Code. Each covenant to do or refrain from doing some act on the Property (i) is for the benefit of the Property and shall be a burden upon the Property; (ii) runs with the Property; (iii) is binding upon each party and each permitted successor owner during its

ownership of the Property or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of the Property, or any portion thereof, and shall benefit each party and the Property hereunder, and each other person or entity succeeding to an interest in the Property.

## **12 NOTICE OF COMPLIANCE**

**12.1** Within thirty (30) days following any written request that Developer may make from time to time, City shall execute and deliver to Developer in recordable form a written "Notice of Compliance," duly executed and acknowledged by City. The notice shall describe this Agreement and the Project and state:

**12.1.1** That 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 state the date and nature of such modification;

**12.1.2** That there are no uncured defaults under this Agreement, or if defaults exist, specify the dates and nature of such default;

**12.1.3** The findings of City with respect to the most recent Annual Review; and

**12.1.4** Such other reasonable information requested by Developer.

**12.2** The failure of City to deliver such a Notice of Compliance within such thirty (30) day period shall constitute a conclusive presumption that may be relied upon by third parties and transferees that, except as may be otherwise stated by Developer, this Agreement is in full force and effect without modification and that there are no uncured defaults in the performance of Developer.

## **13 SPECIAL CIRCUMSTANCES**

Whenever the term "special circumstances" is used in this Amendment, the procedure set forth in this section shall apply. In the event that Developer or its Transferee does not concur with the decision of the City Manager, which shall be deemed to be a final decision, the Developer or Transferee shall notify the City Manager of its disagreement with the City Manager's decision. The City Manager shall meet and confer with the Developer or Transferee in an effort to resolve the matter. If the matter is not resolved, Developer or a Transferee shall have the right to appeal to the City Council, and to address the City Council to express its position. The procedures, including time limits, for filing the appeal shall be those applicable for appeals of Planning Commission decisions to the City Council. The appeal shall be heard by the City Council in accordance with those procedures, except that the appeal shall not be heard as a public hearing. The decision in the appeal shall be deemed to have been made by the City Council acting in its quasi-legislative capacity, and not in its quasi-judicial capacity. The parties agree that the decision of the City Council shall be final and binding and that findings are not required. Developer waives all rights to commence judicial proceedings to set aside or otherwise invalidate the City Council's decision, together with any claim for monetary or equitable relief.<sup>20</sup>

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<sup>20</sup> Amended by Sec. 21 of Ord. 885



## **14 MISCELLANEOUS**

### **14.1 No Agency, Joint Venture or Partnership**

It is specifically understood that the Project is a private development, and the Developer shall have full power over and exclusive control of the Project, subject to the terms and conditions of this Agreement. Although City and Developer intend to cooperate and work together to carry out the Project, the parties renounce the existence of any form of agency relationship, joint venture, partnership or other association between City and developer, and nothing contained herein or in any document executed in connection herewith shall be construed as creating any such legal relationship.

### **14.2 Severability**

If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be disregarded and this Agreement shall continue in effect unless enforcement of this Agreement without the invalidated provision would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. If any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a party hereof of an essential benefit of its bargain hereunder, then such party so deprived shall have the option to terminate this entire Agreement from and after such determination.

### **14.3 Other Necessary Acts**

Each party shall execute and deliver to the other all further instruments and documents as may be reasonably necessary to carry out this Agreement, the Project and Subsequent Approvals, and the Applicable Law in order to provide and secure to each party the full and complete enjoyment of its rights and privileges hereunder.

### **14.4 Construction**

This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

### **14.5 California Law/Attorneys' Fees**

This Agreement shall be construed and enforced in accordance with the laws of the State of California. If legal action by either party is brought against the other party because of an alleged default under the terms and conditions of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs.

### **14.6 Waivers**

No provision or condition of the Agreement shall be considered waived unless such waiver is in writing and signed by the party to be bound.

**14.7 Duty to Act Reasonably and in Good Faith**

Unless otherwise expressly provided, each party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. City and Developer agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement, and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the parties which is to develop the Property in conformity with the terms and conditions specified in this Agreement.

**14.8 Recordation**

Except when this Agreement is automatically terminated due to the expiration of the Term or the provisions of Subsection 8.4. above, the City shall cause this Agreement, an amendment hereto and any other termination thereof to be recorded with the County Recorder within ten (10) days of the Effective Date or the date of such amendment or termination becoming effective. Any amendment or termination of the Agreement to be recorded that affects less than all the Property shall describe the portion thereof that is the subject of such amendment or termination.

**14.9 Time of Essence**

Time is of the essence in the performance of each and every covenant and obligation to be performed by the parties hereunder.

**14.10 Entire Agreement**

This Agreement, together with all exhibits hereto, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement is specifically intended by the parties to supersede all prior agreements, whether written or oral, for the Property which may exist between the City and Developer.

**IN WITNESS WHEREOF**, this Agreement has been executed by the parties hereto on the day and year first above written.

**CITY:**

**DEVELOPER:**

CITY OF ROCKLIN,  
A Municipal Corporation

Sunset Ranchos Investors, LLC

By: \_\_\_\_\_  
Diana L. Ruslin  
Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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Russell A. Hildebrand  
City Attorney

**ATTEST:**

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Barbara Ivanusich, City Clerk

## **EXHIBIT A**

### **Description of Property (Sec.1, 885)**

Lots 1 through 40 and A through L, inclusive as shown on that map entitled "Large Lot Subdivision Liberty Hill," filed \_\_\_\_\_, 2004, in Book \_\_\_\_ of Maps at Page \_\_\_\_\_, Placer County Records, situated in Sections 1, 2, & 3, Township 11 North, Range 6 East, M.D.M., City of Rocklin, County of Placer, California.

EXCEPTION THEREFROM, Lots 2, 7, 15A, 15B, 19A, 19B, 24A, 24B, 32, 33, 34, 35, 36A, 36B, 37, 38A, 38B, 39, & 40.

## **EXHIBIT A-1**

### **Description of After-Acquired Property**

## **EXHIBIT B**

### **Project Approvals**

Environmental Impact Report EIR-2000-02

Annexation AN-98-03

General Plan Amendment GPA-99-04

Prezone PZ-99-03

General Development Plan PDG-99-02

Design Guidelines DR-2002-06

Development Agreement (Sunset Ranchos) DA-2002-01 Ordinance No. 859

First Amendment to the Dev. Agmt. DA-2002-01A, Ordinance No. 885

Second Amendment to the Dev. Agmt. DA-2002-01B, Ordinance No. 897

Third Amendment to the Dev. Agmt. DA-2002-01C, Ordinance No. 944

Fourth Amendment to the Dev. Agmt. DA-2002-01D, Ordinance No. 971

Addendum to North West Rocklin Annexation EIR (Reso 2008-252)

General Plan Amendment, GPA-2004-04

General Plan Amendment, GPA-2006-07

General Development Plan Amendments, PDG-99-02A, PDG-99-02B, PDG-99-02C, PDG-99-02D, PDG-99-02E, PDG-99-02F

Large Lot Tentative Subdivision Map, SD-2003-02

Small Lot Map Phase I, SD-2003-04

Small Lot Map (NAPOTS1), SD-2005-04

Small Lot/Condo Map Unit 4 & 5, SD-2005-05

Large Lot Map Phase II, SD-2006-06

Small Lot Map Phase II, SD-2006-07

Whitney Ranch Phase II Large & Small Lot Map Modifications, SD-2006-06A, SD-2006-07A

Small Lot Map Unit 17, SD-2010-01

Small Lot Map Unit 46CDE, SD-2010-02

Small Lot Map Unit 45A, SD-2010-03

Whitney Ranch Unit 28, DR-2005-01

Whitney Ranch Phase I Wayfinding Sign Program, DR-2005-12

Whitney Ranch Clubhouse, DR-2005-16

Whitney Ranch Units 4 & 5, Dr-2005-17

Whitney Ranch Phase II, DR-2006-25

Whitney Ranch Apartments, DR-2008-10

Whitney Ranch Unit 17, DR-2010-02

Whitney Ranch Unit 46CDE, DR-2010-03

Whitney Ranch Unit 45A, DR-2010-04

Whitney Ranch Large Lot Tentative Map and Small Lot Tentative Map  
Substantial Compliance Approval (SD 2006-07 & SD 2006-06), approved July  
15, 2010.

Resolution 2013-35: Whitney Ranch Unit 22 Tentative Map Approval  
SD 2012-04

Ordinance 991, amending Northwest Rocklin General Development Plan to  
rezone Unit 22 and modify single-story restrictions. [PDG-99-02I](#) and [Z-2012-03](#)

Exhibit C

**On File with the City Clerk Document # 2004-0132773**

Recording Requested by  
and Return to:

City Clerk  
City of Rocklin  
3970 Rocklin Road  
Rocklin, CA 95677

GRANT OF OPEN SPACE AND  
CONSERVATION EASEMENT WITH COVENANTS  
NWRA OPEN SPACE AND TRAIL SYSTEM





ORDINANCE NO. 996

ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF ROCKLIN APPROVING THE 5<sup>TH</sup> AMENDMENT TO THE  
DEVELOPMENT AGREEMENT FOR WHITNEY RANCH  
BY AND BETWEEN THE CITY OF ROCKLIN  
AND SUNSET RANCHOS INVESTORS, LLC,  
( Sunset Ranchos Planning Area, Liberty Hill, Whitney Ranch / DA-2001-1D)

The City Council of the City of Rocklin does ordain as follows:

Section 1. The City Council of the City of Rocklin finds and determines that:

A. City and Sunset Ranchos Investors, LLC entered into a Development Agreement By And Between The City Of Rocklin And Sunset Ranchos Investors, LLC, Relative To The Development Known As The Sunset Ranchos Planning Area Of The Northwest Rocklin Annexation Area, on July 23, 2002, which was approved by City Council Ordinance No. 859. That Development Agreement has since been amended three times:

First Amendment by City Ordinance 885 approved on April 4, 2004;  
Second Amendment by City Ordinance 897 approved on May 10, 2005; and  
Third Amendment by City Ordinance 944 approved on January 13, 2009.  
Fourth Amendment by City Ordinance 971 approving the Amended and Restated Development Agreement for Whitney Ranch on January 11, 2011.

The original development agreement approved by Ord. 859, and the subsequent amendments to that original agreement noted above, are collectively the current approved "Development Agreement". The operative date of the Development Agreement is August 22, 2002. The term of the Development Agreement was most recently amended by Ord. 944, and is 20 years from the operative date, therefore the Development Agreement expires at midnight, August 22, 2022.

B. The original applicant for development of the Sunset Ranchos Planning Area project was Grupe Development, who then sold the project to Sunset Ranchos Investors, LLC, a Delaware Limited Liability Company. The Parties to the Development Agreement are the City of Rocklin and Sunset Ranchos Investors, LLC, referred to hereinafter as SRI.

C. The master planned community in the Northwest Rocklin Annexation Area initially called the Sunset Ranchos Planning Area project was later renamed Liberty Hill. The large lot subdivision map for the project is recorded as the Liberty Hill Large Lot Subdivision Map SD-2003-02. Prior to initiating home building within the project, SRI renamed the project Whitney Ranch, and all City planning documents, agreements, and entitlements have used the name Whitney Ranch since 2004.

D. The Parties have determined that it is reasonable and appropriate to make certain additional changes to the Development Agreement, and further agree that the Development Agreement for Whitney Ranch shall be revised for the following reasons:

1. It is in the public interest to clarify the Parties to the Development Agreement and the name of the project, and the significant number of development activities which have been completed as required by the Development Agreement.
2. Since the Development Agreement is a dynamic document with a 20 year life span, it is appropriate and reasonable that continuing amendments are made to the Development Agreement, however as that process has evolved, the Parties are now initiating amendments to the amendments within the Development Agreement, creating a document that is increasingly difficult to track and understand.
3. Due to the economic downturn, the pattern and rate of growth in Whitney Ranch has dramatically slowed in comparison to the rate of construction activity contemplated by the Development Agreement and the Northwest Rocklin Annexation Area Environmental Impact Report, which analyzed the environmental impacts of the planned development of the Northwest Rocklin Annexation Area, which includes the Sunset Ranchos Planning area.
4. Because of the dramatic change in the economy and the resulting slow down of the project build out, the timing of many of the remaining obligations under the Development Agreement are premature creating fiscal challenges for both Parties. Therefore, the timing of payments due from the SRI and time frames for construction of public improvements should be modified to reflect a realistic appraisal of the demand for infrastructure and community amenities, and the ability of the Parties to finance the infrastructure and community amenities contemplated within the Development Agreement.

E. The improvements and activities to be carried out as required by the 5th Amendment to the Development Agreement for Whitney Ranch have been analyzed as required by the California Environmental Quality Act (CEQA). Pursuant to Section 15162 of the CEQA Guidelines the City Council finds that since no new effects will occur and no new mitigation measures will be required to implement the 5th Amendment to the Development Agreement for Whitney Ranch, the 5th Amendment to the Development Agreement for Whitney Ranch is within the scope of the North West Rocklin Annexation EIR, approved and certified by City Council Resolution 2002-230, which includes the addendum approved by City Council Resolution 2008-252. The City Council further finds that the EIR adequately describes the planned development activities for purposes of CEQA and no further environmental review is required.

F. The 5th Amendment to the Development Agreement for Whitney Ranch is consistent with and implements the policies of the City of Rocklin's General Plan, including the Housing Element;

G. The 5th Amendment to the Development Agreement for Whitney Ranch is compatible with the land uses and development regulations prescribed by the development zoning (General Development Plan PDG-99-02, as amended over time) for the site;

H. The 5th Amendment to the Development Agreement for Whitney Ranch will not be detrimental to the health, safety, and welfare of persons residing in the immediate area nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of residents of the city as a whole;

I. The 5th Amendment to the Development Agreement for Whitney Ranch will not adversely affect the orderly development of property or the preservation of property, on or off the project site;

J. The 5th Amendment to the Development Agreement for Whitney Ranch is consistent with the provisions of Government Code Sections 65864 through 65869.5.

Section 2. The City Council of the City of Rocklin hereby approves the 5th Amendment to the Development Agreement for Whitney Ranch, attached hereto and incorporated by reference herein as Exhibit 1.

Section 3. The City Council of the City of Rocklin hereby directs the Mayor to sign the 5th Amendment to the Development Agreement for Whitney Ranch between the City of Rocklin and Sunset Ranchos Investors, LLC, on behalf of the City of Rocklin and directs the City Clerk to record said document with the Placer County Recorder.

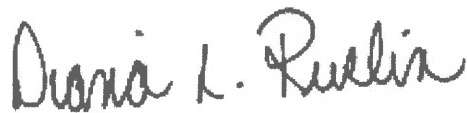
Section 4. Within fifteen days of passage of this ordinance, the City Clerk shall cause the full text of the ordinance, with the names of those City Council members voting for and against the ordinance, to be published in the Placer Herald. In lieu of publishing the full text of the ordinance, the City Clerk, if so directed by the City Attorney and within fifteen days, shall cause a summary of the ordinance, prepared by the City Attorney and with the names of the City Council members voting for and against the ordinance, to be published in the Placer Herald, and shall post in the office of the City Clerk a certified copy of the City Council members voting for and against the ordinance. The publication of a summary of the ordinance in lieu of the full text of the ordinance is authorized only where the requirements of Government Code section 36993 (c) (1) are met.

INTRODUCED at a regular meeting of the City Council of the City of Rocklin held on May 28, 2013, by the following vote:

AYES:	Councilmembers:	Yuill, Magnuson, Butler, Janda, Ruslin
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None
ABSTAIN:	Councilmembers:	None

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Rocklin held on June 11, 2013, by the following vote:

AYES:	Councilmembers:	Yuill, Butler, Janda, Magnuson, Ruslin
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None
ABSTAIN:	Councilmembers:	None



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Diana L. Ruslin, Mayor

ATTEST:



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Barbara Ivanusich, City Clerk

First Reading:	5/28/13
Second Reading:	6/11/13
Effective Date:	7/11/13



PLACER, County Recorder

JIM MCCAULEY

DOC- 2013-0069965-00

Recording Requested by  
and Return to:

City Clerk  
City of Rocklin  
3970 Rocklin Road  
Rocklin, CA 95677

FRIDAY, JUL 12, 2013 15:29:24  
MIC \$0.00 | AUT \$0.00 | SBS \$0.00  
ERD \$0.00 | RED \$0.00 | \* \$0.00  
ADD \$0.00

Ttl Pd \$0.00 Rcpt # 02293707  
clkfpmlfj1/JL/1-47

*No fee per GC 27383*

5<sup>th</sup> AMENDMENT TO THE DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF ROCKLIN AND  
SUNSET RANCHOS INVESTORS, LLC. FOR WHITNEY RANCH

**5TH AMENDMENT TO THE DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF ROCKLIN AND  
SUNSET RANCHOS INVESTORS, LLC. FOR WHITNEY RANCH**

This 5<sup>th</sup> Amendment to the Development Agreement for Whitney Ranch (the "**Agreement**"), dated for references purposes only, May 28, 2013, is entered into by and between Sunset Ranchos Investors, LLC, a Delaware Limited Liability Company ("Developer"), and the City of Rocklin, a Municipal Corporation of the State of California ("City"), pursuant to the authority of Government Code Section 65865, et seq.

**RECITALS**

A To strengthen the public planning process, encourage private participation in comprehensive long-range planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code §65864, et seq., which authorizes the City to enter into an agreement with any person or business entity having a legal or equitable interest in real property within the City, regarding the development of such property and establishing certain development rights therein.

B. City and Sunset Ranchos Investors, LLC entered into the Development Agreement By And Between The City Of Rocklin And Sunset Ranchos Investors, LLC, Relative To The Development Known As The Sunset Ranchos Planning Area Of The Northwest Rocklin Annexation Area, on July 23, 2002, which was approved by City Council Ordinance No. 859. That Development Agreement has since been amended four prior times:

First Amendment by City Ordinance 885 approved on April 4, 2004;  
Second Amendment by City Ordinance 897 approved on May 10, 2005; and  
Third Amendment by City Ordinance 944 approved on January 13, 2009; and  
Fourth Amendment Amending and Restating the Development Agreement for Whitney Ranch by City Ordinance 971 approved on January 11, 2011.

The original development agreement approved by Ord. 859, and the subsequent amendments to that original agreement noted above, are collectively referred to in this Agreement as the "**Development Agreement**". The effective date and operative date of the Development Agreement was August 22, 2002. The term of the Development Agreement was most recently amended by Ord. 944, and is 20 years from the operative date, therefore the Development Agreement as restated and amended in this Agreement expires at midnight, August 22, 2022.

C. The Parties have determined that it is reasonable and appropriate to make certain additional changes to the Development Agreement, and further agree that the Development Agreement shall be revised and superseded by an 5th Amendment to the Development Agreement for Whitney Ranch for the following reasons:

C.1 It is in the public interest to clarify the Parties to the Development Agreement and the name of the project, and the significant number of development activities which have been completed as required by the Development Agreement.

C.2 Since the Development Agreement is a dynamic document with a 20 year life span, it is appropriate and reasonable that continuing amendments are made to the Development Agreement.

C.3 Due to the economic downturn, the pattern and rate of growth in Whitney Ranch has dramatically slowed in comparison to the rate of construction activity contemplated by the Development Agreement and the Northwest Rocklin Annexation Area Environmental Impact Report, which analyzed the environmental impacts of the planned development of the Northwest Rocklin Annexation Area, which includes the Sunset Ranchos Planning area.

C.4 Because of the dramatic change in the economy and the resulting slow down of the project build out, the timing of many of the remaining obligations under the Development Agreement are premature creating fiscal challenges for both Parties. Therefore, the timing of payments due from the SRI and time frames for construction of public improvements should be modified to reflect a realistic appraisal of the demand for infrastructure and community amenities, and the ability of the Parties to finance the infrastructure and community amenities contemplated within the Development Agreement.

D. City has adopted policies, ordinances, procedures and requirements regarding its consideration of development agreements. This Agreement has been processed, considered and executed in accordance with those City policies, ordinances, procedures and requirements.

E. Developer has a legal or equitable interest in those certain parcels of land consisting of approximately 1,092 acres situated in the City of Rocklin and in unincorporated Placer County, as more particularly described in Exhibit "A," attached hereto and by this reference incorporated herein ("Property"). The nature of this ownership or equitable interest is such that Developer has or will have control of the use of the Property as contemplated by this Agreement. The Property comprises a portion of the Sunset Ranchos Planning Area of the Northwest Rocklin Annexation Area, as described in the Project Approvals.

F. Developer has previously received approval of the entitlements on the Property from City as listed on Exhibit B ("Project Approvals") to this Agreement. The Project Approvals establish, among other things, single-family residential land uses; multi-family residential land uses; commercial uses; business professional uses; three elementary schools; one high school; public parks; and open space (the "Project"). Developer acknowledges that the Project Approvals do not grant the right to develop a specific number of residential units or specific square footage of non-residential projects. Development of the Project will require the review and approval of subsequent discretionary entitlements, including tentative maps and conditional use permits, which review will determine the number of residential lots which ultimately may be developed. The maximum densities established by the Project Approvals denote what the supporting infrastructure and available public utilities and services can accommodate.

G. Development of the Project in accordance with the Project Approvals and this Agreement will provide for the orderly development of the Property consistent with the goals, policies and other provisions of the Rocklin General Plan.



H. City has determined that the development of the Project as provided in the Project Approvals and this Agreement is beneficial to the City, because the Project will provide for the dedication and improvement of land for parks, open space, bike and pedestrian trails; commercial and mixed use development areas, a diversity and balance of housing types, and will otherwise achieve the goals and objectives contained in the Rocklin General Plan.

I. City acknowledges that development of the Project is a large-scale undertaking, involving major investments by Developer, with development occurring in phases over several years. Developer is unwilling to incur the required investment in development and construction of the Project without assurance from the City of the continuity of the Project Approvals and the Developer's vested right to develop the Project as contemplated by, and in accordance with, the Project Approvals. City, in turn, cannot be assured of realizing the benefits of the Project without granting to Developer assurance of continuity of the Project Approvals and the Developer's vested right to develop.

K. In adopting the ordinance approving this Agreement, the City Council of City specifically finds as follows:

K.1 The Agreement and the Project Approvals are consistent with the objectives, policies, general land uses, and programs in the Rocklin General Plan;

K.2 The Agreement and the Project Approvals are consistent with the City's sphere of influence;

K.3 The Agreement and the Project Approvals are compatible with the uses authorized within, and the regulations prescribed for, the land use districts in which the Project is located;

K.4 The Agreement and the Project Approvals are in conformity with the public convenience, general welfare and good land use practices;

K.5 The Agreement and the Project Approvals will not be detrimental to the health, safety and general welfare of persons residing in the general neighborhood of the Project or the City as a whole;

K.6 The Agreement and the Project Approvals will not adversely affect the orderly development of Property or the preservation of property values;

K.7 The Agreement is consistent with and is subject to the provisions of Government Code Sections 65864 through 65869.5.

K.8 Any tentative map prepared for a subdivision relating to this Agreement which meets the definition of a subdivision as defined in Cal. Govt. Code Sec. 66473.7(a)(1) shall comply with all of the applicable provisions of Cal. Govt. Code Sec. 66473.7.

J. City and Developer recognize that the terms and conditions of this Agreement are to bind, and be legally enforceable by, each of them, and/or their respective successors in interest.

## **AGREEMENT**

### **1 DEFINITIONS**

Unless the context requires a different meaning or otherwise defined elsewhere in this Agreement, the terms and phrases used in this Agreement shall have the following meanings:

**1.1** "Agreement" shall mean this 5<sup>th</sup> amendment to the Development Agreement titled the 5th Amendment to the Development Agreement for Whitney Ranch.

**1.2** "City Manager" shall mean the City Manager of the City of Rocklin.

**1.3** "County" shall mean the County of Placer.

**1.4** "Council" shall mean the City Council of the City of Rocklin.

**1.5** "Conditions of Approval" shall mean the conditions attached to the Project Approvals and shall be collectively included in any reference to the Project Approvals.

**1.6** "Development Agreement" means the initial development agreement approved by City Council Ordinance No. 859, on July 23, 2002, titled Development Agreement By And Between The City Of Rocklin And Sunset Ranchos Investors, LLC, Relative To The Development Known As The Sunset Ranchos Planning Area Of The Northwest Rocklin Annexation Area, inclusive of the following four prior amendments:

First Amendment by City Ordinance 885 approved on April 4, 2004;  
Second Amendment by City Ordinance 897 approved on May 10, 2005; and  
Third Amendment by City Ordinance 944 approved on January 13, 2009; and  
Fourth Amendment Amending and Restating the Development Agreement for Whitney Ranch by City Ordinance 971 approved on January 11, 2011.

The original development agreement approved by Ord. 859, and the subsequent amendments to that original agreement noted above, are collectively referred to in this Agreement as the approved "Development Agreement"

**1.7** "Developer Improvements" shall mean those improvements required of Developer under this Agreement, the Project Approvals and any Subsequent Approvals.

**1.8** "Effective Date" shall mean the date the City ordinance authorizing execution of this Agreement is effective, which date was August 22, 2002 (Ord. 859)

**1.9** "EIR" shall mean that certain Final Environmental Impact Report for the Project dated March, 2002, and certified as adequate and complete by the City on May 28,

2002, by Resolution 2002-230, including the Addendum to the Final Environmental Impact Report approved by City Council Resolution 2008-252 on September 23, 2008.

- 1.10** "Financing Plan" means the North West Rocklin Public Facilities Financing and Phasing Plan, prepared for Sunset Ranchos Investors, LLC, prepared by Economic and Planning Systems, Inc. and Terrance E. Lowell and Associates, Inc., dated January 28, 2004, as adopted as part of the Northwest Rocklin Annexation Area General Development Plan as amended.
- 1.11** "General Development Plan" shall mean the Northwest Rocklin Area General Plan, as amended." <sup>1</sup>
- 1.12** "General Plan" shall mean the General Plan of the City of Rocklin.
- 1.13** "Landowner" means the owner of a parcel which is the subject of a Subsequent Approval (see 5.4.1)
- 1.14** "Parcel K" shall mean the Parcel K Plan Area as described in the General Development Plan.
- 1.15** "Parkway A" means Whitney Ranch Parkway.
- 1.16** "Parkway A/SR65 Interchange" is also referred to as the Whitney Interchange and at times the Whitney Ranch Interchange. <sup>2</sup>
- 1.17** "Phasing Plan" means the North West Rocklin Public Facilities Financing and Phasing Plan, prepared for Sunset Ranchos Investors, LLC, prepared by Economic and Planning Systems, Inc. and Terrance E. Lowell and Associates, Inc., dated January 28, 2004, as adopted as part of the Northwest Rocklin Annexation Area General Development Plan, as amended.
- 1.18** "Project Approvals" shall mean as defined in Recital No. 6, above.
- 1.19** "Street B" means the north/south road connecting Whitney Ranch Parkway to Sunset Boulevard through the Herman Miller site, referred to as Street B in the General Development Plan and now called University Avenue. The names Street B and University Avenue are synonymous.
- 1.20** "Subsequent Approvals" shall mean all approvals by City, whether discretionary or ministerial, requested or agreed to by Developer, required under the Project Approvals, or this Agreement, or required by City laws, rules, regulations, or official policies, which are necessary or desirable for development of the Project and which occur on or after the Effective Date. Subsequent Approvals may include, but are not limited to, tentative and final subdivision maps, improvement agreements and other agreements relating to subdivision maps, conditional use permits, grading permits, improvement plan approvals, encroachment permits, building permits, zoning approvals, boundary adjustments, certificates of

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<sup>1</sup> Amended by Sec. 4 of Ord. 885

<sup>2</sup> Amended by Sec.5 of Ord. 885

occupancy, certificates of compliance, modifications to the current zoning and modifications to the Project Approvals.

**1.21** “Tentative Map” shall mean any tentative subdivision or parcel map or vesting tentative subdivision or parcel map applied for and/or approved for the Project.

**1.22** “Transferee” shall mean any person or entity to whom all or any portion of the Project is transferred subject to the provisions of Section 10.

**1.23** “Whitney interchange” means the freeway interchange to be constructed at the extension of Whitney Ranch Parkway and State Route 65. The Whitney interchange has been referred to in various documents as the Parkway A/SR 65 interchange, the Whitney interchange, and the Whitney Ranch interchange and the names are synonymous.

## **2 GENERAL PROVISIONS**

### **2.1 Term**

**2.1.1** The term of this Agreement shall be twenty (20) years. The term shall commence on the Effective Date and shall extend up to and including the twentieth (20<sup>th</sup>) anniversary of the Effective Date. Upon notice of either party to the other, no later than 180 days prior to the twentieth (20<sup>th</sup>) anniversary of the Effective Date, the parties shall meet to negotiate in good faith an extension of the term for up to an additional five years, if the Parties find the extension to be of benefit to Developer and the public.<sup>3</sup>

**2.1.2** If any litigation affecting the Project is filed challenging the annexation of the Property, Project Approvals, any Subsequent Approvals, or this Agreement, including, but not limited to, any environmental determinations related to any of the foregoing, or challenging the validity and binding nature of this Agreement, the term of this Agreement shall be extended for the period of time such litigation is pending, and upon the conclusion of such litigation by dismissal or entry of final judgment, Developer and City shall indicate the period of such extension by amendment to this Agreement and record a notice of such effect.

## **3 DEVELOPMENT OF THE PROJECT SITE**

**3.1 Permitted Uses** The permitted uses of the Property, the maximum density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, and location of public improvements, and other terms and conditions of development applicable to the Property shall be those set forth in the Project Approvals and this Agreement.

### **3.2 Vested Rights**

#### **3.2.1 Project Approvals**

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<sup>3</sup> Amended by Sec.1 of Ord. 944

Subject to the provisions and conditions of this Agreement, City agrees that City is granting, and grants herewith, a fully vested entitlement and right to develop the Property in accordance with the terms and conditions of this Agreement and the Project Approvals. City acknowledges that the Project Approvals (as set forth in Exhibit "B.") include the following land uses and approximate gross acreages for the Property:

Low and Medium Density Residential	726 acres;
Medium High Density Residential	27 acres;
High Density Residential	58 acres;
RC (Retail Commercial)	37 acres;
Business Professional	9 acres;
Park	64 acres;
R-C Recreation/Conservation	200 acres;
Schools	92 acres;

Such uses shall be developed in accordance with the Project Approvals as such Project Approvals provide on the Effective Date of this Agreement. Developer's vested right to proceed with the development of the Property shall be subject to Subsequent Approvals, provided that any conditions, terms, restrictions and requirements for such Subsequent Approvals shall not prevent development of the Property for the uses, or reduce the density and intensity of development set forth in the Project Approvals, so long as Developer is not in default under this Agreement.

### **3.2.2 Moratoria, Quotas, Restrictions or Other Growth Limitations**

Developer and City intend that, except as otherwise provided in this Agreement, this Agreement shall vest the Project Approvals against any and all later-adopted resolutions, ordinances, and initiatives, whether adopted by the City Council or voter initiative, that directly or indirectly limit the rate, timing, or sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses as set forth in the Project Approvals. Developer shall be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted on a uniformly applied, City-wide or area-wide basis and which directly concerns a public health or safety issue, in which case City shall treat Developer in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by that public health or safety issue. By way of example only an ordinance which precluded the issuance of a building permit because the district providing sewer service had inadequate sewage treatment capacity to meet the demand therefor (either City-wide or in a designated sub-area of the City) would directly concern a public health issue under the terms of this paragraph and would support a denial of a building permit within the Property, so long as City were also

denying City-wide or area-wide all other requests for building permits which require sewage treatment capacity; however, an attempt to limit the issuance of building permits because of a general increase in traffic congestion levels in the City would not directly concern a public health or safety issue under the terms of this paragraph.

### **3.3 Term of Subdivision Map**

The term of any tentative parcel map or tentative subdivision map relating to the Project, including any subsequently approved large-lot or small-lot tentative subdivision map or other parcel map or subdivision map approved by the City as part of the Subsequent Approvals, shall be the longer of the term therefor under the Subdivision Map Act or the remaining Term of this Agreement.

### **3.4 Rules, Regulations and Official Policies**

#### **3.4.1 Inconsistency**

To the extent any future rules, ordinances, regulations or policies applicable to development of the Property are inconsistent with the permitted uses, density or intensity of use, rate or timing of construction, maximum building height and size, or provisions for reservation and dedication of land under the Project Approvals and as provided in this Agreement, the terms of the Project Approvals and this Agreement shall prevail, unless the parties mutually agree to alter this Agreement. To the extent any future rules, ordinances, regulations or policies applicable to development of the Property are not inconsistent with the permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or provisions for reservation or dedication of land under the Project Approvals or under any other terms of this Agreement, such rules, ordinances, fees, regulations or policies shall be applicable. Taxes, fees, and assessments are addressed in and governed by section 3.5. of this Agreement.

#### **3.4.2 Application of Changes**

This section shall not preclude the application to development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or federal laws or regulations. To the extent that such changes in City laws, regulations, plans or policies prevent, delay or preclude compliance with one or more provisions of this Agreement, City and Developer shall take such action as may be required pursuant to Section 4.3. of this Agreement to comply therewith.

#### **3.4.3 Authority of City**

This section shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit discretion of City or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by City or any of its officers or officials, provided that subsequent discretionary actions shall not unreasonably prevent or delay development of the Property for the uses and to the density and intensity of development as provided by the Project Approvals and this Agreement, in effect as of the Effective Date of this Agreement.

### **3.5 City Fees, Taxes and Assessment**

#### **3.5.1 Processing Fees and Charges**

Developer shall pay those processing, inspection, and plan checking fees and charges required by City under then current regulations for processing applications and requests for permits, approvals, and other actions; monitoring compliance with any permits issued, approvals granted, or the performance of any conditions with respect thereto; or any performance required of Developer hereunder.

#### **3.5.2 Taxes, Fees and Assessments**

Development of the Property and the Project under this Agreement shall be subject to all existing and future City fees, taxes and assessments; provided that Developer's obligation to pay future fees is limited to those fees adopted on a City-wide basis or that apply uniformly to all properties within the City of Rocklin that are zoned in the same classification as the Property as set forth in the Project Approvals.

## **4 PROCESSING OF PERMITS AND APPROVALS**

### **4.1 Subsequent Approvals; Application of Development Agreement**

City shall accept for processing, review, and action any and all applications submitted by Developer for Subsequent Approvals, necessary or convenient for the exercise of Developer's rights under the Project Approvals for the use and development of the Property. Upon approval, a Subsequent Approval shall be deemed a Project Approval under this Agreement.

### **4.2 Application of Development Agreement to After – Acquired Real Property**

As of the effective date of this Agreement, Developer intends to acquire legal or equitable interest in certain parcels of land included within the General Development Plan and so indicated in Exhibit A-1. Upon acquisition of legal or equitable interest in any such parcel by Developer, that parcel shall be deemed to be a portion of the Property subject to the Agreement.

### **4.3 City Cooperation**

The City agrees to cooperate with Developer in securing all permits which may be required by City. In the event state or federal laws or regulations are enacted after this Agreement has been executed, or the action of any governmental jurisdiction prevents, delays, or precludes compliance with one or more provisions of this Agreement, or requires changes in plans, maps, or permits approved by City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such State and federal laws or regulations or the regulations of other governmental jurisdictions. Each party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

### **4.4 Design Review Not Required**

Notwithstanding contrary language in either the City of Rocklin Zoning Code, or the approved Northwest Rocklin Annexation Area General Development Plan, all single family residential units consistent with the established Whitney Ranch community design guidelines shall be exempt from the requirements for further design review by the City Planning Commission. Should any conflict arise between the City Zoning Code, or the approved Northwest Rocklin Annexation Area General Development Plan the Design Review exemption stated in this Agreement shall prevail.

## **5 IMPLEMENTATION**

### **5.1 Timing of Projection Construction**

Except as provided in this Agreement or the Project Approvals, Developer shall not be required to develop any portion of the Project or to develop the Project in accordance with any time schedule except the Developer's schedule.

### **5.2 Other Government Permits**

Developer shall be responsible for applying for and obtaining approvals required by other governmental agencies having jurisdiction over, or providing services to the Project. To the extent possible, City shall reasonably cooperate with Developer in obtaining all such approvals in as timely a manner as possible.

### **5.3 Use of Eminent Domain**

City acknowledges that certain rights-of-way and other lands designated for public facilities, which are needed to accomplish development of the Project pursuant to the Project Approvals, are not under ownership of Developer. Where Developer is unable to secure said rights-of-way or lands after good faith effort, City agrees it shall use its best efforts to assist Developer in securing said rights-of-way and lands.

With respect to the SR 65 interchanges and the core components of the vehicular circulation system shown in Figure 7 and 8 of Exhibit C of the General Development Plan, if City and Developer fail to secure said rights of way or lands, while City cannot commit to exercise of its eminent domain authority in a particular case for constitutional and other reasons, City does agree that where appropriate, subject to all required procedures that require exercise of discretion by the City Council, City will cooperate to extent allowable by law through the use of its eminent domain authority.

In the event that the City does determine that it is appropriate to exercise its eminent domain authority with regard to a particular parcel of property, Developer agrees to enter into a funding agreement to pay to City the estimated cost (including, without limitation, attorney fees for in-house and outside counsel, together with expert witness fees) of conducting all required administrative and judicial procedures, plus the appraised value of the property to be acquired. The agreement shall specify that the funding is required prior to City instituting the proceedings. Where only part of the funding is required prior to instituting the proceedings, the balance shall be secured through security acceptable to the City Manager and City Attorney in his or her discretion.

The Parties further understand and agree that the Financing Plan may, for economic or other reasons, be amended in ways that could involve significant increases in



Developer's financial commitments. City agrees to meet and confer with Developer prior to any such amendment, and to endeavor to reach agreement on the terms and conditions associated therewith. Developer agrees that in the event that agreement, in full or in part, cannot be reached between Developer and City, such amendments are within the absolute discretion of the City Council, and that the vesting provisions of the Agreement are inapplicable to Developer's covenant to participate in the Financing Plan as it exists at the time for required performance by Developer of any specific obligation (including but not limited to payment of any fee).<sup>4</sup>

## **5.4 Plans**

### **5.4.1 Financing Plan**

The Development Agreement required Developer to prepare a Financing Plan. The North West Rocklin Public Facilities Financing and Phasing Plan, prepared for Sunset Ranchos Investors, LLC, prepared by Economic and Planning Systems, Inc. and Terrance E. Lowell and Associates, Inc., dated January 28, 2004, as adopted as part of the Northwest Rocklin Annexation Area General Development Plan, complies with and satisfies Developer's obligation to prepare a financing plan as detailed under the title "Implementation," section D.1. and Developer's obligation to prepare a phasing plan as detailed under the title "Implementation," section D.2 of the Development Agreement.<sup>5</sup>

The vesting provisions of this Agreement shall not apply to the Financing Plan. Specifically, Developer shall participate in the Financing Plan as it exists as of the date that Developer is required to perform each specific obligation specified in the Financing Plan (including, without limitation, payment of fees), as made applicable to the development of the Property. By way of example, if building permits are scheduled to be issued for a portion of the Property on January 1, 2005, the development and other fees that Developer must pay as a condition of issuance of those building permits are the adopted fees that are in effect on January 1, 2005.

If fee increases are adopted on February 1, 2005, and additional building permits are scheduled to be issued on July 1, 2005, the development and other fees that Developer must pay as a condition of issuance of the additional building permits are the adopted increased fees. Developer shall faithfully and timely comply with each and every provision of the Financing Plan, including but not limited to those provisions requiring establishment of infrastructure and services financing mechanisms. For purposes of this Agreement, "financing mechanisms" shall include but not be limited to assessments, special taxes, development fees, and other specific or general fees, whether city-wide or not, and exactions.

Approval of any Subsequent Approval may be made subject to the Landowner's participation in and compliance with the Financing Plan. Failure to so participate shall be an event of default to which the default provisions of this Agreement and those specified in City's adopted policies, ordinances, procedures, and requirements relating to approval of development agreements shall apply. For purposes of this Agreement

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<sup>4</sup> Amended by Sec.6 by Ord. 885

<sup>5</sup> Development Agreement is defined in subsection 1.5.

"participate" and "participation" shall mean payment of all monies required by the Financing Plan, and performance of all obligations imposed thereby.<sup>6</sup>

The Financing Plan shall provide a reliable funding mechanism for each improvement addressed to assure that the improvement is constructed and in service as required by the Phasing Plan. The Financing Plan shall address and shall conform to the General Development Plan, all conditions of approval, and all adopted mitigation measures, including, but not limited to, the following:

**5.4.1.1 Mello-Roos Community Facilities District:**

The creation and implementation of one or more financing districts under the authority of the Mello-Roos Community Facilities District law or comparable statutory scheme (Govt. Code section 53311, et seq.) (the "CFD"). The boundaries of the CFD shall include all or a portion of the territory within the boundaries of the General Development Plan, excluding Parcel K. The CFD shall be authorized to issue bonds and levy and collect special taxes for the construction, acquisition, and maintenance of the broadest range of public facilities as authorized under the law.

The total of the maximum authorized special tax for all CFD activities plus all other annual taxes, special taxes, assessments, and other parity liens, per parcel, shall be established in the Financing Plan. The Financing Plan shall demonstrate that the CFD will comply with City's Policies and Procedures for Land Secured Financing as adopted by City Council Resolution No. 99-192 or as may be amended.

At the time of formation of the CFD, Developer and City shall enter into a shortfall agreement, in form and substance acceptable to City, whereby Developer shall covenant to pay for the CFD improvements to the extent that the CFD special taxes and/or bonds do not provide sufficient funding for the completion of the improvements. At the time of entering into this Agreement, the Parties intend the District to contribute to the financing of, among other things, the core components of the vehicular circulation system, as described in the Project Approvals; the Sunset Boulevard/ SR 65 and Whitney/SR 65 interchanges and the north/south road connecting Whitney Ranch Parkway to Sunset Boulevard through the Herman Miller site, referred to as Street B in the General Development Plan; major water and sewer improvements; major drainage facilities; parkway lighting and landscaping; neighborhood park maintenance; community park construction and maintenance; and fire service. In addition, CFD revenues may be made available to reimburse Developer for expenditures made by it to construct or fund public improvements and facilities to serve the Project to the extent funds are available, which determination shall be in the sole discretion of the City.

**5.4.1.2 Northwest Rocklin Area Community Park Fee:**

- (i) A cost analysis for the full improvement of the proposed community park in accordance with the Community Park Master Plan (see 5.4.3).
- (ii) A fee analysis to fully cover the cost of full development of the proposed community park (the "NWRAA Community Park Fee"). The fee analysis shall include an analysis of the territory to be subject to the fee, the relationship

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<sup>6</sup> Amended by Sec.7 of Ord. 885

between the incidence of the fee and the benefit of the improvements to be built in satisfaction of Government Code 66000, et seq., and a plan for adoption and implementation of the fee. The NWRAA Community Park Fee shall not apply to Parcel K. The study shall also address the required changes to the City's Community Park Fee under RMC Chapter 3, Article VI and its relationship, in terms of fee credits, to the NWRAA Community Park Fee. The study shall commence on or before May 20, 2004, and shall be completed within 6 months of the effective date of this Amendment, but in no event later than the recordation of the first small lot subdivision map.<sup>7</sup>

#### **5.4.1.3 Interchanges and University Avenue (Street B)**

A plan for financing the Sunset Boulevard/SR 65 and Whitney/SR 65 interchanges, and University Ave. The Whitney/SR 65 interchange is not covered at this time by the Highway 65 JPA, but will be financed through a combination of Developer contributions and funding provided by the City. In this regard, Developer agrees that it will contribute its share of the cost of the Whitney interchange as determined in accordance with the provisions of the Financing Plan, to be applied by City to the cost of the Whitney interchange ("Developer Contribution").

As of the time of execution of this Agreement, the Developer Contribution is estimated to be the sum of \$4,643.800.00. (Whitney Interchange Fee)

The City Manager or designee shall provide written notice to Developer that the Developer Contribution is due and payable. Within thirty (30) days of mailing of the notice, Developer shall pay the Developer Contribution in full.

#### **5.4.1.4 Fire and Emergency Service**

The calculation, levy, and collection of a CFD special tax to pay the annual cost of operation and maintenance of fire protection and suppression services and emergency medical aid services within the Project, either through the existing Rocklin Community Facilities District No. 1, the new CFD, or the combination of both. The maximum annual special tax for fire service shall not exceed \$210 for single family detached residential structures, \$210 per unit for condominiums, \$315 for multifamily structures with up to four units, \$660 for multifamily structures with five units or more, \$825 for commercial (including business/professional) structures, and \$990 for light industrial structures. These amounts shall be subject to a four percent (4%) annual inflation adjustment. The annual special tax shall be levied on each lot or parcel as determined in the Financing Plan to insure sufficient operating revenues are generated as needed to provide fire and emergency service to the Project. Developer acknowledges that the annual special tax may be levied on undeveloped land.

#### **5.4.1.5 Reimbursement of Planning Costs**

A plan for reimbursement of Developer for a portion of their reasonable planning costs incurred in connection with the original Project approvals proportionate to the benefit received by other landowners within the North West Rocklin Area, excluding Parcel K, of those planning costs, such as the EIR and General Development Plan preparation costs. These excess planning costs shall not include Developer's proportionate share, or any

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<sup>7</sup> Amended by Sec.8 of Ord. 885

costs associated with project delays or changes initiated by Developer which were of no or minimal value to other landowners. The plan shall include a method of levying and collecting an EDU-based fee from the other benefited landowners at the time the benefited landowner obtains development approvals, as well as a method of paying the fees to Developer. The determination of what constitutes "reasonable" costs shall be in the exclusive determination of City.

#### **5.4.1.6 Reimbursement of Certain Roadway Construction Costs**

A plan for reimbursing Developer a portion of the cost borne directly by Developer of fully improving certain arterial roadways which are eligible for funding out of the City's Traffic Impact Fee (RMC Chapter 3.16 Article IV), and other public improvements which are oversized to benefit property owned by third persons. With respect to arterial roadways, reimbursement from the City shall be limited to the cost of reasonable asphalt paving only (as determined by the City Engineer) those lanes of traffic not needed for the development of the Project Area (that is, which are primarily of City-wide benefit).<sup>8</sup> Reimbursement may be through annual cash payments or Traffic Impact Fee credits to be specified in the Financing Plan.

#### **5.4.1.7 Waiver of claims relating to nexus issues.**

The Financing Plan establishes the need for certain development fees, and calls for the future establishment of other fees and charges, as well as monetary reimbursement requirements and other financing methodologies (collectively, for purposes of this Amendment, "Fees"). Developer understands and agrees that some or all of the Fees are not based upon a nexus analyses or other economic impact studies, either because the Parties have mutually agreed to forego those studies and analyses, or for other legal or practical reasons have determined that they are unduly burdensome or unnecessary. Developer, for itself and all of its heirs, successors, assigns, and Transferees, with full and complete knowledge and understanding of all legal requirements relating to the Fees, and having been fully advised by capable and competent legal counsel, hereby waives any claim of illegality or invalidity, partial or complete, or any other form of defect whatsoever, of or in any Fee included in the Financing Plan, whether adopted by the City Council or not. For purposes of this Amendment, "claim" shall mean and include, but not be limited to, monetary relief or damages, injunctive relief, or other form of legal or equitable remedy. Developer, for itself and all of its heirs, successors, assigns, and Transferees, releases City and its officers, employees, agents and contractors from, and agrees to fully and completely indemnify, defend and hold City and its officers, employees, agents, and contractors harmless from any such claim."

#### **5.4.1.8 City reimbursement obligations**

Under certain provisions of the Financing Plan City has committed to impose fees upon, and collect reimbursements from, later-developing property owners whose properties have received economic benefit from infrastructure improvements constructed by Developer or its Transferees. The Parties agree that City's responsibility in that regard is to use its best reasonable efforts to satisfy those commitments. In the event of a City clerical or other error or other failure of performance by City, or any other circumstance that interferes with City's ability to perform, the sole sources of funding for

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<sup>8</sup> Amended by Sec. 10 of Ord. 885

satisfaction of the City's commitments are the various applicable special funds and sources (including, without limitation, development fee funds) specified in the Financing Plan. Under no circumstances shall the City's General Fund be liable as a source of funding for satisfaction of the City's commitments. If the City's failure to perform in this regard is caused by the intentional or willful misconduct of a City employee, then to the extent permitted by law, City agrees that it will assign to Developer any and all of City's right, title and interest to recover from such employee any shortfalls in the Financing Plan which arose from such employee's intentional or willful misconduct.

#### **5.4.1.9 Sources of reimbursement**

Where Developer's actual eligible construction costs of a facility are funded through fee credits or cash reimbursements, whether from a fee program or otherwise, no reimbursement shall be made from other public funding mechanism(s) (including Mello-Roos bond funds) that may provide funding for the same facility. Where Developer utilizes funds from a Mello-Roos Community Facilities District to finance development fees that the Landowner must pay to a development fee program, Developer shall not receive fee credits or cash reimbursement from the fee program for the fees financed in that manner. In that case, Developer shall be deemed to have paid the required fees to the extent that payment is made from bond funds, and City shall provide Developer with written evidence or certification that the required fees have been paid to the extent that bond funds have been used for prepayment. Where Developer has been reimbursed for eligible construction costs of a facility from bond funds, Developer shall not be entitled to fee credits against fees that are otherwise required by the Financing Plan for purposes of funding those costs.

#### **5.4.1.10 Term of reimbursement and related agreements**

Under the provisions of the Agreement and the Financing Plan, the Parties are required to execute reimbursement and related agreements. Where the term of those agreements extends beyond the term of the Agreement, the Parties agree that the reimbursement and related agreements shall survive the termination of the Agreement, and that the term of those agreements shall apply.

#### **5.4.1.11 Funding shortfalls**

The Parties understand and agree that as development proceeds, infrastructure funding shortfalls may interfere with the appropriate progression of construction of infrastructure required to serve development projects, including but not limited to the Whitney Interchange. In the event of a funding shortfall: (i) there shall be no City General Fund obligation to provide funding to eliminate the shortfall in whole or in part, it being established City policy that development must pay its own way; (ii) the City Manager, subject to the "special circumstances" provisions of this Agreement, shall have the absolute discretion to order that development stop until a plan has been agreed upon for elimination of the shortfall, which plan is reliable, feasible, and includes provisions for adequate security, all in the City Manager's discretion; and (iii) the City Manager may require, in his or her discretion, a shortfall funding agreement that, *inter alia*, specifies security for funding commitments satisfactory to the City Manager and the City Attorney in their sole discretion. In the event that the shortfall occurs due to an actual or predicted decline in residential densities for the Property, Developer agrees that it will fund the resulting shortfall through a mechanism such as reallocating the infrastructure costs over

the remaining undeveloped units so that when build-out occurs the entire infrastructure cost is in fact paid for by the units actually built, or in some other equitable manner.

#### **5.4.1.12 Drainage improvements**

Where drainage improvements (including, but not limited to, detention and retention basins) are required for development of a parcel, funding for those improvements shall be assured as a condition of granting any Subsequent Approvals, through a drainage agreement or other form of agreement. Any such agreement shall include provisions for security, in a form and in an amount acceptable to the City Manager.

#### **5.4.1.13 Accelerated reimbursement**

The parties agree and understand that the Financing Plan contains provisions for accelerated reimbursement to Developer from the non-residential lands within the Financing Plan Area. The City Manager shall, subject to the special circumstances provisions of this Agreement, have the authority to determine in his or her sole and absolute discretion, whether the accelerated reimbursement requirements of the Financing Plan constitute an undue burden on the land that is required to provide advanced reimbursement, and whether and to what extent those acceleration requirements shall be modified. Prior to making his or her decision, the City Manager shall provide reasonable notice to Developer, and shall provide Developer an opportunity to meet and confer with the City Manager within a reasonable time. In the event that Developer exercises its rights under the special circumstances provisions of this Agreement, Developer shall have the right to address the City Council in order to express its position on the issue of the propriety of modification of the accelerated reimbursement provisions.<sup>9</sup>

### **5.4.2 Phasing Plan**

The Development Agreement required Developer to prepare a Phasing Plan prior to City Council approval of any Subsequent Approval. The North West Rocklin Public Facilities Financing and Phasing Plan, prepared for Sunset Ranchos Investors, LLC, prepared by Economic and Planning Systems, Inc. and Terrance E. Lowell and Associates, Inc., dated January 28, 2004, as adopted as part of the Northwest Rocklin Annexation Area General Development Plan, complies with and satisfies Developer's obligation to prepare a phasing plan as detailed under the title "Implementation," section D.2 of the Development Agreement. All obligations required of Developer under subparts 5.4.2.1 through 5.4.2.3 have been completed.

The Phasing Plan, as amended, shall address and shall conform to the General Development Plan, all conditions of approval, and all adopted mitigation measures including, but not limited to, the following:

#### **5.4.2.1 Community Park**

The Plan shall require Developer to make to City an irrevocable offer of dedication of the Community Park site with the first parcel or subdivision map for the Project, shall enter into an agreement to construct Phase I of the Community Park prior to issuance of the

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<sup>9</sup> Amended by Sec.11 of Ord. 885

building permit for the 1000<sup>th</sup> dwelling unit, and shall complete the construction within twelve months of final map approval. The City has received the irrevocable offer of dedication and the construction of Phase I of the Whitney Ranch Community Park has been completed.

#### **5.4.2.2 Interchanges and Vehicular Circulation System**

The plan shall identify the core components of the vehicular circulation system as described in the Project Approvals, the Sunset Boulevard/SR 65 and Whitney/SR 65 interchanges, and the north/south road connecting Whitney Ranch Parkway to Sunset Boulevard through the Herman Miller site, referred to as Street B in the General Development Plan, and shall specify the level of development that can occur, consistent with the General Plan, the General Development Plan, and the EIR, before each component is constructed. The plan shall ensure that development of the Project area is phased in a manner, and at a pace, that will not cause violations of the City's level of service standards as set forth in the General Plan. City and Developer shall revise the street cross section for the portion of Whitney Ranch Parkway beginning at the current terminus of constructed improvements, to the connection point at Park Drive, to show a phased approach to the construction of the ultimate street width. This phased approach shall initially provide for a single travel lane in each direction with a center landscaped median and separated bike and pedestrian trail on one side. Developer's obligation to construct shall be limited to one travel lane in each direction and required frontage improvements, consisting generally of curb, gutter, drainage, separated off street pedestrian bike path, and necessary sidewalks.

#### **5.4.2.3 Other Infrastructure and Public Facilities Improvements**

The plan shall identify all other major infrastructure and public facilities improvements needed to serve the Project and shall establish a construction phasing plan tied to Project development to insure that each is completed in a timely manner. These other major improvements include, but are not limited to, major water and sewer improvements, major drainage facilities, utility service improvements, parking lighting and landscaping, fire station construction, open space and trail system, and neighborhood parks. Developer shall assist City with preparation of a cost sharing plan for the final offsite sewer trunk line improvement. Such assistance may require the preparation of improvement plans and/or cost analysis, all of which shall be funded and prepared by Developer in a timely manner. City shall not withhold any approvals for the construction of Developer's remaining phases solely on the basis of the obligation to construct the final off-site sewer trunk line improvement. City shall use its best efforts to coordinate an agreement between the SPMUD, the City, and the affected landowners to share the costs of the final off-site sewer trunk line improvement, so that no single landowner is required to solely fund the cost of construction. In the event that no sewer agreement is reached by the parties and the Developer is required to fund the offsite sewer trunk line improvements, then the cost of those sewer improvements shall offset (reduce) the Whitney Ranch Interchange funding obligations as set forth in sections 15.16.1 and 15.16.2. In the event that the Developer has advanced all required interchange fees and no sewer agreement is reached by the parties then the City shall advance the funds necessary to allow the construction of the sewer trunk line improvements.

### **5.4.3 Park Master Plans**

Prior to City Council approval of the first final small lot subdivision map on the Property, the Developer shall prepare and obtain City approval of, Park Master Plans detailing the facilities and improvements to be constructed in each of the Neighborhood Parks, in the Community Park, and Open Space and Trail System.<sup>10</sup>

## **5.5 City of Rocklin Community Facilities District No. 10**

City agrees to form and implement the CFD to finance the infrastructure and public facility improvements to be constructed by Developer as detailed in the Financing Plan. The CFD shall be formed consistent with and adhere to the City's standards governing the use and formation of such districts, including Developer's payment of application fees. City and Developer shall cooperate in good faith with each other in the formation of the CFD and the ultimate issuance of bonds thereunder to fund the improvements consistent with the applicable substantive and procedural requirements. The District shall be in place by the dates specified in the Financing Plan.

## **5.6 Neighborhood Parks and Open Space and Trail System**

### **5.6.1 Neighborhood Parks**

Developer shall improve and dedicate to City, at Developer's cost, each of the neighborhood parks identified on the General Development Plan in accordance with the General Development Plan, the Phasing Plan, and the approved Park Master Plan for each site. Developer shall irrevocably offer to City each neighborhood park site and execute the City's standard form Subdivision Improvement Agreement Turn-Key Park for each park as a condition of approval of a Subsequent Approval. In consideration of Developer's obligation to improve and dedicate to City each neighborhood park, development of the Property subject to this Development Agreement shall not be subject to payment of the City's park fee under Rocklin Municipal Code §§16.28.060 – 16.28.160.

### **5.6.2 Open Space Easements Required**

Developer granted to City an Open Space and Conservation Easement over those areas shown in the NWRA General Development Plan as Development Areas 19, 34, and 15 (the Open Space and Trail System).<sup>11</sup> The grant is in substantial conformance with the Grant of Open Space and Conservation Easement with Covenants attached hereto as Exhibit C and by this reference incorporated herein, which provides for public access and use of the trail system.

Developer shall construct the trail system in conformance with the Park Master Plan for the trail system. The trail system shall be maintained by the fee owner in conformance with standards contained in the CC&R's governing the Project and the HOA. The trail system shall be constructed of an all-weather surface suitable for bicycling and hiking

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<sup>10</sup> Amended by Sec.12 of Ord. 885

<sup>11</sup> Amended by Sec.13 of Ord. 885



and shall be designed to provide access to the extent feasible throughout the Open Space Area for public use.

The preliminary location and design of the trail system shall be submitted for approval in phases as part of tentative small lot subdivision map applications; final location and design plans shall be submitted with final map applications. Improvement of the trail system shall be a condition of approval of the tentative maps. Grant of the Open Space and Conservation Easement for the Open Space and Trail System shall be in addition to any and all other land dedications required in the Project Approvals, this Agreement, or by any other law, rule, or regulation of the City.

Upon completion of the improvements, Developer shall dedicate the Open Space and improved Trail System to the public and provide for its operation and maintenance through an appropriate financing district or comparable financing tool.

### **5.7 Community Park**

City agrees to levy the maximum tax for park construction and maintenance in the CFD, beginning with the recording of the first final small lot subdivision map, and make available for acquisition of Phase I proceeds not then needed for park maintenance as determined by the City.<sup>12</sup>

### **5.8 City Recreational Facilities and Off Street Bike Path Contribution**

Developer has paid to City a City-wide recreational facility contribution in the amount of two million dollars (\$2,000,000). City holds the contribution in a separate fund for the construction and/or acquisition of recreational facility(ies) of City's choice.<sup>13</sup> To further enhance the bikeway and pedestrian trail system in Whitney Ranch, the area encompassed by the Northwest Rocklin Annexation Area General Development Plan, and to promote and finance the connectivity of the off street bike trail citywide, Developer shall make an additional contribution for off street bike path funding in the amount of One Hundred thousand dollars (\$100,000.00) The bike path funding contribution shall be due to the City no later than June 15, 2017. In lieu of a cash contribution, Developer, at Developers option, may construct some or all of the off street bike path facilities designated by City, provided such facilities substantially enhance the City's off street bike path goals and relevant citywide bike path master plans, and are not otherwise required under the current project entitlements.

### **5.9 Affordable Housing** (First amended Sec.16 of 885, then Sec. 2 of 944 below.)

At least 10% of the dwelling units constructed in the Project shall be Affordable Units. "Affordable Units" means a combination of very low income (50% of the Placer County median income), low income (80% of the Placer County median income) and moderate income (81% to 120% of the Placer County median income) households. As verified by the Acting Community Development Director by letter to Developer of October 22, 2010, the Developer has satisfied this obligation to produce Affordable Units in Whitney Ranch, unless the type and number of affordable homes which are now available in Whitney Ranch substantially changes prior to termination of this Agreement.

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<sup>12</sup> Amended by Sec.14 of Ord. 885

<sup>13</sup> Amended by Sec. 15 of Ord. 885

### **5.10 High School**

Developer has completed all required improvements for Public Access related to Whitney High School as required in the Development Agreement.<sup>14</sup>

### **5.11 Public Safety Program Contribution<sup>15</sup>**

City and Developer agree Developer's prior financial obligation under this Agreement for a Public Safety Program Contribution is deleted from this Agreement and Developer has completed all duties and obligations towards funding of Rocklin Fire Station No. 4 as of the date of this 5<sup>th</sup> Amendment to the Agreement. Nothing in this Agreement shall relieve the Developer from annexing all of Developer's property into the City's CFD #1.

### **5.12 Update of City Traffic Impact Fee**

City agrees that it shall update its Traffic Impact Fee charged to all development in the City to include the following improvements which City recognizes as necessary for the orderly development of the City: Sunset Boulevard/Blue Oaks Boulevard Intersection, Pacific Street/Sunset Boulevard Intersection, Sunset Boulevard/Atherton Road Intersection, Sunset Boulevard/Atherton Drive Intersection, Sunset Boulevard/West Oaks Boulevard Intersection. City shall use its best efforts in good faith to regularly update the Traffic Impact Fee. .

### **5.13 Fire Protection/California Department of Forestry**

Concurrent with the Operative Date, Developer shall enter into an agreement with City to pay City all charges imposed on City by the California Department of Forestry for providing fire protection and suppression services to all of the territory annexed to the City by adoption of Resolution No. 2002-231.

### **5.14 Phasing**

#### **5.14.1 Requirements to Proceed with Discrete Phases; Timing of Construction**

The parties understand and agree that development of the Property could occur as discrete phases, or as partial development within each planned phase; that development of a project consisting of a particular parcel, subdivision or subdivisions, or portion thereof, can proceed only if all infrastructure required to serve the development project has in fact been built or is assured to the satisfaction of the City Manager in his or her sole discretion; and that uncoordinated and uncontrolled development is detrimental to the public health, safety, and welfare, as well as to the Financing Plan, and is inconsistent with the General Development Plan. For those reasons, notwithstanding any other provision of the Agreement (including, without limitation, the vesting

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<sup>14</sup> Amended by Sec.17 of Ord. 885 and this Agreement.

<sup>15</sup> This section first amended by Sec.18 of 885, then by Operating Memorandum # 1, then with this Agreement

provisions), the City Manager, acting on behalf of City, shall, after meeting and conferring with Developer, have the absolute discretion to determine whether a particular project is timed in a logical manner for the particular applicable development phase under the policies expressed in this section. Accordingly, the City Manager shall have the authority to approve, conditionally approve, or deny approval of the timing for development of the project. The City Manager's decision shall be subject to the "Special Circumstances" provisions of this Amendment. The parties further agree and understand that the General Development Plan Amendments will include a provision that conforms to the provisions of this section.<sup>16</sup>

#### **5.14.2 Further Evaluation of Land Uses**

The parties agree there is a mutual benefit to further evaluation of the desired land use plan of two medium density sites and a seven acre commercial site, designated Parcels 42, 44, and 44B, which are located in and around the intersection of Whitney Ranch Parkway and West Oaks Dr. Both City and Developer shall engage in good faith discussions and analysis regarding the highest and best use for these parcels and agree to modify the City General Plan and/or the NWRAA General Development Plan as necessary to achieve the agreed upon optimized land use plan for these parcels.

#### **5.15 Sunset Blvd. Reconstruction**

SRI has completed its obligations related to the reconstruction of, and cost contribution towards, the Sunset Boulevard reconstruction project.<sup>17</sup>

#### **5.16 Additional Funding for Design and Construction of the Whitney Interchange**<sup>18</sup>

##### **5.16.1 Additional Whitney Interchange Funding Contribution for the Construction of Phase 1A of the SR65/Whitney Interchange.**

In addition to the Whitney Interchange Fee, Developer shall make to City an additional funding contribution for the construction of the SR65 / Whitney Ranch Interchange Phase 1A improvements in the amount of \$4,100,000. One Million Five Hundred Thousand Dollars (\$1,500,000.00) of the additional funding contribution shall be paid to City the later of September 15, 2014, or within 60 days after the City Council awards the contract for the construction of Phase 1A of the SR 65/ Whitney Parkway Interchange. The balance of the additional funding contribution is due to City the later of June 15, 2015 or 12 months after the date the City issues the Notice To Proceed to the constructing contractor for commencement of construction of the Phase 1A interchange improvements. This lump sum contribution is in addition to all other existing fee programs for the construction of the SR65 / Whitney Ranch Interchange.

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<sup>16</sup> Amended by Sec.19 of Ord. 885

<sup>17</sup> Amended by Sec.20 of Ord. 885, and by this Agreement as shown.

<sup>18</sup> First amended by Sec. 1 Ord. 897, then deleted by Sec.3 of Ord. 944, then a New Subsection P added by Sec. 4 of 944, further amended in this Agreement to reflect advance of fees for the Design Contribution.

#### **5.16.2 Additional SR65/Whitney Interchange Funding Contribution If No Phase 1A Construction Approved**

If the Phase 1A concept is not approved by Caltrans, and payments are not made by Developer to City as set forth in subparagraph 5.15.1 above, then Developer shall make to City an additional funding contribution, in addition to the Whitney Interchange Fee, for the construction of the SR65 / Whitney Ranch Interchange improvements in the amount of \$4,100,000. Two Million Dollars (\$2,000,000.00) of the additional funding contribution is due no later than March 1, 2018. The balance of the additional funding contribution is due to City no later than September 1, 2020. This lump sum contribution is in addition to all other existing fee programs for the construction of the SR65 / Whitney Ranch Interchange.

#### **5.17 Community Park Building** <sup>19</sup>

City and Developer agree Developer's prior financial obligation under this Agreement for design of the Whitney Ranch Community Park Building is deleted from this Agreement and Developer has completed all duties and obligations for construction and development of the Whitney Ranch Community Park as of the date of this 5<sup>th</sup> Amendment to the Agreement.

##### **5.17.1**

### **6 AMENDMENT OF AGREEMENT**

This Agreement may be amended from time to time by mutual consent of City and Developer (and/or any successor owner of any portion of the Property, to the extent subject to or affected by the proposed amendment), in accordance with the provisions of the Development Agreement Statute. If the proposed amendment affects less than the entire property, then such amendment need only be approved by the owner(s) in fee of the portion(s) of the Property that is subject to or affected by such amendment. If and when the parties find that clarifications, minor changes or minor adjustments are necessary or appropriate to the implementation of this Agreement or development of the Project, the clarification, minor change or minor adjustment shall be stated in a written operating memorandum agreed to and approved by Developer and City Manager acting on behalf of City. As used in this section, "minor" shall not include an increase in the number of dwelling units otherwise allowed by the Project and applicable rules, regulations, ordinances, and policies, or a reduction in the amount of open space by more than one percent (1%). An operating memorandum under this section, which is consistent with this Agreement, shall not constitute nor require an amendment to this Agreement or prior public notice or hearing to be effective.

### **7 COOPERATION IN THE EVENT OF LEGAL ACTION**

#### **7.1 Third Party Challenge**

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<sup>19</sup> Amended by Sec.2 of Ord. 897, further amended by this Agreement

If any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Project, or Project Approvals, the parties shall cooperate in defending against such challenge. Developer, at Developer's expense, shall defend such action as the real party in interest and assist City in its defense. To the extent that any such action challenges Developer's right to proceed with the Project under this Agreement, Developer shall have the control of the defense of the action or proceeding and may utilize legal counsel of its choice, subject to the approval of City, which approval shall not be unreasonably withheld, conditioned, or delayed. Developer shall reimburse City for reasonable expenses of City's attorneys resulting from representation of City in any such legal action or proceeding. In addition, Developer shall indemnify City for any liability incurred by City as a result of any such action or proceeding, including any award to opposing counsel of attorneys' fees or costs.

## **7.2 Cure, Reapproval**

If any litigation which results in a judgment wherein the courts order the City to reconsider any matter pertaining to this Agreement or Project Approvals, the City and Developer agree that any reconsideration shall be expeditiously performed to remedy any defects noted in such judgment. If such remedy includes the need to readopt any or all of the Project Approvals, City agrees to expeditiously readopt any or all of the Project Approvals in a manner consistent with the requirements of the judgment, and to the extent readoption is in harmony with the spirit and intent of this Agreement, the original Project Approvals, and the public welfare.

## **8 DEFAULT; ANNUAL REVIEW; REMEDIES; TERMINATION**

### **8.1 Defaults**

- 8.1.1** Failure by City or Developer to perform any other material term or provision of this Agreement shall constitute a default under this Agreement.
- 8.1.2** The Party alleging the default shall give the other not less than thirty (30) days' written notice of the default. Any notice of default shall specify the nature of the alleged default and, where appropriate, the manner in which said default may be satisfactorily cured. If notice of default is given, the Parties shall make reasonable efforts to agree to an action plan to cure the default within the thirty (30) days or longer time as agreed.
- 8.1.3** If any default is not cured within the time allowed, the party alleging the default may institute legal action against the party in default or give notice of intent to terminate the agreement pursuant to California Government Code §65868 and regulations of City implementing said Government Code section. Following any default by Developer and notice by City of intent to terminate this Agreement, the matter shall be scheduled for consideration and review by the Council within thirty (30) calendar days in the manner set forth in Government Code §§65865, 65867 and 65868 and City regulations implementing such sections. Developer shall have the right to offer written and oral evidence at such public hearing. Following consideration of evidence presented at such public hearing, either party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

- 8.1.4** Failure or delay in giving notice of default shall not constitute a waiver of any default. Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default of its rights or remedies, and shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
- 8.1.5** No party shall be in default of this Agreement for delays in performance due to war, acts of terrorism, litigation, insurrection, strikes, flood, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, or similar basis beyond the reasonable control of the party to be excused. Any action or proceeding addressing the validity of this Agreement, any Project Approval, or any permit approval, agreement or other entitlement related to the Project, or any action of a governmental agency necessary or desirable to the development of the Project shall create an excusable delay as to Developer or to City.

## **8.2 Remedies**

In addition to any other rights or remedies, either party may institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any other remedies consistent with the foregoing and the purposes of this Agreement. Prior to the initiation of any litigation hereunder, the parties agree to pursue mediation to resolve any disputes.

## **8.3 Annual Review**

- 8.3.1** On or about the first anniversary of the Effective Date, and on or about each anniversary of this Agreement thereafter, City shall conduct a review of the good-faith compliance by Developer with the terms of this Agreement (the "Annual Review"). Said review shall be limited in scope to compliance with the terms of this Agreement pursuant to Section 65865.1 of the Government Code and the Rocklin Municipal Code, Chapter 17.92. The findings of the Annual Review and compliance or non-compliance with this Agreement shall be made available to Developer at the conclusion of the annual Review.
- 8.3.2** City shall notify the Developer that the review will take place. Upon not less than thirty (30) days' written notice by the Planning Director of the City, Developer shall provide such information as may be reasonably requested and deemed to be required by the Planning Director in order to ascertain compliance with this Agreement.
- 8.3.3** City shall pay the appropriate fee for the annual review as established by resolution of the City Council.
- 8.3.4** At the conclusion of the Annual Review, City shall make written findings and determinations on the basis of substantial evidence in the record, regarding whether Developer has complied in good faith with the terms of this Agreement.

If City finds and determines that Developer has not complied with such terms, and that such non-compliance amounts to a default if not cured, then City shall deliver to Developer a notice of default and opportunity to cure, in which case the parties shall proceed as provided in Section 8.1. If notice of default is not sent within thirty (30) days after conclusion of the Annual Review, Developer shall be deemed to be in compliance with this Agreement.

**8.3.5** City shall deliver to Developer, pursuant to Section 9 herein, a copy of all staff reports and documents to be used or relied upon in conducting the Annual Review at least ten (10) days before City's Annual Review. Developer shall be permitted to respond to City's evaluation orally at a public hearing before the City Council, by a written statement, or both.

**8.3.6** If City fails to conduct the Annual Review and Developer is not in default with respect to its performance under this Agreement during the past year as evidenced by the absence of any notice of default being delivered by City to Developer, such failure shall be deemed an approval by the City and Developer's compliance with the terms of this Agreement for that Annual Review period.

#### **8.4 Termination**

This Agreement shall terminate under the following circumstances:

This Agreement shall automatically terminate upon the twentieth (20<sup>th</sup>) anniversary of the Effective Date, unless extended as provided in Section 2.

##### **8.4.1 Automatic Termination Upon Completion and Sale of Residential Unit**

This Agreement shall automatically be terminated, without any further action by either party or need to record any additional document, with respect to any single-family residential lot within a parcel designated by the General Development Plan for residential use upon completion of construction and issuance by the City of a final inspection for a dwelling unit upon such residential lot and conveyance of such improved residential lot by Developer to a bona fide, good-faith purchaser thereof. In connection with its issuance of a final inspection for such improved lot, City shall confirm that all improvements which are required to serve the lot, as determined by City, have been accepted by City. This termination of this Agreement for any such residential lot as provided for in this Section 8.4.1. shall not in any way be construed to terminate or modify any assessment district or Mello-Roos Community Facilities District lien affecting such lot at the time of termination.

##### **8.4.2 Termination Upon Developer Request**

This Agreement may also be terminated, at the election of the then property owner, with respect to any legally subdivided parcel designated by the General Plan for residential or non-residential use (other than parcels designated for public use), when recording a final residential lot subdivision map for such parcel, or receiving a certificate of occupancy or final inspection, whichever is applicable, for a multi-family or non-residential building within such parcel, by giving written notice to City of its election to terminate the Agreement for such parcel, provided that all improvements which are required to serve the parcel, as determined by City, have been accepted by City. City shall cause any

written notice of termination approved pursuant to this subsection to be recorded against the applicable parcel with the County Recorder.

## **8.5 Effect of Termination**

- 8.5.1** If this Agreement is terminated following any event of default of Developer or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement shall prevent Developer from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.
- 8.5.2** Termination of this Agreement shall not affect any of Developer's obligations to comply with City's General Plan, the Project Approvals, any Subsequent Approvals, and all other zoning and subdivision regulations applicable to the Project and the Property..
- 8.5.3** Termination of this Agreement shall not affect any of Developer's obligations which have been expressly made conditions of Subsequent Approvals, unless said obligations are conditioned on the existence of this Agreement.

## **9 NOTICES**

Any notice, demand or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). If given by registered or certified mail, a notice shall be deemed to have been given and received on actual receipt by the addressee. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. A courtesy copy of the notice may be sent by facsimile transmission. Any party may designate any other address in substitution of the address contained hereby by like written notice.

Notices shall be given to the parties at their addresses set forth below:

If to City, to:

City Manager  
City of Rocklin  
3970 Rocklin Road  
Rocklin, California 95677  
Telephone: (916) 632-4050  
Facsimile: (916) 624-8010

with a copy to:

Director of Community Development

If to Developer, to:

Sunset Ranchos Investors  
960 Wildcat Blvd  
Rocklin CA 95765  
Attn: Peter Bridges  
916-235-4950  
Email – pbridges@newlandco.com

with a copy to

DLA Piper  
2000 University Ave



City of Rocklin  
3970 Rocklin Road  
Rocklin, California 95677  
Telephone: (916) 632-4020  
Facsimile: (916) 624-4759

East Palo Alto, CA 94303  
Attn: Jim Anderson  
(650) 833-2078  
  
(650) 833-2001

## **10 ASSIGNMENT**

### **10.1 Right to Assign**

Developer may assign its rights to develop the Project, or any portion or phase thereof, to any successor in interest which acquires any legal or equitable interest in any portion of the Project, which rights shall run with the property on which the Project is constructed. Each successor in interest to Developer shall be bound by all of the terms and provisions hereof applicable to that portion of the Project acquired by it. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties' successors, assigns and legal representatives. Developer shall provide City with written notice of any assignments within ten (10) days after the occurrence thereof.

### **10.2 Release Upon Transfer**

Upon the sale, transfer or assignment in whole or in part of Developer's rights and interests under this Agreement, Developer shall be released from its obligations under this Agreement with respect to the portion of the Project so transferred; provided, however, that (i) Developer is not then in default under this Agreement; (ii) Developer has provided written notice of such transfer to the City; and (iii) subject to the exceptions stated herein below, the transferee executes and delivers to the City a written Assumption Agreement in which (a) the name and address of the transferee is set forth, and (b) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Agreement with respect to the portion of the Project transferred. Developer shall in any event, given written notice to the City of such transferee's address no later than ten (10) days after any such transfer.

## **11 COVENANTS RUN WITH THE LAND**

During the term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, without limitation, Section 1648 of the California Civil Code. Each covenant to do or refrain from doing some act on the Property (i) is for the benefit of the Property and shall be a burden upon the Property; (ii) runs with the Property; (iii) is binding upon each party and each permitted successor owner during its

ownership of the Property or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of the Property, or any portion thereof, and shall benefit each party and the Property hereunder, and each other person or entity succeeding to an interest in the Property.

## **12 NOTICE OF COMPLIANCE**

**12.1** Within thirty (30) days following any written request that Developer may make from time to time, City shall execute and deliver to Developer in recordable form a written "Notice of Compliance," duly executed and acknowledged by City. The notice shall describe this Agreement and the Project and state:

**12.1.1** That 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 state the date and nature of such modification;

**12.1.2** That there are no uncured defaults under this Agreement, or if defaults exist, specify the dates and nature of such default;

**12.1.3** The findings of City with respect to the most recent Annual Review; and

**12.1.4** Such other reasonable information requested by Developer.

**12.2** The failure of City to deliver such a Notice of Compliance within such thirty (30) day period shall constitute a conclusive presumption that may be relied upon by third parties and transferees that, except as may be otherwise stated by Developer, this Agreement is in full force and effect without modification and that there are no uncured defaults in the performance of Developer.

## **13 SPECIAL CIRCUMSTANCES**

Whenever the term "special circumstances" is used in this Amendment, the procedure set forth in this section shall apply. In the event that Developer or its Transferee does not concur with the decision of the City Manager, which shall be deemed to be a final decision, the Developer or Transferee shall notify the City Manager of its disagreement with the City Manager's decision. The City Manager shall meet and confer with the Developer or Transferee in an effort to resolve the matter. If the matter is not resolved, Developer or a Transferee shall have the right to appeal to the City Council, and to address the City Council to express its position. The procedures, including time limits, for filing the appeal shall be those applicable for appeals of Planning Commission decisions to the City Council. The appeal shall be heard by the City Council in accordance with those procedures, except that the appeal shall not be heard as a public hearing. The decision in the appeal shall be deemed to have been made by the City Council acting in its quasi-legislative capacity, and not in its quasi-judicial capacity. The parties agree that the decision of the City Council shall be final and binding and that findings are not required. Developer waives all rights to commence judicial proceedings to set aside or otherwise invalidate the City Council's decision, together with any claim for monetary or equitable relief.<sup>20</sup>

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<sup>20</sup> Amended by Sec. 21 of Ord. 885

## **14 MISCELLANEOUS**

### **14.1 No Agency, Joint Venture or Partnership**

It is specifically understood that the Project is a private development, and the Developer shall have full power over and exclusive control of the Project, subject to the terms and conditions of this Agreement. Although City and Developer intend to cooperate and work together to carry out the Project, the parties renounce the existence of any form of agency relationship, joint venture, partnership or other association between City and developer, and nothing contained herein or in any document executed in connection herewith shall be construed as creating any such legal relationship.

### **14.2 Severability**

If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be disregarded and this Agreement shall continue in effect unless enforcement of this Agreement without the invalidated provision would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. If any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a party hereof of an essential benefit of its bargain hereunder, then such party so deprived shall have the option to terminate this entire Agreement from and after such determination.

### **14.3 Other Necessary Acts**

Each party shall execute and deliver to the other all further instruments and documents as may be reasonably necessary to carry out this Agreement, the Project and Subsequent Approvals, and the Applicable Law in order to provide and secure to each party the full and complete enjoyment of its rights and privileges hereunder.

### **14.4 Construction**

This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

### **14.5 California Law/Attorneys' Fees**

This Agreement shall be construed and enforced in accordance with the laws of the State of California. If legal action by either party is brought against the other party because of an alleged default under the terms and conditions of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs.

### **14.6 Waivers**

No provision or condition of the Agreement shall be considered waived unless such waiver is in writing and signed by the party to be bound.

#### **14.7 Duty to Act Reasonably and in Good Faith**

Unless otherwise expressly provided, each party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. City and Developer agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement, and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the parties which is to develop the Property in conformity with the terms and conditions specified in this Agreement.

#### **14.8 Recordation**

Except when this Agreement is automatically terminated due to the expiration of the Term or the provisions of Subsection 8.4. above, the City shall cause this Agreement, an amendment hereto and any other termination thereof to be recorded with the County Recorder within ten (10) days of the Effective Date or the date of such amendment or termination becoming effective. Any amendment or termination of the Agreement to be recorded that affects less than all the Property shall describe the portion thereof that is the subject of such amendment or termination.

#### **14.9 Time of Essence**

Time is of the essence in the performance of each and every covenant and obligation to be performed by the parties hereunder.


#### **14.10 Entire Agreement**

This Agreement, together with all exhibits hereto, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement is specifically intended by the parties to supersede all prior agreements, whether written or oral, for the Property which may exist between the City and Developer.

**IN WITNESS WHEREOF**, this Agreement has been executed by the parties hereto on the day and year first above written.

**CITY:**


CITY OF ROCKLIN,  
A Municipal Corporation


By:   
Diana L. Ruslin  
Mayor


**APPROVED AS TO FORM:**

**DEVELOPER:**

Sunset Ranchos Investors, LLC

By:   
Name: Peter M. Bridger  
Its: Authorized Representative

By:   
Name: RENEE McDONNELL  
Its: AUTHORIZED REP

  
Russell A. Hildebrand  
City Attorney

**ATTEST:**

  
Barbara Ivanusich, City Clerk

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California }  
County of Placer }

On July 11, 2013 before me, Terry Stemple, Notary Public, personally appeared  
Diana Ruslin

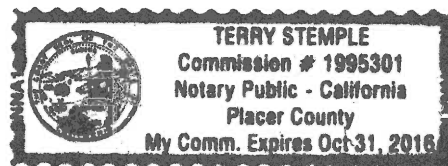
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person 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

Terry Stemple  
Signature of Notary Public



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

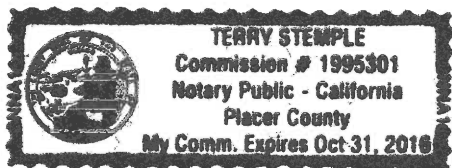
County of Placer

On June 24, 2013 before me,

Terry Stemple, Notary Public  
Here Insert Name and Title of the Officer

personally appeared

Peter M. Bridges  
Name(s) of Signer(s)



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

Terry Stemple  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document:

Development Agreement

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

### Capacity(ies) Claimed by Signer(s)

Signer's Name:

- ☐ Individual  
☐ Corporate Officer — Title(s):  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other:

Signer Is Representing:

Signer's Name:

- ☐ Individual  
☐ Corporate Officer — Title(s):  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

## ACKNOWLEDGMENT

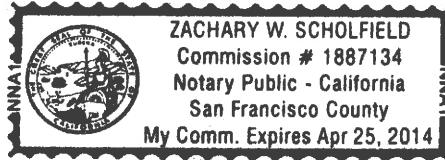
State of California  
County of San Francisco )

On June 25, 2013 before me, Zachary W. Scholfield, Notary Public,  
(insert name and title of the officer)

personally appeared Renee McDonnell,  
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

Zachary W. Scholfield

(Seal)



## EXHIBIT A

### Description of Property (Sec.1, 885)

Lots 1 through 40 and A through L, inclusive as shown on that map entitled "Large Lot Subdivision Liberty Hill," filed October 6, 2004, in Book Z of Maps at Page 94, Placer County Records, situated in Sections 1, 2, & 3, Township 11 North, Range 6 East, M.D.M., City of Rocklin, County of Placer, California.

EXCEPTION THEREFROM, Lots 2, 7, 15A, 15B, 19A, 19B, 24A, 24B, 32, 33, 34, 35, 36A, 36B, 37, 38A, 38B, 39, & 40.

## **EXHIBIT A-1**

### **Description of After-Acquired Property**

## LEGAL DESCRIPTION

### EXHIBIT "A" -1

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ROCKLIN, COUNTY OF PLACER, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

#### Parcel One:

Lots 33, 34, 35, 36A, 36B, 37, 38A, 38B, 39, 40, B, D, E, F, G, H, I, J and L, as shown on the map entitled "Whitney Ranch Large Lot Subdivision" filed for record in the Office of the County Recorder of Placer County, California, October 6, 2004, in Book Z of Maps, at Page 94, as modified by that certain Certificate of Correction recorded June 4, 2007, as Document No. 2007-0056099, Placer County Official Records.

EXCEPTING THEREFROM all oil, gas and hydrocarbon substances, inert gases, minerals and metals, lying below a depth of five hundred (500) feet from the surface of said property, whether now known to exist or hereafter discovered including but not limited to the rights to explore for, develop and remove such oil, gas and other hydrocarbon substances, inert gases, minerals and metals without, however, any right to use, disturb or access the surface of said property, or any other portion thereof above a depth of 500 feet from the surface thereof, for any purpose whatsoever, as set forth in the deed recorded January 4, 1999, as Series No. 99-0000244, Placer County Records.

Assessor's Parcel Nos.:

017-174-012  
017-177-007 and 008,  
017-181-002 through 005  
017-182-002, &  
017-182-004 through 014

#### Parcel Two:

Lot 70 as shown on the map entitled "Sunset Ranchos Estates Unit No. 1", filed in the Office of the County Recorder of Placer County, California, on June 11, 1970, in Book "J" of Maps, at Page 1.

Assessor's Parcel Number: 017-181-001

#### Parcel Three:

A portion of Lot 112 as said lot is shown on the final map entitled "Sunset Rancho Estates" and filed in Book J of Maps, at Page 1, Placer County Records, situated in Section 2, Township 11 North, Range 6 East, Mount Diablo Meridian, City of Rocklin, county of placer, State of California, said portion being more particularly described as follows:

Beginning at the northeast corner of said Lot 112; thence from said point of beginning along the easterly line of said Lot 112 the following three (3) consecutive courses:

1. South 27°00'00" East a distance of 269.51 feet,
2. South 63°00'00" West a distance of 30.00 feet and
3. South 23°27'01" West a distance of 125.96 feet;

thence North 50°22'02" West a distance of 85.83 feet; thence North 13°51'24" East a distance of 201.77 feet; thence North 42°57'15" West a distance of 161.86 feet to the northerly line of said Lot 112; thence along said northerly line of said Lot 112 North 89°51'53" East a distance of 82.58 feet to the point of beginning.

As also described as Transfer Area 5 in that certain Approval of Lot Line Adjustment recorded June 15, 2006, Document No. 2006-0064274, of Official Records.

Assessor's Parcel Number: 017-174-017

**Parcel Four:**

Lot A, as shown on the map entitled "Whitney Ranch Large Lot Subdivision" filed for record in the Office of the County Recorder of Placer County, California, October 6, 2004, in Book Z of Maps, at Page 94, as modified by that certain Certificate of Correction recorded June 4, 2007, as Document No. 2007-0056099, Placer County Official Records.

EXCEPTING THEREFROM Parcel 1 as shown on the map entitled "Parcel Map of Whitney Ranch Clubhouse" filed for record in the Office of the County Recorder of Placer County, California November 3, 2006, in Book 33 of Parcel Maps, at Page 61.

ALSO EXCEPTING THEREFROM all that portion thereof conveyed to Southern Placer School Transportation Authority in that certain Grant Deed recorded December 14, 2007, Document No. 2006-0134370, of Official records.

FURTHER EXCEPTING THEREFROM all oil, gas and hydrocarbon substances, inert gases, minerals and metals, lying below a depth of five hundred (500) feet from the surface of said property, whether now known to exist or hereafter discovered including but not limited to the rights to explore for, develop and remove such oil, gas and other hydrocarbon substances, inert gases, minerals and metals without, however, any right to use, disturb or access the surface of said property, or any other portion thereof above a depth of 500 feet from the surface thereof, for any purpose whatsoever, as set forth in the deed recorded January 4, 1999, as Series No. 99-0000244, Placer County Records.

Assessor's Parcel Number: 017-174-019

**Parcel Five:**

Lot C, as shown on the map entitled "Whitney Ranch Large Lot Subdivision" filed for record in the Office of the County Recorder of Placer County, California, October 6, 2004, in Book Z of Maps, at Page 94, as modified by that certain Certificate of Correction recorded June 4, 2007, as Document No. 2007-0056099, Placer County Official Records.

ALSO EXCEPTING THEREFROM all that portion thereof conveyed to Southern Placer School Transportation Authority in that certain Grant Deed recorded December 14, 2007, Document No. 2006-0134370, of Official records.

FURTHER EXCEPTING THEREFROM all oil, gas and hydrocarbon substances, inert gases, minerals and metals, lying below a depth of five hundred (500) feet from the surface of said property, whether now known to exist or hereafter discovered including but not limited to the rights to explore for, develop and remove such oil, gas and other hydrocarbon substances, inert gases, minerals and metals without, however, any right to use, disturb or access the surface of said property, or any other portion thereof above a depth of 500 feet from the surface thereof, for any purpose whatsoever, as set forth in the deed recorded January 4, 1999, as Series No. 99-0000244, Placer County Records.

Assessor's Parcel Number: 017-182-016

**EXHIBIT "A" (continued)**

**Lots 1, 8, 10 and 22:**

Lots 1, 8, 10 and 22 as shown on the map entitled "Whitney Ranch Large Lot Subdivision" filed for record in the Office of the County Recorder of Placer County, California October 6, 2004, in Book Z of Maps, at Page 94, as modified by that certain Certificate of Correction recorded March 10, 2005, Document No. 2005-0029109, Placer County Official Records, affecting lot 24.

EXCEPTING THEREFROM all oil, gas and other hydrocarbon substances, inert gases, minerals and metals, lying below a depth of five hundred feet from the surface of said property, whether now known to exist or hereafter discovered including but not limited to the rights to explore for, develop and remove such oil, gas and other hydrocarbon substances, inert gases, minerals and metals without, however, any right to use, disturb or access the surface of said property, or any other portion thereof above a depth of 500 feet from the surface thereof, for any purposes whatsoever, as set forth in the deed recorded January 4, 1999, as Series No. 99-0000244, Placer County Records.

**ASSESSOR'S PARCEL NOS.:**

017-171-001  
017-171-008 AND 009  
017-172-005  
017-173-001

## **EXHIBIT B**

### **Project Approvals**

Environmental Impact Report EIR-2000-02

Annexation AN-98-03

General Plan Amendment GPA-99-04

Prezone PZ-99-03

General Development Plan PDG-99-02

Design Guidelines DR-2002-06

Development Agreement (Sunset Ranchos) DA-2002-01 Ordinance No. 859

First Amendment to the Dev. Agmt. DA-2002-01A, Ordinance No. 885

Second Amendment to the Dev. Agmt. DA-2002-01B, Ordinance No. 897

Third Amendment to the Dev. Agmt. DA-2002-01C, Ordinance No. 944

Fourth Amendment to the Dev. Agmt. DA-2002-01D, Ordinance No. 971

Addendum to North West Rocklin Annexation EIR (Reso 2008-252)

General Plan Amendment, GPA-2004-04

General Plan Amendment, GPA-2006-07

General Development Plan Amendments, PDG-99-02A, PDG-99-02B, PDG-99-02C, PDG-99-02D, PDG-99-02E, PDG-99-02F

Large Lot Tentative Subdivision Map, SD-2003-02

Small Lot Map Phase I, SD-2003-04

Small Lot Map (NAPOTS1), SD-2005-04

Small Lot/Condo Map Unit 4 & 5, SD-2005-05

Large Lot Map Phase II, SD-2006-06

Small Lot Map Phase II, SD-2006-07

Whitney Ranch Phase II Large & Small Lot Map Modifications, SD-2006-06A, SD-2006-07A

Small Lot Map Unit 17, SD-2010-01

Small Lot Map Unit 46CDE, SD-2010-02

Small Lot Map Unit 45A, SD-2010-03

Whitney Ranch Unit 28, DR-2005-01

Whitney Ranch Phase I Wayfinding Sign Program, DR-2005-12

Whitney Ranch Clubhouse, DR-2005-16

Whitney Ranch Units 4 & 5, Dr-2005-17

Whitney Ranch Phase II, DR-2006-25

Whitney Ranch Apartments, DR-2008-10

Whitney Ranch Unit 17, DR-2010-02

Whitney Ranch Unit 46CDE, DR-2010-03

Whitney Ranch Unit 45A, DR-2010-04

Whitney Ranch Large Lot Tentative Map and Small Lot Tentative Map  
Substantial Compliance Approval (SD 2006-07 & SD 2006-06), approved July  
15, 2010.

Resolution 2013-35: Whitney Ranch Unit 22 Tentative Map Approval  
SD 2012-04

Ordinance 991, amending Northwest Rocklin General Development Plan to  
rezone Unit 22 and modify single-story restrictions. PDG-99-02I and Z-2012-03

Exhibit C

**On File with the City Clerk Document # 2004-0132773**

Recording Requested by  
and Return to:

City Clerk  
City of Rocklin  
3970 Rocklin Road  
Rocklin, CA 95677

GRANT OF OPEN SPACE AND  
CONSERVATION EASEMENT WITH COVENANTS  
NWRA OPEN SPACE AND TRAIL SYSTEM



ORDINANCE NO. 996

ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF ROCKLIN APPROVING THE 5<sup>TH</sup> AMENDMENT TO THE  
DEVELOPMENT AGREEMENT FOR WHITNEY RANCH  
BY AND BETWEEN THE CITY OF ROCKLIN  
AND SUNSET RANCHOS INVESTORS, LLC,  
( Sunset Ranchos Planning Area, Liberty Hill, Whitney Ranch / DA-2001-1D)

The City Council of the City of Rocklin does ordain as follows:

Section 1. The City Council of the City of Rocklin finds and determines that:

A. City and Sunset Ranchos Investors, LLC entered into a Development Agreement By And Between The City Of Rocklin And Sunset Ranchos Investors, LLC, Relative To The Development Known As The Sunset Ranchos Planning Area Of The Northwest Rocklin Annexation Area, on July 23, 2002, which was approved by City Council Ordinance No. 859. That Development Agreement has since been amended three times:

First Amendment by City Ordinance 885 approved on April 4, 2004;

Second Amendment by City Ordinance 897 approved on May 10, 2005; and

Third Amendment by City Ordinance 944 approved on January 13, 2009.

Fourth Amendment by City Ordinance 971 approving the Amended and Restated Development Agreement for Whitney Ranch on January 11, 2011.

The original development agreement approved by Ord. 859, and the subsequent amendments to that original agreement noted above, are collectively the current approved "Development Agreement". The operative date of the Development Agreement is August 22, 2002. The term of the Development Agreement was most recently amended by Ord. 944, and is 20 years from the operative date, therefore the Development Agreement expires at midnight, August 22, 2022.

B. The original applicant for development of the Sunset Ranchos Planning Area project was Grupe Development, who then sold the project to Sunset Ranchos Investors, LLC, a Delaware Limited Liability Company. The Parties to the Development Agreement are the City of Rocklin and Sunset Ranchos Investors, LLC, referred to hereinafter as SRI.

C. The master planned community in the Northwest Rocklin Annexation Area initially called the Sunset Ranchos Planning Area project was later renamed Liberty Hill. The large lot subdivision map for the project is recorded as the Liberty Hill Large Lot Subdivision Map SD-2003-02. Prior to initiating home building within the project, SRI renamed the project Whitney Ranch, and all City planning documents, agreements, and entitlements have used the name Whitney Ranch since 2004.

D. The Parties have determined that it is reasonable and appropriate to make certain additional changes to the Development Agreement, and further agree that the Development Agreement for Whitney Ranch shall be revised for the following reasons:

1. It is in the public interest to clarify the Parties to the Development Agreement and the name of the project, and the significant number of development activities which have been completed as required by the Development Agreement.
2. Since the Development Agreement is a dynamic document with a 20 year life span, it is appropriate and reasonable that continuing amendments are made to the Development Agreement, however as that process has evolved, the Parties are now initiating amendments to the amendments within the Development Agreement, creating a document that is increasingly difficult to track and understand.
3. Due to the economic downturn, the pattern and rate of growth in Whitney Ranch has dramatically slowed in comparison to the rate of construction activity contemplated by the Development Agreement and the Northwest Rocklin Annexation Area Environmental Impact Report, which analyzed the environmental impacts of the planned development of the Northwest Rocklin Annexation Area, which includes the Sunset Ranchos Planning area.
4. Because of the dramatic change in the economy and the resulting slow down of the project build out, the timing of many of the remaining obligations under the Development Agreement are premature creating fiscal challenges for both Parties. Therefore, the timing of payments due from the SRI and time frames for construction of public improvements should be modified to reflect a realistic appraisal of the demand for infrastructure and community amenities, and the ability of the Parties to finance the infrastructure and community amenities contemplated within the Development Agreement.

E. The improvements and activities to be carried out as required by the 5th Amendment to the Development Agreement for Whitney Ranch have been analyzed as required by the California Environmental Quality Act (CEQA). Pursuant to Section 15162 of the CEQA Guidelines the City Council finds that since no new effects will occur and no new mitigation measures will be required to implement the 5th Amendment to the Development Agreement for Whitney Ranch, the 5th Amendment to the Development Agreement for Whitney Ranch is within the scope of the North West Rocklin Annexation EIR, approved and certified by City Council Resolution 2002-230, which includes the addendum approved by City Council Resolution 2008-252. The City Council further finds that the EIR adequately describes the planned development activities for purposes of CEQA and no further environmental review is required.

F. The 5th Amendment to the Development Agreement for Whitney Ranch is consistent with and implements the policies of the City of Rocklin's General Plan, including the Housing Element;

G. The 5th Amendment to the Development Agreement for Whitney Ranch is compatible with the land uses and development regulations prescribed by the development zoning (General Development Plan PDG-99-02, as amended over time) for the site;

H. The 5th Amendment to the Development Agreement for Whitney Ranch will not be detrimental to the health, safety, and welfare of persons residing in the immediate area nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of residents of the city as a whole;

I. The 5th Amendment to the Development Agreement for Whitney Ranch will not adversely affect the orderly development of property or the preservation of property, on or off the project site;

J. The 5th Amendment to the Development Agreement for Whitney Ranch is consistent with the provisions of Government Code Sections 65864 through 65869.5.

Section 2. The City Council of the City of Rocklin hereby approves the 5th Amendment to the Development Agreement for Whitney Ranch, attached hereto and incorporated by reference herein as Exhibit 1.

Section 3. The City Council of the City of Rocklin hereby directs the Mayor to sign the 5th Amendment to the Development Agreement for Whitney Ranch between the City of Rocklin and Sunset Ranchos Investors, LLC, on behalf of the City of Rocklin and directs the City Clerk to record said document with the Placer County Recorder.

Section 4. Within fifteen days of passage of this ordinance, the City Clerk shall cause the full text of the ordinance, with the names of those City Council members voting for and against the ordinance, to be published in the Placer Herald. In lieu of publishing the full text of the ordinance, the City Clerk, if so directed by the City Attorney and within fifteen days, shall cause a summary of the ordinance, prepared by the City Attorney and with the names of the City Council members voting for and against the ordinance, to be published in the Placer Herald, and shall post in the office of the City Clerk a certified copy of the City Council members voting for and against the ordinance. The publication of a summary of the ordinance in lieu of the full text of the ordinance is authorized only where the requirements of Government Code section 36993 (c) (1) are met.

INTRODUCED at a regular meeting of the City Council of the City of Rocklin held on May 28, 2013, by the following vote:

AYES:	Councilmembers:	Yuill, Magnuson, Butler, Janda, Ruslin
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None
ABSTAIN:	Councilmembers:	None

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Rocklin held on June 11, 2013, by the following vote:

AYES:	Councilmembers:	Yuill, Butler, Janda, Magnuson, Ruslin
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None
ABSTAIN:	Councilmembers:	None

*Diana L. Ruslin*

Diana L. Ruslin, Mayor

ATTEST:

*Barbara Ivanusich*

Barbara Ivanusich, City Clerk

The foregoing instrument is a correct copy of the original document on file in this office.

Attest: *B. Ivanusich*  
7/11/13 City Clerk, City of Rocklin

First Reading:	5/28/13
Second Reading:	6/11/13
Effective Date:	7/11/13