

**Development Agreement
Between the County of El Dorado and
GGV Missouri Flat LLC
For the Development Known as
Diamond Dorado Retail Center**

This Development Agreement (hereinafter “Agreement”) is made and entered into this ____ day of _____, 2012, by and between the **County of El Dorado** (hereinafter “County”) and **GGV Missouri Flat, LLC** (hereinafter “Developer”), **Larry Abel** and **Jacqueline Abel** and **Michael Lindeman** and **Lorraine Lindeman**, as trustees of Lindeman Family 2005 Trust, dated October 17, 2005 (collectively “Landowners”) pursuant to the authority of Sections 65864 through 65896.5 of the California Government Code and Chapter 17.85 of the County's Ordinance Code.

Recitals

This Agreement is entered into based on the following facts and circumstances, among others:

- A. The County of El Dorado, a semi-rural County located in the Sacramento metropolitan region, prides itself on providing a high quality of life to its residents. The County strives to balance the need for a healthy diverse economy, including a wide variety of commercial and retail opportunities, adequately financed and maintained infrastructure, with a healthy, sustainable, natural environment.
- B. The County is currently devoted primarily to residential, natural resource and agricultural uses. Most residents travel to Sacramento County for the majority of their shopping and other commercial needs. The “leakage” of sales tax revenues to Sacramento and Folsom has been a significant concern to the County for many years and the County has developed various policies in its General Plan and elsewhere to promote commercial development and a “jobs/housing balance” in the County.
- C. The Missouri Flat area has been identified by the County for several decades as one of the primary areas affording an opportunity for providing commercial and retail development to serve the County’s current and future residents. One of most significant obstacles constraining commercial development in the area has been the limited operational capacity on roads in the area, including the Missouri Flat Interchange, Missouri Flat Road, and Pleasant Valley Road.
- D. In 1998, in order to facilitate commercial development in the Missouri Flat area, the County adopted the Missouri Flat Master Circulation and Funding Plan (MC&FP). The goals of the MC&FP included facilitating commercial growth by developing funding mechanisms to build various road infrastructure improvements to alleviate existing traffic congestion and provide operational capacity for future development in the area. Primary road improvements identified to be constructed during the first phase of the MC&FP

(MC&FP – Phase I) included improvements to the Missouri Flat Interchange, the widening of Missouri Flat Road, and the construction of a new road connecting Missouri Flat Road to Pleasant Valley Road. The connector road was intended to alleviate congestion on the portion of Pleasant Valley Road that bisects the historic townsite of Diamond Springs, with the added benefit of facilitating commercial development in the area.

E. Of the primary road projects identified in the MC&FP – Phase I, the improvements identified for Missouri Flat Interchange and the Missouri Flat Road widening are either completed or are under construction. A two lane connector road between Missouri Flat Road and Pleasant Valley Road (known as the Parkway Project – Phase I) is in the County CIP and is in the County TIM fee program. On May 24, 2011, County approved an Environmental Impact Report (SCH # 2007122033) for development of the Parkway Project in two phases. Parkway Project - Phase I includes constructing two lanes of the Diamond Springs Parkway segment from Missouri Flat Road to State Route 49 and improvements to State Route 49 from the intersection with the new Diamond Springs Parkway segment to Pleasant Valley Road. Parkway Project – Phase II includes widening the Diamond Springs Parkway segment to four lanes and widening the State Route 49 segment to four lanes. Neither Phase of the Parkway Project is currently fully funded or scheduled for construction, with the exception of a portion of Phase I of the State Route 49 segment between Pleasant Valley Road and Lime Kiln Road.

F. The Developer is in the business of developing commercial projects in Northern California. The Developer has an equitable interest in approximately 27.61 acres owned by the Landowners, real property which is commonly known as the Diamond Dorado Retail Center Property (the “Property” or “DDRC Project”). The Property is located within the Missouri Flat area between Missouri Flat Road and State Route 49, on the south side of the Diamond Springs Parkway segment. The Property is located within the boundary of the MC&FP.

G. Recent traffic studies indicate that the Missouri Flat Interchange improvements that were identified in the MC&FP – Phase I are projected to reach operational capacity with the existing development and the construction of approved but not yet built development in the Missouri Flat area. Additional improvements for the Missouri Flat Interchange are not included in the MC&FP - Phase I funding mechanism. Additional improvements for the Missouri Road Interchange are not in the County’s CIP or TIM fee program. No additional interchange improvements are currently funded or scheduled for construction.

H. The Developer submitted a proposal to build approximately 250,000 square feet of commercial retail space on the Property in a project commonly known as Diamond Dorado Retail Center (“the DDRC Project”). The Property consists of 27.6 acres and is generally known as the Diamond Dorado Retail Center Property, El Dorado County Assessor’s Parcel Nos. 051-250-54, 051-250-51, 051-250-12, and 051-250-46. The DDRC Project is planned to contain approximately 250,000 square feet of commercial

facilities as generally depicted in Exhibit 1. On September 10, 2012, the County certified an EIR for the DDRC Project, and approved the DDRC Project subject to conditions.

I. The Conditions of Approval for the DDRC Project provide that the DDRC Project may not be occupied or operated until the Parkway Project, including both phases of the Diamond Springs Parkway segment and both phases of the State Route 49 segment improvements have been constructed, or are otherwise mitigated for in accordance with the mitigation measures contained within the approved DDRC Project Environmental Impact Report.

J. A mitigation measure identified in the DDRC Project EIR conditions the issuance of any DDRC Project building permit upon available operational capacity at the Missouri Flat Interchange and that the amount of DDRC Project square footage permitted to be constructed shall not result in an exceedance of operational capacity at the Missouri Flat Interchange.

K. Neither the County nor the Developer currently has sufficient funds to construct the Parkway Project or new improvements to the Missouri Flat Interchange beyond those anticipated by the Missouri Flat Interchange- Phase I Project. Economic conditions make it difficult to predict when the Parkway Project and any additional improvements to the Missouri Flat Interchange will be constructed. Developer agrees that Developer is prohibited from constructing the DDRC Project until the Parkway Project has been awarded for construction, and that the DDRC Project shall not be occupied or operated until the Parkway Project, all as provided for in the Conditions of Approval, is completed. Developer also understands that the DDRC Project may be limited, in the timing of construction and/or the amount of the Project that can be built, by future availability of operational capacity on the Missouri Flat Interchange.

L. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development, the Legislature of the State of California adopted Sections 65865 et seq. of the California Government Code enabling a County and an applicant for a development project to enter into a development agreement establishing with certainty what zoning standards and land use regulations of the County will govern the construction and implementation of the development project from beginning to completion.

M. Due to the uncertainty of when the Parkway Project and any additional improvements to the Missouri Flat Interchange will be built, and the County's desire to facilitate commercial development like the DDRC Project in the Missouri Flat area, the Parties have decided to execute this Development Agreement to extend the Project Approvals for the DDRC Project, so that the Approvals are operative for a period of twenty years.

N. As consideration for extending the term of the DDRC Project Approvals and to facilitate the timely construction of the Parkway Project and the DDRC Project, the Developer and Landowners agree to extend the irrevocable offers to dedicate through

which the County is provided a significant portion of the right of way needed for the construction of Parkway Project at no cost to the County, for the term of this Agreement. In addition, the Developer and Landowners agree to provide excess fill material from the DDRC Project site to the County for the construction of the Parkway Project at no cost to County.

O. As stated above, the County has a significant interest in facilitating the timely construction of all commercial development in the Missouri Flat area. The Parties agree that the extension of the Project Approvals will in no way prevent the County from approving other commercial development within the Missouri Flat area that may be proposed prior to the construction of the Parkway Project. The County will be under no obligation to consider the DDRC Project's square footage in determining whether there is adequate available operational capacity on the Missouri Flat Interchange to approve other commercial development in the Missouri Flat area. This understanding is necessary to ensure that the opportunities for other retail and commercial uses in the area will not be lost, and without that understanding, the County would not enter into this Agreement.

P. County hired a consultant to prepare an Environmental Impact Report (State Clearinghouse #2008012004) for the DDRC Project. The public comment period for the Environmental Impact Report ran from December 22, 2011 to February 5, 2012. On August 9, 2012, the County Planning Commission considered the EIR and the DDRC Project and after having conducted duly noticed public hearings, voted to certify the EIR and recommend approval of the DDRC Project to the County Board of Supervisors. On September 11, 2012, the County Board of Supervisors held public hearings on the DDRC Project. At the conclusion of these hearings, the County Board of Supervisors, after making specific findings, certified the EIR, made a Statement of Overriding Considerations, and adopted the Mitigation Monitoring and Reporting Program (MMRP) for the DDRC Project, and approved the DDRC Project consisting of a General Plan amendment to Commercial, Zoning amendment to General Commercial-Planned Development and Preliminary Development Plan.

Q. On _____, 2012, the Board of Supervisors adopted Ordinance No. _____, and approved this Agreement with the Effective Date as set forth in Section 1.2.

Definitions

The following words or phrases used in this Agreement shall have the meanings set forth in this Section. All words not specifically defined shall be deemed to have their common meaning and/or the meaning generally given to such words in the parlance of the planning and development of real property in the State of California.

- A. "Agreement" means this Development Agreement.
- B. "Applicable General Plan" means the County's General Plan, adopted on July 19, 2004, as amended through _____, 2012.

- C. “CIP” means that list of projects contained within future editions of the County of El Dorado Department of Transportation Capital Improvement Program, as adopted by the Board of Supervisors and as may be updated and amended from time to time by the Board. Existing CIP means the *County of El Dorado Department of Transportation Adopted 2012 Capital Improvement Program for West Slope Road/Bridge, Capital Overlay and Rehabilitation, Environmental Improvement Program/Airports*, as adopted by the Board of Supervisors on June 19, 2012.
- D. “Conditions of Approval” mean the requirements placed on the Diamond Dorado Preliminary Development Plan. A copy of the Conditions of Approval is attached as Exhibit 2.
- E. “Developer” means GGV Missouri Flat, LLC, or its successors in interest, provided that if another Landowner initiates development of their respective portion of the Property independently from GGV Missouri Flat, LLC, or its successors, such Landowner shall be considered the “Developer” in accordance with Section 1.5 of this Agreement.
- G. “EIR” means Final Environmental Impact Report for the Diamond Dorado Retail Center, State Clearinghouse No. 2008012004, certified by the Board of Supervisors on September 11, 2012.
- H. “Grading Plan” means the Tentative Grading Plan attached hereto as Exhibit 3, provided that at such time as a final grading plan and/or a Final Development Plan is approved by the County, the subsequently approved plan shall become the Grading Plan.
- I. “Irrevocable Offers to Dedicate” means: Those certain “*Consent to Making of Irrevocable Offer of Dedication*” as follows:
- I.a.) Consent to Making Of Irrevocable Offer of Dedication for Grant in Fee for County Right of Way and Public Utility Easement from Laurence E. Abel, also shown of record as Laurence Abel and Jacqueline Able, husband and wife as joint tenants (Grantor) to the County of El Dorado, a political subdivision of the State of California, (Grantee) recorded as Document No. 20100023366 on May 27, 2010 (APN 051-250-12);
- I.b.) Consent to Making Of Irrevocable Offer of Dedication for Grant in Fee for Public Service Easement and Temporary Construction and Access Easement from Laurence E. Abel, also shown of record as Laurence Abel and Jacqueline Able, husband and wife as joint tenants (Grantor) to the County of El Dorado, a political subdivision of the State of California, (Grantee) recorded as Document No. 20100023367 on May 27, 2010 (APN 051-250-12);

- I.c.) Consent to Making Of Irrevocable Offer of Dedication for Grant in Fee for State Highway 49 Right of Way and Public Utility Easement from Laurence E. Abel, also shown of record as Laurence Abel and Jacqueline Able, husband and wife as joint tenants (Grantor) to the County of El Dorado, a political subdivision of the State of California, (Grantee) recorded as Document No. 20100023368 on May 27, 2010 (APN 051-250-12);
- I.e.) Consent to Making Of Irrevocable Offer of Dedication for Grant in Fee for County Right of Way and Public Utility Easement from GGV Missouri Flat, LLC, a California limited liability company (Grantor) to the County of El Dorado, a political subdivision of the State of California, (Grantee) recorded as Document No. 20100023369 on May 27, 2010 (APN 051-250-46);
- I.f.) Consent to Making Of Irrevocable Offer of Dedication for Public Service Easement, Slope and Drainage Easement, Slope, Drainage, and Traffic Signal Appurtenances Easement, Temporary Construction and Access Easement from GGV Missouri Flat, LLC, a California limited liability company (Grantor) to the County of El Dorado, a political subdivision of the State of California, (Grantee) recorded as Document No. 20100023370 on May 27, 2010 (APN 051-250-46);
- I.g.) Consent to Making Of Irrevocable Offer of Dedication for Grant in Fee for County Right of Way and Public Utility Easement from Michael D. Lindeman and Lorraine D. Lindeman, Trustees of the Lindeman Family 2005 Trust dated October 17, 2005 (Grantor) to the County of El Dorado, a political subdivision of the State of California, (Grantee) recorded as Document No. 20100023371 on May 27, 2010 (APN 051-250-54);
- I.h.) Consent to Making Of Irrevocable Offer of Dedication for Public Service Easement, Slope and Drainage Easement, Storm Drain Easement, Temporary Construction Easement from Michael D. Lindeman and Lorraine D. Lindeman, Trustees of the Lindeman Family 2005 Trust dated October 17, 2005 (Grantor) to the County of El Dorado, a political subdivision of the State of California, (Grantee) recorded as Document No. 20100023372 on May 27, 2010 (APN 051-250-54);
- J. “Landowner” or “Landowners” means GGV Missouri Flat, LLC, Larry Abel and Jacqueline Abel and Michael Lindeman and Lorraine Lindeman, as trustees of Lindeman Family 2005 Trust, dated October 17, 2005, and any successors in interest in the Property.
- K. “Landowner Abel” shall mean Larry and Jacqueline Abel the owners of that Portion of the Property currently described as El Dorado County Assessor’s Parcel No. 051-250-12, or their successors in interest.
- L. “Mitigation Measures” mean the requirements placed on the Property to cure or lessen the environmental impacts of the DDRC Project as identified in the

analysis of the DDRC Project done in EIR #2008012004. The Mitigation Monitoring and Reporting Program adopted with the DDRC Project is attached as Exhibit 4.

- M. “Missouri Flat Boundaries” means the geographic areas within the County identified as “*Figure 2 - Missouri Flat Area MC&FP Boundary*” in the *Final Report Missouri Flat Master Circulation and Funding Plan* dated April 1998 and adopted by the El Dorado County Board of Supervisors on December 15, 1998.
- N. “Missouri Flat Master Circulation and Funding Plan” (“MC&FP”) means that certain planning and policy document adopted by the Board of Supervisors of County on December 15, 1998.
- O. Missouri Flat Master Circulation and Funding Plan - Phase I (“MC&FP - Phase I”) means Phase I of the MC&FP planning and policy document, as approved in the action by the Board of Supervisors of County on December 15, 1998, and including all authorized MC&FP - Phase I transportation improvements and associated Phase I commercial development capacity described within the MC&FP planning and policy document.
- P. “Missouri Flat Master Circulation and Funding Plan - Phase I Funding Mechanisms” means those sources of funds described within the MC&FP, including potential bond debt issued by the Missouri Flat Community Facilities District (CFD) that is secured by a special tax lien upon properties with the CFD boundary and portions of the incremental sales tax and property taxes derived from new commercial development within the Missouri Flat area.
- Q. “MC&FP Improvements” means all of those certain roadway improvements proposed to be constructed pursuant to the MC&FP and identified as Phase I Road Improvements listed in “*Table 1 – Summary of Master Circulation Plan Road Improvements by Phase Missouri Flat Financing Plan*” in the MC&FP, except that project listed as the Headington Road Extension.
- R. “Operational Capacity” means that capacity of roadway facility that provides for operation of the roadway facility during a specified planning horizon and meeting criteria such as achievement of safety standards, traffic volumes, levels of service, queuing and delay thresholds and other traffic operational standards established by County and/or Agency responsible for operation of the roadway facility.
- S. “Party” means either; the County, the Developer, the Landowner, or their successors, as the context may indicate. “Parties” means the County, the Developer, the Landowners, and their successors.
- T. “Property” means the property commonly known as the Diamond Dorado Retail Center Property, currently identified as El Dorado County Assessor’s Parcels No. 051-250-54, 051-250-51, 051-250-12, and 051-250-46. A map showing the

location and boundaries of the Property is attached as Exhibit 5 and the legal description describing the Property is attached as Exhibit 6.

- U. “DDRC Project” means the Diamond Dorado Retail Center as described in the Preliminary Development Plan and which will be further refined in a final Development Plan.
- V. “Project Approvals” means the development approvals and entitlements set forth in Section 2.1.
- W. “Roadway Improvements” listed in the Agreement shall mean the following:

W.a. “Diamond Springs Parkway Project” (“Parkway Project” or “Parkway Project – Phase I and Phase II”) means the road and signalization improvements, analyzed in the Diamond Springs Parkway Final Environmental Impact Report dated May 10, 2010, (State Clearinghouse No. 2007122033) consisting of both the Diamond Springs Parkway segments and the State Route 49 segments. The Parkway Project is anticipated to be constructed in two phases. Parkway Project - Phase I consists of the construction of a new two lane roadway along the Diamond Springs Parkway segment and improvements to the existing two lane segment of State Route 49. Parkway Project - Phase I also includes signalization and turn lane improvements at the intersection of the new Diamond Parkway segment at existing State Route 49. Parkway Project - Phase II consists of widening of the Diamond Springs Parkway segment and the State Route 49 segment from two to four lanes.

W.b.. Diamond Springs Parkway Segment (“DSP Segment”) means the road and signalization improvements, analyzed in the Diamond Springs Parkway Final Environmental Impact Report Dated May 10, 2010, (State Clearinghouse No. 2007122033) which consist of a new divided arterial roadway from Missouri Flat Road east of Golden Center Drive to a new T intersection with State Route 49 south of Bradley Drive. DSP Segment - Phase 1 consists of the construction of a new two-lane divided arterial roadway along with those improvements identified within the Traffic Information Reissuance (TIR) component of the DSP-FEIR, dated May 6, 2010. DSP Segment - Phase II consists of widening the Phase I two-lane divided arterial roadway improvements to a four-lane divided arterial roadway along with those improvements identified within the TIR.

W.c. State Route 49/Diamond Road Segment (“SR-49 Segment”) means the improvements to Highway 49 analyzed in the Diamond Springs Parkway Final Environmental Impact Report Dated May 10, 2010. (State Clearinghouse No. 2007122033) which consist of widening and improving SR-49 from the intersection with the new DSP to Pleasant Valley Road. SR-49 Segment is comprised of two elements, the Pleasant Valley Road to Lime Kiln Road Element and the Lime Kiln Road to Bradley Drive Element. SR-49 Segment - Phase I consists of the construction of a realigned two-lane minor highway along with

those improvements as identified within the TIR. SR-49 Segment - Phase II consists of widening the SR-49 - Phase I two-lane divided minor highway improvements to a four-lane divided arterial roadway along with those improvements identified within the TIR.

W.d. U.S. Highway 50/Missouri Flat Road Interchange (Missouri Flat Interchange):

The Missouri Flat Interchange consists of Missouri Flat Interchange ramp intersections and the Missouri Flat Road/Plaza Drive and Missouri Flat Road/Mother Lode Drive intersections. Missouri Flat Interchange also includes components of the mainline U.S. Highway 50/Weber Creek bridge structure. Improvements to the Missouri Flat Interchange will be constructed in Phases.

U.S. Highway 50/Missouri Flat Road Interchange – Phase I (Missouri Flat Interchange – Phase I) consists of reconstructing the Missouri Flat Interchange into a tight diamond interchange configuration with four lanes on Missouri Flat Road from Plaza Drive to Mother Lode Drive and improving the mainline U.S. Highway/Weber Creek bridge structure, including one new auxiliary lane in both the eastbound and westbound direction. The Missouri Flat Interchange - Phase I improvements also include a new Class I bicycle trail.

U.S. Highway 50/Missouri Flat Road Interchange – Phase II (Missouri Flat Interchange – Phase II) consists of potential additional interchange ramp and mainline improvements and may include the Missouri Flat Road/Plaza Drive and Missouri Flat Road/Mother Lode Drive intersections and all Interchange ramp intersections. The Missouri Flat Interchange - Phase II improvements may be in the configuration of Single Point Diamond Interchange. The Missouri Flat Interchange - Phase II improvements may also include a second new auxiliary lane in both the eastbound and westbound direction over the mainline U.S. Highway 50/Weber Creek Bridge.

X. “Traffic Impact Mitigation Fee Program” or “TIM Fee Program” means that program wherein fees are charged by the County on new development for the purpose of mitigating traffic impacts of the new development. For purposes of this Development Agreement, TIM Fee Program shall refer only to those fees collected pursuant to the Program components referred to as the TIM Fee Program Zones 1-7; TIM FEE Program shall not refer to the fees collected in Zone 8 (El Dorado Hills) TIM Fee Program or to the Highway 50 TIM Fee Program.

SECTION 1. - GENERAL PROVISIONS

1.1. All Exhibits Deemed Incorporated by Reference Unless specifically stated to the contrary, the reference to an exhibit by a designated letter or number shall mean that the exhibit is made a part of this Agreement.

1.2. Agreement to be Recorded; Effective Date When fully executed, this Agreement will be recorded in the Official Records of El Dorado County, pursuant to Government Code Section 65868.5. This Agreement is effective on the date of its recordation (“Effective Date”).

1.3. Term The term of this Agreement is twenty years, commencing on the Effective Date.

1.4. Termination This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

1.4.1. Expiration of the twenty (20) year term;

1.4.2. Entry of a final court judgment or issuance of a final court order directed to the County to set aside, withdraw, or abrogate the County’s approval of this Agreement or any material part of the Project Approvals; or

1.4.3. The effective date of a party’s election to terminate the Agreement as provided in Sections 1.13 and 5.2 of this Agreement.

1.5. Interest of Developer and Landowners Developer and Landowners represent that they have a fee or controlling interest in the Property and that all other persons or entities holding legal or equitable interests in the Property are to be bound by this Agreement. Landowners own the underlying fee title to the Property and although they do not intend to develop the Property themselves, by executing this Agreement they give their consent to the recordation of the Agreement, and agree to be bound by all of its terms. At the time of this Agreement it is the intention of the parties that Developer will develop the Property in cooperation with the rest of the Landowners. However, nothing herein is intended to prevent another Landowner, other than Developer as named herein, from initiating an application for development of their respective share of the Property, provided that, the Landowner making such application will thereafter be deemed a “Developer” pursuant to this Agreement and succeed to the obligations of Developer herein.

1.6. Covenants Running With the Land Any successors in interest to the County, Developer, and Landowners shall be subject to the provisions set forth in Government Code Sections 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and every portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 2.4, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer or Landowner in writing pursuant to Section 1.7. In no event

shall the tenant of any individual building or portion thereof have any rights under this Agreement.

1.7. Right to Assign; Non-Severable Obligations

1.7.1. Except as otherwise provided, the Landowners, except as provided below, shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively “assign”) in whole or in part, its rights, interests and obligations under this Agreement to a third party during the term of this Agreement, provided written notice of such assignment is given to County.

1.7.2. No assignment by Developer, or its successor, of its interest shall be effective until the County Administrative Officer (“CAO”) approves the assignment. Approval shall not be unreasonably withheld provided the assignee has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment. Proof of financial ability shall be provided to the CAO in a form satisfactory to the CAO. The materials so provided shall be utilized for the sole purpose of satisfying this Section. If the CAO concludes that the final determination under this Section requires further consideration, the matter may be referred to the Board of Supervisors for a final approval.

1.7.3. The obligations and conditions set forth in this Agreement are not severable, and any sale of the Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever the obligations and/or conditions shall be a nullity and shall have no force or effect.

1.8. Unapproved Transfers Void Any assignment or attempted assignment that is not approved by the County as required under Section 1.7 or that is inconsistent with the provisions of Section 1.7 shall be unenforceable and void and shall not release the Developer from any obligations hereunder

1.9. Amendment of Agreement This Agreement may be amended from time to time by mutual consent of the County, the Developer and the Landowners as provided in Government Code Section 65868. The cost to the County in processing such a proposed amendment shall be paid by the requesting party or by the Landowners impacted by the amendment in the case of an amendment requested by the County.

1.10. Whole Agreement This Agreement, together with any subsequent amendments, shall constitute the entire agreement of the Parties as to the development of the Property. All prior agreements of the Parties, whether written or oral, are of no further force and effect.

1.11. Modification to the DDRC Project Approvals The Developer or Landowners may apply, in writing, to modify the Preliminary Development Plan or other Project Approvals. Such modification may be processed without any amendment to this Agreement, if the County, in its sole discretion, determines that the requested

modification (1) is consistent with this Development Agreement, (2) does not alter this Agreement's term, provisions for reservation and dedication of land, or monetary contributions, (3) does not substantially alter the permitted uses, density or intensity of use, and (4) is consistent with the Applicable General Plan. If the County determines that the requested modification is inconsistent with this Agreement, alters its term or substantially alters its uses, the modification will not be processed without processing a concurrent amendment to this Agreement in accordance with Section 1.9.

1.12. Waivers Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

1.13. Severability If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other Parties. In the event of such termination, the provisions of Section 1.4 relating to termination of the Agreement by mutual written consent shall apply. Without limiting the generality of the foregoing, no judgment determining that a portion of this Agreement is unenforceable or invalid shall release the Developer from its obligations to indemnify the County under this Agreement.

1.14. Choice of Law; Venue This Agreement shall be interpreted according to the laws of the State of California. The venue for any litigation concerning its meaning shall be the Superior Court of El Dorado California.

1.15. Notices All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the County and Developer or Developer's assigns and successors. Notice shall be effective on the date delivered in person, or the date when the postal authorities indicate that the mailing was delivered to the address of the receiving party indicated below:

Notice to the County: County of El Dorado
2850 Fairlane Court
Placerville, CA 95667

Attn: Director of Development Services

Notice to Developer: GGV Missouri Flat LLC
c/o Palos Verdes Properties
4330 Golden Center Drive, Ste. D
Placerville, CA 95677

and

c/o Granite Land Company
8950 Cal Center Drive #201
Sacramento, CA 95826

Copy to:

Craig M. Sandberg
Law Offices of Craig M. Sandberg
1024 Iron Point Road
Folsom, CA 95630

Notice to Landowners: Larry and Jacqueline Abel
5189 Abel Road
Placerville, CA 95667

Michael and Lorraine Lindeman
27102 E. El Macero Drive
El Macero, CA 95618

1.16. No Third Party Beneficiaries This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

SECTION 2. - DEVELOPMENT OF THE PROPERTY

2.1. Project Approvals The Property shall be developed in accordance with the Project Approvals. The Project Approvals shall consist of:

2.1.1. The General Plan and zoning amendments approved by the County as provided in Paragraph P of the Recitals; and

2.1.2. The Preliminary Development Plan PD 07-0034 for the DDRC Project consisting of commercial buildings ranging in size from approximately 3,100 square feet to 160,572 square feet, together with all of its Conditions of Approval . The sizes of buildings may vary from those depicted on the Preliminary Development Plan at the time that a final Development Plan is submitted and approved, provided that: (1) the total square footage of the approved buildings does not exceed 250,000 square feet, (2) the buildings are substantially as shown in the Preliminary Development Plan, not varying in size by more than 30%, and (3) a minimum of 75% of the building area is utilized for retail uses and (4) the building identified as "Major 1" shall be built in the first phase of the DDRC Project, unless there is insufficient operational capacity at the Missouri Flat Interchange as set forth in Section 3.10.

2.1.3. The Mitigation Monitoring and Reporting Program adopted with the DDRC Project, attached here as Exhibit 4; and

2.1.4. Any subsequent approvals including the Final Development Plan and any Tentative Parcel Map implementing the Preliminary Development Plan shall, upon such approvals, be deemed Project Approvals.

2.2. Consistency with the General Plan The County finds that the provisions of this Agreement and the development of the Property are consistent with and conform to the 2004 General Plan of the County of El Dorado, as amended through the adoption of the ordinance for this Agreement (“Applicable General Plan”).

2.3. Vested Rights of the Developer/Landowner Unless otherwise provided in this Agreement, the Developer shall have the vested right to develop the Property in accordance with the Project Approvals described in Section 2.1 above, and in conformity with the County rules, regulations, policies, standards, specifications and ordinances, including the zoning ordinance, in effect on the date of adoption of the ordinance for this Agreement, provided that Developer or Landowners are not in default under this Agreement. The Developer and Landowners recognize and accept that this vested right to build is limited by all contingencies related to roads and road project funding described within this agreement and that there is no guarantee that all of the DDRC Project can be constructed during the 20 year term of this agreement. The vested right to proceed with the DDRC Project shall be subject to any subsequent discretionary approvals required in order to complete the DDRC Project. Any conditions, terms, restrictions, and requirements for such subsequent discretionary approvals shall not prevent development of the land for the uses and to the density or intensity of development or rate or timing of development set forth in this Agreement and the Project Approvals.

2.4. Rights Retained by the County Notwithstanding any other provisions of this Agreement, including the vesting granted by Section 2.3, the following regulations and provisions shall apply to the development of the Property:

2.4.1. Application fees and charges of every kind and nature imposed by the County to cover the actual costs to the County of processing development applications or for monitoring compliance with any land use entitlements granted or issued.

2.4.2. Procedural Regulations related to hearing bodies, applications, notices, findings, hearings, reports, appeals and any other matter of procedure, provided such procedures are uniformly applied on a county-wide basis to all substantially similar types of development projects and properties.

2.4.3. Regulations governing construction standards and specifications, including, without limitations, the County’s building code, plumbing code, mechanical code, electrical code and grading code and all other uniform construction codes then applicable in the County at the time of permit application.

2.4.4. New County laws or regulations that are mandated by state or federal law.

2.4.5. New County laws and regulations which are reasonably necessary to protect the public health and safety, provided that such laws and regulations are uniformly applied on a County wide basis to all substantially similar types of development projects and properties.

2.4.6. Any fees, taxes, assessment, and charges which are in effect and collected at the time of the approval of a subsequent entitlement or the issuance of a Building Permit, as provided in this Agreement or as generally applicable throughout the County, included but not limited to impact fees, provided that such fees, taxes and assessments apply to all similar private projects within the County and are reasonably related to the cost of the facility or service for which the fee or assessment is imposed. For any fees that are assessed by zone or area, “similar private projects” will mean projects in the same zone or area as the Project.

2.5. Revisions to Project Approvals Developer or Landowners may apply, in writing to revise the Development Plan. If the Director of Development Services, or his designee, determines, in his sole discretion, that the requested revision is (1) a minor change to the DDRC Project considered as a whole; (2) does not increase the density or intensity of the use approved in the Project Approvals; (3) is consistent with this Agreement; (4) is consistent with the Applicable General Plan; and (5) does not change the analysis contained in the EIR, the Director or designee may approve the requested revision without public hearing. The notice and appeal process for such a revision shall be the same process as for any other Director approval at the time of the action requested.

If the Director of Development Services determines the application does not comply with the above, then it shall be processed with all applicable public hearing and notice provisions then in effect.

SECTION 3. - OBLIGATIONS OF THE PARTIES

3.1. Property Development The Property shall be developed in accordance with the Project Approvals set forth in Section 2.1.

3.2. Funding and Construction of Public Improvements Nothing in this Agreement shall be construed as obligating the County to fund, design or construct any specific projects or improvements at any specific time. The County shall not be obligated to expend monies from its general fund or from any source not identified in this Agreement to design or construct any improvements necessary for the development of the Property.

3.3. County’s Treatment of the Roadway Improvements Required for DDRC Project Construction

3.3.1. The Conditions of Approval mandate that the DDRC Project can not be constructed until a contract for the construction of the Parkway Project has been awarded,

or mitigation provided in accordance with the Conditions of Approval, attached as Exhibit 2, and that the DDRC Project can not be occupied or operated until the required Parkway Project improvements, including both phases of the Diamond Springs Parkway Segment and both phases of the State Route 49 Segment, have been completed, and/or are otherwise mitigated for in accordance with the mitigation measures contained within the approved DDRC Project Environmental Impact Report. (DDRC Project Conditions of Approval outline various cases which identify Developer's obligations associated with the Pleasant Valley Road to Lime Kiln Road Segment of State Route 49 - Phase II Segment.)

3.3.2. The County has included the DSP Segment - Phase I and the SR 49 Segment - Phase I in its TIM Fee Program. The DSP Segment - Phase I, SR-49 Segment - Phase I and DSP Segment - Phase II are in the County's CIP Program. The SR-49 Segment - Phase II is not currently in the CIP or TIM Fee Program.

3.3.3. The DSP Segment - Phase I, DSP Segment - Phase II and SR-49 Segment - Phase I are included in the County's adopted MC&FP and are eligible for use of MC&FP - Phase I funding mechanisms.

3.3.4. Developer understands and agrees that the County does not currently have, nor can the County predict having, sufficient funds within County sources (e.g.: The TIM Fee Program and MC&FP Phase I Funding Mechanisms) to construct the Parkway Project Phase I and Phase II within the 20 year term of this agreement.

3.3.5. The County agrees that the portions of the Parkway Project that are currently in the CIP and the TIM Fee Program will remain in those programs until either those portions of the Parkway Project are constructed or this Agreement is terminated. The Developer and Landowner agree that any other road projects that are necessary for construction of DDRC that are in the CIP at the time this Agreement is executed, or that may be added to the CIP in the future, may be removed from the CIP in the future at the County's sole discretion. Nothing in this Agreement shall obligate the County to give any portion of the Parkway Project higher priority than any other road project that is currently contained in, or subsequently added to, the CIP or TIM Fee Program.

3.4. MC&FP Financing Program

3.4.1. County agrees that it shall not reduce the boundaries or the funding programs contained within the MC&FP - Phase I during the twenty year period the Community Facilities District identified in the MC&FP - Phase I remains in existence.

3.4.2. The County may, in its sole discretion, use the MC&FP - Phase I funding mechanisms for any improvements the County determines are needed for the Missouri Flat Interchange prior to using those funding mechanisms for any Parkway Project improvements. The Developer understands that there may not be sufficient funding during the term of this Agreement to fund any needed Missouri Flat Interchange improvements and Parkway Project improvements.

3.4.3. The County is not obligated by this Agreement to use money collected through any funding mechanisms developed in any potential future phases of the MC&FP for the Parkway Project. However, nothing in this Agreement would preclude the County from using funding from any potential future phases of MC&FP for any portion of the Parkway Project.

3.4.4. Landowners agree that, prior to the recording of a final parcel or subdivision map or the issuance of a building permit, they shall sign an agreement agreeing to annex the Property into the Community Facilities District formed in accordance with the MC&FP - Phase I in order to facilitate the financing arrangements provided therein.

3.5. Developer Funding of the Parkway Project

3.5.1. Developer's obligation to construct and fund the Parkway Project is provided in the Conditions of Approval for the DDRC Project, as set forth in Exhibit 2. Nothing in this Agreement alters these conditions. However, in the event that Developer wishes to construct the DDRC Project prior to the County's ability to construct the Parkway Project, Developer shall have the option to provide additional funding for the Parkway Project.

3.5.2. Developer shall give the County written notice of its intent to move forward with the DDRC Project. If there are other eligible projects in the TIM Fee Program or MC&FP - Phase I, other than the Parkway Project, that the County, in its sole discretion, considers to be a higher priority for funding and construction, nothing in this Agreement shall obligate the County to use TIM Fee Program monies or MC&FP - Phase I monies to construct the Parkway Project at the time that the Developer gives notice under this Section. Within ninety (90) days of such notice the Parties shall meet to determine what, if any funds are available from the TIM Fee Program and/or the MC&FP - Phase I to partially fund the Parkway Project.

3.5.3. If at the conclusion of the meetings with the County, the Developer still wishes to proceed, the Developer shall provide the funding to cover the difference between the funds determined by the County to be available from other sources and the total estimated cost of the Parkway Project.

3.5.4. Developer understands and agrees that County will be under no obligation to construct the Parkway Project unless and until one hundred percent of the funds necessary to construct the Parkway Project are identified and secured, including any amount needed to acquire right of way that the County has not already obtained.

3.5.5. Upon securing all necessary funds, the County will utilize its best efforts to begin the construction of the Parkway Project as quickly as possible, while ensuring that all necessary steps including, but not limited to, improvement plans, permits, right of way

acquisition, environmental clearances and public bidding processes are adequately completed.

3.6 Option for Developer to Provide Funding to Change County's Proposed Project

3.6.1. At least six (6) months before the County starts the design of any roadway project that includes the completion of DSP Segment – Phase I, County shall give written notice of its intent to the Developer. This notice shall include a statement outlining the funding sources County has identified for the proposed project and an estimate of the amount of additional funding that would be needed for the County to change the project to the Parkway Project.

3.6.2 Developer has thirty (30) days from the date that the County's notice is sent to Developer to notify the County in writing whether Developer wishes to fully advance the additional funding necessary for the Parkway Project. Developer's notification must be accompanied by a written commitment to fully fund any difference between the amount needed for the County's proposed project and the amount needed to construct the Parkway Project. DDRC must include a deposit for ten percent of the estimated difference between the costs; this deposit will be to fund costs associated with changing the County's proposed project to the Parkway Project.

3.6.3. Within thirty (30) days of receipt of Developer's deposit, the County shall notify Developer whether the County elects to modify its proposed project to the Parkway Project. If the County elects to do so, Developer's deposit shall be nonrefundable.

3.6.4. If Developer commits to funding the difference and the County agrees to revise the project, at least six (6) months before the County advertises the Parkway Project, the County shall notify Developer of its intent to advertise the Parkway Project. This notification will include an updated estimate of the funding required. Within sixty (60) days after this notification is sent, the Developer must submit the remainder of the necessary funding. If such funding is not submitted in a timely fashion, the County will have no obligation to advertise the Parkway Project.

3.6.5. If the Developer fully funds the difference between the County's proposed project and the Parkway Project, Developer shall be fully vested to build its entire project for a period of two years after the Board of Supervisor's approval of the Notice of Acceptance of the Parkway Project, except as may be limited by the Missouri Flat Interchange operational capacity as set forth in Section 3.11.5 below.

3.6.6. If for any reason the County fails to begin construction of the Parkway Project within one (1) year after Developer's final, full payment of the difference between the funding for the County's proposed project and the Parkway Project, the County shall, upon written demand by Developer, refund all of the Developer's money except the initial nonrefundable 10% deposit.

3.7. County's Option to Demand that DDRC Advance TIM Fees for Construction of Parkway Project

3.7.1. If the County elects to design and construct the Parkway Project – Phase II concurrently with the Parkway Project – Phase I, the County shall have the right to demand advance payment of DDRC Project's TIM fees. Developer agrees to pre-pay the DDRC Project TIM fees as set forth below prior to the Board of Supervisors' action to advertise the Parkway Project - Phase I and Phase II.

Developer's obligation to prepay TIM Fees is limited to pre-paying of TIM Fees for the portion of the DDRC Project that is eligible to obtain building permits, given any limits on the Missouri Flat Interchange as defined in Section 3.11. (For example, if the Missouri Flat Interchange limits mandate that only a 100,000 square foot phase of the DDRC Project can be built, the Developer will be required to prepay fees associated with 100,000 square feet.)

3.7.2. The County shall provide Developer notice at least six (6) months prior to advertising the Parkway Project – Phase I and Phase II and the date upon which the pre-payment of the TIM Fees shall be due.

3.7.3. Upon Developer's prepayment of TIM Fees, the DDRC Project would be vested with the right to construct the square footage that Developer has prepaid the TIM Fees for. Vesting shall be in accordance with Section 3.11.6 below.

3.7.4. If for any reason the County fails to begin construction of the Parkway Project - Phase I and II within one (1) year after payment of the fees as provided in this Section 3.7., the fees advanced shall be refunded to Developer.

3.8. TIM Fee Credit and Reimbursement

3.8.1. If Developer advances funding for the Parkway Project, the Developer shall be granted a credit against any TIM Fees required from the DDRC Project. In addition, the Parties shall enter into a reimbursement agreement that shall provide the means and timing by which Developer will be reimbursed any portion of the funds advanced that exceed the TIM Fee credit and exceed the Developer's fair share of the cost of the improvements. County will not be obligated to use any funds other than MC&FP - Phase I revenues or the TIM Fee Program to reimburse Developer.

3.8.2. The Developer is eligible to be reimbursed for the Developer's advance funding only for those portions of the Parkway Project that are in the County's CIP and TIM Fee Program. Any funds advanced for the DSP Segment - Phase I and the SR-49 Segment - Phase I would be eligible for reimbursement from the MC&FP - Phase I and the TIM Fee Program. Any funds advanced for the DSP Segment - Phase II would be

eligible for reimbursement only from TIM funds, since that project is in the TIM Fee Program, but is not in the MC&FP - Phase I Program.

3.8.3. The costs for design and construction of the SR-49 Segment - Phase II are currently not eligible for reimbursement, because the SR-49 Segment - Phase II is not in the CIP or TIM Fee Program and that project would not be needed in the reasonably foreseeable future but for the DDRC Project. Nothing in this Agreement is intended to prevent the County from adding improvements that are not currently in the TIM Fee Program to that program in the future. Similarly, nothing in this Agreement is intended to limit or otherwise affect the County's decisions about what improvements may be eligible for funding in any future phases of the MC&FP program.

3.9. Excess Fill Material

3.9.1. Developer and Landowner Abel agree to give the County, for no additional remuneration, approximately 200,000 cubic yards of fill material, which is the amount of excess fill identified on the DDRC Project Grading Plan.

3.9.2. When the County is ready to solicit bids for construction of any phase of the Parkway Project, Developer and Landowner Abel will grant to County the right, in the form of an easement or license, to enter upon the Property to the excess fill material identified on the DDRC Project Grading Plan. The excess fill material shall be used for earthwork elements of the Parkway Project.

3.9.3. Prior to entry and removal of fill material, the County shall consult with Developer and Landowner Abel to ensure that the fill material is removed in a manner which is consistent with the approved DDRC Project Development Plan and the DDRC Project Grading Plan.

3.9.4. Prior to the County's entrance on the Property the Parties shall enter into easement or license agreements providing typical terms for such an agreement including the indemnification of Developer/Landowners from liability incurred as a result of the County's entry on the Property.

3.9.5. County agrees to leave the Property in a safe and functional condition in accordance with best management practices and local and State regulations relating to drainage and storm water protection. County shall not be obligated to maintain said improvements and all maintenance of and regulatory obligations associated with said improvements shall transfer and be sole responsibility of Landowner upon completion of the following:

- a.) Installation of storm water best management practice improvements necessary to stabilize site from impacts due to grading, and;
- b.) Removal of all temporary construction storm water best management measures which may have been utilized during the construction of the Parkway

Project by County necessary to leave the Property in a safe and functional condition, and;

c.) Board of Supervisor's approval of Parkway Project Notice of Acceptance.

3.10. Timing of Development The Parties acknowledge that Landowners cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Landowners, such as the timing of construction of the roadway improvements, market orientation and demand, interest rates, absorption, competition and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Ca1.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Landowners shall have the right to develop the Property in such order and at such rate and at such times as Landowners deem appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in this Agreement with respect to roadway improvements and as provided for in Section 2.1.2 with respect to minimum building size.

3.11. Reservation of Traffic Capacity on Missouri Flat Interchange

3.11.1. County wishes to encourage the construction of commercial development in the Missouri Flat area and recognizes that the roadway system, in particular the Missouri Flat Interchange, has a finite operational capacity which must be monitored to ensure that traffic conditions do not deteriorate to unacceptable levels.

3.11.2. The timing of funding and constructing any additional improvements to the Missouri Flat Interchange is uncertain and shall be at the sole discretion of County. Developer acknowledges and agrees that the County is not obligated in any way to construct any additional improvements at the Missouri Flat Interchange to provide for the DDRC Project or other development projects within the Missouri Flat area.

3.11.3. The improvements to the Missouri Flat Interchange that were identified in the MC&FP - Phase I are currently being constructed by the County; however, the DDRC Project EIR acknowledged that the Missouri Flat Interchange – Phase I improvements currently being constructed may not be sufficient to adequately serve all existing, approved, and anticipated growth in the Missouri Flat area. It is possible that there will not be adequate operational capacity on the Missouri Flat Interchange at the time that the Parkway Project is completed, thus the Missouri Flat Interchange may serve as an additional constraint to the construction of the DDRC Project.

3.11.4. Developer recognizes that the County's goal for the Missouri Flat area is to encourage commercial activity in the Missouri Flat area that can be constructed in the near future. It would not further the County's goal to "reserve" operational capacity on

the existing Missouri Flat Interchange for this DDRC Project, which may be not constructed for many years due to the uncertainty of timing of construction of the Parkway Project.

3.11.5. Except as provided below, this Agreement in no way limits the County's ability to approve any other development in the Missouri Flat area which (1) is not dependent on construction of the Parkway Project, and (2) which requests entitlements before the Parkway Project is funded and the contract for construction is awarded. The Developer understands that approval of other development may use all of the existing operational capacity on the Missouri Flat Interchange. The DDRC Project may not be able to be constructed until additional operational capacity is available on the Missouri Flat Interchange through the construction of additional improvements or other methods.

3.11.6. The Parties agree that the County shall determine the operational capacity at the Missouri Flat Interchange within 90 (ninety) days of either of the following dates:

a.) the date the County asks for advance payment of the DDRC Project TIM Fees in accordance with Section 3.7, or;

b.) the date that the Board of Supervisors approves the Notice of Acceptance for the Parkway Project – Phase I and Phase II.

The County agrees that if there is sufficient operational capacity for the complete DDRC Project, it shall be reserved until two years after the Notice of Acceptance of the Parkway Project is approved by the Board of Supervisors.

If County determines that there is insufficient operational capacity to serve the entire DDRC Project, Developer and County shall evaluate if reserving the limited operational capacity would meet the Parties' goals and objectives. If there is enough capacity that a realistic phase of the DDRC Project could be built that would meet the minimum building square footages described within Section 2.1.2, the remaining capacity on Missouri Flat Interchange shall be reserved for the DDRC Project until a date two years after the Notice of Acceptance for the Parkway Project is approved by the Board of Supervisors.

If the Developer does not apply for and obtain all necessary building permits during the period that the operational capacity is reserved, as discussed above, or if the Developer subsequently lets some or all of the Building Permits expire, the County shall be under no further obligation to reserve capacity for the DDRC Project.

3.12. Connection to Public Improvements County shall cooperate with Developer to connect any improvements constructed under the Development Plan to existing or newly constructed public improvements, provided the costs of such connections are borne by Developer.

3.13. Extension of Irrevocable Offers of Dedication As consideration for extending the term of the DDRC Project Approvals and to facilitate the timely construction of the

Parkway Project and the DDRC Project, the Developer and Landowners agree to extend the irrevocable offers to dedicate through which the County is provided a significant portion of the right of way needed for the construction of Parkway Project at no cost to the County, for the term of this Agreement.

SECTION 4. - ANNUAL REVIEW

4.1. Annual Review County may, during the term of this Agreement, review the extent of good faith compliance by Developer with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code section 65865.1. The parties agree that due to the nature of this Agreement and the obligations contained herein, annual reviews may not be necessary or practical so strict compliance with Government Code section 65865.1 is not necessary. However, County may determine that a review is necessary or desirable during the term of this Agreement. Notice of such review shall include the statement that any review may result in amendment or termination of this Development Agreement.

Upon not less than thirty (30) days' written notice by the Development Service Director, Developer shall provide such information as may be reasonably requested by the Director and deemed by the Director to be required in order to ascertain compliance with this Agreement. County shall deposit in the mail to Developer a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least ten (10) calendar days prior to any such periodic review. Developer shall be permitted an opportunity to be heard orally and/or in writing regarding its performance under this Agreement before the County Board of Supervisors, or, if the matter is referred to the Planning Commission, before said Commission. If the County determines, based on substantial evidence, that Developer is in default following completion of the normal scheduled periodic review, written notice of proposed termination or modification of this Agreement shall be given, pursuant to applicable laws and regulations, specifying in said notice the alleged nature of the default, and suggested or potential actions and timing to cure said default where appropriate. Developer shall have not less than ninety (90) days to cure any alleged default determined pursuant to this Section. County shall have no duty to give notice of an annual review to anyone having an ownership interest in a portion of the project deemed complete by the County and released from the obligations of this Agreement. Formal rules of evidence shall not apply to such proceedings.

SECTION 5. - DEFAULT, ENFORCEMENT AND REMEDIES

5.1. Application of Section The Parties agree that the following provisions shall govern the availability of remedies shall any of the Parties breach any of its obligations under this Agreement.

5.2. Default Failure or delay by either party to perform any term or provision of this Agreement shall constitute a default provided, however, the default by any successor in

interest of Developer to whom Developer has assigned development rights pursuant to Section 1.6, shall not be considered a default by Developer or by any other successor-in-interest of Developer. The County may institute proceedings pursuant to this Section against any individual defaulting party. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than sixty (60) days notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any sixty (60) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice of expiration of the sixty (60) day period, the party alleging default, at its option, may institute legal proceedings pursuant to Section 5.3 of this Agreement or give notice of intent to terminate the Agreement pursuant to California Government Code section 65868 or may pursue such other administrative remedies as may be appropriate. Following notice of intent to terminate, the matter shall be scheduled for a hearing before the County Board of Supervisors to consider and review the matter within sixty (60) calendar days. Following consideration of the evidence presented in the review, if no resolution of the matter is reached, either party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

5.3. Remedies In the event of an uncured default, the Parties' remedies under this Agreement are as follows:

5.3.1. An action for specific performance of an obligation of a Party, after giving that Party the opportunity to cure a default as provided in Section 5.2.

5.3.2. An action for injunctive relieve to preserve the physical or legal status quo of the development of The Diamond Dorado Retail Center pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

5.3.3. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

5.3.4. The Developer understands and agrees that the County would not be willing to enter into this Agreement if it created any monetary exposure for the County for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by the County. The Developer specifically acknowledges that it may not seek monetary damages of any kind and the Developer hereby waives relinquishes and surrenders any right to any monetary remedy. The Developer hereby agrees to indemnify, defend, and hold the County harmless for any cost, loss, liability, expense or claim, including attorneys' fees, arising from or related to any claim brought by the Developer inconsistent with the foregoing waiver.

SECTION 6 – HOLD HARMLESS AND INDEMNIFICATION

6.1. No Joint Venture or Partnership County, Developer and Landowners hereby renounce the existence of any form of joint venture or partnership between the County and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating a partnership joint venture, or other legal entity between them.

In entering into this Agreement, the County is acting under the statutory and police powers that it holds as a political subdivision of the State of California which authorize it to regulate the development of land within its boundaries and to provide for the general health, safety and welfare.

In entering into this Agreement, the Developer and Landowners are acting in a purely private capacity as the owners of real property in the County of El Dorado, which property is subject to the jurisdiction of the County.

6.2. No Liability for Acts of the Developer or Landowner

6.2.1. It is expressly understood that the development of the DDRC Project is an undertaking that may create for the Developer and Landowners liability to third parties including, but not limited to, assignees of all or part of this Agreement, buyers and lessees of building, building contractors and subcontractors, and suppliers. The Developer and Landowners understand and agree that the County would not execute this Agreement if, in so doing, it created for the County any liability to any third party. Consequently, the Developer, Landowners, and their successors, heirs and assigns agree to defend, indemnify and hold harmless the County, and its officers, agents, and employees from any claim or injury to person or property arising out of or relating to this Agreement or the operations of the Developer or Landowners in the development of the Diamond Dorado Retail Center Project under the terms of this Agreement.

6.2.2. Developer, Landowners and all successors also agree to and shall hold County and its appointed councils, boards, commissions, officers, agents and employees harmless from any liability, including costs and attorneys' fees, for any challenge to the Agreement, damages or claims for damage for personal injury, including death, and from claims for property damage which may arise from any act or omission of the Developer or Landowners, of his assigns, successors in interest, or their agents, employees, contractors or sub-contractors, pursuant to this Agreement.

6.2.3. Notwithstanding anything in Section 6.3 to the contrary, the County shall have any remedy available to it at law or in equity to enforce the provision of, or to collect damages for, any breach of this Section.

6.3. Duty to Defend Challenges to this Agreement

6.3.1. The Parties recognize that there may be third party challenges to this Agreement, relative to the procedure used to adopt it or the contents of it.

6.3.2. Developer and Landowners shall defend the County and its elective and appointive councils, boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damage caused by reason of the aforesaid operations under this Agreement.

6.3.3. The County shall have the right, at its sole discretion, to select its own attorneys to defend the County in any action brought by a third party, and the Developer and Landowners hereby agree to pay the fees and expenses of the attorneys selected.

6.3.4. The County agrees to cooperate in good faith in the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it.

6.3.5. Should a court, in any action challenging this Agreement or the ordinance adopting it, award attorneys' fees costs or other litigation expenses against the County, the Developer and Landowners shall be responsible for the payment of those fees, costs, and expenses and shall hold the County harmless from any claim thereto.

IN WITNESS WHEREOF, the parties have duly signed this Agreement as of the date first written above.

DEVELOPER:

By:_____

COUNTY:

By:_____

ATTEST:

By:_____

APPROVED AS TO FORM:

By:_____
County Counsel