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COUNTY RECORDER

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DEVELOPMENT AGREEMENT

by and between

THE COUNTY OF EL DORADO

and

EL DORADO HILLS INVESTORS

January 19, 1989

*As approved
BOS 4/3/89
310S 11*

ATTACHMENT A

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DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter "Agreement") is made and entered into this 3rd day of January, 1989, by and between the COUNTY OF EL DORADO, a political subdivision of the State of California (hereinafter "County") and EL DORADO HILLS INVESTORS, LTD, a California Limited Partnership, dba EL DORADO HILLS COMMUNITIES (hereinafter "Developer"), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code and Chapter 17.85 of the El Dorado County Ordinance Code, establishing rules, regulations and procedures for the consideration of development agreements.

RECITALS

A. Enabling Statute. 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, who has a legal or an equitable interest in the property to be developed, 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.

B. Property Description. Developer is the legal owner of that certain uninhabited real property constituting approximately 3646 acres generally located north and south of Highway 50, in the El Dorado Hills area of El Dorado County as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (herein the "Property").

C. Development Agreement Goals. County and Developer desire to enter into this Agreement relating to the Property in order to facilitate the creation of a physical environment that will conform to and complement the goals of the County, provide efficient traffic circulation and the timely provision of necessary infrastructure, protect adjacent land uses and natural resources from adverse impacts, enhance the certainty of implementation of the County's General Plan and El Dorado Hills Specific Plan, and reduce the economic risks of development to the Developer and the County.

The County by entering into this Agreement, will receive the benefit of the construction and installation of various public facilities and improvements. In addition, this Agreement will assist in implementing the General Plan, Area Plan and El Dorado Hills Specific Plan, as approved by the County. It also provides that, in implementing those plans, development will not proceed without the timely provision of public facilities and services required to serve the new development.

D. Project Background and Approvals.

1. On November 19, December 3, and December 10, 1987, the El Dorado County Planning Commission considered the El Dorado Hills Specific Plan, proposed rezoning and Environmental Impact Report and after having conducted duly noticed public hearings thereon voted to recommend approval of the Plan, zoning and Environmental Impact Report.

2. On February 8, February 24, March 3, March 31, April 25, May 16 and July 18, 1988, the El Dorado County Board of Supervisors held public hearings on the Specific Plan, rezoning and the Environmental Impact Report. At the conclusion of these hearings the Board, on July 18, 1988, certified the Environmental Impact Report as adequate and complete.

The Board on July 18, 1988, after making specific findings and adopting a Statement of Overriding Considerations, approved the El Dorado Hills Specific Plan and adopted Ordinance No. 3849 which rezoned the property in conformity with the Specific Plan.

3. On November 9 and November 14, 1988, the Planning Commission conducted a duly noticed public hearing on this Agreement and recommended to the Board of

Supervisors that this Agreement and the Public Improvement Financing Plan, attached hereto as Exhibit "B" and incorporated herein by reference (hereinafter referred to as the "Financing Plan") be approved.

4. On January 3, 1989, after a duly noticed public hearing, the Board of Supervisors adopted this Agreement together with the Financing Plan as Ordinance No. 3999 which is effective on February 3, 1989.

E. Project Description. The El Dorado Hills Specific Plan includes 3,896 acres which includes the Property and 250.33 acres owned by others. The Plan provides for a mix of residential property including single-family and multi-family properties; commercial property for large scale and neighborhood stores and offices; a village green; two proposed golf courses; five school sites; and approximately 800 acres of natural open space.

F. General Plan Consistency. The County hereby finds this Agreement and the El Dorado Hills Specific Plan to be consistent with the County of El Dorado General Plan and the El Dorado Hills/Salmon Falls Area Plan. The El Dorado Hills Specific Plan provides balanced land uses subject to appropriate standards and requirements with respect to land development and usage so as to maintain the overall quality of life and the environment within the County.

G. Vested Rights. In consideration of the substantial public improvements and benefits to be provided by Developer pursuant to this Agreement and the El Dorado Hills Specific Plan, and in order to strengthen the public planning process and reduce the economic risks of development, by this Agreement the County, at the request of Developer, intends to assist Developer in completion of the project and financing of the public improvements which are a part of the project in accordance with the terms of this Agreement. Development of the Property in accordance with the terms of this Agreement requires major investment by Developer in public facilities, substantial front-end investment in onsite and offsite improvements, major dedications of land for public benefit and purposes, and substantial commitment of the resources of Developer to achieve the public purposes and benefits of the project for County.

County recognizes and has determined that the granting of such vested rights and assurances will assist Developer in undertaking the development of the project and thereby achieve the public purposes and benefits of the project. But for said commitments on the part of County and Developer, the parties would not enter into this Agreement.

NOW, THEREFORE, in further consideration of the above recitals, all of which are expressly incorporated into this

Agreement, and the mutual promises and covenants of the parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1.

GENERAL PROVISIONS

1.1. Property Description and Binding Covenants. The Property is that unimproved real property owned by Developer within the Specific Plan area described in Exhibit "A". It is intended and determined that the provisions of this Agreement, to the extent permitted by law, shall constitute covenants which shall run with the Property and the benefits and burdens of this Agreement shall be binding upon and inure to the benefit of the parties and to their successors in interest.

1.2. Development Plan. For purposes of this Agreement, the term "Development Plan" shall refer to the El Dorado Hills Specific Plan and Rezone Ordinance No. 3849, this Agreement and the Financing Plan incorporated herein.

1.3. Interest of Developer. Developer represents that Developer has a fee interest in the Property and that all other

persons holding legal or equitable interests in the Property are to be bound by this Agreement.

1.4. Term. The term of this Agreement shall commence on the effective date of the ordinance authorizing the approval and execution of this Agreement and shall extend for a period of twenty (20) years from that date unless it is terminated, modified, or extended by the circumstances set forth in this Agreement or by the mutual agreement of the parties.

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

- (a) Expiration of the twenty (20) year term;
 - (b) Completion of the project in accordance with the Development Plan and the County's issuance of all required occupancy permits and acceptance of all dedications required under the Development Plan and this Agreement;
 - (c) Entry after all appeals have been exhausted of a final judgment or issuance of a final order directed to the County to set aside, withdraw, or abrogate the County's approval of this Agreement or any material part of the Development Plan;
- or

(d) The effective date of a party's election to terminate the Agreement as provided in Sections 6.1 and 7.11 of this Agreement.

1.6. Assignment. Developer shall have the right to sell, mortgage, hypothecate, assign or transfer the Property in whole or in part, to any person, partnership, joint venture, firm, or corporation at any time during the term of this Agreement, provided that any such sale, mortgage, hypothecation, assignment, or transfer shall include the assignment of those rights, duties, and obligations arising under or from this Agreement applicable to the Property or portions thereof being assigned, transferred or sold. The County shall not impose any conditions on or otherwise have any rights of approval over said sale, mortgage, hypothecation, assignment, or transfer. Developer and any subsequent assignor shall notify County in writing of any assignment. The notice shall include the name, address of the assignee, and a description of the property acquired. The notice shall include a Twenty-five Dollar (\$25.00) non-refundable fee to County to pay for future costs of notice and administration. County shall have no obligation to provide future notice to any assignee if the above notice is not given. Any and all successors and assigns of Developer shall have all of the same rights, benefits, and obligations of Developer under

this Agreement. All successors understand that the Property must be developed in accordance with the Development Plan and that the timing of development of any one portion of the Property may be dependent upon the completion of specified improvements. Such improvements will be required at those times specified in the Development Plan even though such requirements may adversely impact the timing of development of a successor and even though a successor's project, standing alone, may not require the improvements.

1.6.1 Subdivided Lots. It is understood and agreed by the parties that the Property may be subdivided after the effective date of this Agreement. One or more of such subdivided parcels may be sold, mortgaged, hypothecated, assigned, or transferred to persons for development by them in accordance with the provisions of this Agreement. Upon the filing of final subdivision maps on a village or portion thereof within the Specific Plan area which create final residential lots, the purchaser of any single individual residential lot shall be released from any further obligations under this Agreement. The burdens of this Agreement shall terminate without the execution or recordation of any further document or instrument and such lot shall be released from and no longer be subject to the burdens and obligations of this Agreement. The lot owner is not relieved of any requirement

to pay fees, taxes, or assessments provided herein or by the Financing Plan. The benefits of this Agreement shall continue to run as to any such lot.

1.7. Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the County and the owner of the property which is the subject of the proposed amendment in the manner set forth in Government Code Sections 65867, 65867.5 and 65868, provided, however:

(a) Any change to this Agreement which does not substantially alter the term, permitted uses, density or intensity of use, provisions for reservation and dedication of land, conditions, terms, restrictions and requirements relating to subsequent discretionary actions, monetary contributions by Developer or any conditions or covenants relating to the use of the Property shall not require notice or public hearing and may be made by mutual consent of the parties;

(b) Any modification of the El Dorado Hills Specific Plan which is approved by the Planning Director or other appropriate County personnel as provided in Section 1.8 shall not require an amendment to this Agreement; and

(c) The determination as to whether any proposed change or modification pursuant to this section or section 1.8

will require a public hearing shall be made by the County in its sole discretion:

1.8. Modification to the El Dorado Hills Specific Plan.

Upon request of the Developer, the Planning Director or other appropriate County personnel may modify the El Dorado Hills Specific Plan without compliance with procedural provisions of the zoning ordinance or any notice of public hearing if the Planning Director determines, in a manner consistent with County policy and state law, that the requested modification does not substantially alter the term, permitted uses, density or intensity of use, provisions for reservation and dedication of land, conditions, terms, restrictions and requirements relating to subsequent discretionary actions, monetary contributions by Developer or any conditions relating to the use of the Property, and is otherwise consistent with the El Dorado Hills Specific Plan, the El Dorado Hills/Salmon Falls Area Plan and the County General Plan.

1.9. 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
Community Development Department
360 Fair Lane
Placerville, CA 95667

Notice to the Developer: El Dorado Hills Investors
3864 Park Drive, Suite 204
El Dorado Hills, CA 95630

1.10. Prior Agreements. The parties entered into a prior development agreement dated April 2, 1985 which affected the Property, as well as other property in which Developer has an interest. It is the intent of the parties that this Agreement shall completely supersede the earlier agreement with respect to the Property.

SECTION 2.

DEVELOPMENT OF THE PROPERTY

2.1. Land Use Entitlements. The permitted land uses, density and intensity of use of the Property; zoning, provisions for reservation or dedication of land for public purposes; the location and size of major transportation, sewer, drainage and

water facilities and improvements shall be those set forth in the Development Plan at the time of the effective date of this Agreement. In the event of any conflict between the provisions of this Agreement and any other resolution, rule, regulation, or policy of the County now in existence, the provisions of this Agreement shall control.

2.1.1. Density Transfer. The parties and all successors and assigns agree that the total number of dwelling units in any of the three residential neighborhoods or any of the villages as shown in the Specific Plan may vary, provided that the densities within any village depicted in the Plan shall not exceed the densities permitted by the El Dorado Hills/Salmon Falls Area Plan as it exists at the time of the effective date of this Agreement, nor shall the total units or gross and net densities of the total Specific Plan exceed those set forth in the Specific Plan. The parties agree that a possibility exists that any specific village may not be developable to the maximum density provided in the Specific Plan due to the use of density transfer provided by this section.

2.2. Applicable Rules, Regulations, and Official Policies. Except as set forth in Section 2.2.1, the ordinances, resolutions, codes, rules, regulations, official policies, and

General and Specific Plans of the County governing permitted uses, rate of development, density, design, improvements, and construction standards and specifications applicable to development of the Property, shall be those, rules, regulations, and official policies in force at the time of the execution of this Agreement.

Handwritten notes:
* 2.2.1. Application of Subsequently Enacted or Modified Rules, Regulations and Ordinances.
Full rule policies apply in other building AD>S-

2.2.1. Application of Subsequently Enacted or Modified Rules, Regulations and Ordinances. Subsequently enacted rules, regulations, ordinances, laws, and official policies adopted or modified after the date of this Agreement shall apply provided:

(a) They are applied uniformly to all similar properties or developments in the El Dorado Hills/Salmon Falls area of the County;

(b) They do not prevent development of the Property for the uses and to the density or intensity of development set forth in the Development Plan; and

(c) They are not in conflict with matters which are specifically addressed in the Specific Plan, and are consistent with the goals and policies of the Specific Plan.

2.3. County Fees, Taxes, and Assessments. Developer shall pay those County fees, taxes, and assessments in existence at the time of the approval of any entitlements on the Property provided that:

(a) Such fees, taxes, and assessments apply to all private projects or works within the El Dorado Hills/Salmon Falls area of County and are reasonably related to the cost of the facility or service for which the fee or assessment is imposed;

(b) Their application to the Property is prospective only as to applications for building and other development permits or approvals of tentative subdivision maps not yet accepted for processing; and

(c) Such fees, taxes and assessments are not exacted in order to provide facilities, infrastructure or services already provided for in the Development Plan or for which Developer has otherwise provided mitigation pursuant to the Development Plan.

2.3.1. Road Fees. The County intends to adopt a transportation improvement plan and fee for the El Dorado Hills area and shall, if adopted, administer the fees collected in conformity with the provisions of the Financing Plan. Developer and successors agree to pay those road fees as provided in the Financing Plan, provided said fees are properly adopted by the County Board of Supervisors for the El Dorado Hills/Salmon Falls area.

2.3.2. Processing Fees and Charges. Developer shall pay those processing fees and charges of every kind and nature imposed or required by County under current or future regulations covering the actual costs of County in (i) processing applications and requests for permits, approvals and other actions, and (ii) monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Developer hereunder.

2.4. Public Improvements. The public improvements shall be constructed in a manner in accordance with the time frames and conditions set forth in the Development Plan, provided sufficient funds are available to make such improvements. Improvements scheduling, dates, or times of performance by either party hereto may be subject to revision from time to time due to causes beyond the control of Developer or County as mutually agreed by the County and Developer in writing. Such revisions are deemed to be within the framework of this Agreement as presently drafted and executed and do not constitute grounds for termination of this Agreement or amendments to this Agreement requiring new notices and hearings under State law and/or County ordinances.

2.4.1. Payment for Improvements. Nothing in this Agreement shall be construed as obligating the County to construct any improvements for which adequate funds are not available. Under no circumstances shall County be obligated in any way or for any reason to expend monies from its general fund or from other sources not identified in the Financing Plan to pay for the improvements necessary for the development of the Property.

2.4.2. Requirement of Adequate Public Improvements to Develop. Developer and all successors understand that development of the Property may only continue as long as required public improvements and services are made available to serve the Property as set forth in the Development Plan. Some of these improvements and services are provided by public entities other than County. Developer and successor are responsible for working with such other public entities to ensure that such services are made available to serve the Property.

SECTION 3.

DEVELOPER OBLIGATIONS

3.1. Public Improvements Financing. A Public Improvements Financing Plan is attached to this Agreement as Exhibit "B." The Financing Plan describes the specific mechanisms to be used in financing roadways and intersections, water, sewer and drainage improvements, parks, open space, certain village green improvements, schools and a freeway interchange at Silva Valley Parkway and Highway 50. The Financing Plan also describes the commitments and obligations of the Developer to the dedication of land for public improvements and the timing for and conditions of such dedication and financing commitments. Developer and County agree to initiate those acts necessary to implement the Financing Plan. It is understood that the final decision to issue bonds and/or incur debt will be at the sole discretion of the issuing and/or borrowing agencies.

3.2. Parks and Open Space. Developer shall dedicate to the El Dorado Hills Community Services District ("CSD") or other governmental agency certain park and open space lands and improvements as set forth in the Financing Plan. These lands include the following:

- a. A ten acre community park;
- b. A ten acre and an eight acre district park site;
- c. A one to two acre neighborhood park in each non-private residential village containing 200 or more dwelling units, or two such sites in a non-private residential village containing 500 or more units;
- d. A 45+ acre archery range within the area currently used as an archery range;
- e. Public natural space as shown on the Specific Plan.

3.2.1. Acceptance of Dedication. In the event CSD fails to accept dedication of any of the park and open space lands described in this subsection and in the Financing Plan, Developer shall make an offer to dedicate, and County may accept dedication of, such lands to the County. Developer may offer to dedicate lands currently designated as private open space to CSD. The County may accept dedication of such lands if CSD fails to accept or refuses dedication.

3.2.2. Reversion Clause. The conveyance of lands pursuant to this subsection shall contain a reversionary clause which provides that should the lands ever be used by CSD for

any purpose other than public recreation or open space they shall revert to the County. An additional clause shall provide that should the lands ever be used by the County for any purpose other than public recreation or open space, then such land shall revert to Developer or Developer's successor in interest.

3.2.3. Maintenance and Control. Prior to the actual dedication of the park and open space lands, the lands shall remain under the control of Developer as private property, provided that Developer agrees not to grade, ditch or channel on land which has been designated as public parkland although not yet dedicated. Upon dedication, the property shall be controlled by the accepting governmental entity and maintained pursuant to the terms of the Financing Plan.

3.2.4. Restriction on Use of Public Open Space. Restrictions contained in the instrument conveying the public open space shall ensure compatability of uses of the open space with adjacent residential uses consistent with the Specific Plan.

3.2.5. Park Land Obligation. The Specific Plan includes park sites, private and public open space, and sites for two 18-hole golf courses. In addition, the Financing Plan delineates commitments to the dedication and improvement of public park and open space areas and private park lands. The provisions

of the Specific Plan and the provisions, commitments, and obligations of the Financing Plan shall completely satisfy any park land obligations related to development of the Specific Plan area. No additional park land dedications or in-lieu fees shall be required as conditions of approval of any subsequent entitlements conferred for development within the Specific Plan area.

3.3. Schools. School sites of sufficient usable area to satisfy State criteria shall be located and reserved pursuant to the provisions of the Specific Plan.

3.4. Covenants, Conditions and Restrictions. Developer shall create one or more master property owners associations and various individual village property owners associations within the Specific Plan area. These associations shall be responsible in perpetuity for the maintenance of private parks and open space and landscape medians and corridors as set forth in the Financing Plan.

3.5 Dedication to County of Right-of-Way. Developer and all successors agree to convey to County when necessary all rights-of-way for the construction of the street and highway or other improvements required for the implementation of the Specific Plan. Failure to so dedicate is a material breach.

3.6 Village Green Public Facilities. Developer agrees that as part of the application to County for the approval of the site plan for the Village Green area Developer shall reserve within such site plan areas, as set forth in the Specific Plan, for public services and uses. Such reservation shall include an agreement by Developer to offer for dedication an area not to exceed four (4) acres within the site plan for the purpose of siting governmental facilities such as a sheriff substation or fire station. The exact size and location of the site(s) will be determined at the time of the development approvals for the Village Green in cooperation with County and other affected governmental agencies. This requirement shall survive any incorporation of this area into a city and the offer of dedication shall be made not later than ten (10) years from the effective date of this Agreement.

3.7. Fire Station Site. The Specific Plan provides for the possibility of a site for a fire station in Village J near Bass Lake Road. Developer shall dedicate a one-half (1/2) acre site upon the development approval for Village J, if the El Dorado Hills Fire District indicates a need for such site.

SECTION 4.

COUNTY OBLIGATIONS

4.1. Vested Rights. By entering into this Agreement County hereby grants to Developer a vested right to proceed with the development of the Property in accordance with the terms and conditions of this Agreement, the Development Plan and Applicable Rules. Developer's vested right to proceed with the project shall be subject to any subsequent discretionary approvals required in order to complete the project, provided that 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 set forth in this Agreement and the Development Plan, provided Developer is not in default under this Agreement and Sections 2.4.1 and 2.4.2 and other applicable requirements are satisfied.

4.2. County Cooperation. County shall cooperate with Developer for the purpose of connecting all public improvements constructed under the Development Plan to existing or newly constructed public improvements, whether located within or outside the Property, provided the costs of such are borne by Developer or as provided in the Financing Plan, and shall ini-

tiate proceedings for the formation of any assessment or community facilities districts; and enter into reimbursement agreements as provided for by the Financing Plan.

4.2.1. Applications. County agrees that it shall accept for processing and shall review, and take action on all applications for development permits or other entitlements for development of the Property in accordance with the Development Plan and this Agreement. County shall inform Developer, upon request, of the necessary submission requirements for each application for a permit or other entitlement for use and the time necessary for review of said application by the appropriate authority within the applicable time limits set forth in the California Government Code and Public Resources Code.

4.2.2. Cooperation. The County further agrees to cooperate with Developer in securing all permits, licenses, approvals, or consents which may be required by County or other agencies having jurisdiction over development of the Property, provided the costs of such are paid by Developer.

In the event State or federal laws or regulations enacted after the effective date of this Agreement, or formal action of any governmental jurisdiction other than the County, prevent compliance with one or more provisions of this Agreement, or

require changes in plans, maps or permits approved by the County, the parties agree that the provisions of this Agreement shall be modified, extended, or suspended only to the minimum extent necessary to comply with such State or federal laws or regulations or the regulations of other governmental jurisdictions other than the County.

4.3 Annexation and Incorporation.

(a) Upon the incorporation or annexation of the Property in or to any city, the City shall succeed to the benefits and rights and be bound by the obligations and duties of County hereunder to the same extent as if the City were a signatory hereof, including but not limited to the obligation to issue necessary permits and approvals in accordance herewith. To the extent permitted by law, the County shall continue to be a beneficiary with respect to the Developer's obligations under this Agreement.

(b) Upon an incorporation of less than all of the Property, County and Developer agree that this Agreement shall be modified, at County's request, with respect to that portion of the Property remaining in the unincorporated territory to the extent necessary and feasible to minimize any significant adverse financial impacts resulting from the partial incorporation and with the purpose of preserving the intent of this Agreement.

SECTION 5.

ANNUAL REVIEW

5.1. Annual Review. County shall, at least every twelve (12) months 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. Notice of such annual 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 Community Development Director of County, Developer shall provide such information as may be reasonably requested by the Community Development Director and deemed by the Community Development 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 County 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 in such proceedings.

SECTION 6.

DEFAULT, ENFORCEMENT, AND REMEDIES

6.1. 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. It is acknowledged, however, that such a default by one party may impact the ability of Developer or other successors in interest to proceed with development due to the improvement timing requirements provided by the Development Plan. 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 such sixty (60) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the sixty (60) day period, the party alleging default; at its option, may institute legal proceedings pursuant to 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 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.

6.2. Reimbursement in the Event of Invalidation. Should an ordinance, measure, or other limitation be determined by a court of competent jurisdiction to invalidate or prevail over all or any part of this Agreement, Developer may be deprived of the benefits of certain improvements previously funded by the Developer in anticipation of being allowed to develop the Property in accordance with this Agreement and the Development Plan. In that event, Developer shall continue to be entitled to reimbursement for those funds expended towards necessary infrastructure or other capital improvements and facilities required by the Financing Plan for which Developer became

entitled to reimbursement pursuant to the Financing Plan prior to the date of invalidation of all or a portion of the Agreement, provided the funds shall come from those sources of funds identified by the Financing Plan. County, however, is not obligated to issue bonds or to expend general funds to provide such reimbursement.

6.3. Cumulative Remedies. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, injunctive relief, and relief in the nature of mandamus. All of the remedies described above shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

6.4. No Joint Venture or Partnership. County and Developer 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 making County and Developer joint venturers or partners.

6.5 Hold Harmless Agreement. Developer and all successors agree to and shall hold County and its appointive councils, boards, commissions, officers, agents, and employees harmless from any liability, including costs and attorneys' fees, for 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, of his assigns, successors in interest, or their agents, employees, contractors or subcontractors, pursuant to this Agreement. Developer 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.

6.6 Cooperation in the Event of Legal Challenge.

(a) In the event of any legal action instituted by a third party challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate with each other in good faith to defend said action and the validity of each provision of this Agreement; however, it is understood that both parties will independently evaluate the merits of any such action. Except as set forth in (b) of this section, each party shall be liable for its own legal expenses and costs.

(b) In the event that an initiative measure is enacted, and legal action is commenced against County which seeks to make the terms of said enactment applicable to the Property, Developer or successors shall defend against said action and hold County harmless from any legal fees or costs County may incur as a result of said legal action.

6.7. Attorneys' Fees. In any arbitration, quasi-judicial, or administrative proceedings, or any action in any court of competent jurisdiction, brought by any party to enforce any covenant or any of such party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses and disbursements in connection with such action, including the costs of reasonable investigation, preparation and professional or expert consultation, which sums may be included in any judgment or decree entered in such action in favor of the prevailing party.

SECTION 7.

MISCELLANEOUS PROVISIONS

7.1. Authority to Execute. The person or persons executing this Agreement on behalf of Developer warrant and represent that they have the authority to execute this Agreement on behalf of their limited partnership and represents that they have the authority to bind Developer to the performance of its obligations hereunder.

7.2. Cancellation or Modification. Any party may propose cancellation or modification of this Agreement but said cancellation shall require the consent of all parties.

7.3. Consent. Where the consent or approval of a party is required in or necessary under this Agreement, such consent or approval shall not be unreasonably withheld.

7.4. Construction of Agreement. The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. This Agreement shall be governed by the laws of the State of California.

7.5. Covenant of Good Faith and Fair Dealing. Neither party shall do anything which shall have the effect of harming or injuring the right of the other party to receive the benefits of this Agreement; each party shall refrain from doing anything which would render its performance under this Agreement impossible; and each party shall do everything which this Agreement contemplates that such party shall do to accomplish the objectives and purposes of this Agreement.

7.6. Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by entities other than the County, enactment of conflicting state or federal laws or regulations, litigation, or similar bases for excused performance. If written notice of such delay is given to County within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

7.7. Entire Agreement. This Agreement, together with the exhibits, constitute the entire agreement between the parties with respect to the subject matter of this Agreement.

7.8. Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, file or record any required instruments and writings necessary to evidence or consummate the transactions contemplated by this Agreement, and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement.

7.9. 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.

7.10. No Waiver. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under the provisions of

this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

7.11. Severability. If any provision of this Agreement shall be adjudicated to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision hereof, unless such adjustment affects a material part of this Agreement. Notwithstanding any other provisions of this Agreement, in the event that any material provision of this Agreement is found to be unenforceable, void or voidable, Developer or the County may terminate this Agreement upon providing written notice to the other party.

7.12. Power of Eminent Domain. As set forth in Exhibit B (the Public Improvement Financing Plan), Developer is responsible for acquiring certain right(s)-of-way necessary to construct the public facility improvements required by this Agreement. Should it become necessary due to Developer's failure to acquire said right(s)-of-way, the County shall negotiate the purchase of the necessary right(s)-of-way to allow Developer to construct the

public improvements as required by this Agreement and, if necessary, in accordance with the procedures established by State law, use its power of eminent domain to condemn said required right(s)-of-way, provided that Developer shall bear the cost of such action. If County cannot make the proper findings, or if, for some other reason under the condemnation laws, County is prevented from acquiring the necessary right(s)-of-way to enable Developer to construct the public improvements required by this Agreement, then the parties agree to amend this Agreement to modify Developer's obligation(s) accordingly. Nothing in this subsection shall be deemed to constitute a determination or resolution of necessity by County to initiate condemnation proceedings.

7.13. Recording. The County Clerk shall cause a copy of this Agreement to be recorded with the El Dorado County Recorder no later than ten (10) days following execution of this Agreement by County, which execution will take place no sooner than the effective date of the ordinance approving this Agreement.

COUNTY:

COUNTY OF EL DORADO, a political sub-
division of the State of California

By: Robert E Dorr

1-3-89

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE COUNTY
BOARD OF SUPERVISORS

By: Margaret E. Neady
Clerk of the County
Board of Supervisors
1-3-89

APPROVED AS TO FORM:

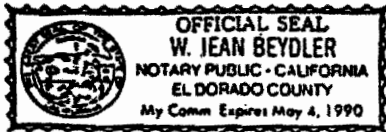
By: Robert R. Lindsey
County Counsel

ALL SIGNATURES ARE TO BE NOTARIZED

STATE OF CALIFORNIA)
County of El Dorado) ss.

On this 27th day of March, in the year 19 89,
before me W. JEAN BEYDLER, a Notary Public, personally
appeared Robert E. Dorr,
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person who executed this
instrument as Chairman of the Board of Supervisors
for the County of El Dorado, and acknowledged to me that
the County of El Dorado, a political subdivision of the
State of California, executed it.

WITNESS my hand and official seal.



W. Jean Beydler
W. JEAN BEYDLER
Notary Public in and for
said County and State

EXHIBIT A

067-490-28
103-010-22
103-010-23
103-010-29
106-020-07
106-020-08
106-020-10
106-020-11
106-020-12
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106-020-33

107-010-04
107-010-05
107-010-06
107-010-07
107-010-08
107-130-01
107-130-02
107-130-03
086-070-06
107-010-09
107-010-11
107-010-12
107-120-07
107-130-04
107-130-05
107-130-09
107-130-11
106-020-36

State of California)
County of El Dorado)

SS

On January 27, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Anthony Mansour, know to me or proved to me on the basis of satisfactory evidence to be one of the general partners of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.



(seal)

Cherie Savage
Notary Public

State of California)
County of El Dorado)

SS

THE COMMONWEALTH OF MASSACHUSETTS }
COUNTY OF SUFFOLK } SS.

On this 17th day of February, 1989
before me, the undersigned, a Notary Public in and for the said Commonwealth, residing therein, duly commissioned and sworn, personally appeared John U. O'Sullivan
to me personally known, who by me duly sworn, did say that he is a Senior Mortgage Investment Officer of JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

MARIE C. O'BRIEN, Notary Public

MY COMMISSION EXPIRES SEPTEMBER 1, 1992

My commission expires.....19.....

Marie C. O'Brien
Notary Public in and for said Commonwealth

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