

RECORDING REQUESTED BY:

06/12/2007, 20070038886

Board of Supervisors

WHEN RECORDED MAIL TO:

**Board of Supervisors
330 Fair Lane
Placerville, CA 95667**

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE

TITLE (S)

**ANNEXATION AGREEMENT - MISSOURI FLAT AREA CFD NO. 2002-01
BY AND BETWEEN THE COUNTY OF EL DORADO AND
GRANITE GRADO VENTURES - PROJECT I, LLC RELATIVE TO THE
DEVELOPMENT KNOWN AS
GOLDEN CENTER PLAZA
AGREEMENT # 06-1070**

**ANNEXATION AGREEMENT
MISSOURI FLAT AREA CFD No. 2002-01
BY AND BETWEEN THE COUNTY OF EL DORADO AND
GRANITE GRADO VENTURES – PROJECT I, LLC RELATIVE TO THE
DEVELOPMENT KNOWN AS
GOLDEN CENTER PLAZA**

AGMT # 06-1070

THIS ANNEXATION AGREEMENT ("Agreement"), is made and entered into by and between the County of El Dorado, a political subdivision of the State of California, ("County") and Granite Grado Ventures – Project I, LLC, a limited liability company duly qualified to conduct business in the State of California, whose principal place of business is 8950 Cal Center Drive, Suite 201, Sacramento, California 95826, ("Landowner").

RECITALS

A. Property Description. Landowner has legal or equitable interests in the real property that is the subject of this Agreement ("Property"). The Property, identified as Assessor's Parcel Numbers 327-212-20-100, 327-212-22-100, 327-212-23-100 and 327-212-24-100 consisting of approximately 3.4 acres, is located on the northwest corner of Missouri Flat Road and Golden Center Drive, approximately one-quarter mile south of the intersection of Forni Road and Missouri Flat Road, in the Diamond Springs/El Dorado area of El Dorado County. A description of the Property is attached hereto as Exhibit A, marked "Property Description," incorporated herein and made by reference a part hereof.

B. Project Description. Applicant is developing the Property as a commercial development consisting of four commercial buildings comprising a total of approximately 34,500 square feet ("Project"). The uses will be a mix of warehouse, retail and office space.

C. Conditions of Approval. As conditions of approval PD 03-0006, page 9, Condition 13, County requires Landowner to enter into an agreement in recordable form which commits the Project to participate in Community Facilities District No. 2002-01 ("CFD") which was formed by Resolution 074-2002, in March 2002, as part of the Missouri Flat Master Circulation and Funding Plan ("MC&FP"), which was approved by County's Board of Supervisors in December 1998 and updated in December 2000, prepared for the Missouri Flat area. This Agreement is intended by the parties to fully comply with the conditions of approval.

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AGREEMENT

1. Participation in CFD. Landowner hereby consents to the imposition of the special tax as set forth in the MC&FP; provided that the structure of the CFD and the special tax authorized is in material conformance with the CFD Structure, which assumes bonds will only be issued to the extent that projected debt service shall be covered from the tax increment generated from taxable sales within the Project and other participating development. The special tax shall be based on the same formula, or a no less favorable formula, as applied to other participants in the CFD. Landowner waives and releases any claims or objections it may possess, or may hereafter possess, with respect to the formation and implementation of the CFD, the authorization and imposition of the proposed special tax, or the annexation of the Property to the CFD; provided, that it is consistent with the CFD Structure and the limitations set forth herein. Landowner hereby consents to the annexation of the Property to the CFD by County. Landowner shall not file, nor cause to be filed, any protest or objection to the authorization of the special tax, and shall not file, or cause to be filed, any legal action challenging the authorization, imposition or collection of the special tax, or any other action regarding the CFD including, but not limited to, annexation of property to the CFD; provided the implementation of the special tax and the implementation of the CFD are in compliance with the CFD Structure. The Property may be annexed and the special tax authorized at any time after the Effective Date of this Agreement, upon request of County. Landowner shall be required to take any action reasonably required under this Section regardless of whether development on the Project has occurred or is then proposed; provided, that the CFD Structure provides that the special tax shall not accrue or be collected on the Property until building permits have been obtained and construction commenced. At the request of County, Landowner shall execute and deliver to County, in a form suitable for its intended purpose, any document required to annex the Property to the CFD, including, but not limited to, forms reflecting the consent of the property owner to such annexation.

Landowner shall provide to County a preliminary title report for the Property, and executed "lender's consents," consenting to the authorization for the special tax from each lien holder having an interest in the property prior to County approving the Agreement. The lender's consents shall be in a form reasonably acceptable to bond counsel for County. However, such documents need not be in recordable form.

2. Satisfaction of Condition and Issuance of Building Permits. County agrees that the execution and recordation of this Agreement fully satisfies Condition Number 13 of the Conditions of Approval for PD 03-0006. County shall issue building and other construction permits for improvements for the Project without further delay or obligation of Landowner with respect to Condition Number 13, subject to compliance with all other requirements for issuance of a building permit including but not limited to, payment of customary fees or other obligations associated with the issuance of building permits in the County.

3. Binding Covenants. The provisions of this Agreement shall constitute covenants that shall run with the Property and the benefits and burdens hereof shall be binding upon and inure to the benefit of the parties and their successors in interest.

4. Term. The term of this Agreement shall commence on execution and recordation of this Agreement ("Effective Date") and shall extend for a period of ten (10) years from that date, unless it is terminated, modified or extended by the mutual written agreement of the parties; provided however, that any obligations undertaken by the parties pursuant to this Agreement that relate to Landowner's consent to participation in the CFD shall survive the expiration of this Agreement and shall not be affected in any way by such expiration.

5. 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, addressed to the persons and at the addresses shown below. The addresses for delivery of notice may be changed from time to time upon ten (10) days prior written notice. Notices to County shall be in duplicate. 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:

To County:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn: Elizabeth B. Diamond, P.E.
Deputy Director, West Slope
Engineering & Project Delivery

With a Copy to:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn: Tim C. Prudhel,
Contract Services Officer

To Landowner:

Granite Grado Ventures – Project I, LLC
8950 Cal Center Drive, Suite 201
Sacramento, CA 95826
Attn: Scott Wolcott, President

6. Authority to Execute. The person or persons executing this Agreement on behalf of Landowner warrant and represent that they have the authority to execute this Agreement on behalf of Landowner, and that they have the authority to bind Landowner to the performance of its obligations hereunder.

7. 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 sections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction.

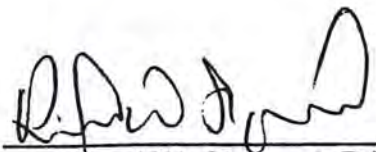
8. Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, file or record any required instruments and writings necessary to evidence or consummate the transaction 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.

9. Contract Administrator. The County Officer or employee with responsibility for administering this Agreement is Elizabeth B. Diamond, P.E., Deputy Director, West Slope Engineering & Project Delivery, Department of Transportation, or successor.

10. Recording. The parties shall promptly execute this Agreement upon approval of County's Board of Supervisors in such form as will allow the recordation of this Agreement. The County Clerk shall cause the two originals 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.

11. Severability. If any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, except as otherwise provided in this Agreement, the remainder of this Agreement, or the application of such terms, covenants or conditions to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

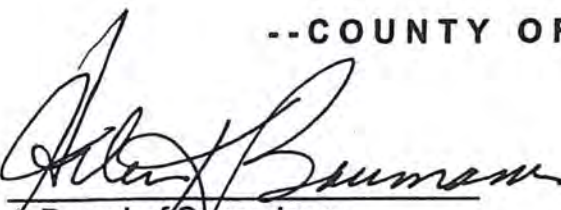
Requesting Department Concurrence:

By: 
Richard W. Shepard, P.E.
Director of Transportation

Dated: 12/5/04

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

--COUNTY OF EL DORADO--

By: 
Board of Supervisors
"County" **HELEN K. BAUMANN**

Dated: 6/5/07

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: 
Deputy Clerk

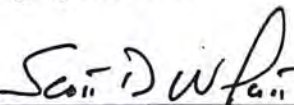
Dated: 6/5/07

--GRANITE GRADO VENTURES- PROJECT I, LLC--

A California Limited Liability Company

By: Granite Grado Ventures, LLC
A California Limited Liability Company
Managing Member

By: Granite Land Company
A California Corporation
Managing Member

By:  12-14-06
Scott D. Wolcott Dated
President

By:  12.14.06
William E. Barton Dated
Senior Vice President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of El Dorado

On June 11 2007 before me, Loretta Featherston, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Helen K. Baumann
NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Loretta Featherston
SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Annexation Agmt. (Missouri)
TITLE OR TYPE OF DOCUMENT
Flat between EDC & Granite
Shado Ventures Project 1, LLC.

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

--ACKNOWLEDGEMENT--

State of California

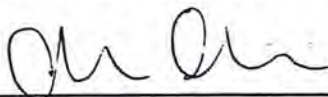
County of Sacramento

On 12/14/04 before me, Desiree Holberg Notary Public
(here insert name and title of officer)

personally appeared Scott D. Wolcott

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

WITNESS my hand and official seal.

Signature 

(Seal)



ACKNOWLEDGEMENT

STATE OF CALIFORNIA }
 }
COUNTY OF SANTA CRUZ }

On December 14, 2006 before me, Lisa Beatty, Notary Public
personally appeared William E. Barton, Senior Vice President
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

BY: Lisa Beatty
Signature of Notary Public



Granite Grado Ventures – Project I, LLC

Exhibit A

Property Description

All that portion of the west half of Section 24, being Tract 2 of Record of Survey 20-97 and Parcel 3 of Parcel Map 41-96, County of El Dorado, State of California, and more particularly described as follows:

Parcels 1, 3, 4, and 5 as shown on that parcel map filed for record in the office of the El Dorado County Recorder in Book 49 of Parcel Maps, at page 53.



9-28-06

CONSENT OF LIENHOLDER

Bank of Sacramento ("Lienholder") hereby consents to the Annexation Agreement for the Missouri Flat Area CFD No. 2002-01 ("Agreement") by and between Granite Grado Ventures - Project I, LLC and the County of El Dorado relative to the development known as the Golden Center Retail Plaza. Lienholder joins in the execution hereof solely as Lienholder and hereby does agree that in the event of the foreclosure of said mortgage, or other sale of said property described in said loan under judicial or non-judicial proceedings, the same shall be sold subject to said Agreement.

SIGNED AND EXECUTED this 12th day of December, 2006

Bank of Sacramento, Lienholder

BY:



Ed Gee
Chief Credit Officer

PARCEL MAP

A PORTION OF THE W 1/2 OF SEC 24,
T 10 N, R 10 E, M.D.M., BEING TRACT 2
OF R.S. 20-97 & PARCEL 3 OF P.M. 41-96
COUNTY OF EL DORADO, STATE OF CALIFORNIA
DATE: NOVEMBER, 2005 SCALE: 1"=40'

BELLECCI & ASSOCIATES, INC.

CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING

1832 EUREKA ROAD, ROSEVILLE, CA 95661
PHONE (916) 771-6099 FAX (916) 771-6899

LEGEND

- DIMENSION POINT, NOTHING SET OR FOUND
- SET 5/8" REBAR, PLASTIC CAP STAMPED L.S. 6925
- FOUND 3/4" CIP, STAMPED L.S. 5093, 1985
- FOUND 3/4" CIP, STAMPED L.S. 4663, 1994
- CIP CAPPED IRON PIPE
- I.O.D. IRREVOCABLE OFFER OF DEDICATION
- (R) RECORD DATA PER RECORD OF SURVEY, 41-98
- (T) TOTAL
- (M) MEASURED
- (C) CALCULATED
- (100.00') DISTANCE PRODUCED BY EASEMENT CROSSING PARCEL LINE
- ||||| ABUTTER'S RIGHTS OF ACCESS RELINQUISHED
- PRIVATE ACCESS PROHIBITED

EASEMENT NOTES:

- 1.) THE SLOPE EASEMENT PER 2386 OR 804 AS REFERENCED IN RS 13-118 HAVE BEEN INCORPORATED INTO THE PLAN DEVELOPMENT NO. P003-0006/P03-0013.
- 2.) THE 15' WIDE SEWER LINE EASEMENT PER 2271 OR 40 WAS INADVERTENTLY OUIT CLAIMED IN DOC NO. 2006-15032 AND LATER FOLLOWED UP BY THE OUIT CLAIM OF THE PROPER 10' WATER LINE EASEMENT IN DOC. NO. 2006-17257. THE 15' WIDE SEWER LINE EASEMENT SHOWN HEREON SHOULD STILL EXIST.

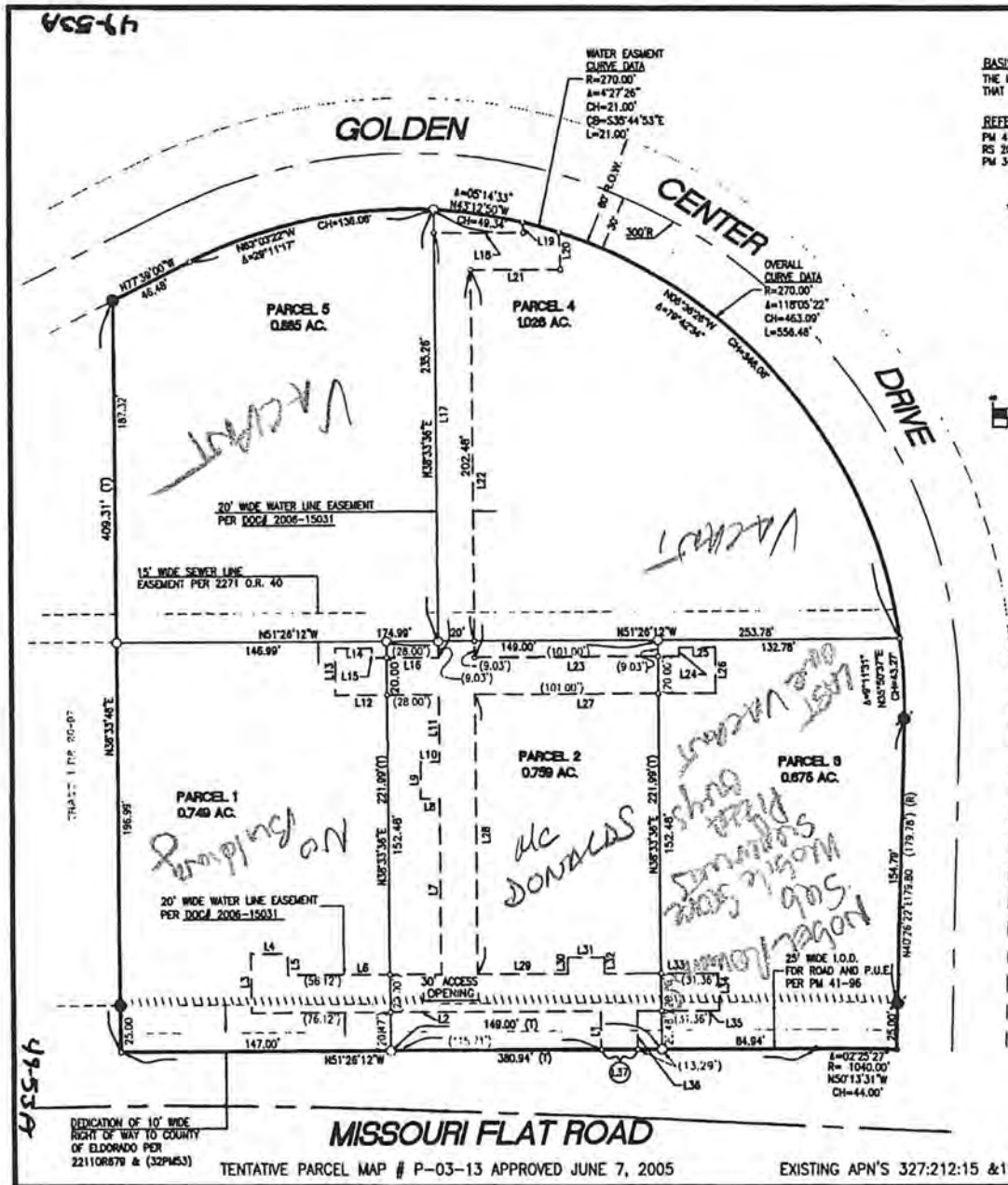
BASIS OF BEARINGS
THE MERIDIAN OF THIS SURVEY IS IDENTICAL TO
THAT OF PM 34-146 AND IS TRUE NORTH.

REFERENCES
PM 41-96
RS 20-97
PM 34-146

GRAPHIC SCALE



LINE	BEARING	DISTANCE
L1	N38°15'11"E	20.48'
L2	N51°26'24"W	191.72(T)
L3	N38°33'36"E	31.32'
L4	N51°26'24"W	20.00'
L5	N38°33'36"E	11.32'
L6	N51°26'24"W	84.13(T)
L7	N38°33'36"E	95.85'
L8	N51°26'24"W	10.00'
L9	N38°33'36"E	20.00'
L10	N51°26'24"W	10.00'
L11	N38°33'36"E	36.63'
L12	N51°26'24"W	55.96(T)
L13	N38°33'36"E	25.34'
L14	N51°26'24"W	20.00'
L15	N38°33'36"E	5.34'
L16	N51°26'24"W	35.96(T)
L17	N38°33'36"E	231.56(T)
L18	N51°18'07"W	46.08'
L19	N36°10'20"E	5.80'
L20	N36°30'48"E	20.18'
L21	N51°18'07"W	46.77'
L22	N38°33'36"E	211.51(T)
L23	N51°26'24"W	112.38(T)
L24	N38°33'36"E	4.84'
L25	N51°26'24"W	20.00'
L26	N38°33'36"E	24.84'
L27	N51°26'24"W	132.36(T)
L28	N38°33'36"E	158.48'
L29	N51°26'24"W	50.00'
L30	N38°33'36"E	9.84'
L31	N51°26'24"W	20.00'
L32	N38°33'36"E	9.84'
L33	N51°26'24"W	82.36(T)
L34	N38°33'36"E	29.00'
L35	N51°26'24"W	44.78(T)
L36	N38°15'11"E	20.48'
L37	N51°26'12"W	20.00'



LEGAL DESCRIPTION

All that portion of the west half of Section 24, being Tract 2 of Record of Survey 20-97 and Parcel 3 of Parcel Map 41-96, County of El Dorado, State of California, and more particularly described as follows:

Parcels 1, 3, 4, and 5 as shown on that parcel map filed for record in the office of the El Dorado County Recorder in Book 49 of Parcel Maps, at page 53.



9-28-06

10/10/10

10/10/10

RECORDING REQUESTED BY:

Board of Supervisors

WHEN RECORDED MAIL TO:

**Board of Supervisors
330 Fair Lane
Placerville, CA 95667**

11/20/2006, 20060079410

**SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE**

TITLE (S)

**ANNEXATION AGREEMENT MISSOURI FLAT AREA CFD NO. 2002-01 AGMT 06-1069
BY AND BETWEEN THE COUNTY OF EL DORADO AND SCHOOLS FINANCIAL CREDIT
UNION RELATIVE TO THE DEVELOPMENT KNOWN AS
SCHOOLS FINANCIAL CREDIT UNION, PLACERVILLE BRANCH – OFFICE AND
RETAIL**

**ANNEXATION AGREEMENT
MISSOURI FLAT AREA CFD No. 2002-01
BY AND BETWEEN THE COUNTY OF EL DORADO AND
SCHOOLS FINANCIAL CREDIT UNION RELATIVE TO THE
DEVELOPMENT KNOWN AS
SCHOOLS FINANCIAL CREDIT UNION, PLACERVILLE BRANCH – OFFICE
and RETAIL**

AGMT # 06-1069

THIS ANNEXATION AGREEMENT ("Agreement"), is made and entered into by and between the County of El Dorado, a political subdivision of the State of California, ("County") and Schools Financial Credit Union, a corporation duly qualified to conduct business in the State of California, whose principal place of business is 1485 Response Road, Suite 126, Sacramento, California 95815, ("Landowner").

RECITALS

A. Property Description. Landowner has legal or equitable interests in the real property that is the subject of this Agreement ("Property"). The Property, identified as Assessor's Parcel Number 327-212-18-100, consisting of approximately 2.47 acres, is located on the northeast corner of Missouri Flat Road and Forni Road in the Diamond Springs/El Dorado area of El Dorado County. A description of the Property is attached hereto as Exhibit A, marked "Property Description," incorporated herein and made by reference a part hereof.

B. Project Description. Applicant is developing the Property as a commercial development consisting of the addition of two commercial buildings comprising approximately 12,900 square feet on a parcel containing an existing 6,000 square foot commercial building ("Project"). The uses will be a mix of office, retail, and medical office space.

C. Conditions of Approval. As conditions of approval PD 03-0008, page 3, Condition 15, County requires Landowner to enter into an agreement in recordable form which commits the Project to participate in Community Facilities District No. 2002-01 ("CFD") which was formed by Resolution 074-2002, in March 2002, as part of the Missouri Flat Master Circulation and Funding Plan ("MC&FP"), which was approved by County's Board of Supervisors in December 1998 and updated in December 2000, prepared for the Missouri Flat area. This Agreement is intended by the parties to fully comply with the conditions of approval.

AGREEMENT

1. Participation in CFD. Landowner hereby consents to the imposition of the special tax as set forth in the MC&FP; provided that the structure of the CFD and the special tax authorized is in material conformance with the CFD Structure,

which assumes bonds will only be issued to the extent that projected debt service shall be covered from the tax increment generated from taxable sales within the Project and other participating development. The special tax shall be based on the same formula, or a no less favorable formula, as applied to other participants in the CFD. Landowner waives and releases any claims or objections it may possess, or may hereafter possess, with respect to the formation and implementation of the CFD, the authorization and imposition of the proposed special tax, or the annexation of the Property to the CFD; provided, that it is consistent with the CFD Structure and the limitations set forth herein. Landowner hereby consents to the annexation of the Property to the CFD by County. Landowner shall not file, nor cause to be filed, any protest or objection to the authorization of the special tax, and shall not file, or cause to be filed, any legal action challenging the authorization, imposition or collection of the special tax, or any other action regarding the CFD including, but not limited to, annexation of property to the CFD; provided the implementation of the special tax and the implementation of the CFD are in compliance with the CFD Structure. The Property may be annexed and the special tax authorized at any time after the Effective Date of this Agreement, upon request of County. Landowner shall be required to take any action reasonably required under this Section regardless of whether development on the Project has occurred or is then proposed; provided, that the CFD Structure provides that the special tax shall not accrue or be collected on the Property until building permits have been obtained and construction commenced. At the request of County, Landowner shall execute and deliver to County, in a form suitable for its intended purpose, any document required to annex the Property to the CFD, including, but not limited to, forms reflecting the consent of the property owner to such annexation.

Landowner shall provide to County a preliminary title report for the Property, and executed "lender's consents," consenting to the authorization for the special tax from each lien holder having an interest in the property prior to County approving the Agreement. The lender's consents shall be in a form reasonably acceptable to bond counsel for County. However, such documents need not be in recordable form.

2. Satisfaction of Condition and Issuance of Building Permits. County agrees that the execution and recordation of this Agreement fully satisfies Condition Number 15 of the Conditions of Approval for PD 03-0008. County shall issue building and other construction permits for improvements for the Project without further delay or obligation of Landowner with respect to Condition Number 15, subject to compliance with all other requirements for issuance of a building permit including but not limited to, payment of customary fees or other obligations associated with the issuance of building permits in the County.

3. Binding Covenants. The provisions of this Agreement shall constitute covenants that shall run with the Property and the benefits and burdens hereof shall be binding upon and inure to the benefit of the parties and their successors in interest.

4. **Term.** The term of this Agreement shall commence on execution and recordation of this Agreement ("Effective Date") and shall extend for a period of ten (10) years from that date, unless it is terminated, modified or extended by the mutual written agreement of the parties; provided however, that any obligations undertaken by the parties pursuant to this Agreement that relate to Landowner's consent to participation in the CFD shall survive the expiration of this Agreement and shall not be affected in any way by such expiration.

5. **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, addressed to the persons and at the addresses shown below. The addresses for delivery of notice may be changed from time to time upon ten (10) days prior written notice. Notices to County shall be in duplicate. 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:

To County:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn: Elizabeth B. Diamond, P.E.
Deputy Director, West Slope
Engineering & Project Delivery

With a Copy to:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn: Tim C. Prudhel,
Contract Services Officer

To Landowner:

Schools Financial Credit Union
1485 Response Road, Suite 126
Sacramento, CA 95815
Attn: James P. Jordan, President/CEO

6. **Authority to Execute.** The person or persons executing this Agreement on behalf of Landowner warrant and represent that they have the authority to execute this Agreement on behalf of Landowner, and that they have the authority to bind Landowner to the performance of its obligations hereunder.

7. **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 sections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction.

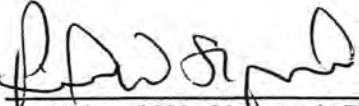
8. **Further Actions and Instruments.** Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, file or record any required instruments and writings necessary to evidence or consummate the transaction 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.

9. **Contract Administrator.** The County Officer or employee with responsibility for administering this Agreement is Elizabeth B. Diamond, P.E., Deputy Director, West Slope Engineering & Project Delivery, Department of Transportation, or successor.

10. **Recording.** The parties shall promptly execute this Agreement upon approval of County's Board of Supervisors in such form as will allow the recordation of this Agreement. 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.

11. **Severability.** If any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, except as otherwise provided in this Agreement, the remainder of this Agreement, or the application of such terms, covenants or conditions to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Requesting Department Concurrence:

By: 
Richard W. Shepard, P.E.
Director of Transportation

Dated: 6/12/06

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

--COUNTY OF EL DORADO--

By: James R. Sweeney
Board of Supervisors
"County"
JAMES R. SWEENEY

Dated: 9/19/06

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: Spencer Tyler
Deputy Clerk

Dated: 9/19/06

--SCHOOLS FINANCIAL CREDIT UNION--

By: James P. Jordan
James P. Jordan
President/CEO

Dated: 7/28/06

By: Elizabeth Lew
Elizabeth Lew
Corporate Secretary

Dated 7-28-06

ACKNOWLEDGMENT

State of California

County of EL DORADO

On Sept 25, 2006 before me, LORETTA FEATHERSTON, NOTARY PUBLIC,
(here insert name and title of the officer)

personally appeared JAMES R. SWEENEY, CHAIRMAN OF THE BOARD OF SUPERVISORS

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

WITNESS my hand and official seal.

Signature Loretta Featherston



(Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of Sacramento

On July 28, 2006 before me, C. CAMPAS, NOTARY PUBLIC
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared James P. Jordan
NAME(S) OF SIGNER(S)

☒ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

C. Campas
SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☒ CORPORATE OFFICER
President / CEO
TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
Schools Financial
Credit Union

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

Schools Financial Credit Union

Exhibit A

Property Description

All that portion of the west half of Section 24, Township 10 North, Range 10 East, M.D.M., unincorporated area of the County of El Dorado, State of California, more particularly described as follows:

Parcel A, as said parcel is shown on the map recorded in Book 34 of Parcel Maps, at Page 146, in the office of the El Dorado County Recorder, containing 2.47 acres, more or less.

End of description



5-04-06

RECORDING REQUESTED BY: }

Board of Supervisors }

EL DORADO CO. RECORDER-CLERK

11/05/2009, 20090055535

WHEN RECORDED MAIL TO: }

Board of Supervisors }

330 Fair Lane }

Placerville, CA 95667 }

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE

TITLE (S)

**ANNEXATION AGREEMENT MISSOURI FLAT AREA CFD NO. 2002-01
BY AND BETWEEN THE COUNTY OF EL DORADO AND GRANITE GRADO VENTURES
PROJECT II, LLC RELATIVE TO THE DEVELOPMENT KNOWN AS FORNI RETAIL
PLAZA AGMT # 09-52624**

ORIGINAL

**ANNEXATION AGREEMENT
MISSOURI FLAT AREA CFD No. 2002-01
BY AND BETWEEN THE COUNTY OF EL DORADO AND
GRANITE GRADO VENTURES – PROJECT II, LLC RELATIVE TO THE
DEVELOPMENT KNOWN AS
FORNI RETAIL PLAZA**

AGMT # 09-52624

THIS ANNEXATION AGREEMENT ("Agreement"), is made and entered into by and between the County of El Dorado, a political subdivision of the State of California, ("County") and Granite Grado Ventures – Project II, LLC, a limited liability company duly qualified to conduct business in the State of California, whose principal place of business is 8950 Cal Center Drive, Suite 201, Sacramento, California 95826, ("Landowner").

RECITALS

A. Property Description. Landowner has legal or equitable interests in the real property that is the subject of this Agreement ("Property"). The Property, identified as Assessor's Parcel Numbers 327-213-10-100, 327-213-11-100 and 327-213-12-100 consisting of approximately 4.08 acres, is located on the northwest corner of the intersection of Missouri Flat Road and Forni Road, in the Placerville area. A description of the Property is attached hereto as Exhibit A, marked "Property Description," incorporated herein and made by reference a part hereof.

B. Project Description. Applicant is developing the Property as a commercial development consisting of four commercial retail buildings comprising a total of approximately 36,237 square feet ("Project").

C. Conditions of Approval. As conditions of approval PD 08-0001, page 10, Condition 27, County requires Landowner to enter into an agreement in recordable form which commits the Project to participate in Community Facilities District No. 2002-01 ("CFD") which was formed by Resolution 074-2002, in March 2002, as part of the Missouri Flat Master Circulation and Funding Plan ("MC&FP"), which was approved by County's Board of Supervisors in December 1998 and updated in December 2000, prepared for the Missouri Flat area. This Agreement is intended by the parties to fully comply with the conditions of approval.

AGREEMENT

1. Participation in CFD. Landowner hereby consents to the imposition of the special tax as set forth in the MC&FP; provided that the structure of the CFD and the special tax authorized is in material conformance with the CFD Structure, which assumes bonds will only be issued to the extent that projected debt service shall be covered from the tax increment generated from taxable sales within the Project and other participating development. The special tax shall be based on the same formula, or a no less favorable formula, as applied to other participants in the CFD. Landowner waives and releases any claims or objections it may possess, or may hereafter possess, with respect to the formation and implementation of the CFD, the authorization and imposition of the proposed special tax, or the annexation of the Property to the CFD; provided, that it is consistent with the CFD Structure and the limitations set forth herein. Landowner hereby consents to the annexation of the Property to the CFD by County. Landowner shall not file, nor cause to be filed, any protest or objection to the authorization of the special tax, and shall not file, or cause to be filed, any legal action challenging the authorization, imposition or collection of the special tax, or any other action regarding the CFD including, but not limited to, annexation of property to the CFD; provided the implementation of the special tax and the implementation of the CFD are in compliance with the CFD Structure. The Property may be annexed and the special tax authorized at any time after the Effective Date of this Agreement, upon request of County. Landowner shall be required to take any action reasonably required under this Section regardless of whether development on the Project has occurred or is then proposed; provided, that the CFD Structure provides that the special tax shall not accrue or be collected on the Property until building permits have been obtained and construction commenced. At the request of County, Landowner shall execute and deliver to County, in a form suitable for its intended purpose, any document required to annex the Property to the CFD, including, but not limited to, forms reflecting the consent of the property owner to such annexation.

Landowner shall provide to County a preliminary title report for the Property, and executed "lender's consents," consenting to the authorization for the special tax from each lien holder having an interest in the property prior to County approving the Agreement. The lender's consents shall be in a form reasonably acceptable to bond counsel for County. However, such documents need not be in recordable form.

2. Payment of TIM Fees. Landowner agrees that if it shall pay Traffic Impact Mitigation (TIM) Fees in accordance with the then current fee schedule set forth by County's Board of Supervisors ("TIM Fee Schedule"), at the time of acceptance by the Development Services Department's Building Services of the completed building permit application. Payment of the fees shall be made notwithstanding any claim, protest, or legal action brought by any other person or entity. Landowner shall not be entitled to participate in or utilize any program otherwise available from County for deferral, partial payment, or payment in installments of TIM Fees, or any other program other than full payment of TIM Fees at the time of acceptance of the completed application for a building permit.

3. Satisfaction of Condition and Issuance of Building Permits. County agrees that the execution and recordation of this Agreement fully satisfies Condition Number 27 of the Conditions of Approval for PD 08-0001. County shall issue building and other construction permits for improvements for the Project without further delay or obligation of Landowner with respect to Condition Number 27, subject to compliance with all other requirements for issuance of a building permit including but not limited to, payment of customary fees or other obligations associated with the issuance of building permits in the County.

4. Binding Covenants. The provisions of this Agreement shall constitute covenants that shall run with the Property and the benefits and burdens hereof shall be binding upon and inure to the benefit of the parties and their successors in interest.

5. Term. The term of this Agreement shall commence on execution and recordation of this Agreement ("Effective Date") and shall extend for a period of ten (10) years from that date, unless it is terminated, modified or extended by the mutual written agreement of the parties; provided however, that any obligations undertaken by the parties pursuant to this Agreement that relate to Landowner's consent to participation in the CFD shall survive the expiration of this Agreement and shall not be affected in any way by such expiration.

6. 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, addressed to the persons and at the addresses shown below. The addresses for delivery of notice may be changed from time to time upon ten (10) days prior written notice. Notices to County shall be in duplicate. 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:

To County:

County of El Dorado
Department of Transportation
4505 Golden Foothill Parkway
El Dorado Hills, CA 95762
Attn: Matthew D. Smeltzer,
Deputy Director
Roadway Design Division

With a Copy to:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn: Tim C. Prudhel,
Contract Services Officer

To Landowner:

Granite Grado Ventures – Project II, LLC
8950 Cal Center Drive, Suite 201
Sacramento, CA 95826
Attn: Scott Wolcott, President

7. **Authority to Execute.** The person or persons executing this Agreement on behalf of Landowner warrant and represent that they have the authority to execute this Agreement on behalf of Landowner, and that they have the authority to bind Landowner to the performance of its obligations hereunder.

8. **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 sections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction.

9. **Further Actions and Instruments.** Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in 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 transaction 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.

10. **Contract Administrator.** The County Officer or employee with responsibility for administering this Agreement is Matthew D. Smeltzer, Deputy Director, Roadway Design Division, Department of Transportation, or successor.

11. **Recording.** The parties shall promptly execute this Agreement upon approval of County's Board of Supervisors in such form as will allow the recordation of this Agreement. The County Clerk shall cause the two originals 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.

12. **Severability.** If any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, except as otherwise provided in this Agreement, the remainder of this Agreement, or the application of such terms, covenants or conditions to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Requesting Department Concurrence:

By: _____

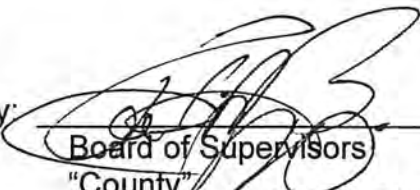
James W. Ware, P.E.
Director of Transportation

Dated: _____

8/14/09

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

--COUNTY OF EL DORADO--

By: 
Board of Supervisors
"County"
RON BRIGGS

Dated: 11/3/09

Attest:
Suzanne Allen de Sanchez
Clerk of the Board of Supervisors

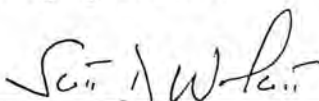
By: 
Deputy Clerk

Dated: 11/3/09

--GRANITE GRADO VENTURES-PROJECT II, LLC--

A California Limited Liability Company

By: Granite Land Company
A California Corporation
Its Managing Member

By: 
Scott D. Wolcott
President

Dated: 8/24/09

By: 
Michael Futch
Corporate Secretary

Dated: 8/31/09

Granite Grado Ventures – Project II, LLC

EXHIBIT A

PROPERTY DESCRIPTION

All that portion of the northwest quarter of the southwest quarter of Section 24, Township 10 North, Range 10 East, M.D.M., unincorporated area of El Dorado County, State of California, and more particularly described as follows:

Parcel 1, as said parcel is shown on that map recorded in Book 4, Parcel Maps, at Page 153, in the office of the El Dorado County Recorder, **excepting therefrom** that portion granted to the County of El Dorado in Book 5026, Official Records, at Page 382, in the office of the El Dorado County Recorder, containing 1.244 acres, more or less;

Together with Parcel 2, as said parcel is shown on that map recorded in Book 4, Parcel Maps, at Page 153, in the office of the El Dorado County Recorder, containing 1.0 acres, more or less;

Together with the lands described in Document No. 2007-0016478, containing 1.834 acres, more or less.

End of description.



2-27-09

--ACKNOWLEDGEMENT--

State of California

County of Sacramento

On 08/24/09 before me, Desiree Holberg, Notary Public,
(here insert name and title of the officer)

personally appeared

Scott D. Wolcott

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

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

WITNESS my hand and official seal.

Signature 



(Seal)

--ACKNOWLEDGEMENT--

State of California

County of Santa Cruz

On 8/31/2009 before me, Pamela J. Burnham Notary Public
(here insert name and title of the officer)

personally appeared

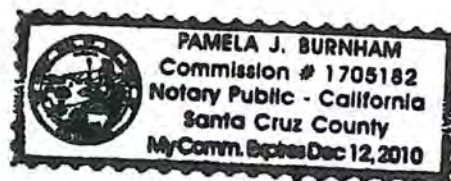
Michael Futch

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

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

WITNESS my hand and official seal.

Signature Pamela J. Burnham



(Seal)

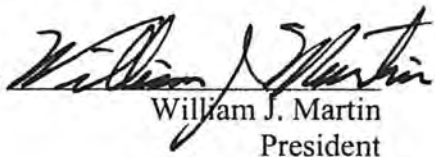
BANK OF SACRAMENTO

CONSENT OF LIENHOLDER

Bank of Sacramento ("Lienholder") hereby consents to the Annexation Agreement for the Missouri Flat Area CFD No. 2002-01 ("Agreement") by and between Granite Grado Ventures a – Project II, LLC and the County of El Dorado relative to the development known as the Forni Retail Plaza and the imposition of the special tax as provided in said agreement. Lienholder joins in the execution hereof solely as the Lienholder and hereby does agree that in the event of the foreclosure of said mortgage or other sale of said property described in said loan under judicial or non-judicial proceedings, the same shall be sold subject to said Agreement.

Signed and executed this 6th day of August, 2009

Bank of Sacramento, Lienholder

By: 
William J. Martin
President

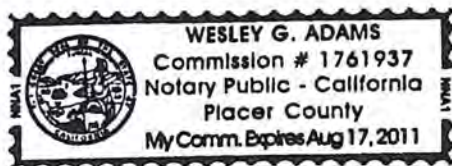
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento

On Aug. 6, 2009 before me, Wesley G. Adams, Notary Public

personally appeared William S. Martin



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

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

WITNESS my hand and official seal.

Signature Wesley G. Adams, Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Consent of Lienholder

Document Date: Aug. 6, 2009 Number of Pages: 1

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: William S. Martin

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

Signer Is Representing: _____

Bank of Sacramento

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here



Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

ACKNOWLEDGMENT

State of California
County of El Dorado

On Nov 5, 2009 before me, Loretta Featherston, Notary Public

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

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

WITNESS my hand and official seal

Signature Loretta Featherston

* attached to Annexation Agreement CFD
agreement # 09-52624 2002-01



(Seal)

RECORDING REQUESTED BY

Board of Supervisors

WHEN RECORDED MAIL TO:

NAME:

MAILING BOARD OF SUPERVISORS
ADDRESS:

CITY, STATE,
ZIP CODE



El Dorado, County Recorder

William E. Schultz Co Recorder Office

DOC- 2000-0060835-00

Acct 30-EL DORADO CO BOARD OF SUPERVISORS

Wednesday, NOV 29, 2000 11:08:37

Ttl Pd \$0.00

Nbr-0000091256

LJP/C2/1-101

SPACE ABOVE THIS LINE RESERVED FOR
RECORDERS USE

TITLE(S)

DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY OF EL DORADO
AND VILLAGE/EL DORADO PARTNERS, L.P., A CALIFORNIA LIMITED
PARTNERSHIP RELATIVE TO THE DEVELOPMENT KNOWN AS EL DORADO
VILLAGES SHOPPING CENTER

11/29/2000, 20000060835

Recording Requested By

LOUIS B. GREEN
COUNTY COUNSEL

When Recorded Mail To

LOUIS B. GREEN
EL DORADO COUNTY COUNSEL
330 Fair Lane
Placerville, CA 95667

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

DEVELOPMENT AGREEMENT
BY AND BETWEEN THE COUNTY OF EL DORADO AND
VILLAGE/EL DORADO PARTNERS, L.P., A CALIFORNIA LIMITED PARTNERSHIP
RELATIVE TO THE DEVELOPMENT KNOWN AS
EL DORADO VILLAGES SHOPPING CENTER

DEVELOPMENT AGREEMENT

**BY AND BETWEEN THE COUNTY OF EL DORADO AND
VILLAGE/EL DORADO PARTNERS, L.P., A CALIFORNIA LIMITED PARTNERSHIP
RELATIVE TO THE DEVELOPMENT KNOWN AS
EL DORADO VILLAGES SHOPPING CENTER**

This Development Agreement ("**Development Agreement**") is entered into this 15th day of DECEMBER, 1998, by and between the County of El Dorado, a political subdivision of the State of California, hereinafter "**County**", The Cecilia D. Headington Revocable Living Trust, dated April 1, 1993, and ^{Jericho} ~~Jerico~~/Village Partners, a California general partnership, hereinafter collectively "**Landowner**", and Village/El Dorado Partners, L.P., a California limited partnership, hereinafter "**Applicant**", Landowner and Applicant being referred to herein collectively as "**Developer**", pursuant to the authority of Sections 65864 *et seq.* of the Government Code of the State of California (the "**Development Agreement Statute**").

Recitals

A. Authorization. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Statute which authorizes the County and any person having a legal or equitable interest in real property to enter into a development agreement, establishing certain development rights in the property which is the subject of a development project application. In addition, a development agreement allows the County and such an applicant to voluntarily undertake obligations which are mutually beneficial but which otherwise could not be imposed upon the applicant as a condition of project approval, nor required of the County. It is the intent of the parties that the obligations contained herein are undertaken voluntarily for the mutual benefit of the parties, and are not imposed as conditions of approval of any project nor as exactions.

B. Property Description. The Landowner and Applicant hereto have legal or equitable interests in the real property which is the subject of this Development Agreement ("**Property**"). The Property consists of approximately 15.838 acres as shown on Exhibit "A" and described in Exhibit "B", attached hereto and incorporated herein by reference. At the time of the Effective Date (as defined in Section 1.D of this Development Agreement) Landowner owns in fee the property identified as the "Headington Parcel" and the property identified as the ^{Jericho} ~~Jerico~~ "Parcel" on Exhibit "A". Applicant owns in fee the remainder of the Property and holds an option to purchase the Headington Parcel.

C. Project Description. Developer intends to develop the Property as a retail

shopping center consisting of a maximum of 120,000 square feet of gross retail floor area ("**Project**"). The Project is subject to Conditions of Approval (including CEQA mitigation measures) which are attached hereto as Exhibit "C", attached hereto and incorporated herein by this reference (the "**Villages Conditions of Approval**"). The Villages Conditions of Approval, as agreed by the parties, shall also include the following two conditions which were identified by the Board of Supervisors as necessary to ensure that the impacts of the Project are properly addressed:

1. El Dorado Road/Highway 50 Interchange. El Dorado Villages shall pay its fair share of the cost of the El Dorado Road/Highway 50 Interchange and the balance of such costs to be funded through the County TIM Fee program or any other funding strategy acceptable to the County. In addition, the County will continue to evaluate including the cost of this interchange within the MC&FP without creating a conflict with Measure Y. No building permit shall be issued until the funding source is identified and a fair share is committed.

2. Intersection Improvements. El Dorado Villages, in conjunction with other projects in the MC&FP area shall be responsible for improvement to the following intersection:

- Missouri Flat Road/El Dorado Road - install a traffic signal and construct exclusive eastbound and westbound left-turn lanes on the Missouri Flat Road approaches.
- El Dorado Road/Mother Lode Drive - install a traffic signal and construct exclusive northbound and southbound left-turn lanes on the El Dorado Road approaches.

The specific timing of these improvements will depend on traffic growth at these locations from new development in the Missouri Flat Area. El Dorado County DOT shall monitor these locations and determine when signalization would be appropriate. Applicant shall pay its fair share of the cost of the signals, and the balance of such cost will be funded through the County TIM Fee program or any other funding strategy acceptable to the County. In addition, the County will continue to evaluate including the cost of the signals within the MC&FP without creating a conflict with Measure Y.

As further consideration for the agreements of the County in this Development Agreement, Developer agrees to take all steps reasonably necessary to satisfy each of the Villages Conditions of Approval.

D. Project Background and Approvals.

1. Environmental Impact Report ("EIR"). In accordance with the California Environmental Quality Act ("CEQA"), on November 24, December 8, and December 15, 1998, the Board of Supervisors of the County ("**Board of Supervisors**") held a duly noticed and conducted public hearing. At the conclusion of these hearings, on December 15, 1998, the Board of Supervisors certified the EIR as adequate and complete, made specific findings, adopted a

Statement of Overriding Considerations, and adopted a Mitigation Monitoring and Reporting Program ("MMRP").

2. Approved Land Use Entitlements. For the Property, the County has approved the following land use entitlements in furtherance of the Project ("**Project Approvals**"):

- c. Planned Development PD97-12 approved by motion of the Planning Commission on October 29, 1998;
- d. Ordinance No. 4519, adopting this Development Agreement DA98-02 ("**Adopting Ordinance**").

3. Vesting Tentative Map. The Property currently consists of eight (8) separate legal parcels. Developer may submit an application for the approval of a Vesting Tentative Map ("VTM") to further subdivide the Property into additional separate legal parcels ("**Parcels**"). County's review and consideration of the VTM will occur subsequent to the adoption of this Development Agreement.

E. Missouri Flat Road Master Circulation and Funding Plan: Development Agreement Goals. The Project is located on Missouri Flat Road, north of Highway 50, in the unincorporated area of the County of El Dorado. Missouri Flat Road, its interchange at Highway 50, and surrounding roadways currently are impacted by existing traffic which causes those roadways to operate at or near Level of Service F. Future development in the area of Missouri Flat Road, including the Project, will generate additional traffic which, if not mitigated, will worsen traffic congestion conditions on Missouri Flat Road and surrounding areas.

It is not feasible to address the impacts of future development without also addressing current deficiencies due, in large part, to the fact that the crux of the problem is the Missouri Flat Road Overcrossing/Interchange at Highway 50, which was not designed for the volumes of traffic that it currently experiences. The roadway improvements needed to address current deficiencies are currently unfunded. The Project, when combined with other planned commercial development in the Missouri Flat Area of the County, provides funding, through payment of Traffic Impact Mitigation ("**TIM**") Fees, for the roadway improvements needed for the Project and further provides a source of funds, in the form of incremental tax revenue, to finance the roadway improvements needed to overcome current deficiencies. Therefore, the roadway improvements needed to address current deficiencies, and to mitigate the future impacts of the Project, are integrally related.

Policy 2.1.4.8 of the El Dorado County General Plan calls for the adoption of a "specific plan, redevelopment plan, or a master circulation and funding plan" for the Missouri Flat Area by the County and restricts discretionary approvals of development projects in that area pending such adoption. County, Developer and proponents of two other development projects in the Missouri Flat Area, Sundance Plaza and Wal-Mart, have cooperated in, and provided funding

for, the development of such plan which is referred to as the Missouri Flat Area Master Circulation and Funding Plan ("MC&FP"). Following review and recommendation by the County Planning Commission, the MC&FP was adopted by the Board of Supervisors on December 15, 1998.

The MC&FP identifies those traffic mitigation improvements needed to restore and maintain Level of Service E or better on Missouri Flat Road and surrounding roadways, taking into consideration both existing deficiencies in light of current traffic, and projected traffic impacts of anticipated new development. It also details a comprehensive funding program to accomplish those improvements which requires cooperation and coordination by the County and project applicants in the area. The funding plan relies primarily on two sources of funding for the improvements. One is use of traffic impact mitigation fees paid by new development in the TIM Fee Area. This source of funding ultimately will account for approximately forty-eight percent 48% of the total cost of all the improvements. The cost allocation from each funding source for individual improvements varies based on the nature and location of the improvement. The other source of funds is the use of a portion of the incremental property and sales tax revenues which will be generated by new development in the Missouri Flat Area. However, in order to effectively capitalize that projected cash flow, it is proposed that this second funding mechanism be secured by a special tax on properties in the area as they develop implemented through the establishment of a Community Facilities (Mello-Roos) District ("CFD"), which would secure bonds to be issued.

A central purpose of this Development Agreement is to provide the mechanism whereby County and Developer agree to the implementation of the MC&FP and create the binding obligations necessary to allow it to move forward. In particular, in consideration of the County's agreement to devote a certain portion of the incremental tax revenues for these purposes, Developer agrees to assist in securing such financing by agreeing to the formation of a Community Facilities District and to the authorization of a special tax in conformance with the terms of this Development Agreement and the MC&FP.

F. General Plan Consistency. The Board of Supervisors hereby finds this Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the County's General Plan, and, without limitation, that it carries out the purposes of Policy 2.1.4.8. Furthermore, the Board of Supervisors has reviewed the provisions of the MC&FP and this Development Agreement, and has determined that both are consistent with the provisions of Measure Y, which was approved by the voters of the County of El Dorado at the general election on November 3, 1998. The Board of Supervisors also finds and determines that approval of the MC&FP and this Development Agreement do not require voter approval pursuant to the terms of Measure Y.

G. Commitment of the Parties. Developer shall have a vested right to develop the Project in accordance with the terms and conditions of this Development Agreement. County, at the request of Developer, intends to cooperate with and assist Developer in development of the

Project in the manner set forth in this Development Agreement. Development of the Project requires a major investment by Developer in public facilities, substantial front-end investment in on-site and off-site improvements, and substantial commitment of Developer's resources to achieve the public purposes and benefits of the Project and the MC&FP for the County. The contributions of the Project to finance, and to provide a source of funding for, public facilities and dedications of land for public benefit are key elements of consideration for County's execution of this Development Agreement. County and Developer recognize and agree that, but for Developer's contributions to mitigate the impacts arising as a result of development entitlements granted pursuant to this Development Agreement, as well as existing deficiencies, County would not approve the development of the Property as provided by this Development Agreement. County's approval of the Project as provided herein is in reliance upon and in consideration of Developer's agreement to make contributions toward the cost of public improvements, as herein provided, to mitigate the impacts of the Project and existing deficiencies. Developer acknowledges that although funding provided through tax increment is based upon existing traffic deficiencies, in fact, the impacts of the Project cannot be mitigated without addressing those existing deficiencies, thereby resulting in Developer's willingness to participate in the financing of that portion of the funding.

County recognizes and has determined that the granting of vested development rights and assurances to Developer in accordance with the Development Agreement Statute will assist Developer in undertaking the development of the Project and thereby achieve the public purposes and benefits of the Project and the MC&FP. But for said commitments on the part of the County, Developer would not enter into this Development Agreement nor develop the Project.

H. Development Agreement Ordinance. County and Developer have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Ordinance of the County of El Dorado, Ordinance No. 3300 ("**Development Agreement Ordinance**").

I. Environmental Mitigation. The parties understand that the EIR was intended to be used in connection with each of the Project Approvals issued subsequent to certification of the EIR and any additional approvals hereafter needed for the Project ("**Subsequent Approvals**"). Consistent with other CEQA policies and requirements applicable to tiered EIR's, County agrees to use the EIR in connection with the processing of any Subsequent Approvals to the maximum extent allowed by law and not to impose on the Project any environmental mitigation measures unless required by CEQA to address impacts not considered by the EIR, nor to impose other conditions of approval other than those specifically imposed by the Project Approvals and the MMRP, or required or allowed by Applicable Law (as defined in Section 2.C.1 of this Development Agreement). In addition, to the extent consistent with CEQA policies and requirements applicable to tiered EIR's, the County agrees to use the EIR in connection with the processing of Subsequent Approvals to the maximum extent allowed by law. Without limiting the generality of the foregoing, in processing Subsequent Approvals, County agrees to apply the statutory and other exemptions afforded by CEQA, including, but not limited to, CEQA

Guidelines Section 15268 and 15315, when appropriate under CEQA.

J. Project Benefits. County and Developer desire that the development of the Project pursuant to this Development Agreement will result in significant benefits to County and Developer by providing assurances to Developer that it will have the ability to develop the Property in accordance with this Development Agreement and providing assurances to County that the Property will be developed in accordance with the County's General Plan. Consistent with this desire, County has determined that the Project presents certain public benefits and opportunities which are advanced by County and Developer in entering into this Development Agreement. This Development Agreement will, among other things, (1) provide tax increment revenue for construction of roadway improvements necessary to mitigate existing deficiencies in traffic level of service, (2) reduce uncertainties in planning and provide for the orderly development of the Project, (3) strengthen the County's economic base and provide long-term jobs, in addition to short-term construction jobs, and (4) generate substantial revenue for the County and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

NOW, THEREFORE, in further consideration of the above recitals, all of which are expressly incorporated into this Development Agreement, and the mutual promises and covenants of the parties contained in this Development 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.A. Binding Covenants. The provisions of this Development Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall be binding upon and inure to the benefit of the parties and their successors in interest.

~~Jericho~~ 1.B. Interest of Landowner. Landowner is the owner of the Headington Parcel and the ~~Jericho~~ Parcel, which are the only portions of the Property not currently owned by Applicant. The Headington Parcel is subject to an option to purchase agreement by which Landowner has agreed to sell the Headington Parcel to Applicant. The ~~Jericho~~ Parcel is owned by ~~Jericho~~ Villages Partners, a California general partnership, an affiliate of Applicant. Landowner acknowledges that County requires it to execute this Development Agreement so that the whole of the Property will be subject to this Development Agreement.

1.C. Interest of Applicant and Landowner. Developer intends to hold a fee interest in the Property at all times necessary to the performance of its obligations hereunder and that all other persons holding legal or equitable interests in the Property are to be bound by this Development Agreement.

Notwithstanding anything set forth in this Development Agreement to the contrary:

a. The Property shall be subject to this Development Agreement, and any development of any portion of the Property shall be subject to and in accordance with the terms of this Development Agreement.

b. Neither Applicant, nor Landowner, are obligated by the terms of this Development Agreement to affirmatively act to develop all or any portion of the Property, pay any sums of money, dedicate any land, indemnify any party, or to otherwise meet or perform any obligation with respect to the development of the Property, except and only insofar as is required by County as a condition to the development of any portion of the Property owned by them, and only as such act or obligation is related to the subject party's development of that portion of the Property. Applicant and Landowner are not relieved of any obligations hereunder to give notice to County of any matters required hereunder, to obtain an assumption of the obligations of this Development Agreement from any assignee, to cooperate and share information with County, or otherwise perform acts not directly related to development of the Property.

c. Notwithstanding the provisions of Section 1.C.b. above, Developer shall perform, at the request of County, any of the acts called for in Section 5.A.4. of this Development Agreement whether or not development on the Property is proposed; provided, however, that the CFD Structure does not permit actual collection of any special tax on the Property until development occurs.

1.D. Term. The term of this Development Agreement shall commence on the Effective Date of the ordinance authorizing the approval and execution of this Development Agreement ("**Effective Date**") 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 Development Agreement or by the mutual written agreement of the parties. Any obligations undertaken by the parties pursuant to this Development Agreement which affects the security or payment of any CFD Bonds issued in accordance with this Development Agreement and secured by the special tax on the Property, including, but not limited to, Developer's consent to participation in the CFD and County's execution of a contribution agreement with the CFD, shall survive the expiration of this Development Agreement and shall not be affected in any way by such expiration, notwithstanding Section 17.85.016 of the Development Agreement Ordinance.

1.E. Assignment. Developer, and any subsequent assignor, 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 Development Agreement; provided, however, that any such sale, mortgage, hypothecation, assignment or transfer shall include the assignment of the rights, duties, and obligations arising under or from this Development Agreement applicable to the Property or portions thereof being assigned, transferred or sold, and the acceptance by the assignee of such rights, duties and obligations.

Such assignment and assumption shall be in writing. Developer, and any subsequent assignor, shall notify County in writing of any such assignment within thirty (30) days after such assignment. The notice shall include the name and address of the assignee, and a description of the property acquired. The name and address in the notice shall be deemed to be the location for delivery of notices pursuant to Section 1.H, below, unless an alternate address for delivery is specified in writing. County shall have no obligation to provide future notice to any assignee if the above notice is not given. Developer, and any subsequent assignor, shall also provide County with a copy of the written assignment and acceptance. Any and all successors and assignees of Developer shall have all of the same rights, benefits, and obligations of Developer under this Development Agreement.

1.F. Amendment of Development Agreement. This Development Agreement may be amended from time to time by mutual written consent of the County and the owner of the Property, or portion 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, that no amendment shall be made affecting Developer's obligations to participate in the MC&FP funding plan in a manner which would increase the liability, or decrease the security, of any other participating landowner without the written consent of all such affected landowners. Any amendment to this Development Agreement shall be operative only as to those specific portions of this Development Agreement expressly subject to the amendment, with all other terms and conditions remaining in full force and effect without interruption.

1.G. Project Approval Amendments. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:

1.G.1. Administrative Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval (other than this Development Agreement) or for a Subsequent Approval, the Planning Director or his designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with Applicable Law (other than that portion of Applicable Law sought to be amended) and this Development Agreement. If the Planning Director or his designee finds that the proposed amendment or modification is both minor and consistent with Applicable Law (other than that portion of Applicable Law sought to be amended) and this Development Agreement, the amendment or modification shall be determined to be an "Administrative Amendment" and the Planning Director or his designee may, except to the extent otherwise required by law, approve the Administrative Amendment without notice and public hearing. For the purpose of this Section 1.G.1 and by way of example, lot line adjustments, changes in pedestrian or bicycle paths, subdivision amendments which will not have a substantial or material impact on circulation within the Property or from the Property, minor changes in landscaping, variations in the location or design of buildings that do not substantially alter the design concepts of the Project, and variations in the location or installation of utilities and other infrastructure

connections or facilities that do not substantially alter the design concepts of the Project, may be treated as Administrative Amendments.

1.G.2. Non-Administrative Amendments. Any request by Developer for an amendment or modification to a Project Approval (other than this Development Agreement) or a Subsequent Approval which is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to Applicable Law (other than Section 1.G.1, above).

1.G.3. Relationship to Amendments to Development Agreement. Administrative Amendments, and any Non-Administrative Amendment of a Project Approval or Subsequent Approval, which is in conformity with Applicable Law and this Development Agreement, and is not inconsistent with the uses and fundamental concepts of the Project Approvals, as determined by County, shall not require an amendment to this Development Agreement and shall automatically be deemed to be incorporated into the Project and vested under this Development Agreement; provided, that any such amendments are not inconsistent with and do not modify express provisions of this Development Agreement, do not change the proposed use of the Project as established in the Project Approvals, and do not significantly increase the total floor area of the proposed uses on the Property.

1.H. Notices. All notices required or provided for under this Development Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, addressed to the persons and at the addresses shown below. The addresses for delivery of notice may be changed from time to time upon ten (10) days prior written notice. 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 County: County of El Dorado
2850 Fairlane Court
Placerville, CA 95667
Attn: Planning Director

Copy to: County of El Dorado
330 Fair Lane
Placerville, CA 95667
Attn: Chief Administrative Officer

060835

Notice to Landowner: The Cecilia D. Headington Revocable Living Trust,
dated April 1, 1993

Jericho
Jerico/Village Partners, a California general
partnership
121 Spear Street #250
San Francisco, CA 94105
Attn: Scott Kepner

Notice to Developer: Village/El Dorado Partners, L.P., a California
limited partnership
~~562 Mission Street, Suite 201~~ 121 Spear Street #250
San Francisco, California 94105
Attention: Scott Kepner

Copy to: Halbear Enterprises
2100 Northrop Avenue, Suite 500
Sacramento, California 95825
Attention: Mark Perlberger

And copy to: Trainor Robertson
701 University Avenue, Suite 200
Sacramento, California 95825
Attention: David L. Robertson, Esquire

1.I. Definitions. The following definitions shall govern usage in this Development Agreement.

1.I.1. "Community Facilities District," "CFD" or "Mello-Roos District" means the community facilities district to be formed under the Mello-Roos Community Facilities Act of 1982 ("Mello-Roos Act"), California Government Code Sections 53311, *et seq.*, pursuant to the MC&FP and this Development Agreement for the purpose of funding MC&FP Improvements.

1.I.2. "CFD Bonds" or "Bonds" means those bonds to be issued by the CFD under the Mello-Roos Act for the purpose of funding MC&FP Improvements. Such Bonds shall be obligations of the CFD, secured by the Special Tax to be authorized on properties proposed for development within the Missouri Flat Area pursuant to this Development Agreement, or otherwise. Such Bonds shall not be general obligations of the County, nor shall they be secured by any source of revenue or funds of the County other than the Special Tax.

1.1.3. "CFD Special Tax" or "Special Tax" means a special tax to be enacted by the CFD, which is consistent with the CFD Structure, for the purpose of securing CFD Bonds to be issued for the purpose of funding MC&FP Improvements. Developer is required to consent to authorization of the CFD Special Tax pursuant to Section 5.A.4 of this Development Agreement.

1.1.4. "CFD Structure" means those certain characteristics of the CFD and the CFD Special Tax which are conditions to Developer's obligations to consent to, join or annex the Property to the CFD, or to take other actions pursuant to Section 5.A.4, below. The CFD Structure, which sets forth those conditions, is attached hereto as Exhibit "D" and incorporated herein by this reference. The CFD Structure does not contain all of the terms and conditions which will have to be set forth for purposes of forming the CFD, developing the actual tax formula, and authorizing the Special Tax. County may structure the CFD and the Special Tax as it deems appropriate; provided, however, that it is consistent with the CFD Structure.

1.1.5. "El Dorado Villages Project" means a proposed development of a retail shopping center identified by the County as project number PD97-12/DA98-02.

1.1.6. "Environmental Impact Report" or "EIR" means the Environmental Impact Report for the Missouri Flat Area MC&FP and Sundance Plaza and El Dorado Villages Shopping Center Projects, State Clearinghouse No. 97092074. "Draft EIR" refers to the draft EIR dated April, 1998.

1.1.7. "Lucky's Expansion Project" means a proposed expansion of the Lucky's supermarket located in the Prospector's Plaza Shopping Center identified by the County as project number PD97-06..

1.1.8. "MC&FP Adoption Date" means December 15, 1998.

1.1.9. "MC&FP Improvements" means all of those certain roadway improvements proposed to be constructed pursuant to the MC&FP and identified as Phase I Roadway Improvements on page 3-25 of the Draft EIR; except that the construction of a 2-lane Headington Road, intersection improvements at Headington Road/El Dorado Road, and signalization and ramp improvements at the El Dorado Road interchange with Highway 50 shall not be included in the MC&FP Improvements, in that the use of Tax Increment Revenues for such improvements is not approved. It should be noted that the Draft EIR and the draft MC&FP defined both Phase I and Phase II MC&FP Improvements. In the review process, the County determined to approve only Phase I of the MC&FP. Therefore, those improvements previously referred to in various documents as Phase I Improvements are referred to herein as MC&FP Improvements, as modified.

Although for planning and study purposes, specific improvements have been identified as MC&FP Improvements and, in some cases, specific improvement design has been

considered, the actual MC&FP Improvement may be those specifically identified or those which are functionally equivalent improvements and design.

1.I.10. "Missouri Flat Area" means the geographic area within the County identified as the Missouri Flat Area on Exhibit 3-3 (Proposed Missouri Flat Area Master Circulation and Funding Plan Area and Vicinity) at page 3-16 of the Draft EIR.

1.I.11. "Missouri Flat Area Master Circulation and Funding Plan" or "MC&FP" means that certain planning and policy document adopted by the Board of Supervisors of County on December 15, 1998.

1.I.12. "Missouri Flat Area Development" means the initial private retail use projected to develop in the Missouri Flat Area which will be sufficient to secure the funding of the MC&FP Improvements. Considering currently pending proposals, this is expected to consist of approximately 733,000 square feet of private retail use which is expected to occur by approximately the year 2005. Pending development proposals which, if approved and constructed, would comprise the Missouri Flat Area Development include the El Dorado Villages Project, the Wal-Mart Project, the Sundance Plaza Project (Phase I for which Project Approvals applications have been made), the Raley's Project, and the Lucky's Expansion Project. Additional development may be treated as Missouri Flat Area Development by County for funding purposes under the MC&FP if deemed to enhance the funding program. Although several pending projects have been identified as potentially comprising Missouri Flat Area Development, the MC&FP is designed to function regardless of the identity of specific development which proceeds. Therefore, Missouri Flat Area Development may consist of any development which would generate Projected Annual Taxable Sales (as that term is defined in Section 1.I.15, below) equal to or greater than that of the proposed projects specifically identified.

1.I.13. "Pending Development" means proposed non-residential development within the Missouri Flat Area which meets all of the following criteria:

- a. A specific use has been proposed sufficient to allow its traffic impacts to be assessed, and sufficient to allow an estimate of the anticipated Taxable Sales Targets to be calculated.
- b. The proposed development has obtained all discretionary approvals required from the County, but need not have obtained ministerial approvals such as building permits.
- c. The proposed development has obtained, or has provided reasonable evidence that it can obtain, all required discretionary approvals from other governmental agencies, and can satisfy the requirements of responsible agencies such as the Army Corps. of Engineers with respect to wetlands issues, and utility purveyors with respect to

the availability of adequate utility infrastructure in the area of the proposed development.

d. Satisfactory evidence is provided that the proposed buildings will be owner-occupied, or letters of intent, or similar business letters or written expressions of interest customarily given by retail tenants in connection with project financing, from tenants which will occupy approximately 50% of the project, including any anchor tenants which will be required for proceeding with the development.

e. Satisfactory evidence is provided of the availability of financing for the project. Such evidence may consist of any of the following, or such alternative evidence as may be deemed by County to be substantially equivalent: (1) preliminary or conditional financial commitments for construction or take-out financing from qualified lending institutions; (2) satisfactory evidence that the project proponent intends to, and is financially able to, self-fund the project; or, (3) satisfactory evidence that equity capital (in the form of equity in land, cash or cash equivalents) is available in an amount equal to not less than 25% of the estimated cost of the project.

f. The applicant has entered into an agreement with the County agreeing to submit its application for a building permit(s) for the development within one year after notice from County that Pending Development has reached the Threshold Level for Funding and all other preconditions to issuance of such building permits under the MC&FP have been satisfied. If an application for building permit is not submitted within the one year, the development shall no longer qualify as Pending Development unless it reestablishes its qualifications to be considered pending.

g. The subject property has been included in the CFD and otherwise satisfied the requirements of the MC&FP relative to the issuance of building permits.

h. No other condition, fact or limitation exists upon which County reasonably determines that, notwithstanding compliance with all of the above, the proposed development is not capable of being accomplished within a reasonably foreseeable time frame.

1.I.14. "Project Approvals" means those certain development approvals and entitlements set forth in Recital D.2 of this Development Agreement.

1.I.15. "Projected Annual Taxable Sales" means the amount arrived at by multiplying the applicable Taxable Sales Target (as defined in Section 1.I.24) times the number of square feet devoted to the specific use or category of use to which the Taxable Sales Target applies. As dictated by the context in which it is used, the Projected Annual Tax Sales may be calculated for a particular property or project, or for the Missouri Flat Area in its entirety. Unless otherwise stated, Projected Annual Taxable Sales on a property or within an area includes only Projected Annual Taxable Sales generated by development which occurs after the MC&FP Adoption Date. For purposes of this Development Agreement, Projected Annual Taxable Sales

shall be calculated only using the Taxable Sales Targets in Exhibit "E" and not actual market projections which may be made at any future time, except that, in calculating Projected Annual Taxable Sales for purposes of determining whether County is obligated to issue bonds or proceed with any MC&FP Improvements, County may consider any unique use of property which would cause the actual annual taxable sales to be significantly lower than the Taxable Sales Target.

1.I.16. "Property Tax Increment" means that portion of the County's share of the one percent (1%) ad valorem property tax levied under Article XIII A, Section 1(a) of the California Constitution which is generated by any increased assessed value attributable to buildings or structures constructed in the Missouri Flat Area after the MC&FP Adoption Date. For purposes of this Development Agreement, buildings or structures shall be deemed to be constructed after the MC&FP Adoption Date if the certificate of occupancy is issued after that date. Construction includes construction of buildings or structures on vacant land, the addition of buildings or structures on property on which other buildings or structures already exist, replacement of existing structures, and significant expansions of existing structures, but does not include the remodeling of existing structures.

Property Tax Increment does not include any revenues received by any public agency other than County, nor does it include any property tax revenues received under Article XIII A, Section 1(b), or is otherwise restricted in its purpose.

1.I.17. "Raley's Project" means the proposed construction of a Raley's supermarket on Missouri Flat Road south of Highway 50.

1.I.18. "Sales Tax Increment" means any unrestricted sales and use tax revenues received by County which are generated by transactions which occur in buildings or structures in the Missouri Flat Area, or their accessory areas, constructed after the MC&FP Adoption Date. For purposes of this Development Agreement, construction shall be deemed to have occurred after the MC&FP Adoption Date if the certificate of occupancy for the structure is issued after that date. Construction includes construction of buildings or structures on vacant land, the addition of buildings or structures on property on which other buildings or structures already exist, replacement of existing structures, and significant expansions of existing structures, but does not include the remodeling of existing structures. Where construction consists of the expansion of an existing structure, the Sales Tax Increment attributable to the expansion shall be determined by pro rating total sales tax generated in the building based on the proportion the floor area in the expanded area devoted to retail sales bears to the total floor area in the building devoted to retail sales.

Sales Tax Increment does not include: (1) sales tax revenues restricted to specific uses, such as revenues received under Proposition 172 for public safety purposes; (2) any special tax or override in excess of the current one percent (1%) of sales tax currently received by County for general purposes; or, (3) any sales tax received by any public entity other than the County.

1.I.19. "Subsequent Approvals" means any land use approvals, entitlements and permits, other than Project Approvals, required to allow development of the Project in accordance with the Project Approvals.

1.I.20. "Sundance Project" or "Sundance" means the proposed construction of a regional shopping center identified by County as project number Z97-22/PD97-11/P97-17/DA98-01. The Sundance Project includes both Phase I of the project (regional shopping center) and Phase II (convenience center) as described in the EIR for the Sundance Project.

1.I.21. "Tax Increment Revenues" is an amount equal to eighty-five percent (85%) of Total Tax Increment. Pursuant to Section 6.B of this Development Agreement, and subject to the limitations set forth in that section, County commits to devote these funds equal to eighty-five percent of Total Tax Increment annually to MC&FP purposes in accordance with this Development Agreement. Total Tax Increment is used as a basis for determining the amount of County's obligation. However, the County's obligations under this Development Agreement, and the use of terms such as Total Tax Increment and Tax Increment Revenues, is not intended to be a pledge of that particular revenue source.

1.I.22. "Taxable Sales Target" means the projected annual retail sales per square foot for the various types or categories of uses as set forth in Exhibit "E" attached hereto and incorporated herein by this reference.

1.I.23. "Threshold Level for Funding" means the amount of non-residential development within the Missouri Flat Area which would generate sufficient Tax Increment Revenues to fund that portion of the cost of specified MC&FP Improvements which is to be funded through Tax Increment Revenues pursuant to the MC&FP, as well as the amount of TIM Fees projected to be required from development within the Missouri Flat Area to fund the TIM Fee portion of the cost of those MC&FP Improvements. The Threshold Level for Funding shall be determined based on the Taxable Sales Targets established for the particular proposed use as shown in Exhibit "E". The amount of Tax Increment Revenue and cash flow required for specified MC&FP Improvements shall be based upon the estimated cost of the Improvements, and taking into consideration the nature, source and cost of funding which is then available and proposed for use in financing the specified Improvements.

1.I.24. "Total Tax Increment" means the total of Property Tax Increment plus Sales Tax Increment.

1.I.25. "Traffic Impact Mitigation Fees" or "TIM Fees" means fees charged by the County on new development for the purpose of mitigating the traffic impacts of the new development. For purposes of this Development Agreement, TIM Fees shall refer only to those fees collected pursuant to the programs referred to as the TIM Fee Program and the State TIM Fees program, and not Roadway Impact Fees (RIF) charged in the El Dorado Hills/Salmon Falls

area.

1.I.26. "Wal-Mart Project" or "Wal-Mart" means the proposed construction of a Wal-Mart retail discount store which is identified by County as project number Z94-08/PD94-02.

SECTION 2.

DEVELOPMENT OF THE PROPERTY

2.A. Permitted Use and Entitlements. The permitted land uses, density and intensity of use of the Property, timing or phasing of development, zoning, provisions for reservation or dedication of land for public purposes, and the location and size of major transportation, sewer, drainage and water facilities and improvements shall be those set forth in the Project Approvals as of the Effective Date, in this Development Agreement, and in the Applicable Law (as defined in Section 2.C.1, below). It is the intent of this Development Agreement that upon the Effective Date that the development of the Property shall be allowed pursuant to the requirements set forth in the Project Approvals and in this Development Agreement and that all further development of the Property shall be done in accordance with the Project Approvals and Subsequent Approvals. In the event of any conflict between the provisions of this Development Agreement and any other resolution, rule, regulation or policy of the County now in existence, the provisions of this Development Agreement and the Project Approvals shall control. However, this shall not prohibit the County from applying any ordinance, resolution, regulation, role or policy in effect on the Effective Date to the processing of any Subsequent Approval if it is not inconsistent with, and does not prevent development of the Property in accordance with, the Project Approvals and this Development Agreement.

2.A.1. Retail Development. Through its approval of the Project Approvals, County has granted land use to the Property, subject to this Development Agreement, allowing for the development of a maximum of 120,000 gross square feet of retail space as shown on the Development Plan. Developer is entitled to construct the retail area in phases as determined by Developer. Uses permitted within the Project are those shown for the Property and contained in the Project Approvals, and as may be amended from time to time by the mutual written consent of County and Developer.

2.B. Vested Rights. County acknowledges that Developer has, by entering into this Development Agreement and by County's approval of the Project Approvals, vested Developer's rights to develop the Project in accordance with the Project Approvals. It is the intent of County and Developer that the vesting of development rights of Developer shall include the permitted land uses, density and intensity of use of the Property, timing or phasing of development, height and size of buildings to be constructed (including without limitation the right to develop a project that is comparable in overall mass and appearance), zoning, provisions for reservation or dedication of land for public purposes, and the location and size of public improvements and other terms and conditions of development of the Project as set forth in the Project Approvals

and this Development Agreement.

County recognizes and has determined that the granting of the vested right and assurance of fully developing the project as set forth in the Project Approvals and this Development Agreement is required by Developer in order to undertake the development of the Project and thereby achieve the public benefits of the Project and the MC&FP. In addition, this Development Agreement will provide assurances that the Project will be developed in a manner which incorporates the conditions and mitigation measures called for in the Project Approvals and will assist in the implementation of the MC&FP.

Similarly, County is relying on Developer's intent to develop the Property in accordance with the Project Approvals in planning for and moving forward with the MC&FP. The MC&FP makes certain assumptions based upon representations of Developer as to the proposed use of the Property. The Property will be included in the proposed CFD, as described in Section 5.A.4 below, and will assist the financing of the CFD through the right to impose a special tax on the Property. Success of the Property in generating Tax Increment Revenues will affect the financing plan and the timing of the MC&FP Improvements. Although County recognizes that financial, market and other factors affect Developer's ability to develop the Property in conformance with the Project Approvals, Developer recognizes that any changes in the proposed uses or size of facilities on the Property which significantly reduce the capacity for the generation of property and sales tax increment revenue affects the public benefit derived from this Development Agreement and upon which the determination to enter into this Development Agreement is based.

Developer agrees that, notwithstanding any otherwise applicable zoning or other land use regulations, policies or standards which may allow approval of amendments to the Project Approvals, the County may deny an application for a Substantial Amendment to the Project which would significantly reduce the capacity of the Property to generate the property or sales tax revenue projected in the MC&FP for the Property, unless the Developer demonstrates that either: (1) the requested amendment will not have any significant negative effect on the MC&FP, including, but not limited to, timing of improvements or likelihood that projected Tax Increment Revenues generated by Missouri Flat Area Development will be sufficient to cover debt service and other costs associated with the bonds to be issued by the CFD, or (2) development of the Project as approved, or any reasonable alternative which would have significantly less impact on the MC&FP, is not feasible or economic.

But for said commitments on the part of County and Developer, the parties would not enter into this Development Agreement.

2.C. Rules, Regulations and Official Policies.

2.C.1. Applicable Law Defined. Except as otherwise set forth in this Development Agreement, the rules, regulations, official policies, and ordinances governing the

permitted land uses, density and intensity of use of the Property, timing or phasing of development, height and size of the buildings, zoning, provisions for reservations or dedication of land for public purposes, location and size of public improvements, development fees and other terms and conditions of development of the Project as set forth in the Project Approvals, including, but not limited to, County's development fee structure and as the same may be adjusted pursuant to Section 2.D.1 of this Development Agreement, applicable to the Project, the Property and the Project Approvals vested by this Development Agreement (collectively the "**Applicable Law**") shall be those set forth in this Development Agreement and those which are in force and effect on the date of adoption of the ordinance approving this Development Agreement ("**Vesting Date**"); except that, solely for purposes of this Development Agreement, Measure Y, approved by the voters at the November 3, 1998, election, shall be treated as being in force and effect on the Vesting Date regardless of the fact that the actual effective date of Measure Y, in fact, is after the Vesting Date. The fact that Measure Y is deemed to be in effect on the Vesting Date shall not constitute a waiver by Developer of any right to challenge either the validity of Measure Y and any actions taken to implement Measure Y, or any interpretation of Measure Y which is proposed. "Applicable Law" shall also include any rules, regulations, official policies and ordinances that are not in force and effect on the Effective Date, but that are later adopted, and are applicable to the Project pursuant to Sections 2.C.4, 2.C.5, 2.D.1 or 2.D.2 of this Development Agreement, or by the subsequent agreement of the Parties.

2.C.2. Approvals as Applicable Law. Applicable Law shall include, without limitation, the Project Approvals and Subsequent Approvals as they may be issued from time to time in a manner consistent with the terms and provisions of this Development Agreement.

2.C.3. Uniform Codes. Notwithstanding anything to the contrary contained in this Development Agreement, County may apply to the Project, at any time during the term of this Development Agreement, then-current Uniform Building Code and other uniform construction codes, provided that such uniform codes shall apply to the Project only to the extent that such codes have been adopted by County and are in effect with respect to similar development on a County-wide basis, except where such requirements may not be applied on a County-wide basis due solely to considerations of terrain and topography.

2.C.4. State and Federal Law. As provided in Government Code Section 65869.5, this Development Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of the Development Agreement, such provisions of this Development Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and County and Developer shall take such action as may be necessary to meet the minimum requirements of such state or federal law. Without limiting the foregoing, nothing in this Development Agreement shall preclude County from imposing on Developer any fee specifically mandated and required by state or federal laws and regulations.

2.C.5 No Conflicting Enactments. Unless ordered by a court of law, or to the extent required by State or Federal law, County shall not impose on the Project (whether by action of the Board of Supervisors, other local legislative body or by initiative, referendum or other means) any ordinance, resolution, rule, regulation, policy, standard, directive, condition or other measure (each, individually, a "**County Law**") not in effect on the Vesting Date that is in conflict with Applicable Law or this Development Agreement, that substantially increases the cost of constructing or developing the Project or any portion thereof, or that reduces the development rights or assurances provided to developer by this Development Agreement. The parties acknowledge that the Development Agreement Statute provides that this Development Agreement shall not prevent the County, in subsequent actions applicable to the Project, from applying new rules, regulations and policies which do not conflict with the Applicable Law or this Development Agreement, nor from denying or conditionally approving any subsequent project application on the basis of such new rules, regulations and policies and the Applicable Law. Without limiting the generality of the foregoing, and except as provided otherwise in this Development Agreement, any County Law, rule, regulation or policy, shall be deemed to conflict with Applicable Law or this Development Agreement or reduce the development rights provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

- a. Change any land use designation or permitted use of the Project allowed by the Project Approvals or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage, floor area ratio, height of buildings, or number of proposed buildings or other improvements;
- b. Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities for which the Developer could have applied and received on the Vesting Date, to the extent County has any authority to limit or control the availability of such public utilities, services, or facilities necessary to serve the Project. This section shall apply to any moratoria applied to the provision of such public utilities, services, or facilities; provided, however, that nothing in this section shall require the provision of such utilities, services or facilities if the same are not available, or cannot be provided without direct threat to the public health and safety, and that nothing in this section shall require County to construct, finance, or otherwise provide for public utilities, services, or facilities not otherwise available;
- c. Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner or require the issuance of additional permits or approvals by the County other than those required by this Development Agreement and Applicable Law which would result in having to substantially delay construction of the Project. This section shall apply to any moratoria enacted; except that nothing in this section shall require the provision of such utilities, services or facilities if the same are not available, or cannot be provided without direct threat to the public health and safety,

and that nothing in this section shall require County to construct, finance, or otherwise provide for public utilities, services, or facilities not otherwise available;

d. Limit or control the location of buildings, structures, grading, or other improvements of the Project in any manner which significantly affects the cost or timing of the Project that is inconsistent with or more restrictive than the limitations included in the Project Approvals or the Subsequent Approvals (as and when they are issued);

e. Apply to the Project any County Law otherwise allowed by this Development Agreement that is not uniformly applied to similar types of development on a County-wide basis, except where regional or specific variations are allowed as a result of terrain, topography, availability or lack of availability of a specific service, or the need to address an identified condition specific to a particular area of the County, or impose against the Project any dedication or other exaction not authorized by Applicable Law;

f. Limit the processing of applications for, or obtaining of, Subsequent Approvals, except where based upon the lack of required public utilities, services or facilities, as allowed in subsections (b) and (c), above, other than roadway capacity.

If County attempts to apply to the Project a County Law which Developer believes conflicts with Applicable Law or this Development Agreement, Developer shall provide to County in writing a notice describing the legal and factual basis for Developer's position. The parties shall meet and confer within thirty (30) days after the date of such written notice with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. If no mutually acceptable solution can be reached, either party may take such action as may be permitted under this Development Agreement.

Notwithstanding anything to the contrary contained in this Development Agreement, nothing herein shall be construed to limit County's authority to apply new rules, regulations and policies to the Project which are consistent with Applicable Law, nor limit County's general police power to implement, based upon appropriate and adequate findings, specific measures necessary to alleviate legitimate and bona fide harmful and noxious uses, or protect against real and actual threats to the health and safety of County residents in which any rule, regulation or policy imposed on the development of the Project shall be done to the minimum extent necessary to correct such bona fide harmful and noxious uses or protect against real and actual threats to the health and safety of County residents.

2.C.6. Further Assurances.

a. Developer reserves the right to challenge in court any County Law that would, in Developer's opinion, conflict with the provisions of this Development Agreement.

b. Should any initiative, referendum, or other measure be enacted,

and any failure to apply such measure by County to the Project be legally challenged, Developer agrees to fully indemnify defend and hold harmless the County, its officers, employees and agents, against such challenge, including providing all necessary legal services, bearing all costs therefor, and otherwise holding the County harmless from all costs and expenses of such legal challenge and litigation, including, but not limited to, any award of attorneys' fees made against County. If Developer gives written notice to County of Developer's option, as real party in interest, not to defend such challenge, County, at its option may either (1) continue to defend such action, in which event Developer shall be relieved of its obligations under this Section 2.C.6.b, or (2) rescind the approvals which are the subject of the challenge and take such actions as are necessary to obtain dismissal of any pending actions or claims. In the latter event, Developer shall be obligated to indemnify and hold County, its officers, employees and agents, harmless from all costs and expenses incurred by County in connection with the defense and dismissal of any such action or claim.

2.C.6.A. Moratoria and Restrictions and Limitations on the Rate or Timing of Development. In the event a County Law is enacted (whether by action of the Board of Supervisors or otherwise, or by initiative, referendum, other than a referendum which specifically overturns County's approval of this Development Agreement, the Project Approvals for the Project or issuance of a Project Approval) which relates to the timing, phasing or sequencing of new development or construction in County or, more particularly, development and construction of all or any part of the Project, and that is in conflict with the Applicable Law or the Development Agreement, such County Law shall not apply to the Project, or any portion thereof.

2.C.6.B. Project Development Schedule. The development schedule for the buildout of the Project shall be that established by Developer consistent with the terms of this Development Agreement.

2.C.6.C. Subsequent Approvals. County agrees that certain other land use approvals, entitlements, and permits other than the Project Approvals may be necessary or desirable for the buildout of the Project (collectively, the "**Subsequent Approvals**"). Provided that such Subsequent Approvals are in conformity with the Project Approvals, Applicable Law and this Development Agreement, County shall act promptly to process any request for such Subsequent Approvals in a timely fashion. Developer acknowledges that in processing any Subsequent Approvals which require the exercise of discretion or judgment by any County officials, this Development Agreement is not intended to restrict or predetermine the manner in which the discretion or judgment is exercised; provided, that any action taken does not violate the terms of this Development Agreement.

2.C.6.D. Vesting Tentative Map. County acknowledges that Developer may submit an application for a Vesting Tentative Map ("VTM") for the Project. The conditions of approval attached by County to the VTM shall be consistent with the terms of this Development Agreement. County further agrees that upon its approval of the VTM, such

approvals shall be included within the conditions and protections provided by this Development Agreement.

2.C.7. Expiration of Vested Rights. Notwithstanding any other provision of this Development Agreement, at the conclusion of the first Annual Review conducted not less than eight years after the Effective Date of this Development Agreement, if the Developer has not obtained required Subsequent Approvals, including building permits, and commenced substantial construction on the Project, the Board of Supervisors of the County may give written notice to Developer of any ordinances, regulations, rules or policies affecting the development of the Project which, under the terms of this Development Agreement would not otherwise apply to the Project or any Subsequent Approvals, along with a notice of intent that such ordinances be made applicable to the Project. Any such ordinances, regulations, rules or policies contained in the notice may affect any aspect of the Project; except that such ordinances, regulations, rules or policies shall not prohibit the types of commercial uses approved in the Project Approvals, nor shall they significantly reduce the amount of floor area which may be developed. Upon receipt of such notice, Developer may do either of the following:

- a. File with the County an election to become subject to the ordinances, regulations, rules and policies specified in the notice, in which case such ordinances, regulations, rules and policies shall, at the expiration of two (2) years after the County's notice, become Applicable Law and shall be applicable to the Project and, except as modified herein, all vested rights under this Development Agreement shall remain in effect;
- b. Within two years after the County's notice, obtain required Subsequent Approvals and commence substantial construction on the Project, in which case all vested rights under this Development Agreement shall remain in full force and effect;

If, within two (2) years after the County's notice, Developer does neither of the above, then at the end of that period Developer's vested rights under this Section 2.C shall terminate. Project Approvals shall remain in effect, but the Project shall be subject to all then existing, or thereafter adopted, ordinances, regulations, rules and policies, except as otherwise exempt by law.

2.D. Development Fees. Consistent with the terms of this Development Agreement, County shall have the right to impose only those development fees ("**Development Fees**") that are in effect upon the Effective Date of this Development Agreement, and will be due upon issuance of the building permits for the Project. The term Development Fees is intended to mean fees, charges or other exactions imposed by County in connection with the approval of a development project for the purpose of defraying all or a portion of the cost of public facilities, services or programs related to a development project and includes public facilities fees, in-lieu

fees, impact fees, linkage fees, and mitigation fees, charges, or other exactions on development. Provided the Development Fees are consistent with the terms of this Development Agreement, Developer shall pay those Development Fees applicable to the Project that are in effect on the Vesting Date, and as adjusted by the County pursuant to its right to adjust such Development Fees during the term of this Development Agreement consistent with the conditions set forth in Section 2.D.1 of this Development Agreement. Developer retains the right to challenge any modification, amendment and/or adjustment of such Development Fees pursuant to Government Code Section 66021 and such right, and any applicable statute of limitations, shall begin to run from the date that County approves the imposition, amendment, modification and/or adjustment and not from the time the Development Fees are paid. Developer agrees to pay all Development Fees in effect on the Effective Date and hereby waives any claim that such Development Fees violate Government Code Sections 66000, *et seq.*, or any other statutory or constitutional provisions. Nothing in this section shall be deemed to apply to, prevent or limit the imposition of the special tax intended to be authorized under the CFD and MC&FP referenced in Section 5.A.4 of this Development Agreement to secure funding for the MC&FP Improvements.

2.D.1. Development Fees - Adjustments. County's Development Fees may be adjusted by County to account for increases or decreases in the cost of constructing the facilities or in providing the services for which such Development Fees are collected. As applied to Development Fees imposed for the construction of capital facilities, increases shall be limited to increases in the Engineering News Record Construction Cost Index ("CCI") for the Twenty Cities National Average, except insofar as specific Development Fees are fixed under this Development Agreement. As applied to Development Fees imposed for the cost of providing County services, increases shall be limited to increases in the Consumer Price Index for the San Francisco-Oakland-San Jose Area, published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"). Such adjustments shall retain the same assumptions, methodology and list of improvements upon which such Development Fees were based at the time of the Effective Date of this Agreement; except that, not less than five (5) years after the Effective Date of this Development Agreement, and every five (5) years thereafter, County may modify such Development Fees to reflect changes in such assumptions, methodology and list of improvements upon which such Development Fees are based, as long as the amended Development Fees are applied to all similar projects which are similarly situated. In addition, such five-year adjustment may include increases in actual estimated costs of providing the facilities or services in excess of the CCI or CPI for the applicable period.

In addition to the preceding adjustments, if it is determined that an adjustment to the TIM Fee Schedule is required solely in order to comply with the requirements of Measure Y, and such adjustments are made within one hundred eighty (180) days of the Effective Date or prior to the date on which Developer is required to pay TIM Fees, whichever is later, then any such adjustment shall be applicable; provided, that Developer is not waiving any rights it might have to challenge the validity of such adjustments, or the necessity of such adjustments in order for Developer to comply with Measure Y. Developer acknowledges that County intends to conduct a review of its TIM Fee program in light of the passage of Measure Y.

Notwithstanding any other provision of this Development Agreement, and notwithstanding the fact that Developer may comply with all other laws, ordinances and regulations which otherwise would entitle Developer to a building permit for the Project, County may withhold issuance of a building permit in order to allow completion of that study if the issuance would otherwise occur within one hundred eighty (180) days of the Effective Date, unless Developer enters into an agreement with County to pay any modified TIM Fee which may result from the study within the one hundred eighty (180) days, and provides security deemed adequate by County.

If the County modifies any Development Fees based upon changes in such assumptions, methodology and list of improvements upon which the Development Fees were based less than five (5) years from the Effective Date, or less than five (5) years after the last allowable modification, those modifications to the Development Fees, whether increases or reductions, shall not go into effect with respect to the Project until the expiration of such five (5) year period.

2.D.2. Non-Development Fees. Developer understands and acknowledges that County would not enter into this Development Agreement absent County's ability, except for the limitations as to Development Fees provided in this Development Agreement, and as otherwise set forth in this Development Agreement including, but not limited to, Sections 2.D and 2.D.1 of this Development Agreement, to impose fees, charges, taxes, and assessments in effect at the time such fees, charges, taxes, or assessments are required to be paid, including, but not limited to, user fees, services fees, connection fees, regulatory fees (including processing fees), taxes or assessments ("**Non-Development Fees**"). Developer agrees to pay those Non-Development Fees attributable to the Project in effect at the time of payment of such Non-Development Fees and County shall have the right to revise or adopt Non-Development Fees applicable to the Project during the term of this Development Agreement so long as such Non-Development Fees are applied to all similar projects on a County-wide basis; except that application on a County-wide basis is not required where regional variations are based upon the fact that services or facilities for which the Non-Development Fees are charged are or are not available in different regions, upon variations in the services or facilities provided in different regions, or where the Non-Development Fees are calculated based upon the cost of providing the services or facilities on a regional basis. Developer retains the right to challenge the imposition, modification, amendment and/or adjustment of such Non-Development Fees after the Effective Date as provided by law, and such rights, and any applicable statutes of limitations, shall begin to run from the date County approves the imposition, modification, amendment and/or adjustment and not from the time such Non-Development Fees are paid. Developer agrees to pay all Non-Development Fees in effect on the Effective Date and hereby waives any claim that such Non-Development Fees violate any statutory or constitutional provisions. Nothing in this section shall be deemed to apply to, prevent or limit the imposition of the special tax intended to be authorized under the CFD and MC&FP referenced in Section 5.A.4 of this Development Agreement to secure funding for the MC&FP Improvements.

2.E. MC&FP Traffic Capacity Limitations. The MC&FP Improvements are

designed to provide traffic capacity which will address current deficiencies and provide capacity to serve a limited amount of additional development in the Missouri Flat Area. The capacity is sufficient to allow the Project and other currently pending development projects to meet the County's level of service standards of the County's General Plan and mitigate the traffic impacts of such development. Except as provided in Section 4.C.e, below, availability of traffic capacity is allocated to development on a first come, first serve basis. If, at the time Developer seeks any discretionary approval for the use of the Property, including, but not limited to Subsequent Approvals, development which has occurred subsequent to the Effective Date, plus any Pending Development which has priority in time over the Project, will generate traffic which will fully utilize the capacity provided by the MC&FP Improvements, nothing in this Section 2 shall obligate the County to grant such approval, if such approval would be inconsistent with the policies of the County's General Plan relating to traffic. The determination whether to grant such approvals shall be in accordance with ordinances, policies and regulations at the time. The purpose of this Section 2.E is not to require disapproval, but to allow such disapproval if otherwise required.

SECTION 3.

GENERAL DEVELOPER OBLIGATIONS

3.A. Property Development. The Property shall be developed according to the Project Approvals and as set forth in this Development Agreement.

3.B. Public Improvements. Developer shall construct or fund public improvements according to the Project Approvals and as follows:

3.B.1. Missouri Flat Road. Developer shall pay for construction of one additional through lane with a Class II bike lane within Missouri Flat Road and one standard deceleration lane to allow right-turn movement from Missouri Flat Road into the Project at Plaza Drive ("**Developer's Missouri Flat Obligation**"). All other improvements to Missouri Flat Road, including additional through lanes, realignment and widening of the U.S. Highway 50 offramp at Missouri Flat Road, turning pockets, and signalization, shall be included as MC&FP Improvements ("**County's Missouri Flat Obligation**"). Developer shall have the right, but not the obligation, to construct all of County's Missouri Flat Obligation between the U.S. Highway 50 offramp and Plaza Drive, in which event Developer shall receive a credit against Developer's TIM Fee obligation generated by development of the Project. Developer and County agree that the party incurring the expense shall receive the benefit of any credit or reimbursement, regardless of the ownership of the Property when the credit or reimbursement becomes available.

3.B.2. Plaza Drive. Developer shall pay for construction of that portion of Plaza Drive described in Villages Conditions of Approval No. 36. ("**Developer's Plaza Drive Obligation**").

3.C. Dedication to County of Right-of-Way. Developer agrees to provide to County irrevocable offers of dedication of the rights-of-way Within the Property necessary for the construction of the streets and highways or other improvements as required by the Project Approvals or for construction of Developer's Missouri Flat Obligation or Developer's Plaza Drive Obligation.

SECTION 4.

GENERAL COUNTY OBLIGATIONS

4.A. Vested Rights. By entering into this Development 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 Development Agreement, the Project Approvals, and Applicable Law. 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 Property for the uses and to the density or intensity of development or rate or timing of development set forth in this Development Agreement and the Project Approvals, provided Developer is not in default under this Development Agreement. It is the intent of this Section, in consideration of the substantial investment and commitments required of Developer to implement the Project, and in consideration of Developer's agreement to participate in the MC&FP funding plan, that the Property shall not be subject to any subsequently enacted ordinance or resolution whether adopted by the Board of Supervisors or the County electorate, which purports to amend the General Plan or to restrict the number of building permits or other development approvals which may be issued in any given year, or in any other manner limit the timing of development of the Project, except as provided in Section 2.C of this Development Agreement.

4.B. County's Cooperation. To the extent that applications and submittals by Developer are in conformity with the Project Approvals, Applicable Law and this Development Agreement, County agrees to diligently and promptly accept, review and take action on all subsequent applications and submittals made to County in furtherance of the Project. Similarly, County shall promptly review and act on improvement plans, conduct construction inspections and accept completed public facilities.

4.C. Building Permits. County shall issue building and other construction permits for improvements within the Project upon satisfaction of the following conditions:

a. Developer shall have obtained all Subsequent Approvals required by the Applicable Law as prerequisite to issuance of a building or other construction permit.

b. The application for building or other construction permit shall be in compliance with the Project Approvals, Subsequent Approvals, Uniform Codes, and any other applicable laws, regulations, requirements and standards applicable to such applications under the Applicable Law.

c. Developer shall have paid all fees due and complied with all other conditions applicable to the issuance of the building permits.

d. Developer shall be in compliance with all terms of this Development Agreement.

e. The CFD called for in Section 5.A.4 of this Development Agreement shall have been formed, the special tax authorized and the Property included in the CFD, or annexed to it if not originally included. Developer agrees that County shall have no obligation to issue any building permit for the Property until the Property has been included in the CFD formed in compliance with the CFD Tax Structure; provided, however, that the County's right to withhold issuance of a building permit pursuant to this subsection shall be deemed waived in the event the CFD has not been formed by the date specified in Section 6.D of this Development Agreement as a result of the County's failure to timely initiate the actions required for the formation of the CFD as required by this Development Agreement or to diligently prosecute such proceedings to a conclusion, or if the CFD formed by such date is not in compliance with the CFD Structure. This right to withhold shall not be waived if the failure to form the CFD prior to the specified date is the result of any failure by Developer to perform any obligations under this Development Agreement or the legal inability of the County to form the CFD. For the purpose of this subsection, the CFD shall be deemed formed and the Special Tax shall be deemed authorized at such time as the actions by the County to form the CFD or authorize the Special Tax are complete, notwithstanding the pendency of any litigation concerning the validity of the actions in the absence of a court order prohibiting such actions. Notwithstanding any such waiver of the right to withhold a building permit, and the issuance of any building permits for the Project, Developer shall thereafter continue to be obligated by this Development Agreement to provide the necessary consents and take all other action required by this Development Agreement to allow or assist in the formation of the CFD in conformance with the CFD Tax Structure, and to authorize the CFD Special Tax. Except as expressly provided in this subsection, Developer hereby waives and releases any and all claims that County is obligated to issue any such building permit, and any claims for damages arising out of County's withholding of such building permits, if the CFD has not been formed and the Property included in the CFD, and the special tax authorized, or if the Developer is in breach of this Development Agreement.

f. Sufficient development has been proposed and qualified as Pending Development to meet the Threshold Level for Funding for those MC&FP Improvements needed to mitigate the traffic impacts of that Pending Development. In the event there is Pending Development sufficient to fund traffic mitigation measures for some, but not all, of the Pending Development, or if traffic generation from Pending Development would exceed the capacity of the MC&FP Improvements, as determined by General Plan policies, then priority of the development shall be determined by the order in which projects applied for, and submitted all required evidence of meeting the criteria for Pending Development. Such priority shall be lost if a building permit application is not made within the one year specified pursuant to the terms for qualifying as Pending Development. Notwithstanding the foregoing, in light of the financial commitments made to completion of the MC&FP, and the demonstrated commitments to move

forward, the Project shall have its priority set as the date of the adoption of the MC&FP; provided, that the Project otherwise satisfies the eight criteria set forth in Section 1.I.12 within twelve (12) months after the adoption of the MC&FP.

4.D. Inspections. Any building inspection request received by County from Developer shall be performed promptly after receipt of the request.

4.E. Right-of-Way Acquisition.

4.E.1. County's Missouri Flat Obligation. County shall acquire from Developer all right(s)-of-way within the Property which are necessary for construction of County's Missouri Flat Obligation. County shall compensate Developer for the fair market value of such right(s)-of-way at the time of acquisition.

4.E.2. U.S. Highway 50 Interchange. County shall be obligated to acquire that portion of the Property identified on Exhibit "F", attached hereto and incorporated herein by this reference, as being necessary for the Missouri Flat Interchange described in the MC&FP ("**Interchange Acquisition**"). County shall compensate Developer for the fair market value of the Interchange Acquisition determined at the time of acquisition, in accordance with the standards applicable in the event of a taking through eminent domain, including, without limitation, the fact that the value of the Interchange Acquisition will be determined without regard to any increase or decrease in value as a result of the Interchange improvements. County acknowledges that, in designing its Project, Developer has cooperated with County to facilitate the planning of the Missouri Flat Interchange, and reserved the land for the Interchange Acquisition for later acquisition without incorporating it into the Project. In order to ensure that the just compensation payable to Developer is neither reduced as a result of Developer's effort to cooperate with County to reserve the Interchange Acquisition for later purchase, nor increased by its having been set aside as a separately reserved parcel, the Interchange Acquisition shall be valued, including any potential severance damages, as though a part of the larger Property as configured immediately prior to the Effective Date.

From the time Tax Increment Revenues commence being generated by Project, and in accordance with the priority established in Section 6.B.1.d, below, and until payment of the full purchase price, County shall annually pay to Applicant an amount equal to the Tax Increment Revenues generated from the Project, less amounts required for purposes in Sections 6.B.1.b and 6.B.1.c. The amount of such payments actually made, adjusted to the date of final acquisition in the same manner as Development Fees are adjusted for cost of living increases, shall be applied as credits against the purchase price. The balance of the purchase price shall be paid at the time CFD Bond proceeds become available for that purpose, but in any event upon acquisition of the right-of-way.

4.E.3. Cooperation by County. County agrees, if necessary, to assist Developer in acquiring any off-site right(s)-of-way that are necessary for Developer to construct required off-site improvements as set forth in this section. To the extent that the acquisition of off-site right(s)-of-way are necessary for Developer to construct off-site improvements, including, but

not limited to, roadways, wet or dry utility improvements, or drainage improvements, Developer shall be responsible for all costs of such acquisition, except to the extent County has agreed in this Development Agreement, or otherwise in writing, to assume any portion of that cost through the MC&FP, use of TIM Fees or in any other manner. Developer shall negotiate in good faith with any property owner from whom such interests must be acquired to attempt to agree upon such sale and acquisition. If, after such good faith negotiation, Developer is unable to acquire such right(s)-of-way, County shall assist in such acquisition as follows, subject to Developer fulfilling its obligations as set out.

If Developer is unable to obtain required right(s)-of-way after negotiating in good faith, Developer may make a written request for assistance to County. Such request shall be accompanied by accurate and sufficient legal descriptions prepared by a civil engineer or land surveyor of all right(s)-of-way needed. Each legal description shall be accompanied by a map showing the property to be acquired. To the extent applicable, separate legal descriptions shall be provided for rights-of-way which fall within any currently existing non-exclusive road easement and for rights-of-way which fall outside any such easement of record.

Developer shall be responsible for payment of all costs incurred by County in acquiring the required interests, including, but not limited to, all costs incurred by County in each acquisition, whether by negotiation or exercise of the eminent domain power. Such costs shall be deemed to include all costs incurred by the County to acquire the necessary rights-of-way pursuant to Title 7, Part III of the Code of Civil Procedure, commencing with section 1230.010 and shall include, but not be limited to, survey costs, costs of appraisal, costs for title search and guarantee, expert fees, attorneys fees, court costs, costs for preparation of acquisition agreements and other documents in the event eminent domain is not necessary for any rights-of-way, costs of public notice, costs of purchase of the property itself and interest thereon, cost of relocation requirements, and any other costs borne by the County in the acquisition of the property, including any property owner's attorneys fees, if awarded.

Within ten (10) days of receipt of a request from Developer, County shall notify Developer of the estimated cost of preparing an appraisal of the interests to be acquired, if needed. Developer shall deposit with County the estimated cost of the appraisal. Within forty-five (45) days after receipt of that deposit, County shall promptly cause the required appraisal to be prepared. Within ten (10) days of receipt of the appraisal, County shall notify Developer of the initial projected costs of proceeding with each of the acquisitions, including, but not limited to, the expected purchase price, reasonable attorneys fees and other related costs, and Developer shall deposit the required amounts with County. County shall establish accounts for each of the required acquisitions. County shall provide Developer with regular accounting of the expenditures from said account. In the event Developer fails to deposit any necessary monies in a timely manner, the County may cease its efforts to obtain the rights-of-way until the required funds are deposited. If at any time County determines that the amounts deposited will be insufficient to complete the acquisition, County shall give written notice of the estimated additional funds required. Developer shall make such additional deposit within ten (10) days of the notice. Developer shall be entitled to the return of any funds remaining in any such account

upon completion of the acquisition and payment of all costs incurred therein. In the event County is unable to obtain the necessary rights-of-way for any reason whatsoever, Developer shall not be entitled to the return of any monies required to be paid deposited hereunder except for the return of any unused deposits. In the event the actual costs of any acquisition exceed the moneys deposited, within ten (10) days of written notice from County of such deficiency Developer shall pay said amount to County.

Within thirty (30) days of deposit of the required funds by Developer, County shall negotiate with the owner of such off-site land to acquire the right(s)-of-way in question, including the making of any required offer. In the event such negotiations fail to acquire such right(s)-of-way within said thirty (30) day period, then within thirty (30) days County shall take the required actions to commence, and shall thereafter diligently prosecute to conclusion, an action(s) in eminent domain to acquire the needed right(s)-of-way. County shall take such steps as are necessary to allow construction to be completed in a timely manner, including seeking an order of possession to acquire and take immediate possession of such right(s)-of-way.

County shall be solely responsible for the prosecution of the eminent domain actions and shall make all decisions regarding the manner in which to proceed therein, except as provided in this paragraph. County acknowledges the substantial costs Developer would incur should acquisition of right(s)-of-way be delayed. Therefore, County agrees to use reasonable efforts and take all reasonable actions to expedite acquisition. County shall not abandon any eminent domain action filed without the consent of Developer, unless it is determined by County's legal counsel that the continued prosecution of the action could not be maintained in good faith or otherwise in conflict with the legal obligations of County and its attorneys. Neither the abandonment of any action nor any adverse judicial ruling shall affect Developer's obligations under this section, including, but not limited to, obligations to assume the costs incurred in the prosecution of the case, or as a result of the abandonment of any case.

County shall be entitled, at its sole discretion, to utilize attorneys in the Office of the County Counsel or to retain outside counsel to perform the acquisition legal work. To the extent the County utilizes County attorneys, the County shall be reimbursed at the normal internal billing rates for such attorneys or paralegals for work performed. In the event County determines to retain outside counsel, County shall first consult with Developer regarding the selection of counsel and shall provide Developer the opportunity to comment thereon.

County does not represent or warrant by execution hereof any particular final result of any action filed by it, but simply that it will exercise its lawful authority and power in a fair and reasonable manner to accomplish the purposes of this Development Agreement, considering all of the circumstances.

Developer shall defend, indemnify and hold the County, its officers, agents and employees, harmless from any and all claims, liability, lawsuits and damages arising out of any counterclaim or independent action filed by any property owner against whom an action is commenced by County pursuant to this section.

SECTION 5.

**OBLIGATIONS OF DEVELOPER RELATED TO THE
MISSOURI FLAT AREA MASTER CIRCULATION
AND FUNDING PLAN**

5.A. Obligations of Developer. In consideration of the commitments of County contained herein, in order to implement the MC&FP and to achieve long-term mitigation of the traffic impacts of the Project, and in order to assure the benefits considered by the County in approving the Project, Developer hereby agrees to take the actions set forth in this Section 5.

5.A.1. Completion of Project. Applicant shall use reasonable efforts to substantially complete the Project, as approved, within the time frame anticipated in development of the MC&FP. Developer shall keep County apprised of the status of the project, including, but not limited to, anticipated dates of commencement and completion of construction, anticipated tenant mix, and any changes to construction design. Developer and County shall meet periodically, on a schedule to be established, to consult regarding the status of the Project and the MC&FP Improvements. Developer shall promptly advise County of any anticipated changes in the Project which would cause the Tax Incremental Revenues generated by the Project to deviate significantly from that projected in the MC&FP, including, but not limited to, any material change in proposed retail floor area or types of retail uses expected.

5.A.2. Exchange of Information. Developer shall cooperate with County in its efforts to implement the MC&FP by providing such information as may reasonably be required. In particular, Developer shall provide information such as the identity of proposed tenants and proposed schedules for construction and occupancy of the Project. Developer shall provide such information and disclosure as may be reasonably required by the County, its financial and legal advisors, and other consultants and representatives in the course of forming the CFD and issuing bonds for funding the MC&FP.

5.A.3. Payment of TIM Fees. Timely and full payment of TIM Fees by projects within the Missouri Flat Road area is an essential element of the funding for roadway improvements. Notwithstanding any other provision of this Development Agreement, Developer agrees that it shall pay TIM Fees in accordance with the fee schedule set forth in Board of Supervisors Resolutions Nos. 31-98 and 32-98, adopted on February 24, 1998, ("**TIM Fee Schedule**"), at the time of issuance of building permits for all or any portion of the Project. Developer shall pay any increased TIM Fees in conformance with Section 2.D.1. of this Development Agreement. Developer agrees that any TIM Fees payable, up to the amounts set forth in the TIM Fee Schedule, shall be paid without offset, protest or objection. Developer hereby waives and releases any claim it may possess, or may hereafter possess, with respect to the validity or applicability of the TIM Fees. Payment of such fees are a provision of this

Development Agreement, and said waiver and release includes, but is not limited to, any claim that the fees exceed those which could be constitutionally or statutorily imposed on approval of the project. Developer shall make no claim, and shall file no action, with respect to the validity or applicability of such fees. Payment of the fees shall be made notwithstanding any claim, protest, objection or legal action brought by any other person. If, however, any such claim, protest, objection or legal action brought by any third person results in the invalidation of the TIM Fees so that the loss of such TIM Fees prevents implementation of the MC&FP, and County fails to act within a reasonable time to re-enact a TIM Fee schedule which is valid and allows the MC&FP to be implemented, then Developer shall be entitled to avail itself of any remedies made possible by such claim, protest, objection or legal action by the third person. Provided that the TIM Fees are used or held for purposes included in the MC&FP, Developer shall make no claim for return of such fees on the basis of the length of time held by County, whether or not such length of time exceeds that permissible under any statute, or for any other reason. County agrees to use that portion of the TIM Fees collected as is indicated in the MC&FP for the purposes included in the MC&FP.

Developer shall not be entitled to participate in or utilize any program otherwise available from the County for deferral, partial payment, or payment in installments of TIM Fees, or any other such program other than full payment of TIM Fees at the time of building permit issuance.

5.A.4. Participation in CFD. Formation of the CFD called for in the MC&FP is an essential element in funding that portion of the cost of MC&FP Improvements which represent mitigation of existing roadway deficiencies which are integral to the accomplishment of mitigation of the traffic impacts of the Project. Developer hereby consents to the formation of the CFD and the imposition of the special tax as set forth in the MC&FP; provided that the structure of the CFD and the Special Tax authorized is in material conformance with the CFD Structure. Developer waives and releases any claims or objections it may possess, or may hereafter possess, with respect to the formation and implementation of the CFD or the authorization and imposition of the proposed special tax; provided, that it is consistent with the CFD Structure. Developer agrees, at the request of County, to take such steps as are necessary for the formation and implementation of the CFD and the authorization of the special tax called for by the MC&FP. Such actions may include, but are not limited to, executing any consent to, or petition for, or ballot in favor of formation of the CFD and the authorization of the special tax; waivers of any objections to any of the proceedings to form the CFD or authorize the special tax; and, waiver of all election procedures and rights with respect to authorization for the special tax. Developer shall not file, or cause to be filed, any protest or objection to the formation of the CFD or the authorization of the special tax, and shall not file, or cause to be filed, any legal action challenging the formation of the CFD, the authorization, the imposition or collection of the special tax, or any other action to implement the CFD including, but not limited to, annexation of property to the CFD; provided the implementation of the special tax and the formation and implementation of the CFD are in compliance with the CFD Structure. In the event the CFD is formed without including the Property, and County later requests annexation of

the Property to the CFD, Developer shall have all of the same obligations with respect to such annexation as are provided in this Section 5.A.4. with respect to the initial formation of the CFD and authorization of the special tax. Developer acknowledges the desirability of forming the CFD and taking such other actions as are required to commence validation proceedings as soon as possible. Therefore, the CFD may be formed and the special tax authorized, or the Property annexed to the CFD, at any time after the Effective Date, upon request of County. The Developer shall be required to take any action required under this Section 5.A.4. regardless of whether development on the Property has occurred or is then proposed; provided, that the CFD Structure for the CFD provides that the special tax shall not accrue or be collected on the Property until building permits have been obtained and construction commenced. Developer acknowledges that its protection against liabilities of the CFD being incurred prematurely lies in the limitations on the issuance of bonds set forth in Sections 6.H, below.

Developer shall provide to County a preliminary title report for the Property, and executed "lender's consents," consenting to the formation of the CFD and the authorization for the Special Tax from each lien holder having an interest in the property. The lender's consents shall be in a form reasonably acceptable to bond counsel for County. However, such documents need not be in recordable form.

5.A.5. Litigation Costs. Developer recognizes that certain legal and litigation costs will be incurred in the course of implementing the MC&FP. It will be necessary to file a validation action in order to market the bonds to be issued by the CFD. In addition, there is a possibility of legal challenges being filed by persons opposed to the MC&FP or to individual development projects. Developer agrees to contribute to the funding of such costs in the following manner:

a. Project-Specific Challenge. Developer shall be solely and fully responsible for all costs associated with any challenge to the Project, the Project Approvals, any Subsequent Approvals, and this Development Agreement. Developer shall defend, indemnify and hold harmless County, its officers, employees and agents, against any such challenges or claims, and against any legal actions brought to challenge such approvals, and against any costs, expenses or liabilities incurred as a result thereof, including, but not limited to, costs of defense and any award of attorneys' fees made against County. This obligation shall not be deemed to expand Developer's obligations under Section 5.A.5.c, below, with respect to any action brought related to the MC&FP generally.

b. Validation Action. Developer shall contribute to the cost of any required validation actions brought in connection with the MC&FP, the CFD, or any related actions. Developer shall be responsible for that portion of the costs arrived at by multiplying the total cost by a factor determined in the same manner as is set forth in subsection (c), below related to challenges to the MC&FP. The parties acknowledge that such costs may be eligible for reimbursement from the proceeds of any bonds sold, and that County will use reasonable efforts to obtain reimbursement of such costs from the proceeds of such bond sale. However, Developer's obligation to partially fund such litigation is not conditioned upon such eligibility or

upon the outcome of the action.

c. MC&FP-Related Challenges. Developer shall contribute to the cost of defending any legal challenges brought to challenge the MC&FP and any of the required implementation measures such as formation of the CFD, which are not specifically related to any development project which would be defended solely by the developer under Section 5.A.5.a. Developer shall be responsible for that portion of the costs arrived at by multiplying the total cost by a fraction, the numerator of which is the proposed floor area of the Project upon completion, and the denominator of which is one million five hundred thousand square feet. With respect to the Sundance Plaza Project, the proposed floor area of the Project shall include both Phase I and Phase II of the Sundance Plaza Project.

d. Separate Agreement. It is the intent of the parties that the obligations contained in this Section 5.A.5 shall be severable and shall survive any challenge to the validity of this Development Agreement. In order to ensure such survival, the obligations set forth in this Section 5.A.5 shall also be set forth in a separate agreement and executed by the parties.

SECTION 6.

OBLIGATIONS OF COUNTY RELATED TO THE MISSOURI FLAT AREA MASTER CIRCULATION AND FUNDING PLAN

6.A. Obligations of County. In order to implement the MC&FP, improve existing traffic congestion problems in the Missouri Flat Area, ensure adequate traffic carrying capacity to accommodate future development in the area, and induce Developer to participate in the implementation of the MC&FP as set forth below, County hereby agrees to take the actions set forth in this Section 6. County hereby intends to bind itself to the extent allowed by law. However, the Developer and Landowner acknowledge and agree that:

a. Certain of the acts proposed to be performed by County pursuant to this Section 6 of the Development Agreement, such as the exercise of the power of eminent domain or the formation of the CFD, may require, pursuant to statute, that County make factual findings, or exercise its discretion in a manner prescribed by law, prior to taking such action. If County, in the exercise of reasonable diligence, is unable to make the required findings or exercise its discretion in the manner required by law, its failure to perform the acts required hereby shall not be a breach of this Development Agreement.

b. All acts required hereunder are intended to be performed in full compliance with law. If County is unable to perform any act called for because such act would conflict with any provision or requirement of law, including, but not limited to, Measure Y, County's failure to perform such act shall not be deemed a breach of this Development

Agreement. The same shall apply to acts which, as a result of the application of law, cannot be performed in the manner anticipated (e.g. bonds cannot be issued in the time or manner as prescribed and receive the desired tax-exempt status). Without limiting the foregoing, County and Developer note the approval by the voters of El Dorado County of Measure Y at the November 3, 1998 election. County and Developer believe and maintain that approval of the Project and this Development Agreement are in conformance with the provisions of Measure Y.

c. The parties acknowledge that they intend all acts with respect to public finance or issuance of bonded indebtedness to be taken in the usual manner so as to maximize the likely success of the proposed validation action, compliance with debt limitation requirements, the tax exempt status of any CFD bonds issued, and full compliance with the requirements of the Internal Revenue Code and the Internal Revenue Service with respect to such indebtedness or bonds. Failure to take any act because of inability to meet such standards, even if the action and the manner in which it is to be performed is specified in this Development Agreement, shall not be a breach of this Development Agreement.

Notwithstanding the foregoing, the parties agree that adoption of the MC&FP and approval of this Development Agreement constitute legislative acts establishing the policies and actions to be taken with respect to satisfying Policy 2.1.4.8 of the El Dorado County General Plan and addressing the traffic congestion problems in the Missouri Flat Area. The actions required to be taken hereunder are in furtherance of those legislative policies and goals and are intended to be administrative implementation of those legislative act, even though such acts may require the exercise of discretion. Therefore, to the maximum extent allowed by law, the obligations of the County set forth in this Section are intended to be binding on the County.

The parties further acknowledge that the MC&FP sets forth a proposed schedule for funding and completing MC&FP Improvements. However, the MC&FP is intended to provide flexibility in the timing, phasing and sequencing of the MC&FP Improvements in order to accommodate financing and other needs. In particular, it is an underlying tenet of the MC&FP that construction of the MC&FP Improvements and the issuance of bonded indebtedness to finance such improvements shall only occur when sufficient funds, or funding sources, identified in the MC&FP exist. County shall not be obligated under this Development Agreement to design or construct any improvements, or issue and sell any bonds, unless such funds or secure funding sources exist, and unless required bond issues can be successfully marketed upon terms which meet the financing needs of the MC&FP. No delay in the performance of County's obligations hereunder as the result of the absence of such funds or funding sources shall be a breach of this Development Agreement.

The obligations set forth in this section are those to be undertaken by the County pursuant to this Development Agreement. Nothing herein shall prevent County, at its sole discretion, from taking any additional actions not required by this Development Agreement to further the goals of MC&FP.

6.B. Tax Increment Funding. Under the MC&FP, approximately fifty-two percent

(52%) of the total cost of the MC&FP Improvements is intended to be funded or financed using a portion of the Total Tax Increment generated by Missouri Flat Area Development. This represents County's contribution toward relieving existing traffic congestion and future traffic impacts not associated with new development. The balance is to be funded through the use of TIM Fees generated by new development, representing that portion of the cost attributable to the impacts of new development.

In order to satisfy County's commitment, County agrees annually to commit a sum equal to eighty-five percent (85%) of the Total Tax Increment generated by Missouri Flat Area Development in that year to funding MC&FP Improvements. However, in order to ensure compliance with Measure Y, the County shall not be required to commit Tax Increment Revenues to fund MC&FP Improvement costs in excess of Fourteen Million Nine Hundred and Thirteen Thousand One Hundred Eighty-eight Dollars (\$14,913,188). "Costs" for this purpose shall include only the costs of actual design, planning, acquisition and construction, and not financing costs or other expenses attributable to financing the underlying costs. County's obligation shall continue until all MC&FP Improvements are completed and all financial obligations related thereto have been discharged, or any remaining financial obligations have been fully funded through reserve accounts or similar mechanisms, so that the Property is no longer subject to the lien of the CFD special tax or there are sufficient moneys in the Special Reserve Account to make bond payments as they come due for the term of the CFD Bonds or to redeem the CFD Bonds. The Tax Increment Revenues may be used for any purposes consistent with the MC&FP including, but not limited to, direct payment for the cost of MC&FP Improvements on a pay-as-you-go basis, contribution of funds to the CFD for debt service and CFD costs associated with CFD bonded indebtedness used to fund MC&FP Improvements, repayment of TIM Fee advances made pursuant to Section 6.J of this Development Agreement, contributions to the CFD for redemption of bonds, payment of design and engineering costs, right-of-way acquisition, and accumulation of Tax Increment Revenues in a special account for future use consistent with the MC&FP with respect to MC&FP Improvements, such as accumulation of funds for future MC&FP Improvement projects. Except as may be expressly provided in this Development Agreement, the specific purpose for which the funds are used and the timing of the use of such funds shall be at the discretion of the County to be exercised for the achievement of the goals of the MC&FP.

The County's use of the remaining fifteen percent (15%) of the Total Tax Increment shall be completely unrestricted.

The County's obligations under this Section 6.B shall cease when all MC&FP Improvements have been completed or fully funded, and when all other financial obligations of the parties which the Tax Increment Revenues would otherwise be used to reduce or discharge, have been fully discharged, or, any remaining financial obligations have been fully funded through reserve accounts or similar mechanisms, so that the Property is no longer subject to the lien of the CFD special tax or there are sufficient moneys in reserve to make bond payments as they come due for the term of the CFD Bonds or to redeem the CFD Bonds. At that time, County's use of all Total Tax Increment shall be completely unrestricted.

The County's obligations under this Section 6.B are to be funded exclusively by Tax Increment Revenues. No other source of County funds is being obligated by this Development Agreement. In no event shall the County's obligations to fund MC&FP Improvements exceed in any year eighty five percent (85%) of the Total Tax Increment received in that year from Missouri Flat Area Development. Nothing in the paragraph is intended to prevent the use in any year of funds accumulated, but not spent, during prior years from the committed Tax Increment Revenues, for any purposes consistent with the MC&FP.

6.B.1. Sequence of Use of Tax Increment Revenues Prior to Issuance of Bonds.

The purposes and sequence for which the Tax Increment Revenues shall be expended in any year prior to the issuance of any CFD Bonds to fund MC&FP Improvements shall be as follows.

6.B.1.a. Special Reserve. The County shall first deposit all of the remaining Tax Increment Revenues into the Special Reserve Account to be established pursuant to Section 6.C for the purpose of making available funds for bond debt service in the event that Tax Increment Revenues in any year are insufficient to fund that debt service, reducing the likelihood the collection of the Special Tax would be required. Such deposits shall continue to be made to the special Reserve Account until the Special Reserve Account, as supplemented by interest earned on such deposits, reaches One Million Five Hundred Thousand Dollars (\$1,500,000.00). This Special Reserve Account, and all interest earned thereon, shall remain in the possession of the County and shall be in addition to any bond reserves otherwise required to be established. This Special Reserve Account is to be established solely pursuant to the MC&FP and this Development Agreement and its use shall be limited solely by the terms of the MC&FP and this Development Agreement. Once the purpose for which the Special Reserve Account is established no longer exists, funds remaining therein shall be used for other purposes related to the MC&FP Improvements as stated in Section 6.B of this Development Agreement. When County's obligations under Section 6.B have been discharged as stated therein, any remaining funds in the Special Reserve Account shall be deposited in the general fund of County and their use by County shall be unrestricted. This Special Reserve Account is established by County solely to reduce the likelihood of any necessity to collect the Special Tax due to insufficient Tax Increment Revenues in any year to fund the debt service.

6.B.1.b. TIM Fee Repayment. In the event the Special Reserve Account has been fully funded and bonds for the funding of MC&FP Improvements have not been issued, remaining Tax Increment Revenues shall be used to repay any Traffic Impact Mitigation Fees which have been advanced by the County pursuant to Section 6.J, below.

6.B.1.c. Other Related Purposes. In the event Tax Increment Revenues remain after reimbursement of TIM Fees pursuant to Section 6.B.1.b, above, and no CFD Bonds have been issued, such revenues shall be used by the County to fund MC&FP Improvements, or for any other purpose consistent with the MC&FP, as set forth in Section 6.B. The determination of the uses to which such revenues will be put shall be made by County in furtherance of the goals of accelerating completion of MC&FP Improvements, repaying any moneys advanced by County from other sources, reducing the need for issuance of bonded

indebtedness, or the reduction of existing indebtedness, as in the judgment of County will result in the most effective implementation of the MC&FP.

6.B.2. Sequence of Use of Tax Increment Revenues Subsequent to Issuance of Bonds. Subsequent to the issuance of CFD Bonds for funding any MC&FP Improvements, Tax Increment Revenues in any year shall be used by County in the following sequence:

6.B.2.a. Contribution to CFD. Tax Increment Revenues shall first be contributed to the CFD up to an amount necessary to cover bond debt service and other expenses of the CFD which would otherwise be funded by the special tax authorized pursuant to the CFD, in accordance with Section 6.E, below.

6.B.2.b. Replenishment of Reserve Account. Tax Increment Revenues remaining after contributions to the CFD shall be used to replenish the Special Reserve Account in an amount equal to the amount of any funds that have been drawn down from that account to pay debt service as provided in the MC&FP.

6.B.2.c. Repayment of TIM Fees. Tax Increment Revenues remaining shall be used to repay any advance of Traffic Impact Mitigation Fees which were advanced by the County pursuant to Section 6.J, below, for the purpose of funding any portion of the planning, designing or construction of MC&FP Improvements which otherwise is appropriately allocated to the County as addressing existing roadway deficiencies.

6.B.2.d. Additions to Special Reserve Account. Tax Increment Revenues remaining shall be deposited in the Special Reserve Account to the extent required, if any, to increase the Special Reserve Account to levels established by the MC&FP.

6.B.2.e. MC&FP General Reserve. Any remaining Tax Increment Revenues shall be placed in a general reserve to be used as deemed appropriate by the County for the funding of MC&FP Improvements. Such uses may include, but are not necessarily limited to, those set forth in Section 6.B, above.

6.C. Establishment of Special Reserve Account. The County shall establish a Special Reserve Account for the purpose of receiving moneys pursuant to Section 6.B.1.a. of this Development Agreement. Moneys deposited in that Account shall be used solely for the purpose of a reserve against any annual shortfall in Tax Increment Revenues which would trigger collection of the Special Tax under the CFD. Once the purpose for which the reserve has been created no longer exists, any remaining funds in the Special Reserve Account shall be used first for any of the purposes set forth in Section 6.B, above, or if discharged pursuant to that section, any remaining funds shall be deposited in the General Fund of the County and may be used by the County without restriction.

6.D. Formation of Community Facilities District. As soon as is reasonably practicable, based on the advice of County's bond counsel and financial consultants, but in no event later than one hundred and eighty (180) days after the Effective Date of this Development Agreement,

the County shall initiate and expeditiously process to conclusion proceedings for the formation of a Community Facilities District pursuant to the Mello-Roos Community Facilities Act, Title 5, Division 2, Chapter 2.5 of the California Government Code, Sections 53311 *et seq.* The CFD shall be established for the purpose of funding MC&FP Improvements in accordance with the MC&FP. The CFD shall be formed and the Special Tax shall be authorized and levied consistent with the CFD Structure.

The CFD shall include the Property, and any other Missouri Flat Area Development which has received County approvals and which are obligated to participate in the MC&FP and the CFD by reason of have entered into development agreements so providing, by any other condition of approval, or which are otherwise required or willing to participate. To the extent allowed by law, County shall require all Missouri Flat Area Development to participate in the MC&FP and the CFD. County, subject to compliance with applicable provisions of law, shall annex additional Missouri Flat Area Development to the CFD as such projects are approved and become obligated or willing to participate. Once all Missouri Flat Area Development has been included in the CFD, the annexation of any additional projects shall be at the sole discretion of the County which may elect to annex such projects or withhold such projects to be included in subsequent roadway improvement programs.

Developer acknowledges that the MC&FP is intended to provide maximum flexibility in financing the MC&FP Improvements. Therefore, the financing of MC&FP Improvements is dependent upon the development of sufficient retail uses to secure the funding, and not upon specific development. Missouri Flat Area Development is intended to represent sufficient development to fund the MC&FP Improvements. The Project is expected to develop in a time frame which will result in its being Missouri Flat Area Development. However, in the event development of the Project does not occur within the time anticipated, and other development occurs prior to the Project or other development on the Property, that other development may constitute sufficient Missouri Flat Area Development so that inclusion of the Property in the CFD to fund MC&FP Improvements is not necessary or would overburden the MC&FP Improvements. If that is determined to be the case, in the sole discretion of County, and at the County's request, Developer agrees that it will consent to the Property being included in a community facilities district for the purpose of funding improvements beyond the MC&FP Improvements to accommodate development which occurs after the completion of the Missouri Flat Area Development; provided, that the obligations of Developer under such community facilities district are consistent with the CFD Structure. In such case, all of Developer's obligations contained in Section 5.A.4 shall apply with respect to such later community facilities district. In addition, if the Property has previously been included in the CFD, but not developed, then Developer agrees to take all actions necessary to all the Property to be severed from the CFD so that it can be included in that community facilities district.

6.E. Contribution to CFD. Subject to the limitations set forth herein, County shall annually contribute to the CFD an amount sufficient to allow payment of the total annual debt service on CFD Bonds outstanding which were issued to fund MC&FP Improvements, plus such other expenses of the CFD which would otherwise be funded by the CFD Special Tax. In no

event shall the County's contribution to the CFD in any year exceed the Tax Increment Revenues from Missouri Flat Area Development, except that nothing in this section is intended to prevent the use of the Special Reserve Account established pursuant to Section 6.C, above. There shall be no carry-over obligations on the part of the County in the event that the Tax Increment Revenues are less than is required for debt service and other costs of the CFD in the year. The County shall not be required to make any contribution from the then current year's Tax Increment Revenues for prior years when contributions fell short of that necessary to cover CFD expenses.

Upon formation of the CFD, the County shall enter into an agreement, or otherwise make a binding commitment to contribute such funds annually to the CFD. Such commitment shall be in a form recommended by County's bond counsel. County shall deliver a copy of such written commitment to Developer as soon as the County executes the commitment. Among other recommended terms, the commitment shall provide that the annual contributions shall not exceed an amount determined to be the fair value for the use of the MC&FP Improvements being funded through the CFD Bonds for which the contributions are being made, and shall provide for abatement of the contributions in the event the MC&FP Improvements are materially damaged or destroyed so that there is substantial interference with the use of the MC&FP Improvements, all in a form recommended by bond counsel for the County.

6.F. Authorization of Bonds. As soon after formation of the CFD as is recommended by bond counsel for purposes of commencing the validation action called for in Section 6.G, County shall take such actions as are required by law to authorize the issuance of CFD Bonds for the purpose of funding MC&FP Improvements. The amount of the authorization shall be the maximum reasonably feasible amount based upon the advice of the County's financial advisors and bond counsel, taking into consideration projections for anticipated rate of Missouri Flat Area Development, expected Tax Increment Revenues, and the anticipated timing for the sale and use of said bonds. County and CFD shall have no obligation to issue or sell any bonds at the time of such authorization, and shall not be obligated to issue or sell any bonds until the criteria set forth in Section 6.H. are met.

6.G. Validation Action. If recommended by County's bond counsel at the earliest time recommended by bond counsel, County shall file, or cause to be filed, in a court of competent jurisdiction, an action designed to validate the issuance and sale of bonds, and all preliminary actions which are prerequisite to such sale, such as formation of the CFD, the contribution agreement between County and CFD, and the provisions of this Development Agreement as they relate to the funding of the MC&FP.

6.H. Sale of Bonds. It is the intent of the parties that MC&FP Improvements be funded, undertaken and completed expeditiously. At the same time, it is the intent of the parties that sufficient Tax Increment Revenues be available to service all bonded indebtedness incurred for such purposes, and all associated costs, in order to minimize any likelihood that such costs will need to be funded through the collection of the special tax by the CFD. To accomplish these concurrent goals, the MC&FP was developed to allow maximum flexibility in the timing,

phasing and scope of MC&FP Improvements, and the associated funding, so that MC&FP Improvements, or increments of MC&FP Improvements, can be undertaken or deferred in response to the actual development of Missouri Flat Area Development and the generation of Tax Increment Revenues.

Consistent with these purposes, the County, from time to time, shall take such steps as are reasonably necessary to cause the sale of CFD Bonds to finance the completion of MC&FP Improvements, or increments thereof. The timing, phasing and sequencing of MC&FP Improvements, and the timing and amount of any bond issue, except as is expressly provided otherwise in Section 6.H.1 of this Development Agreement, shall be at the discretion of the County based upon the availability of adequate Tax Increment Revenues to support the financing, and the timeliness of the improvements in the schedule of MC&FP Improvements.

If sources of funds for MC&FP Improvements, other than CFD Bonds, become available on terms which are comparable or favorable to the terms upon which bond financing is available, County, in its sole discretion, may substitute such funding sources for all or part of the bond financing contemplated. This provision is intended to allow the County to take advantage of favorable financing which may be available to the benefit of County and Developer. Such substitution of funding sources shall not affect or modify the obligations or liabilities of County or Developer with respect to the repayment or securing of such funds. The County's and Developer's obligations to provide for repayment through Tax Increment Revenues and the CFD Special Tax, respectively, shall remain in effect in the same form as is provided with respect to repayment of the CFD Bonds. Such alternative funding sources can be used without the consent of Developer only if all of the following conditions are met: (1) the total cost of the alternative funding over the term of the financing does not exceed the total cost of the bond funding which it replaces; (2) the debt service for the alternative funding in any year does not exceed the projected debt service for the replaced bond funding in that respective year; (3) the amortization schedule for repayment of the alternative funding does not exceed in length the projected term for repayment of the replaced bond funding; and, (4) the Developer's obligations and liabilities set forth in the CFD Structure remain unchanged. Alternative funding sources which are deemed mutually beneficial, but do not meet the criteria set forth above, may be used with the written consent of both County and Developer without amending this Development Agreement.

In addition, County, at its discretion, may structure or restructure its contribution arrangement under Section 6.E, above, in such fashion as is deemed appropriate either to reduce the costs of the financing or in order to meet legal requirements. Any such structuring or restructuring shall conform to the CFD Structure and all of the criteria set out in the immediately preceding paragraph with respect to alternative funding sources.

6.H.1. Restriction on Issuance of CFD Bonds. The Property will be subject to the lien of a special tax to secure CFD Bonds issued to fund MC&FP Improvements. The MC&FP contemplates that the contribution of Tax Increment Revenues by the County to the CFD will be sufficient to fund the debt service and costs of the CFD so that the special tax will not need to be imposed on the Property. Therefore, County agrees that it will not cause any CFD

Bonds to be issued until sufficient Missouri Flat Area Development has been constructed and occupied to result in Projected Annual Taxable Sales which will generate Tax Increment Revenues sufficient to fund such debt service and CFD costs, and until the Special Reserve Account has been funded to the initial level of One Million Five Hundred Thousand Dollars (\$1,500,000.00). With respect to subsequent issues, CFD Bonds shall not be sold unless the Special Reserve Account contains at least one year's debt service for all outstanding CFD Bonds plus the proposed issue.

6.H.2. Issuance of Bonds to Fund Missouri Flat/Highway 50 Interchange Phases 1a and 1b. The MC&FP contemplates the sale of CFD Bonds to fund 52% of the total cost of improvements to the Missouri Flat Road/Highway 50 Interchange. This improvement is expected to be segmented into phases identified as 1a and 1b as set forth in the MC&FP. The Bonds may be issued in a single issuance or in separate annual issuances corresponding to construction phases based on advice of County's financial consultants and bond counsel. County shall take the necessary steps to cause the CFD Bonds to be issued for these purposes, and thereafter to cause the interchange improvements to be constructed, when all of the following conditions have been met:

a. The validation action referred to in Section 6.G of this Development Agreement shall have been successful and final. No other legal action shall be pending which would threaten the validity of the bonds or the capability to service the bond debt.

b. The necessary design and engineering work has been completed, required governmental review and approvals have been obtained and are final, and construction is scheduled so that issuance of the bonds is timely, and not premature, in light of the anticipated construction schedule for the improvements.

c. Sufficient TIM Fees have been collected and are available to fund the remaining portion of the improvement which are to be funded from that source, representing the share of the costs attributable to new development.

d. Missouri Flat Area Development shall have occurred, been occupied, and placed into service having Projected Taxable Sales, not otherwise encumbered for purposes of the MC&FP, which will generate Tax Increment Revenues sufficient to service the debt on the bonds proposed to be issued, as well as other related administrative and operating costs of the CFD. In the event it is determined that Phase 1a of the Missouri Flat Road/Highway 50 Interchange improvements can be accomplished independent of Phase 1b, and that it is economic and feasible to have a separate bond issuance for Phase 1a, then that issuance may occur when the Projected Taxable Sales will generate Tax Increment Revenues sufficient to service that smaller issue.

e. The Missouri Flat Area Development being relied upon to generate the Projected Taxable Sales shall have been complete and in use for not less than one (1) year, and shall have a taxable sales generation record which supports the conclusion that actual taxable sales will approximate the Projected Taxable Sales.

f. The Missouri Flat Area Development being relied upon to generate the Projected Taxable Sales shall have been included in or annexed to the CFD and shall be subject to the special tax.

g. The Special Reserve Account called for in Section 6.C shall contain at least One Million Five Hundred Thousand Dollars (\$1,500,000.00).

h. The proposed bond issue is in full compliance with the requirements of the Securities and Exchange Act and any other laws or regulations applicable to such issue, and County or CFD are able to obtain all required opinions of counsel and other normal prerequisites to such issue.

i. The County or CFD, as required, shall have completed the due diligence investigation required and found the bond issue to be in conformity with the usual and customary standards regarding the security of such issue.

6.I. Reimbursement of MC&FP Costs. The cost of developing the MC&FP, including, but not necessarily limited to, the cost of traffic engineering, planning, economic analysis, legal analysis, drafting and environmental review, have been borne by the County, Developer, Sundance and Wal-Mart under a series of cost sharing agreements. The original agreement was dated June 18, 1996, and was superseded by an agreement dated April 15, 1997, as amended. This work has analyzed both current traffic conditions in the Missouri Flat Road area and projected traffic generated by projected development through approximately the year 2015 (approximately 1,500,000 square feet) based upon General Plan policies and analysis, and has developed a master circulation plan to mitigate those impacts and a funding plan which has developed a means of funding the required mitigation. In the absence of such work, any project proponent would be required to perform such environmental, traffic and financial analysis and to develop a mechanism for mitigating the impacts of the proposed project. Given the interrelated nature of anticipated traffic impacts from new development and existing transportation deficiencies, such task would require an effort essentially equivalent to that put into the MC&FP, if, in fact, such analysis were feasible in the context of an individual project. Therefore project proponents in the Missouri Flat Area, other than Developer, Sundance and Wal-Mart will benefit fully from the work funded by these developments and the County, and will avoid the costs of such work. Although County has approved only what has been referred to in preliminary documents as Phase I of the MC&FP, which is expected to accommodate approximately one-half of the projected 2015, the planning, economic and environmental work done with respect to the MC&FP has continuing value in developing a master circulation and funding plan for development beyond that which is contemplated in Phase I as described in the EIR. Therefore, it is appropriate to provide for the payment of such fees by development beyond that immediately contemplated in the event it occurs.

Therefore, County shall develop and impose on non-residential development in the Missouri Flat Area, including development in the Sundance Plaza Project, the El Dorado Villages Project and the Wal-Mart Project, a permit processing fee calculated to charge such

development its fair share of the costs of preparing the MC&FP based on the floor area of the proposed development in proportion to the total floor area of development projected in the year 2015 (one million five hundred thousand square feet). Such fees shall be used to reimburse County, Developer, Sundance and Wal-Mart, at least quarterly to the extent fee revenues are available, for the costs incurred by them in developing the MC&FP. As between Landowner and Applicant, reimbursements shall be payable to the party which actually made the original cost contribution. For purposes of this calculation, the total floor area of the Sundance Plaza Project shall include both Phase I and Phase II of that Project. For purposes of this calculation, the total floor area of the Sundance Plaza Project shall include both Phase I and Phase II of that Project. If any of the parties which contributed to the cost of the MC&FP and related actions (Sundance, El Dorado Villages, Wal-Mart or County) are applicants for building permits, they shall receive a credit against any such fees up to the amount contributed by that party under the cost sharing agreement. In the event any of the parties have actually contributed more under the cost sharing agreement than others, that party shall first receive reimbursement until the parties' contributions are equalized. Thereafter, the receipts shall be distributed equally until parties have received full reimbursement of their contributions, adjusted for cost of living increases, less any amounts credited against fees which would otherwise have been charged. To the extent permitted by law, County will include in the fees established under this section a reasonable charge for reimbursing the County and Developer any costs of litigation incurred by County and Developer in defending any legal action challenging the MC&FP or related actions of general applicability, but not Project-specific litigation. Any litigation costs recovered through such fees shall be first applied to reimburse any party which incurred expenses in excess of its share as set forth in this Development Agreement. Thereafter, reimbursements shall be made in proportion to the contributions made by each party.

Reimbursable litigation costs incurred by the Developer, Sundance and Wal-Mart shall be accounted for separately from expenditure under the cost sharing agreements. Any fees collected shall first be used to reimburse the parties for reimbursable litigation costs. Once all such costs have been reimbursed, fees collected shall be devoted to reimbursement of costs incurred under the cost sharing agreement.

6.J. Advance of TIM Fees. Tax Increment Revenues and Bond proceeds will not be available for several years after completion adoption of the MC&FP and approval of this Development Agreement. In order to accelerate completion of certain MC&FP Improvements, County agrees to advance funds in accordance with the MC&FP, but only to the extent funds are available, from TIM Fees held or received from development in the TIM Fee area, to fund portions of the cost of those Improvements which are scheduled to be funded through Tax Increment Revenues. Such funds shall be used for design work, right-of-way acquisition and construction related to certain MC&FP Improvements as called for in the MC&FP. Such advances shall not exceed Four Million One Hundred Thousand Dollars (\$4,100,000.00) without County's approval.

In particular, County has completed, or is in the process of completing, the Missouri Flat Road South Widening Phase 1 and Phase 2 improvements which are being fully funded out of

TIM Fee revenues. The estimated total cost of those improvements is Five Million Seven Hundred Eight Thousand Five Hundred Dollars (\$5,708,500.00). Of that amount, Two Million Three Hundred Ninety Seven Thousand and Five Hundred Seventy Dollars (\$2,397,570.00) represents TIM Fees funds advanced pursuant to this section which are to be credited toward the County's commitment. The balance of the advances are to be made, if needed, for the design, right-of-way acquisition and construction of other MC&FP Improvements such as the Missouri Flat Road/Hwy. 50 interchange or the Pleasant Valley/Missouri Flat Road Connector.

Such advances shall be repaid, with interest, out of bond proceeds or Tax Increment Revenues, as available, as called for in the MC&FP and, subject to the availability of funds in a timely manner and taking into consideration the priorities established for use of tax increment funds, in accordance with the schedule set forth in the MC&FP. The current schedule calls for approximately Two Million Dollars (\$2,000,000.00) to be repaid from the proceeds of the first bond issuance, with the balance to be paid in annual increments thereafter over a period of approximately eight (8) years.

SECTION 7.

ANNUAL REVIEW

7.A. Annual Review. County shall, at least every twelve (12) months during the term of this Development Agreement, review the extent of good faith compliance by Developer with the terms of this Development Agreement. Such periodic review ("Annual Review") shall be limited in scope to compliance with the terms and conditions of this Development 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.

7.A.1. Request for Information. Upon not less than thirty (30) days written notice by the Planning Director of County, Developer shall provide such information as may be requested by the Director and deemed by the director to be required in order to ascertain compliance with this Development Agreement.

7.A.2. Review Process. In the same manner as in Section 1.H, County shall deposit in the mail to Developer a notice of the pending contract review not less than ten (10) days prior to completion of such annual review. Such notice shall give the time and place of any scheduled hearing and designate the location at which Developer may obtain all staff reports or any written materials relating to contract performance. County may charge a reasonable fee for the duplication and distribution of such written materials. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Development Agreement before, the Board of Supervisors or, if the matter is referred to the Planning commission or other officer of the County, then before said Commission or officer. A noticed public hearing shall not be required, but may be held at the election of the County. Formal rules of evidence shall not apply in any proceedings related to this annual review. A finding by County of good faith compliance by Developer with the terms of this Development Agreement

shall be conclusive with respect to the performance of Developer during the period preceding the review.

7.B. Costs. County may charge to Developer the reasonable costs of conducting the annual review.

SECTION 8.

DEFAULT, ENFORCEMENT AND REMEDIES

8.A. Default. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provisions of this Development Agreement shall constitute a default.

8.A.1. Notice. In the event of alleged default or breach of any term or condition of this Development Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) 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 thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

8.A.2. Initiation of Proceedings for Remedies. After notice and expiration of the thirty (30) day period, either party to this Development Agreement at its option may institute legal proceeding pursuant to this Development Agreement or give notice of intent to terminate the Development Agreement pursuant to California Government Code Section 65868 and regulations of the County implementing said Government Code Section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review by the Board of Supervisors within thirty (30) days in the manner set forth in Government code Sections 65865, 65867 and 65868 and County regulations implementing said sections.

8.A.3. Termination. 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 Development Agreement to the other party.

8.A.4. Cure. No party shall be deemed to be in default of any term or provision of this Development Agreement if, within thirty (30) days of notice of alleged default, the party alleged to be in default cures the default or, if the default is incapable of cure within that time, commences to cure the default and thereafter proceeds expeditiously to cure the default.

8.A.5. Annual Review. Evidence of default may also arise in the course of a regularly scheduled periodic review of this Development Agreement pursuant to Government Code Section 65865.1 and Section 7.A of this Development Agreement. If either party determines that the other party is in default following the completion of the normal scheduled periodic review, said party may give written notice of intent to terminate this Development Agreement as set forth in this section, specifying in said notice the alleged nature of the default,

and potential actions to cure said default, and shall specify a reasonable period of time in which such default is to be cured. If the alleged default is not cured, or if not capable of cure within the time allowed then commenced and diligently prosecuted to completion, within thirty (30) days or within such longer period specified in the notice, or if the defaulting party waives its right to cure such alleged default, the County may terminate or modify this Development Agreement.

8.A.6. Effect of Termination. The parties acknowledge that certain of the obligations under this Development Agreement relate to the funding of the MC&FP, and that the County and other entities may take actions or incur debt in reliance on actions to be taken under this Development Agreement. Certain of those actions will be implemented through document other than this Development Agreement such as granting of consent by Developer to the formation of a CFD, formation of the CFD and execution of a contribution agreement *or other binding commitment* between County and the CFD. The parties agree that termination of this Development Agreement, for default or otherwise, shall in no way affect the validity of any such actions taken prior to termination of the Development Agreement.

8.B. Specific Performance. In addition to any other remedies provided in law or equity, the terms of this Development Agreement shall be specifically enforceable by any court of competent jurisdiction. With respect to the execution of any documents, consents or other materials by Developer required to grant consent to the formation of the CFD or to authorize the CFD special tax in conformance with this Development Agreement, such specific performance shall include the authority of the court to order the execution of such documents on behalf of the Developer by any person designated by the court to act on behalf of, or as attorney for, the Developer.

8.C. No Building Permit During Default. In addition to any other remedies provided in law or equity, no building permit shall be required to be issued or building permit application accepted for any structure on the Property if the permit applicant, or person on whose behalf the permit is being obtained, owns or controls any property subject to this Development Agreement, and if such applicant or any entity or person controlling such applicant is in default of the terms and conditions of this Development Agreement.

8.D. 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.

8.E. Enforced Delay, Extension of Times of Performance. In addition to the specific provisions of this Development Agreement, performance by either party hereunder shall not be deemed to be in default where, and to the extent that, delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God,

governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to the other party 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.

8.F. Applicable Law and Attorneys' Fees. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party for breach of this Development Agreement or to enforce any provisions herein, the prevailing party to such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court.

SECTION 9

MISCELLANEOUS PROVISIONS

9.A. No Joint Venture or Partnership. It is understood and agreed by and between the parties hereto that the Project is a private development. No partnership, joint venture or other association of any kind is formed by this Development Agreement.

9.B. Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party challenging the validity of any provision of this Development 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 Development Agreement. Nothing in this section shall be deemed to modify or limit any other provisions of this Development Agreement providing for the funding of such litigation.

9.C. Authority to Execute. The person or persons executing this Development Agreement on behalf of Developer warrant and represent that they have the authority to execute this Development Agreement on behalf of Applicant and Landowner, and that they have the authority to bind both Applicant and Landowner to the performance of their obligations hereunder. All owners of beneficial interests in the Property have executed or consented to the recordation of this Development Agreement.

9.D. Construction of Agreement. The language in all parts of this Development Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. The captions of the sections and subsections of this Development Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction.

9.E. 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 Development 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 transaction contemplated by this Development Agreement, and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement.

9.F. No Third Party Beneficiaries. This Development Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns, except as is expressly provided otherwise in this Section 9.H. No other person shall have any right of action based upon any provision in this Agreement; except, that, any property owner within the Missouri Flat Area whose property has been included in the CFD, and whose liability would be increased or security decreased by any proposed amendment to this Development Agreement shall have the right to enforce the provision contained in Section 1.F which calls for the consent of such property owners in such event.

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

9.H. Recording. The parties shall promptly execute this Development Agreement upon approval by the Board of Supervisors in such form as will allow the recordation of this Development Agreement. The County Clerk shall cause a copy of this Development Agreement to be recorded with the El Dorado County Recorder no later than ten (10) days following execution of this Development Agreement by County.

9.I. Severability. If any term, covenant or condition of this Development Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, except as otherwise provided in this Development Agreement the remainder of this Development Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Development Agreement shall be valid and be enforced to the fullest extent permitted by law.

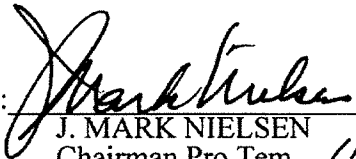
Notwithstanding the foregoing, it is acknowledged by Developer and County that a central purpose of this Development Agreement is to provide for the funding of MC&FP Improvements in accordance with Section 5 and 6 of this Development Agreement. If any provision of this Development Agreement is held invalid or unenforceable, and such invalidity or unenforceability renders it impossible or infeasible to fund the MC&FP Improvements in a manner materially comparable to that contemplated by this Development Agreement, then such provision shall not be severable. In such event, the parties shall negotiate in good faith to attempt to agree upon modifications to the Development Agreement which would cure the invalidity or unenforceability and accomplish the purposes of the Development Agreement. If the parties are unable to agree upon such modifications, this Development Agreement shall terminate and be of no further force and effect upon giving of written notice by either Developer

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or County of such failure to reach agreement.


DATE: 1-1-99

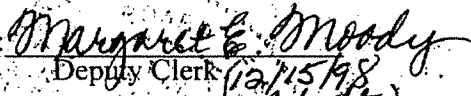
COUNTY OF EL DORADO

By: 
J. MARK NIELSEN
Chairman Pro Tem
Board of Supervisors (12/15/98)
Bd. dte.

ATTEST:
DIXIE L. FOOTE
Clerk of the Board of Supervisors

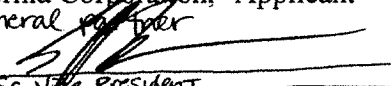
APPROVED AS TO FORM


LOUIS B. GREEN
County Counsel

By: 
Margaret E. Moody
Deputy Clerk (12/15/98)
Bd. dte.

DATE: 11/7/00

Village/El Dorado Partners, L.P.,
a California limited partnership
By: VILLAGE PROPERTIES, INC., VPI, Inc.,
a California Corporation, "Applicant"
General partner

By: 
Its: Sr. Vice President

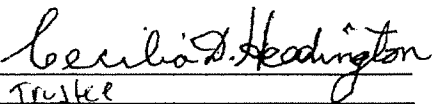
Jericho/Village Partners, a California general partnership
By: VPI, Inc. Managing Partner
"Landowner"

By: 
Its: Sr. Vice President

Date: 11/7/00

DATE: 11/1/00

The Cecilia D Headington Revocable Trust
Dated April 1, 1993
a , "Landowner"

By: 
Its: Trustee

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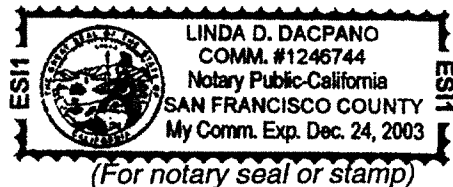
ATTACHED TO DEVELOPMENT AGREEMENT
BY AND BETWEEN THE COUNTY OF EL DORADO
AND VILLAGE/EL DORADO PARTNERS, L.P.
RELATIVE TO THE DEVELOPMENT KNOWN AS
EL DORADO VILLAGES SHOPPING CENTER

STATE OF CALIFORNIA §
 §
County of San Francisco §

On November 7, 2000 before me, Linda D. Dacpano, a Notary Public in and for said County and State, personally appeared Scott Kepner personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Linda D. Dacpano
Signature of Notary

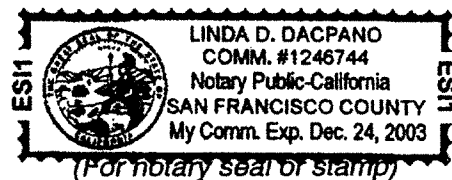


STATE OF CALIFORNIA §
 §
County of San Francisco §

On November 7, 2000 before me, Linda D. Dacpano, a Notary Public in and for said County and State, personally appeared Scott Kepner personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Linda D. Dacpano
Signature of Notary



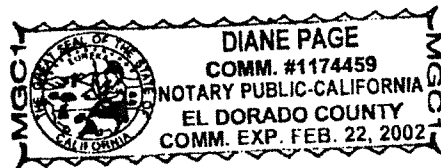
060835

STATE OF CALIFORNIA)
County of El Dorado)

On January 5, 1999, before me, DIANE PAGE, Notary Public,
State of California, personally appeared J. Mark Nielsen,
Chairman Pro Tem of The Board of
Supervisors of the County of El Dorado
personally known to me (or proved to me on the basis of satisfactory evidence)
to be the person (s) whose name (s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

Diane Page
DIANE PAGE, Notary Public
State of California



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STATE OF CALIFORNIA }
COUNTY OF El Dorado } ss.

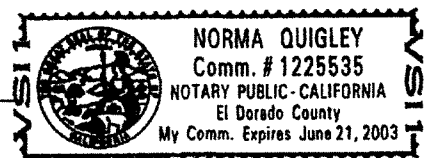
On November 1, 2000, before me, Norma Quigley, Notary Public,
personally appeared Cecilia D. Headington

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

WITNESS my hand and official seal.

Signature

Norma Quigley



(This area for official notarial seal)

Title of Document	_____
Date of Document	_____ No. of Pages _____
Other signatures not acknowledged	_____

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EXHIBIT "A"

PROPERTY SITE MAP

POR. N. 1/2 SEC. 23, T. 10 N., R. 10 E., M.D.M.

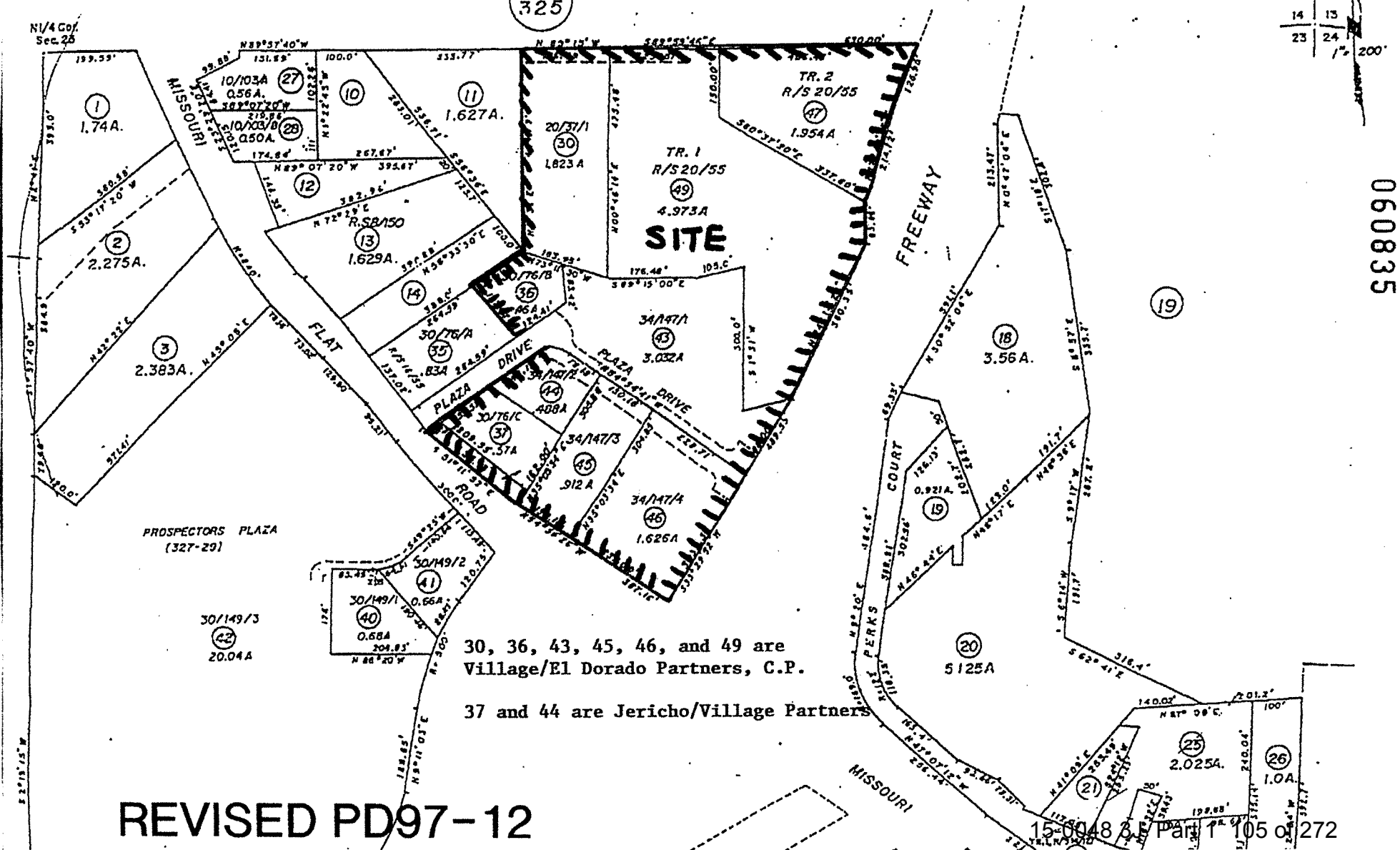
Tax Area Code

327.13

BK.
325

14 13
23 24
1" = 200'

N 1/4 Cor.
Sec. 28



060835

EXHIBIT "B"

PROPERTY DESCRIPTION

060835



V I L L A G E P R O P E R T I E S

562 MISSION ST. SUITE 201 SAN FRANCISCO CA 94105

Letter of Transmittal

To: Louis Green
El Dorado County
330 Fair Lane
Placerville, CA 95667

Date: January 4, 1999
Phone: 530-621-5770
Fax: 530-621-2937

Via: Facsimile

For Your: Use

Regarding: Placerville Parcels

Enclosures:

No. Description

- 1 - Legal Description for Placerville Missouri Flats Village (Smith)
- 2 - Legal Description for Placerville Missouri Flats Village (Headington)
- 3 - Legal Description for Placerville (Jericho Village)

Remarks:

Following, please find copies of the above described items. If you have any questions regarding the following, please feel free to give me a call at the number shown below.

From: Karen Blueford
Phone: 415-227-2204
Fax: 415-227-2228

060835

EXHIBIT A
(Fee Land)

Smith's Store 762
El Dorado County, CA

LEGAL DESCRIPTION

PARCEL 1: (APN #327-130-49)

PARCEL A:

A portion of the Northeast quarter of Section 23, Township 10 North, Range 10 East, M.D.B.&M., more particularly described as follows:

Beginning at the intersection of the Westerly line of U.S. Highway 50 with the North line of Section 23 in Township 10 North, Range 10 East, M.D.B.&M.; thence along said Westerly line, South 22 deg. 42' 35" West 120.52 feet; thence South 17 deg. 49' 30" West 214.72 feet; to the true point of beginning of this description; thence continuing along said Westerly highway line, South 01 deg. 15' 09" West 83.85 feet; thence South 24 deg. 14' 37" West 360.35 feet to the line common to Parcel 1 as shown on the Parcel Map recorded in Book 34 at page 147 and the Headington parcel as described in Book 1958 at page 723, said County Records; thence along said line the following three courses, 1) South 76 deg. 45' 14" West 102.42 feet, 2) North 00 deg. 46' 14" East 300.17 feet, 3) South 76 deg. 45' 14" West 105.00 feet to the Westerly line of said Headington parcel said line also being the Easterly line of Parcel 2 as shown on that certain Parcel Map recorded in Book 20 at page 37, said County Records; thence along said line, North 00 deg. 46' 14" East 475.46 feet to the North line of said Section 23; thence along said Section line South 89 deg. 59' 46" East 47.09 feet; thence leaving said line, South 00 deg. 00' 14" West 150.00 feet; thence South 60 deg. 37' 20" East 337.60 feet to the true point of beginning of this description.

PARCEL B:

A portion of the Northeast quarter of Section 23, Township 10 North, Range 10 East, MDB&M., more particularly described as follows:

Parcel 2, as shown on that certain Parcel Map filed in the office of the County Recorder, County of El Dorado, State of California, on June 13, 1978, in Book 20, of Parcel Maps, at page 37.

Said Parcels above described are now shown as Tract 1, as shown on that certain Record of Survey filed in the office of the County Recorder, County of El Dorado, State of California, on September 23, 1993, in Book 22, of Record of Surveys, at page 55.

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060835

EXHIBIT A
(Fee Land)

Smith's Store 762
El Dorado County, CA

LEGAL DESCRIPTION CONTINUED

PARCEL 2: (APN #327-130-30)

A portion of the Northeast quarter of Section 23, Township 10 North, Range 10 East, MDB&M., more particularly described as follows:

Parcel 1, as shown on that certain Parcel Map filed in the office of the County Recorder, County of El Dorado, State of California, on June 13, 1978, in Book 20, of Parcel Maps, at page 37.

PARCEL 3: (APN #327-130-43, 327-130-45 AND 327-130-46)

A portion of the Northeast quarter of Section 23, Township 10 North, Range 10 East, MDB&M., more particularly described as follows:

Parcels 1, 3, and 4, as shown on that certain Parcel Map filed in the office of the County Recorder, County of El Dorado, State of California, on January 22, 1986, in Book 34, of Parcel Maps, at page 147.

PARCEL 4: (APN #327-130-36)

A portion of the Northeast quarter of Section 23, Township 10 North, Range 10 East, MDB&M., more particularly described as follows:

Parcel B, as shown on that certain Parcel Map filed in the office of the County Recorder, County of El Dorado, State of California, on January 15, 1982, in Book 30, of Parcel Maps, at page 76; and as modified by that certain Certificate of Correction recorded July 14, 1983, in Book 2188 of Official Records, at page 452; and as modified by that certain Certificate of Correction recorded November 30, 1984, in Book 2252 of Official Records, at page 652.

060835

VILLAGE PROPERTIES

Heavington 004

DESCRIPTION

THAT CERTAIN REAL PROPERTY SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF EL DORADO, UNINCORPORATED AREA, DESCRIBED AS FOLLOWS:

A PORTION OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 10 EAST, MDB&M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 2, AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF EL DORADO, STATE OF CALIFORNIA, ON SEPTEMBER 23, 1993, IN BOOK 22, OF RECORD OF SURVEYS, AT PAGE 55.

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Page No. 9

Order No. 115447

EXHIBIT A - DESCRIPTION PAGE

PARCEL NO. 1:

Parcel C, as designated on the parcel map entitled "A Portion of the NE 1/4 of Section 23, T10N, R10E, M.D.M.", filed January 15, 1982, Book 30 of Parcel Maps, page 76, El Dorado County Records and corrected by Certificate of Correction, recorded July 14, 1983, in Book 2188 of Official Records, at page 542 and corrected by Certificate of Correction recorded January 30, 1984, in Book 2252 of Official Records, at page 652.

PARCEL NO. 2:

Parcel 2, as shown on that certain Parcel Map entitled "A Portion of the N.E. 1/4 of Section 23, T10N, R10E, M.D.M., Being a Portion of Parcel D of P.M. 30-76", filed in the office of the County Recorder, County of El Dorado, State of California, on January 22, 1986, in Book 34 of Parcel Maps, at page 147.

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EXHIBIT "C"

CONDITIONS OF APPROVAL

EL DORADO VILLAGES - As adopted by the Board of Supervisors December 15, 1998.**Findings****Overall Project**

1. A de minimis finding on the project's effect on fish and wildlife resources cannot be found and the project is therefore subject to the payment of California Department of Fish and Game fees per AB 3158.
2. The decision-making body has independently reviewed and certified the Final *Missouri Flat Area and Sundance Plaza and El Dorado Villages Shopping Center EIR*, prepared in accordance with State CEQA Guidelines §15132, prior to approving the project. The County has also considered and responded to Agency issues and concerns raised during review of the project (summarized in 'Agency Comments') through design modifications, or attached conditions of approval.
3. Significant and unavoidable impacts were identified in the Final EIR for the project and findings were prepared pursuant to Public Resources Code §21081. A Statement of Overriding Considerations was prepared pursuant to Public Resources Code § 21081(b). An El Dorado Villages Shopping Center Mitigation Monitoring and Reporting Program (MMRP) was prepared pursuant to Public Resources Code §21081.6. The decision-making body has considered the EIR, the findings and Statement of Overriding Considerations, and the MMRP during the discretionary review of this project.
4. The project, as conditioned, complies with County General Plan policies, and development standards and regulations for Planned Developments, and underlying zoning.
5. The project is not considered detrimental to the public health, safety, and welfare.

Planned Development

1. A Planned Development application was filed in accordance with County Code Chapter 17.04 *et. seq.* The Planned Development, as conditioned, is found to be consistent with the County General Plan and related County regulations.
2. The decision-makers considered the architectural drawings of elevations of the proposed buildings in accordance with County Code 17.14.130 for applications in a commercial district facing a state highway.
3. The proposed El Dorado Villages Shopping Center is so designed to provide a desirable environment within its own boundaries.
4. The site is physically suited for the proposed uses.

EL DORADO VILLAGES - As adopted by the Board of Supervisors December 8, 1998**Findings****Overall Project**

1. A de minimis finding on the project's effect on fish and wildlife resources cannot be found and the project is therefore subject to the payment of California Department of Fish and Game fees per AB 3158.
2. The decision-making body has independently reviewed and certified the Final *Missouri Flat Area and Sundance Plaza and El Dorado Villages Shopping Center EIR*, prepared in accordance with State CEQA Guidelines §15132, prior to approving the project. The County has also considered and responded to Agency issues and concerns raised during review of the project (summarized in 'Agency Comments') through design modifications, or attached conditions of approval.
3. Significant and unavoidable impacts were identified in the Final EIR for the project and findings were prepared pursuant to Public Resources Code §21081. A Statement of Overriding Considerations was prepared pursuant to Public Resources Code § 21081(b). An El Dorado Villages Shopping Center Mitigation Monitoring and Reporting Program (MMRP) was prepared pursuant to Public Resources Code §21081.6. The decision-making body has considered the EIR, the findings and Statement of Overriding Considerations, and the MMRP during the discretionary review of this project.
4. The project, as conditioned, complies with County General Plan policies, and development standards and regulations for Planned Developments, and underlying zoning.
5. The project is not considered detrimental to the public health, safety, and welfare.

Planned Development

1. A Planned Development application was filed in accordance with County Code Chapter 17.04 *et. seq.* The Planned Development, as conditioned, is found to be consistent with the County General Plan and related County regulations.
2. The decision-makers considered the architectural drawings of elevations of the proposed buildings in accordance with County Code 17.14.130 for applications in a commercial district facing a state highway.
3. The proposed El Dorado Villages Shopping Center is so designed to provide a desirable environment within its own boundaries.
4. The site is physically suited for the proposed uses.

5. Adequate services are available for the proposed uses including, but not limited to, water supply, sewage disposal, roads, and utilities.
6. The proposed uses do not significantly detract from the natural land and scenic values of the site.

Development Agreement

1. The development agreement is consistent with the objectives, policies, general land uses and programs specified in the County General Plan and any applicable specific plan.
2. The development agreement will not be detrimental to the health, safety and general welfare of person residing in the immediate are nor detrimental to the general welfare of the residents of the County as a whole.
3. The development agreement will not adversely affect the orderly development of property or the preservation of property values.
4. The development agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.
5. The development agreement contains a legal description of the subject property.

CONDITIONS OF APPROVAL - Development Plan**Planning Department**

1. Only the following exhibits and documents are approved herein as part of the Development Plan for El Dorado Villages Shopping Center:

Exhibit B: Site Plan
Exhibit D: Preliminary Grading Plan
Exhibit E: Preliminary Planting/Landscape Plan
Exhibit F: Building Elevation Reductions (large scale on file in Planning Department)
Exhibit G: Proposed Signage
2. Approval of this development plan authorizes the processing of building and grading permits for projects found to be consistent with the approved Development Plan and conditions of approval noted herein. Such building and grading permit applications are processed as a ministerial permit, and approved by County departments. In those instances where the development plan establishes specific standards, they shall supercede County standards. In those instances where the development plan does not address an issue or standard, applicable County standards shall apply.

In those situations where, in the opinion of the Planning Director, there is a significant departure from the approved development plan, or if issues are discovered which are not readily clarified in the conditions of approval of the development plan, then the Planning Director shall first present such changes to the Planning Commission at a regular meeting (not requiring hearing notification) to determine if the Planning Commission can make a finding of consistency. If such a finding cannot be made, plans shall be modified to be brought into consistency or an amendment application filed for Planning Commission consideration at a public hearing.

3. Prior to issuance of a building permit, final plans for fire flow, building sprinklers, and fire hydrant locations will be approved by the Diamond Springs/El Dorado Fire Protection District. Fire Department Connections for the Automatic Fire Sprinkler Systems will be located no farther than 50 feet from a fire hydrant.
4. Prior to the issuance of Occupancy Permits, fire extinguishers will be required throughout all commercial buildings. Size and type will be approved by the Diamond Springs/El Dorado Fire Protection District.
5. Prior to initiation of grading, the applicant shall submit and have approved by the El Dorado County APCD, a fugitive dust prevention and control plan.
6. Prior to construction/installation of point source emissions units (e.g., commercial water heaters, gas station, cleaners) at El Dorado Villages Shopping Center, authority to construction applications shall be submitted to the APCD. Submittal of applications will include facility diagram(s), proposed equipment specifications and emission factors.
7. Prior to issuance of a building permit, the applicant will secure necessary water meter(s) for the building being proposed at that time from the El Dorado Irrigation District (EID).
8. Prior to issuance of a building permit, the applicant will obtain EID approval of a Facility Plan Report for water and wastewater distribution lines and facilities, requiring the prior payment to EID of \$240 in review fees.
9. The project applicant shall provide separated routes for bicycle and pedestrian traffic to allow unimpeded circulation within the property being developed as specified in Policies 3.9.1.6 and 3.11.2.3 of the *El Dorado County General Plan*. Said routes shall be shown on the Development Plan and approved by the Planning Director prior to issuance of building permits.
10. The applicant shall receive a "will serve" letter from the franchise refuse hauler, the El Dorado Disposal Company, Inc. prior to building permit issuance.
11. The applicant shall adhere to El Dorado County Ordinance, Section 8.42.600 et. al. regarding loading and collecting solid waste and recyclable materials.

12. Prior to issuance of a grading permit, the applicant will provide El Dorado County Environmental Management Department with proof of abandonment of the existing onsite leach field.
13. The project will be permitted no more than one shopping center pylon sign (announcing various shopping center tenants) of not to exceed 434 square feet per side along the project frontage on the side fronting U.S. Highway 50. The location of the shopping center pylon sign shall be in accordance with County Code 17.16.050. If individual back lighted letters are used in total or in part for this sign instead of the typical interior lighted "can" sign, a larger area may be allowed if approved by the Planning Commission.
14. No more than one onsite monument shopping center sign, not to exceed 10 feet in height and 80 square feet of area per side, will be permitted within the entrance area of the project visible from Missouri Flat Road, as indicated on the approved site plan, or such modified location as may be approved by the Planning Director.
15. One tenant monument sign will be permitted for each free-standing use not to exceed 6 feet in height and 30 square feet in area per side.
16. Building wall signs will be permitted not to exceed, on average, 10 percent of the square footage of the building frontage on which it appears and meet the other standards specified in County Code §17.16.030. The frontage will include parapets or other wall features that extend beyond the structure of the wall.
17. Menu boards and directional signs for the fast food restaurants will be subject to the approval of the Planning Director.
18. Prior to issuance of any building permit the applicant shall submit a sign design program as a minor amendment to the Development Plan which addresses criteria for color, style, sizes, materials for the pylon, monument and walls signs. Such criteria, when approved by the Planning Commission, shall be applied to all permitted on-site signs. Temporary signing and banners are not permitted unless standards are provided in the sign program for such signing, including length of time such temporary signs are allowed.
19. All sign locations will comply with El Dorado County site distance requirements as defined in the *"Design and Improvements Standards Manual."*
20. Perimeter landscaping shall be provided within the project site's boundary between the project and U.S. Highway 50, Missouri Flat Road, and Headington Road. Landscaping shall also be provided along the project perimeter between the existing Jack-in-the-Box restaurant and the eastern boundary at Headington Road. Where practical, existing onsite trees shall be retained. Said perimeter landscaping shall be subject to the approval of the Planning Director.

21. A final landscape plan identifying the number of proposed trees and shrubs, in addition to their planting size (landscape palette provided already) will be provided prior to issuance of a grading permit. The minimum trees and shrubs within perimeter landscaping shall be in accordance with County Code §17.18.090.
22. Parking lot landscaping shall include shade trees, distributed evenly throughout, placed as to provide canopy cover over 50 percent of the total parking within 15 years of securing the building permit. Canopy trees from a minimum fifteen (15) gallon container size or equal shall be planted within the parking lots, and satisfy the requirements of the water conserving landscape ordinance. Parking areas shall contain at least two (2) tree species, with at least one type being a large shade tree and at least one type of accent tree to delineate aisles and announce entries.
23. Planters shall utilize live landscape materials that will ultimately achieve 75 percent coverage of the planter area. Landscape treatments and shrub plantings shall be located as not to impair visibility for pedestrians or motorists. In areas where plants are susceptible to damage by vehicular traffic or pedestrian circulation, the landscape materials shall be protected by appropriate curbs, tree guards, or other acceptable means.
24. Landscape maintenance shall be provided by the applicant or successor shopping center owner, or as agreed through binding tenant agreements. For each month during the first year of planting, the vitality and health of all landscape shall be monitored. During this time, non-living landscape of comparable quality, size, and texture, shall be replaced at the originally planted size (different plants may be used, at the discretion of the Planning Director, if they would provide for a more vigorous or sustainable landscape). Quarterly from the second through the fifth year of planting, the vitality and health of all landscape shall be monitored. During this time, non-living landscape of comparable quality, size, and texture, shall be replaced at the originally planted size (different plants may be used, at the discretion of the Planning Director, if they would provide for a more vigorous or sustainable landscape).
25. In addition to EIR Mitigation Measure 4.3-12, parking lot light poles will be restricted to 30 feet or less and shall be incorporated into the parking lot landscape design.
26. Prior to the issuance of building permits, a color rendering for the project shall be approved by the Planning Director.
27. For any building facade in excess of 100 feet which faces U.S. 50, Missouri Flat Road, or Headington Road, the applicant will incorporate recesses and projections along at least 20 percent of the length of the facade. Such recesses or projections shall be a minimum depth of 12 inches. Where the building facade does not face one of these roads, the facade shall incorporate a combination of textual and material and/or color changes to relieve monotony. Final treatment of the facade is subject to the approval of the Planning Director.
28. For buildings in excess of 50 feet in length on the front side, the project shall provide

variations in roof lines to encourage greater architectural interest in the structure. Variations may be in the form of parapets concealing flat roofs and rooftop equipment, overhanging eaves, slope roofs, and three or more roof slope planes.

29. Screening of roof top equipment shall be provided to prevent visibility of any roof top equipment from passers by traveling along Missouri Flat Road and U.S. Highway 50. The type and extent of screening shall be approved by the Planning Director.
30. Any trash enclosures situated along frontages of U.S. Highway 50, Missouri Flat Road, and Headington Road will be screened from direct passers by view with treatments (e.g, building finishes and colors) that correspond with adjacent buildings. Trash enclosures shall be a minimum of seven (7) feet in height to minimize outside views of enclosed dumpsters.
31. The parking lot and walk areas shall not be used for outdoor sales or other events. However, an outdoor events plan, if approved by the Planning Commission as a minor amendment to the Development Plan, may authorize such activities. The outdoor events plan shall at a minimum address the magnitude, frequency and location of such events.

Department of Transportation

32. The applicant shall submit a site improvement/grading plan prepared by a professional civil engineer to the Department of Transportation for review and approval. The plan shall be in conformance with the County of El Dorado "*Design and Improvement Standards Manual*," the "*Grading, Erosion and Sediment Control Ordinance*," the "*Drainage Manual*," the "*Off-Street Parking and Loading Ordinance*," and the State of California Handicapped Accessibility Standards.
33. The applicant shall be subject to a grading permit fee commensurate with the scope of the proposed project prior to commencement of any work performed.
34. The project shall be subject to the County Traffic Impact Mitigation (TIM) fee. Pursuant to Resolution 31-98, said fee shall be due upon the issuance of a building permit. If prior to the application for a building permit for said project a revised fee is established, such revised amount shall be paid.
35. The project shall be subject to the State system infrastructure traffic impact mitigation (TIM) fee. Pursuant to Resolution 32-98, said fee shall be due upon the issuance of a building permit. If prior to the application for a building permit for said project a revised fee is established, such revised amount shall be paid.
36. The project will require an encroachment permit for improving the Plaza Drive access to Missouri Flat Road. This access shall be widened to accommodate left turn lanes, an existing right turn lane, and shoulders. All improvements will need to correlate with the ultimate improvements to Missouri Flat Road as noted in Exhibit 4.4-7 of the MC&FP EIR.

37. The project will require an encroachment permit for access to Headington Road. The encroachment and road terminus shall be subject to Department of Transportation review and approval.
38. The project will require a 4-foot walkway from the northwest corner of the parking lot to Headington Road.
39. Vehicular access to Missouri Flat Road and Headington Road shall not be allowed except for the common access points approved by the Department of Transportation.
40. The project will require a road improvement agreement for construction of the Missouri Flat Road and Headington Road improvements.
41. The project applicant for the El Dorado Villages Shopping Center shall be responsible for constructing a bus turnout and transit shelter along the project site frontage of Missouri Flat Road. The type and location of the specific facilities shall be determined by El Dorado County DOT with input from the El Dorado County Transit Authority.
42. Alternatively, due to the site's proximity to the Missouri Flat Road/U.S. Highway 50 off-ramp, the bus turnout and transit shelter shall be provided internal to the site. Approval of the internal facilities or use of in-lieu fees shall be received from both the El Dorado County Transit Authority and the El Dorado County DOT prior to the issuance of occupancy permits.
43. The project applicant for the El Dorado Villages Shopping Center shall be responsible for the construction of Class II bike lanes along the project site frontage of Missouri Flat Road. The timing of construction shall be determined by the El Dorado County DOT.
44. The on-site portion of Headington Road shall be improved to a 20 foot, half width, with type 2 curb and gutter and 6 foot sidewalk. The total width of the roadway along the project frontage shall be 32 feet.

The existing roadway not within the property boundary will be creditable against the 32 feet required to the extent that the existing structural section meets County Standard 101A. The developer shall provide an irrevocable offer of dedication for a 30-foot right-of-way where on-site improvements are constructed.

The developer shall construct off-site improvements (interim off-site improvements) to Headington Road to provide a nominal 32-foot paved width from the project boundary to the intersection with Missouri Flat Road, with intersection with Missouri Flat Road, with intersection improvements at Missouri Flat Road as necessary to accommodate safe vehicular operation, and turning movements for automobile and semi-truck traffic.

The calculation of construction costs shall exclude those improvements associated with the

intersection of Headington Road and Missouri Flat Road as these improvements are a part of the Missouri Flat Master Circulation and Financing Plan.

Developer's financial obligation for the cost of interim off-site improvements and related costs, including, but not limited to acquisition of rights-of-way, design of improvements, and construction shall be limited to developer's pro rata share of the cost of the ultimate off-site improvements. Developer's pro rata share shall be equal 32 percent of the ultimate off-site improvements.

It is the County's intent that as other property develops, the street will be constructed as a 101A Commercial Standard Road to a width of 40 feet, including curbs, gutters, and sidewalks on both sides within a 60-foot right-of-way (ultimate off-site improvement). The determination of the fair share obligation shall be based upon the cost to construct the ultimate off-site improvement.

Parcels currently zoned for residential use which are not designated for commercial use in the current General Plan shall not be included in the calculation of includable acreage.

In the event the cost of improvements exceed the developer's financial obligation, the County shall make a reasonable effort to reduce the scope of the off-site improvements to match the developer's financial obligation. If this reduction in scope is infeasible due to public health and safety concerns, and to the extent that other funding sources cannot be located to fund the required improvements, County and developer shall negotiate a reimbursement agreement to reimburse developer for those off-site improvement costs in excess of developer's fair share financial obligation.

45. The project shall set back from and protect any required right-of-way adjacent to Missouri Flat Road for the future widening improvements. However, the County will be responsible for purchasing excess right-of-way required due to the need to offset the future centerline from the existing centerline. Actual right-of-way proportion will be determined based upon the final improvement plans for Missouri Flat Road, as set forth in the development agreement
46. The project shall set back from and protect any required right-of-way adjacent to State Highway 50 for the future interchange and road widening improvements, as set forth in the development agreement.
47. Project approvals shall be operative only upon execution and final approval of a development agreement requiring the applicant to participate in the Missouri Flat Area Master Circulation and Funding Plan including, but not limited to, participation in the Mello-Roos District to be formed to fund roadway improvements specified in the MC&FP.

EL DORADO VILLAGES**ENVIRONMENTAL MITIGATION MEASURES****Land Use Mitigation Measures**

Mitigation Measure 4.2-3: Implement Mitigation Measures 4.3-12, 4.5-4, 4.5-12, 4.6-4(b), 4.6-7, and 4.6-8. No further feasible mitigation measures are available to reduce this impact to a less-than-significant level.

Mitigation Measure 4.3-12: See Mitigation Measure 4.3-12 in Visual Resources.

Mitigation Measure 4.5-4: See Mitigation Measure 4.5-4 in Air Quality.

Mitigation Measure 4.5-12: See Mitigation Measure 4.5-12 in Air Quality.

Mitigation Measure 4.6-4(b): See Mitigation Measure 4.6-4 in Noise.

Mitigation Measure 4.6-8: See Mitigation Measure 4.6-8 in Transportation and Circulation.

Visual Resources

Mitigation Measure 4.3-12: Approval of any retail project in the MC&FP Area, Sundance Plaza, or El Dorado Villages Shopping Center, shall be subject to the following lighting standards, which are fashioned after the draft El Dorado County lighting standards being considered for inclusion in the updated County Zoning Ordinance:

- a. Any commercial, industrial, multi-family, civic, or utility project that proposes to install outdoor lighting shall submit plans for such lighting, to be reviewed by the Planning Director as part of a site plan review. If the project requires a design review, special use permit or development plan application, said lighting plan shall be included as part of that application, and shall be subject to approval by the approving authority.
- b. Lighting plans shall contain, at a minimum, the location and height of all light fixtures, the manufacturer's name and style of light fixture, and specifications for each type of fixture.
- c. All outdoor lighting shall conform to the following standards:
 - 1) Parking lot and other security lighting shall be top and side shielded to prevent the light pattern from shining onto adjacent property or roadways, excluding lights used for illumination of public roads.
 - 2) External lights used to illuminate a sign or the side of a building or wall shall be shielded to prevent the light from shining off of the surface intended to be illuminated. Bottom lighting shall be prohibited.
 - 3) Lights that shine onto a road in a manner which causes excessive glare and may be considered to be a traffic hazard shall be prohibited.

- 4) Outdoor floodlights shall not be projected above the horizontal plane.
- 5) Lighting of outdoor display area, including but not limited to vehicle sales and rental, and building material sales, shall be turned off within 30 minutes after the closing of the business. Security lighting, as approved by the Planning Director may remain on after the close of business.
- 6) Outdoor lighting within the -DS, Scenic Corridor Design Review combining zone district, shall conform to standards 1) through 5) above, or the standards to be adopted with the Scenic Corridor.

Transportation and Circulation Mitigation Measures

Mitigation Measure 4.4-2: Phases 1 and 2 - Intersection Operations (MC&FP Area). Implementation of Phases 1 and 2 of the MC&FP would increase traffic volumes resulting in the deterioration of p.m. peak hour intersection operations to LOS F at the Missouri Flat Road/El Dorado Road intersection and at the El Dorado Road/Mother Lode Drive intersection. This impact is considered significant.

Project applicants for development projects in the MC&FP area shall be responsible for improvements to the following intersections.

- ▶ Missouri Flat Road/El Dorado Road - install a traffic signal and construct exclusive eastbound and westbound left-turn lanes on the Missouri Flat Road approaches.
- ▶ El Dorado Road/Mother Lode Drive - install a traffic signal and construct exclusive northbound and southbound left-turn lanes on the El Dorado Road approaches.

The specific timing of these improvements will depend on traffic growth at these locations from new development in the MC&FP. El Dorado County DOT shall monitor these locations and determine when signalization would be appropriate. The applicants for Sundance Plaza and El Dorado Villages shall each pay their fair share of the cost of the signals, and the balance of such cost will be funded through the County TIM fee program or any other funding strategy acceptable to the County. In addition, the County will continue to evaluate including the cost of the signals within the MC&FP without creating a conflict with Measure Y.

Mitigation Measure 4.4-7: The project applicant for the El Dorado Villages Shopping Center shall participate in the MC&FP. This plan would result in the implementation of roadway improvements by 2005 that would provide LOS D or better operations at all study intersections. Completion of all of these improvements would not occur until 2005. Therefore, LOS F conditions at the Missouri Flat Road/Highway 50 WB Ramps intersection and at the Missouri Flat Road/Mother Lode Drive intersection would be exacerbated by the El Dorado Villages Shopping Center traffic until 2005. Also, LOS D conditions at the Missouri Flat Road/Prospector Plaza intersection would be exacerbated by El Dorado Villages traffic until 2005. As a result, Impact 4.4-7 would be significant and unavoidable under the short-term conditions and less than significant under the long-term conditions.

Mitigation Measure 4.4-8: The project applicant for the El Dorado Villages Shopping Center shall be responsible for constructing a bus turnout and transit shelter along the project site frontage of Missouri Flat. The type and location of the specific facilities shall be determined by El Dorado County DOT with input from the El Dorado County Transit Authority.

Alternatively, due to the site's proximity to the Missouri Flat Road/U.S. Highway 50 off-ramp, the bus turnout and transit shelter shall be provided internal to the site. Approval of the internal facilities or use of in-lieu fees shall be received from both the El Dorado County Transit Authority and the El Dorado County DOT prior to the issuance of occupancy permits. Implementation of these improvements would reduce Impact 4.4-8 to less than significant.

Mitigation Measure 4.4-9: The project applicant for the El Dorado Villages Shopping Center shall be responsible for the construction of Class II bike lanes along the project site frontage of Missouri Flat Road. The timing of construction shall be determined by the El Dorado County DOT. In addition, the project applicant shall provide separated routes for bicycle and pedestrian traffic to allow unimpeded circulation within the property being developed as specified in Policies 3.9.1.6 and 3.11.2.3 of the *El Dorado County General Plan* prior to issuance of occupancy permits. These routes shall be subject to review and approval by El Dorado County DOT and implemented prior to issuance of the first Certificate of Occupancy. Implementation of these improvements would reduce Impact 4.4-9 to less than significant.

Air Quality Mitigation Measures

Mitigation Measure 4.5-1: Project applicants for retail development and roadway improvements projects in the MC&FP Area, and applicants for Sundance Plaza and El Dorado Villages Shopping Center projects, shall implement the following measures, including compliance with applicable El Dorado County APCD rules and regulations, as applicable during grading and construction periods:

- a) Comply with El Dorado County APCD Rule 223 (Fugitive Dust), as required by the Air Pollution Control Officer. Compliance may include, but is not limited to, implementation of the following measures:
 - Application of water or suitable chemicals or other specified covering on material stockpiles, wrecking activity, excavation, grading, sweeping, clearing of land, solid waste disposal operations, or construction or demolition of buildings or structures (all exposed soil shall be kept visibly moist during grading);
 - Installation and use of hoods, fans and filters to enclose, collect, and clean the emissions of dusty materials;
 - Covering or wetting at all times when in motion of open-bodied trucks, trailers or other vehicles transporting materials which create a nuisance by generating particulate matter in areas where the general public has access.
 - Application of asphalt, oil, water or suitable chemicals on dirt roads;

- Paving of public or commercial parking surfaces;
 - Removal from paved streets and parking surfaces of earth or other material which has a tendency to become airborne;
 - Alternate means of control as approved by the Air Pollution Control Officer.
- b) Use only low-emission mobile construction equipment (e.g., tractor, scraper, dozer, etc.).
 - c) Maintain construction equipment engines in proper operating condition.
 - d) Develop and implement construction activity management techniques, such as extending construction period, reducing number of pieces used simultaneously, increasing distance between emission sources, reducing or changing hours of construction, and scheduling activity during off-peak hours.
 - e) Comply with El Dorado County APCD Rule 224 (Cutback and Emulsified Asphalt Paving Materials).
 - f) Comply with El Dorado County APCD Rule 215 pertaining to architectural coatings.
 - g) Obtain permission from the APCD and/or the local fire agency prior to burning of wastes from land development clearing, depending upon the time of year the burning is to take place. Only vegetative waste materials may be disposed of using an outdoor fire.

Mitigation Measure 4.5-3: Implement Mitigation Measures 4.5-1(a) through (g). No further mitigation measure are available.

Mitigation Measure 4.5-4: In addition to compliance with all applicable rules and regulations of the El Dorado County APCD, project applicants for retail development and roadway improvement projects in the MC&FP Area, and applicants for Sundance Plaza and El Dorado Villages Shopping Center projects, shall implement the following measures, as applicable, to the extent allowable under state law:

- a) Proponents of individual point sources of emissions, such as gas stations or dry cleaners, shall submit authority-to-construct applications to the APCD prior to the construction or installation of such facilities. Such applications are required to include facility diagrams, proposed equipment specifications, and emission factors.
- b) Design the site to maximize access to existing transit lines.
- c) Construct lighted transit shelters and/or multimodal transfer stations for transit users (Major projects only).

- d) Design and implement “shop by telephone” or “shop by computer” services (Major projects only).

Mitigation Measure 4.5-7: Implement Mitigation Measures 4.5-4 (a) through (d). No further mitigation measures are available.

Mitigation Measure 4.5-12: Implementation of the following mitigation measures would reduce this impact to a less-than-significant level:

- a) Implement Mitigation Measure 4.5-4(a)
- b) Applicants for authority-to-construct from the El Dorado County APCD shall prepare a health risk assessment for point sources that have the potential to emit toxic air contaminants. Resultant health risks shall not exceed the APCD’s thresholds for cancer and non-cancer risks.

Mitigation Measure 4.5-14: Implement Mitigation Measure 4.5-4(a) and Mitigation Measure 4.5-12(b). No further mitigation measures are required.

Noise Mitigation Measures

Mitigation Measure 4.6-1: Construction activities shall be conducted in accordance with the County noise regulation or limited to the following hours and days:

- Between the hours of 7:00 a.m. and 7:00 p.m. on any weekday
- Between the hours of 8:00 a.m. and 6:00 p.m. on Saturdays
- Prohibited on Sundays and holidays within 150 feet of occupied residences.

At the time of the letting of the construction contract, it shall be demonstrated that engine noise from excavation equipment would be mitigated such that resultant noise levels do not exceed those provided in Table 6-2 of the General Plan by keeping engine doors closed during equipment operation. For equipment that cannot be enclosed behind doors, lead curtains shall be used to attenuate noise to levels that do not exceed the County’s non-transportation noise standard (Table 6-2 of the General Plan).

Mitigation Measure 4.6-2: Implement Mitigation Measure 4.6-1. No further mitigation is required.

Mitigation Measure 4.6-4:

Note: Item a) of Mitigation Measure 4.6-4 does not apply to El Dorado Villages Shopping Center.

- b) Implementation of either of the following mitigation measures would ensure that stationary

source noise impacts associated with the proposed El Dorado Villages Shopping Center project are reduced to a less-than-significant level:

- The project applicant for El Dorado Villages Shopping Center shall ensure that loading and unloading activities at the loading area associated with the proposed grocer shall be prohibited during evening (7 p.m. to 10 p.m.) Or nighttime (10 p.m. to 7 a.m. hours; and
- The project applicant shall ensure that stationary source noise levels from the El Dorado Villages Shopping Center project site do not exceed the levels provided in Table 6-2 of the El Dorado County General Plan.
- Alternatively, the project applicant shall construct a six-foot masonry sound wall along the northern project boundary between the northwestern boundary of the project site and the proposed entrance from Headington Road. The sound wall shall be integrated into the proposed landscaping along the project boundary.

Mitigation Measure 4.6-8: The project applicant for the El Dorado Villages Shopping Center project shall contribute on a fair-share basis to the funding of traffic noise attenuation measures, such as sound barriers, noise berms, or setbacks, required to ensure that traffic noise levels do not exceed applicable County standards, as presented in Table 6-1 of the General Plan. The project's fair share shall be determined by the County, in consultation with the project applicant, based on the project's relative contribution to the traffic noise level.

Earth Resources Mitigation Measures

Mitigation Measure 4.7-2: Prior to the issuance of grading permits for Sundance Plaza or El Dorado Villages Shopping Center, applicants shall submit grading plans in accordance with Uniform Building Code (UBC) Appendix Chapter 33 (A33) provisions. According to Section 3305 of the UBC (found in A33, 'Excavation and Grading'), the Appendix "... sets forth rules and regulations to control excavation, grading and earthwork construction, including fills and embankments; establishes the administrative procedure for issuance of permits; and provides for approval of plans and inspections of grading construction." Included in Section 3309 of this UBC Appendix are definitions of "engineered grading" and "regular grading" and the grading requirements for each, and standards for the preparation of soils engineering reports and grading geology reports. The criteria for preparation of a liquefaction study are identified. Additional standards regarding cuts and fills (Sections 3312 and 3313, respectively and Section 3314) are included in this Appendix as are standards for drainage and terracing, erosion control, grading inspection and completion of work.

In addition, prior to the issuance of grading permits for Sundance Plaza and El Dorado Villages Shopping Center, the grading plans shall be in accordance with the *County of El Dorado Design and Improvement Standards Manual* (El Dorado County 1990): Volume IV (Erosion Control Requirements and Specifications) which establish the grading and drainage requirements that must be met in grading plans (Section 1), and sets forth the critical area planting construction specification

(Section 2); and the standards, as applicable, from Volume V (Design Standard Details) which provides the design standards and detail drawings that are intended to be guidelines for various County roads, cul-de-sacs, storm drain inlets, ditches, utility pole locations, channels, gates, underground trenches, vehicle barriers, swales, slope protection, and others. Any additional specifications required by County DOT shall also be adhered to by the applicant for grading plans.

These plans shall include geotechnical studies and designs appropriate for the site conditions encountered. The earthwork on these projects shall be constructed as engineered fill and will exceed the minimum relative density for liquefaction. Standard construction practices to be employed when wet areas are encountered would include construction of drainage systems to de-water springs and wet areas.

Mitigation Measure 4.7-6: The California Health and Safety Code requires that buildings be designed to resist stresses developed by earthquakes. Accepted seismic design criteria are presented in the Uniform Building Code (UBC), Chapter 23, regarding wood-frame buildings, and Chapter 16, Division III. Division III provides the design specifications for resist the effects of seismic ground motions; included in this Division are the following: criteria selection for structural systems (e.g., bearing walls, building frame, moment-resisting frame system, dual system) (§1627), engineering standards for minimum design lateral forces and related effects (e.g., the design for the shear forces at the base of structures, vertical distribution of force, and horizontal distribution of shear) (§1628); dynamic lateral-force procedures (§1629); lateral force on elements of structures, nonstructural components and equipment supported by structures (§1630); detail systems design requirements (§1631); and nonbuilding structures (§1632). Although wood-frame buildings of not more than two stories in height in unincorporated areas are exempt under the California Earthquake Protection Law, prior to the issuance of building permits for retail or roadway improvement projects in the MC&FP Area, or for Sundance Plaza or El Dorado Villages Shopping Center, proposed structures shall be designed to the design factors presented for UBC Zone 3, as a minimum. Final design standards shall be in accordance with the findings of detailed geologic and geotechnical analyses for the proposed building sites.

Mitigation Measure 4.7-10: Prior to issuance of grading permits for retail or roadway improvement projects located within the MC&FP Area, or for Sundance Plaza or El Dorado Villages Shopping Center, erosion and ground instability mitigation measures shall be designed in conformance to Chapter A33 of the 1994 edition of the Uniform Building Code (see Mitigation Measure 4.7-2 for description), the County of El Dorado Grading, Erosion and Sediment Control Ordinance (1991), and to El Dorado County grading standards found, principally, in the *County of El Dorado Design and Improvement Standards Manual* (El Dorado County 1990) Volume IV (Erosion Control Requirements and Specifications) and Volume V (Design Standard Details), and as specified by County DOT. Prior to the issuance of grading permits, grading design plans shall incorporate the findings of detailed geologic and geotechnical investigations. These findings shall include methods to control soil erosion and ground instability. Measures to control soil erosion include, but are not limited to, the following:

1. Uncemented silty soils are prone to erosion. According to requirements as set forth in

Section 402 (p) of the Clean Water Act as amended in 1987, erosion control measures (appropriate Best Management Practices) should be implemented during construction which conform to the National Pollution Discharge Elimination System, Storm Drain Standards, and local standards. Cut slopes and drainage ways within native material shall be protected from direct exposure to water run off immediately following grading activities. All collected runoff flow should outlet on an apron of crushed rip-rap to dissipate the energy of the runoff. Cut and fill surfaces, particularly embankment slopes, should be protected from sheet, rill and gully erosion by revegetation of exposed slopes. If revegetation can not be completed and established prior to the onset of the rainy season, erosion control matting should be stapled to the exposed slopes.

Any cut or fill slopes and their appurtenant drainage facilities shall be designed in accordance with Uniform Building Code guidelines. In general, soil slopes shall be no steeper than 2:1 (horizontal to vertical) unless authorized by a qualified professional. Slope angles shall be designed to conform to the competence of the material into which they are excavated.

2. Drainage facilities shall be lined as necessary to prevent erosion of the site soils immediately following grading activities.
3. During construction, trenches greater than 5 feet in depth shall be shored, sloped back at a 2:1 slope angle, or reviewed for stability by a qualified professional in accordance with the Occupational Safety and Health Administration regulations if personnel are to enter the excavations.
4. Rainfall shall be collected and channeled into an appropriate collection system designed to receive the runoff, minimize erosion, and convey the runoff off-site. Conduits intended to convey drainage water off site shall be protected with energy dissipating devices as appropriate, and in some areas potentially lined with an impermeable, impact-proof material.
5. Parking facilities, roadway surfaces, and buildings all have impervious surfaces which concentrate runoff and artificially change existing drainage conditions. Collection systems shall be designed where possible to divert natural drainage away from structures, to collect water concentrated by these surfaces, and to convey water away from the site in accordance with the National Pollution Discharge Elimination System, Storm Drain Standards, and El Dorado County standards.
6. Where structures are to be constructed between the bedrock exposed in a cut slope and engineered fill, mass grading may include sub-excavation of the bedrock portions of the building pads to a depth of 1 foot below the bottom of the footings and reconstruction of the pads with engineered fill.

Hydrology and Water Quality Mitigation Measures

Mitigation Measure 4.8-1: Prior to the approval of a tentative map, or for projects without maps, issuance of a building permit, a project applicant for retail development or roadway improvements in the MC&FP Area, including the project applicants for Sundance Plaza and El Dorado Villages Shopping Center projects, shall submit and obtain approval of the project drainage report by the El Dorado County Department of Transportation. This report shall demonstrate that post-development stormwater peak discharge levels from the project will remain at existing peak levels through the use of one or all of the following alternative mitigation measures. The drainage report shall be prepared by a Certified Civil Engineer and shall be in conformance with the El Dorado County Drainage Manual adopted by the Board of Supervisors in March 1995. The project applicant shall be financially responsible for his/her portion of stormwater drainage facility maintenance requirements and agreements. The drainage report shall include, at a minimum, written text addressing existing conditions, the effects of project improvements, all appropriate calculations, a watershed map, potential increases in downstream flows, proposed onsite improvements, and drainage easements, if necessary, to accommodate flows from the site.

- a) Design and construction of an onsite detention facility of adequate size to reduce peak discharge to pre-development levels. The detention facility may be incorporated into the parking lot design. If a detention facility is incorporated into the proposed parking lot, parking within the facility area shall be restricted during storm events through the placement of cones to ensure vehicles are not damaged by detained water. Permanent maintenance of the detention facility shall include semi-annual inspections to ensure facility integrity and debris removal as necessary.
- b) Design and construction of a regional detention facility of adequate size to reduce peak discharge to pre-development levels. The detention facility may serve as a regional facility for multiple sites. Permanent maintenance of the detention basin shall include semi-annual inspections to ensure facility integrity and debris removal as necessary.

and/or

- c) Improvements to existing storm drainage system to reduce peak discharge to pre-development levels. This may include up-sizing of pipes, culverts, etc., at downstream locations. Permanent maintenance of the drainage facilities shall include semi-annual inspections to ensure facility integrity and debris removal as necessary.

Mitigation Measure 4.8-2: New developments of generally 5 acres or greater are subject to a National Pollutant Discharge Elimination System (NPDES) permit. The purpose of the permit is to protect water quality from development that would discharge into Waters of the U.S. The need for an NPDES permit would be triggered with any application for development of five acres or greater in the MC&FP Area, and the development of Sundance Plaza and El Dorado Villages Shopping Center. In addition, private development projects are subject to the County of El Dorado Grading, Erosion and Sediment Control Ordinance (1991), which requires the submittal of an erosion control plan. The following mitigation measure is for the significant impact of short-term surface water quality degradation that would occur during the development of the MC&FP Area, and

the Sundance Plaza and El Dorado Villages Shopping Center sites as individual projects:

- a) Prior to issuance of a grading permit for a retail or roadway improvement project of 5 acres or greater in the MC&FP Area, or for Sundance Plaza or El Dorado Villages Shopping Center projects, the developer shall obtain from the California State Water Resources Control Board a General Construction Activity Stormwater Permit under the National Pollutant Discharge Elimination System (NPDES) and comply with all requirements of the permit to minimize pollution of stormwater discharges during construction activities.
- b) Prior to issuance of a grading permit for a retail or roadway improvement project in the MC&FP Area, or for Sundance Plaza or El Dorado Villages Shopping Center projects, the project applicant shall submit to the Resource Conservation District and the El Dorado County Department of Transportation, for review and approval, an erosion control plan consistent with the County's Grading, Erosion and Sediment Control Ordinance. The erosion control plan shall indicate that proper control of siltation, sedimentation and other pollutants will be implemented per NPDES permit requirements. The plan shall address storm drainage during construction and proposed BMPs (Best Management Practices) to reduce erosion and water quality degradation. The plan shall include a BMP monitoring program that provides for regular inspections to: 1) ensure proper installation of BMPs; 2) monitor the effectiveness of the BMPs; 3) ensure proper maintenance of the BMPs; and 4) determine if adjustment of the BMPs due to changed drainage patterns is required. All on-site drainage facilities shall be constructed to El Dorado County Department of Transportation specifications, as provided in El Dorado County's Drainage Manual (1995), Grading, Erosion and Sediment Control Ordinance (1991), and Design and Improvement Standards Manual (1990). BMPs shall be implemented throughout the construction process. The following BMPs will be implemented as necessary:

Soil Stabilization Practices

- ▶ Straw Mulching
- ▶ Hydromulching
- ▶ Jute Netting
- ▶ Revegetation
- ▶ Preservation of Existing Vegetation

Sediment Barriers

- ▶ Straw Bale Sediment Barriers
- ▶ Filter Fences
- ▶ Straw Bale Drop Inlet Sediment Barriers

Site Construction Practices

- ▶ Winterization
- ▶ Traffic Control
- ▶ Dust Control

Runoff Control in Slopes/Streets

- ▶ Diversion Dikes
- ▶ Diversion Sales
- ▶ Sediment Trap

Mitigation Measure 4.8-3: The following mitigation measure is for the significant impact of long-term surface water quality degradation that would occur after the retail development and roadway improvements in the MC&FP Area, and the Sundance Plaza and the El Dorado Villages Shopping Center as individual projects:

- a) The developers of retail projects in the MC&FP Area, and developers of Sundance Plaza and El Dorado Villages Shopping Center shall construct on-site detention basins. These basins shall be constructed at the commencement of grading, and be maintained throughout the construction period to receive stormwater runoff from graded areas to allow capture and settling of sediment prior to discharge to receiving waters.
- b) Prior to issuance of a grading permit for retail or roadway improvement projects in the MC&FP Area, and Sundance Plaza and El Dorado Villages Shopping Center, the project applicant shall develop a surface water pollution control plan (i.e., parking lot sweeping program and periodic storm drain inlet clearing) to reduce long-term surface water quality impacts. Parking lot sweeping shall occur on a weekly basis, and storm drain inlet clearing shall occur semi-annually. The plan shall also include the installation of oil, gas and grease trap separators in the project parking lot. Project plans will incorporate catch basin inserts and filters along with cleaning schedules. As specified under the Monitoring Program and Reporting Requirements sections of the NPDES General Permit, sampling of receiving waters with accompanying laboratory analysis will be conducted for typical stormwater constituents of concern (pH, Total Suspended Solids, Specific Conductance, Total Organic, Carbon, Oil and Grease, and Waste Oil Metals) during two storm events producing significant runoff during the wet season, which is defined as from October through April. The project applicant shall develop a financial mechanism, to be approved by the El Dorado County Department of Transportation, which ensures the long-term implementation of the program.

Biological Resources Mitigation Measures

Mitigation Measure 4.9-2:

- a) Prior to issuance of a grading permit for any MC&FP retail development, or roadway improvement projects, a qualified biologist will consult with USFWS to determine whether red-legged frogs could potentially occur on the project site.
- b) If the USFWS determines that there is no potential for the occurrence of red-legged frog on the project site, the species may be assumed absent and no further mitigation

is necessary.

- c) If USFWS determines that surveys are necessary to determine whether red-legged frogs could occur on the project site, a survey will be conducted in accordance with the methods outlined in *Guidance on Site Assessment and Field Surveys for California Red-legged Frogs* (USFWS 1997).
- d) Prior to issuance of a grading permit, a red-legged frog survey will be completed for the Sundance Plaza and the El Dorado Villages Shopping Center.
- e) The results of the red-legged frog survey will be summarized in a report to be provided to the USFWS Ecological Services Division, Sacramento Field Office. This report will also include additional information related to survey as described under USFWS protocol (USFWS 1997).
- f) If no red-legged frogs are found during the survey, and the survey results are acceptable to USFWS, this species will be presumed absent and no further mitigation will be necessary.
- g) If red-legged frogs are found, the project proponent will consult with USFWS under Section 7 or Section 10 to determine a future course of action, including whether incidental take authorization is needed. Through consultation and negotiations with USFWS, appropriate mitigation and avoidance measures will be determined and required to be implemented for the take authorizations.

Mitigation Measure 4.9-8:

- a) Prior to issuance of a grading permit for any MC&FP retail development or roadway improvement projects, and Sundance Plaza and El Dorado Villages Shopping Center, it will be determined whether grading or tree removal is proposed during the raptor nesting season (February 1 to August 31).
- b) If no grading or tree removal will occur during the raptor nesting season, no further mitigation will be necessary.
- c) If grading or tree removal is proposed during the raptor nesting season, a focused survey for raptor nests shall be conducted by a qualified biologist during the nesting season to identify active nests on the project site. The survey will be conducted no less than 14 days, and no more than 30 days prior to the beginning of grading or tree removal. The results of the survey will be summarized in a written report to be submitted to CDFG prior to the beginning of grading.
- d) If nesting raptors are found during the focused survey, no grading or tree removal will occur within 500 feet of an active nest until the young have fledged (as

determined by a qualified biologist) or until the project applicant receives written authorization from CDFG to proceed. If nest trees are unavoidable, they shall be removed during the non-breeding season.

Mitigation Measure 4.9-9:

- a) Prior to issuance of a grading permit for any MC&FP retail development or roadway improvement projects, and Sundance Plaza and El Dorado Villages Shopping Center, the project proponent shall submit a tree survey to the El Dorado County Planning Department for approval. A map of all oak trees to be removed or disturbed during project construction will be included with the tree survey. The tree survey will also include a determination of the existing canopy cover on the project site (as determined from base line aerial photography or by site surveys performed by a qualified licensed arborist or botanist) and a preservation and replacement plan.
- b) Oaks not approved for removal that are within 200 feet of the grading activity shall be protectively fenced 5 feet beyond the dripline and root zone of each oak tree (as determined by a certified arborist). This fence, which is meant to prevent activities that result in soil compaction beneath the canopy or over the root zone, shall be maintained until all construction activities are complete. No grading, trenching, or movement of construction equipment shall be allowed to occur within fenced areas. Protection for oaks trees on slopes and hillsides will include installation of a silt fence. A silt fence shall be installed at the upslope base of the protective fence to prevent any soil drifting down over the root zone.
- c) To ensure that proposed replacement trees survive, a mitigation monitoring plan, including provisions for necessary replacement of trees, will be incorporated into the preservation and replacement plan. Detailed performance standards will be included to ensure that an 80 percent survival rate is achieved over a 5-year period. Annual reports identifying planting success and monitoring efforts will be submitted to the El Dorado County Planning Department and CDFG. During monitoring, the following information will be evaluated: average tree height, percent of tree cover, tree density, percent of woody shrub cover, seedling recruitment, and invasion by non-native species. Temporary irrigation equipment will be installed to facilitate sapling survival during the first several years of growth. During the revegetation process, tree survival will be maximized by using deer screens or other maintenance measures as recommended by a certified arborist.
- d) If the existing canopy cover is less than 10 percent, no further mitigation will be necessary.
- e) If the existing canopy cover exceeds 10 percent, the project will be subject to the canopy cover retention and replacement standards presented under Policy 7.4.4.4 of the El Dorado County General Plan.

- f) Mitigation could occur on-site within the slope areas around the project perimeter and potentially within project landscaping, or for Sundance Plaza only, within the park or cemetery. Partial mitigation of this impact may also occur off-site potentially in open space areas of other large projects in El Dorado County, similar to the concept practiced in Serrano open space areas.

Mitigation Measure 4.9-10: Prior to issuance of a grading permit, for the MC&FP (excluding Sundance Plaza site) or roadway improvement projects, a determination, through the formal Section 404 wetlands delineation process, shall be made by a qualified biologist whether potential jurisdictional Waters of the United States, including wetlands are present on the project site.

NOTE: Item a) of Mitigation Measure 4.9-10 does not apply to El Dorado Villages Shopping Center.

- b) Prior to issuance of a grading permit, a formal wetland delineation shall be completed for the El Dorado Villages Shopping Center site.
- c) If wetlands on the site are determined to be jurisdictional and can be avoided, no further mitigation will be required.
- d) If jurisdictional Waters of the United States, including wetlands, and greater than 1/3 acre in size are present and would be filled as a result of the project, authorization of a Section 404 permit shall be secured from USACE and a Section 1600 agreement shall be secured from CDFG, as appropriate.
- e) As part of the permitting process, mitigation of impacts to jurisdictional Waters of the United States, including wetlands, will be identified and implemented. The acreage will be replaced or rehabilitated on a "no-net-loss" basis in accordance with USACE regulations. Habitat restoration, rehabilitation, and/or replacement shall be at a location and by methods agreeable to USACE. Habitat compensation will also be in accordance with El Dorado County which has adopted a "no-net-loss" policy under General Plan Policy 7.3.3.2; this policy allows wetland habitat compensation on- or off-site, but at a minimum 1:1 ratio. Also in accordance with General Plan Policy 7.3.3.2, a wetland study and mitigation monitoring program will be submitted to the County and concerned state and federal agencies (i.e., USACE, CDFG) for review prior to permit approval.
- f) All grading plans will include adequate setback for preserved seasonal and perennial drainages. Measures to minimize erosion and runoff into seasonal and perennial drainages that are preserved will also be included in all grading plans. Appropriate runoff controls such as berms, storm gates, detention basins, overflow collection areas, filtration systems, and sediment traps shall be implemented to control siltation and the potential discharge of pollutants into preserved drainages.

- g) Mitigation could occur on-site within on-site detention ponds, or other natural areas on the site, or for Sundance Plaza within the proposed park; or it could occur off-site within wetland mitigation banks such as the Sheridan Wildlands bank.

Cultural Resources Mitigation Measures

Mitigation Measure 4.10-1: Implementation of the following mitigation measure would reduce impacts related to the disturbance of known or unknown cultural resources, but not to a less-than-significant level.

NOTE: Items a) and b) of Mitigation Measure 4.10-1 do not apply to El Dorado Villages Shopping Center.

- c) If any prehistoric or historic artifacts, or other indications of cultural resources are found once project construction is underway, all work must stop within 20 meters (66 feet) of the find. A qualified archaeologist shall be consulted for an immediate evaluation of the find before resuming ground-breaking construction activities within 20 meters of the find. If the find is determined to be an important archaeological resource, the resource shall be either avoided, if feasible, or recovered consistent with the requirements of Appendix K of the State CEQA Guidelines.
- d) In the event of discovery or recognition of human remains in any location other than a dedicated cemetery, no further excavation or disturbance of a project site or any nearby area reasonably suspected to overlie adjacent human remains can occur until the County Coroner has been informed and determines that no investigation of the cause of death is required. If the remains are of Native American origin, the agency must solicit the Native American Heritage Commission to see whether that agency can identify descendants of the deceased Native American(s). If, within 24 hours of being notified by the Commission, such descendants offer the lead agency recommendations for treating or disposing of the remains and any associated grave goods, such recommendations should be followed, unless the landowner disagrees with the recommendation, in which case the Native American Heritage Commission shall mediate the dispute. If the Native American Commission was unable to identify a descendant, or the descendant fails to offer a recommendation within 24 hours after being notified by the Commission, or the Commission could not mediate a dispute between the descendants and the landowner to the latter's satisfaction, further work on the project may proceed, but the landowner must rebury the remains and any grave goods "with appropriate dignity on the property in a location not subject to subsurface disturbance."

Mitigation Measure 4.10-2: Implementation of the following mitigation measures would reduce potential impacts to "important archaeological resources" or "historical resources", but not to a less-than-significant level.

NOTE: Items a) and b) of Mitigation Measure 4.10-2 do not apply to El Dorado Villages

Shopping Center.

- c) To reduce potential impacts of the El Dorado Villages Shopping Center project on the Missouri Flat Ditch, but not to a less-than-significant level, the El Dorado Villages Shopping Center project applicant shall preserve as much of the existing alignment of the historic Missouri Flat Ditch as feasible by designing the proposed restaurant portion of the project, along with the adjacent parking, so that the ditch may be avoided and incorporated into adjacent landscaping.

Mitigation Measure 4.10-4:

Apply mitigation measures 4.10-1(c) and (d), and no further mitigation is available to reduce this impact to a less-than-significant level).

Fire Service Mitigation Measures

Mitigation Measure 4.11-3: Prior to the approval of final subdivision maps, or in the case of no subdivision, issuance of building permits, for retail projects in the MC&FP Area, the Fire District shall assess a developer fee to purchase and install signal light pre-emption devices on all Fire District response vehicles. The project applicant for Sundance Plaza shall pay the Fire District for the cost of purchase and installation of such devices, which shall be purchased and installed by the Fire District prior to the signalization of the Missouri Flat Road/Headington Road intersection, as proposed by the Sundance Plaza project applicant. Project applicants for subsequent discretionary projects shall reimburse the Sundance Plaza project applicant, on a fair-share basis, for the cost of such signal light pre-emption devices. Each project's fair-share shall be based on traffic contribution, as determined by the Fire District in consultation with the El Dorado County Department of Transportation.

Mitigation Measure 4.11-6: Implement Mitigation Measure 4.11-3. In addition, prior to approval of Improvement Plans, the project applicant shall be required to design infrastructure necessary to achieve fire flows as specified by the Diamond Springs-El Dorado Fire Protection District and EID.

Mitigation Measure 4.11-7: Implement Mitigation Measure 4.11-3 and no other mitigation is required.

Wastewater Mitigation Measures

Mitigation Measure 4.13-1: At the time of final map approval or, in those cases where subdivision maps are not proposed with the project, issuance of building permits for retail projects in the MC&FP Area, project applicants shall pay Facility Capital Charges as required by EID. The fees provide for the project's contribution to increased sewage flows at the wastewater treatment plant as well as infrastructure improvements that may be required as a result of the project's proportional increase in sewage flows.

Prior to the issuance of occupancy permits for retail projects in the MC&FP Area, the project

Hazardous Materials Mitigation Measures**Mitigation Measure 4.17-1:**

Note: Items a) through e) of Mitigation Measure 4.17-1 do not apply to El Dorado Villages Shopping Center.

- g) If the electrical transformers on the El Dorado Villages Shopping Center are to be relocated, removed, or otherwise disturbed, then prior to issuance of a grading permit, the applicant shall coordinate with PG&E to have them properly removed, and, if they were leaking, the vicinity around the transformers shall be properly remediated. Prior to issuance of a grading permit, a letter, prepared by PG&E, shall be submitted to the El Dorado County Environmental Management Department stating that the transformers have been properly removed.

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EXHIBIT "D"

CFD STRUCTURE

Exhibit [D]

DESCRIPTION OF THE MISSOURI FLAT
COMMUNITY FACILITIES DISTRICT

BACKGROUND

This Exhibit defines and describes the proposed Missouri Flat Community Facilities District (CFD) that is referenced in the Development Agreement. Once formed, the CFD will provide a flexible, market-accepted mechanism for issuing debt and providing a method for sharing costs and risks. The Missouri Flat CFD, along with other aspects of the proposed Missouri Flat road improvement funding, is described in the *Missouri Flat Master Circulation and Funding Plan (MC&FP)*.

The MC&FP was created by the County to implement the *County General Plan* adopted in 1996. As many as 20 policies contained in the *General Plan* are implemented by the MC&FP and related development and road improvements. The MC&FP establishes a master circulation (road improvement) program, including twelve specific road improvement projects organized into two phases of road improvements. The MC&FP also includes the policies and programs needed to pay for the road improvements.

The total MC&FP funding requirement estimated to be \$30 million (1996\$) will be paid, in part, with cash derived from the County's Traffic Impact Mitigation (TIM) Fee program, with the balance derived from CFD bond proceeds. The TIM Fee portion of funding reflects the proportional share of project costs based upon additional travel demand generated by new commercial development. The CFD portion of funding reflects the County's policy to eliminate existing traffic congestion in the Missouri Flat Area.

In a manner similar to other CFDs, any debt issued by the Missouri Flat CFD will be secured by a special tax lien upon properties within the CFD boundary; however, because the landowners and developers will be paying their proportional share of road improvement costs through the County's TIM Fee program, the CFD debt service will be funded, as specified in the individual Development Agreements, from a portion of the incremental sales taxes and property taxes derived from new commercial development in the Missouri Flat area. This funding will be allocated annually by the Board of Supervisors pursuant to an agreement between the CFD and the County and also the individual development agreements with retail commercial developers.

The preparation of the MC&FP included extensive and detailed market and financial analysis which evaluated the cash flow requirements associated with funding road improvements under a variety of development phasing and financing assumptions. The analysis also included detailed market analysis and forecasts of sales and property

taxes. The market analysis concluded that sufficient market demand presently exists for the currently proposed commercial retail projects, with most sales being derived from expenditures currently being made in Sacramento County by El Dorado County residents.

The nature of the financing proposed in the Financing Plan, involving significant issuance of debt, use of incremental future sales and property tax flows, and use of a land secured financing district (the *CFD*) creates a number of potential risks for both public and private participants. Recognizing this concern, the financial analysis has included both conservative assumptions and a number of risk management features. One such feature is a special reserve fund equaling a year of debt service in addition to the normal bond reserve fund that would derive from the bond issues. This fund will be built from incremental sales and property taxes accruing prior to the first bond issue.

The El Dorado County Board of Supervisors will form the Missouri Flat *CFD* following the certification of the Project EIR, adoption of the *MC&FP*, and adoption of the development agreements with the individual project proponents. The development agreements will stipulate the funding relationships between the County, the *CFD*, and the Developers/subsequent property owners. Initially, the *CFD* would contain only those properties that are the subject of current development proposals (i.e., Sundance Plaza, El Dorado Villages, and Walmart) totaling an estimated 733,000 square feet of retail space. Only these properties would initially be included in the *CFD* and be subject to the special tax. As the County processes additional commercial development proposals within the *MC&FP* Area, they would need to be added to the *CFD* as a means of securing the improvements required to resolve traffic deficiencies. All of the commercially designated properties in the Missouri Flat area over this time will be included in the *CFD*. Exceptions may be made for small properties and/or properties that require no discretionary approvals.

DESCRIPTION OF PROPOSED SPECIAL TAX FORMULA

The following narrative provides a description of how the Missouri Flat *CFD* Special Tax Formula would operate. As mentioned above, the special tax is a contingent source of funding in the event that sales tax performance for commercial retail properties fall below that necessary to support debt service. With projected "coverage" ratios in the range of 1.5, the likelihood that a net tax liability would exist is small.

1. TAXABLE SALES TARGETS AND MAXIMUM ANNUAL TAXES

Six categories of use will be reflected in the Rate and Method of Apportionment. These six classes of use will apply to each development parcel, as appropriate.

Retail Category	Average Retail Sales per square foot ¹ Performance Target	Maximum Annual Special Tax per square foot GLA ²
National Discount Retailer Stand-Alone ³	\$300.00	\$2.55
Home Improvement ⁴	\$240.00	\$2.05
Regional Retail (department stores and related "in line" shops) ⁵	\$220.00	\$1.90
Supermarket ⁶	\$150.00	\$1.30
Other Retail ⁷	\$160.00	\$1.35
Non-Retail Commercial ⁸	\$ 0.00	\$0.25

¹ Average Retail Sales per square foot reflect industry averages for the specified categories or retail uses. Actual sales performance of individual retail outlets within shopping centers may be higher or lower. Taxable Sales Targets for Original Parcels will be derived by multiplying Average Retail Sales Per Square Foot subject to State sales taxes by Gross Leaseable Area including all enclosed sales areas including outside garden sales area (GLA) as vested by the Development Agreements. Non-retail uses (financial institutions, etc.) will have a Maximum Annual Special Tax per square foot of \$0.25.

² Maximum Special Tax Levy will be calculated by multiplying the Performance Target by one percent (the local portion of State sales taxes). The product will be reduced by the Tax Rate Factor of .85, rounded to the nearest \$0.05 to establish the Maximum Special Tax to be applied to each square foot of GLA.

³ Includes big box, large membership club, and other off-price or high-value retailers such as Wal-Mart.

⁴ Includes Home Depot, Home Base, Orchard Supply, or other large home improvement/hardware stores, lumber yards, building material suppliers, etc.

⁵ Includes Target, Kmart, PriceCostco, Petsco, Ross Dress for Less, J. C. Penney's, Borders Books, Barnes & Noble, Bed and Bath, or other department stores, shoes, specialty apparel shops, jewelry stores, etc., which are typically found in regional malls.

⁶ Includes all grocery stores, including supermarkets, small produce and meat shops, etc.

⁷ Includes all other types of retail including drug stores, restaurants, small convenience stores, gas stations, video stores, beauty supply stores, service commercial such as nurseries, auto repair, etc.

⁸ Includes all other commercial, non-residential uses such as banks, professional offices, etc.

2. REPORTING

The property owner or retail operator will be required to provide taxable sales reports quarterly by submitting copies of State Board of Equalization (SBE) sales tax forms or receipts. The County will verify accuracy of the sales reports by comparison with quarterly SBE data provided by the County's retail data consultant. All sales tax reports and other retail sales information provided to the County would be kept confidential to the extent allowed by law.

3. ANNUAL TAX LEVY

Each year the County will levy the special tax upon taxable parcels within the CFD. The tax assigned to each taxable parcel will be based on the steps described below. The Special Tax liability will not be placed on the assessor's tax roll in the typical manner; rather, the County will "direct bill" for the special tax liability each year.

Step 1: The County will determine if taxable sales receipts and property tax revenues are adequate to meet the CFD debt service requirement for the payments due in the following calendar year. If the committed percentage of incremental tax revenues appears adequate to pay for debt service, then each parcel will receive a 100 percent credit against the maximum special tax and no payment will be due.

If the committed percentage of tax revenues are not sufficient to meet debt service and the special reserve fund balance is less than the amount necessary to meet the shortfall, then parcels not achieving their Taxable Sales Target will not receive 100 percent credit against the maximum special tax.

In determining the adequacy of the tax revenues for the following year, the County will review various factors, including:

- Status and draws on special reserve fund.
- Sales and property tax history.
- Status of improvement bond issues and changes in debt service schedules.

If there is insufficient current property and sales tax revenues to cover debt service, then:

Step 2: The County will review taxable sales reports provided by property owners and compare with SBE data provided by the County's retail data consultant.))

Step 3: The County will determine if each Original Parcel or Successor Parcel, as appropriate, independently met its Taxable Sales Target. As to each parcel that has met its Taxable Sales Target, there will be a 100 percent credit against the maximum special tax.

If there is insufficient current property and sales tax revenues, parcels that did not reach Taxable Sales Target will be identified, then:

Step 4: The County will determine the difference between Taxable Sales Target and Actual Taxable Sales during the prior four quarters for which data is available. The County will determine if factors causing the difference are likely to continue into future and, if so, in what degree.

Step 5: The County will determine the total current debt service allocable to each parcel that did not meet its Taxable Sales Target ("Underperforming Parcel"), and subtract from that amount the current property and sales tax revenues actually generated by the Underperforming Parcel. The County will determine the total current property and sales tax revenues left after paying the current debt service allocable to the parcels that did meet their Taxable Sales Target ("Excess Revenue"). The County will allocate the Excess Revenue and monies in the special reserve fund among the parcels in proportion to current property and sales tax revenues actually generated by each Underperforming Parcel. Any portion of the current debt service allocable to an Underperforming Parcel still remaining unpaid ("Unpaid Balance") will be payable in accordance with Step 6.

Step 6: The County will directly bill each Underperforming Parcel its Unpaid Balance determined in Step 5.

4. PAYMENT OF SPECIAL TAXES AND FORECLOSURE ACTION

If the County determines it is necessary to bill a property owner for the special tax, the bill will be sent out by October 1 of the calendar year in which the deficiency occurs.

Fifty (50) percent of the payment will be delinquent December 10 of the same year and 50 percent will be delinquent by April 10 of the following year.

Delinquent payments will be subject to standard county charges for delinquent tax payments.

If taxes are delinquent as of April 10, County will institute foreclosure proceedings within 90 days.

While special taxes are delinquent or foreclosure action is pending, the County will use the following sources in the prescribed order to fund debt service requirements:

- a. Committed sales and property tax revenues in excess of the debt service requirement (the coverage provided from other parcels meeting their Taxable Sales Targets).
- b. The special reserve fund.

- c. The bond reserve fund.

5. RECONCILIATION

If, after levying and billing the special tax, the County determines that there is adequate tax revenues to meet debt service requirements, the County will reimburse the property owner for any special taxes paid. This reconciliation is made on a year-by-year basis only; there is no carryover from one year to the next. Following the first year or two there generally will be no need for reconciliation since the amount of revenue available will be accrued in the prior year.

The determination of "adequate tax revenues" that enable the County to make the determination of the ability to pay debt service could include a revision in the taxable sales estimates, adjustments due to late reporting, payment of delinquent taxes, or proceeds from foreclosures sales.

6. ASSIGNMENT OF SPECIAL TAXES

a. Assignment of Special Taxes to Original Parcels

The County Chief Administrative Officer shall determine the Maximum Annual Special Tax applicable to parcels existing or shown in a pending subdivision map at the time the CFD is formed ("Original Parcels") or to parcels created after the formation of the CFD ("Successor Parcels") by applying the Maximum Annual Special Tax per square foot to the Gross Leaseable Area (GLA) that is approved for development by the County and vested in each Development Agreement, using one of the six retail use classifications identified in Section 1, above. The determination of use classification for each Original Parcel or Successor Parcel and the GLA shall be determined when the first building permit is issued for construction of a commercial building on such parcel.

b. Assignment of Maximum Special Tax to Successor Parcels.

In the event of a subsequent subdivision of an Original Parcel, the County shall assign the Maximum Special Tax to each Successor Parcel as follows:

- Determine whether the Successor Parcels are Taxable Parcels or Tax-Exempt Parcels.
- Calculate the percentage of each taxable Successor Parcel's GLA to the total GLA (square footage) to that of the Original Parcel; then,
- Multiply this percentage by the Maximum Special Tax assigned to the Original Parcel. This will be the new Maximum Special Tax for each Successor Parcel.

The sum of the Maximum Special Taxes for all new Successor Parcels will always equal the Maximum Special Tax for the previous Original Parcel.

- Maximum Special Tax assigned to Successor Parcels may be adjusted at the option of the Original Parcel Owner to reflect changes in commercial uses. For example, a Successor Parcel created from subdivision of an Original Parcel designated "Regional Retail" for the purpose of building a financial institution (bank) could be assigned the Maximum Annual Special Tax for the Non-Retail Commercial category; however, Maximum Annual Special Tax for the aggregate of the Successor Parcels must always equal the Maximum Annual Special Tax for the Original Parcel. This may mean that Maximum Annual Special Taxes for certain Successor Parcels exceed the rates shown in Item 1, above.

c. Allowable transfer of Special Tax

In the event that an Original or Successor parcel, through a loss of developable land, will have a higher Special Tax per acre of developable land than other Taxable parcels in the CFD, the revised Maximum Special Tax may be adjusted further by shifting the tax to other Taxable Parcels throughout the CFD and subject to the following provisions:

- (i) any decrease in one Taxable Parcel's Maximum Special Tax is offset by an equal increase in the Maximum Special Tax of another Taxable Parcel or Parcels to ensure that there is no net loss in total Maximum Special Taxes;
- (ii) all adjustments are agreed to by the affected property owners and the County and comply with the requirements of the Act; and,
- (iii) none of the transferred Special Taxes will be spread to Tax-Exempt Parcels.

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EXHIBIT "E"

TAXABLE SALES TARGETS

EXHIBIT 5**DESCRIPTION OF PROPOSED SPECIAL TAX FORMULA**

The following narrative provides a description of how the Missouri Flat CFD Special Tax Formula would operate. As mentioned above, the special tax is a contingent source of funding in the event that sales tax performance for commercial retail properties fall below that necessary to support debt service. With projected "coverage" ratios in the range of 1.5, the likelihood that a net tax liability would exist is small.

1. TAXABLE SALES TARGETS AND MAXIMUM ANNUAL TAXES

Six categories of use will be reflected in the Rate and Method of Apportionment. These six classes of use will apply to each development parcel, as appropriate.

Retail Category	Average Retail Sales per square foot ¹ Performance Target	Maximum Annual Special Tax per square foot GLA ²
National Discount Retailer Stand-Alone ³	\$300.00	\$2.55
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Supermarket ⁶	\$150.00	\$1.30
Other Retail ⁷	\$160.00	\$1.35
Non-Retail Commercial ⁸	\$ 0.00	\$0.25

¹ Average Retail Sales per square foot reflect industry averages for the specified categories or retail uses. Actual sales performance of individual retail outlets within shopping centers may be higher or lower. Taxable Sales Targets for Original Parcels will be derived by multiplying Average Retail Sales Per Square Foot subject to State sales taxes by Gross Leaseable Area including all enclosed sales areas including outside garden sales area (GLA) as vested by the Development Agreements. Non-retail uses (financial institutions, etc.) will have a Maximum Annual Special Tax per square foot of \$0.25.

² Maximum Special Tax Levy will be calculated by multiplying the Performance Target by one percent (the local portion of State sales taxes). The product will be reduced by the Tax Rate Factor of .85, rounded to the nearest \$0.05 to establish the Maximum Special Tax to be applied to each square foot of GLA.

³ Includes big box, large membership club, and other off-price or high-value retailers such as Wal-Mart.

⁴ Includes Home Depot, Home Base, Orchard Supply, or other large home improvement/hardware stores, lumber yards, building material suppliers, etc.

⁵ Includes Target, Kmart, PriceCostco, Petsco, Ross Dress for Less, J. C. Penney's, Borders Books, Barnes & Noble, Bed and Bath, or other department stores, shoes, specialty apparel shops, jewelry stores, etc., which are typically found in regional malls.

⁶ Includes all grocery stores, including supermarkets, small produce and meat shops, etc.

⁷ Includes all other types of retail including drug stores, restaurants, small convenience stores, gas stations, video stores, beauty supply stores, service commercial such as nurseries, auto repair, etc.

⁸ Includes all other commercial, non-residential uses such as banks, professional offices, etc.

Recording Requested by
and When Recorded Mail to:

FINANCING AGREEMENT
BY AND BETWEEN THE COUNTY OF EL DORADO AND
BURNHAM PACIFIC
RELATIVE TO THE DEVELOPMENT KNOWN AS
PROSPECTORS PLAZA SHOPPING CENTER

This Agreement ("Agreement") is entered into this 27th day of February, 2001, by and between the County of El Dorado, a political subdivision of the State of California, hereinafter "County"; BPP/Golden State Acquisitions, LLC., a Delaware limited liability company, hereinafter collectively "Landowner." *Board date 8/25/98*

Recitals

A. Property Description. Landowner has legal or equitable interests in the real property which is the subject of this Agreement ("Property"). The Property is developed as a shopping center known as the Prospectors Plaza Shopping Center (the "Center"). *A description of the property is attached hereto and as Exhibit "A" and incorporated herein by this reference.*

B. Project Description. Applicant intends to increase the commercial building area of the Center to accommodate the expansion and modernization of the existing grocery store in the Center (the "Project"). The Project will consist of remodeling and expanding the grocery store by approximately 9500 square feet. The expansion of the existing facility was previously approved by the County Board of Supervisors on August 25, 1998, by approval of PD97-06, which amended the prior approved Planned Development Permit for the Center.

C. Conditions of Approval. As conditions of approval PD97-06, the County required Landowner to enter into an agreement in recordable form which commits the Project to participate in a Community Facilities District ("CFD") which the County intends to form as part of the Master Circulation and Financing Plan ("MC&FP") prepared for the Missouri Flat area of the County. In addition, such conditions require that Landowner agree to pay a portion of the cost of the preparation of the MC&FP, such portion to be established on a pro-rata basis. This Agreement is intended by the parties to fully comply with the conditions of approval.

AGREEMENT

1. Participation in CFD. Landowner hereby consents to the formation of the CFD contemplated by the MC&FP and the imposition of the special tax as set forth in the MC&FP; provided that, the structure of the CFD and the Special Tax authorized is in material conformance with the CFD Structure, which assumes that bonds will only be

issued to the extent that projected debt service shall be covered from the tax increment generated from taxable sales within the Project and other participating development. County agrees that Landowner's participation in the CFD shall be limited to the expansion area of the Project, or approximately 9500 square feet and that any special tax which would be imposed shall be based on the floor area of the expansion area. Further, the special tax shall be based on the same formula, or a no less favorable formula, as applied to other participants in the CFD. Landowner waives and releases any claims or objections it may possess, or may hereafter possess, with respect to the formation and implementation of the CFD or the authorization and imposition of the proposed special tax; provided, that it is consistent with the CFD Structure and the limitation set forth herein. Landowner agrees, at the request of County, to take such steps as are necessary for the formation and implementation of the CFD and the authorization of the special tax called for by the MC&FP. Such actions may include, but are not limited to, executing any consent to, or petition for, or ballot in favor of formation of the CFD and the authorization of the special tax; waivers of any objections to any of the proceedings to form the CFD or authorize the special tax; and, waiver of all election procedures and rights with respect to authorization for the special tax. Landowner shall not file, or cause to be filed, any protest or objection to the formation of the CFD or the authorization of the special tax, and shall not file, or cause to be filed, any legal action challenging the formation of the CFD, the authorization, the imposition or collection of the special tax, or any other action to implement the CFD including, but not limited to, annexation of property to the CFD; provided the implementation of the special tax and the formation and implementation of the CFD are in compliance with the CFD Structure. Landowner acknowledges the desirability of forming the CFD and taking such other actions as are required to commence validation proceedings as soon as possible. Therefore, the CFD may be formed and the special tax authorized, or the Property annexed to the CFD, at any time after the Effective Date of this Agreement, upon request of County. The Landowner shall be required to take any action reasonably required under this Section regardless of whether development on the Project has occurred or is then proposed; provided, that the CFD Structure for the CFD provides that the special tax shall not accrue or be collected on the Property until building permits have been obtained and construction commenced.

Landowner shall provide to County a preliminary title report for the Property, and executed "lender's consents," consenting to the formation of the CFD and the authorization for the Special Tax from each lien holder having an interest in the property. The lender's consents shall be in a form reasonably acceptable to bond counsel for County. However, such documents need not be in recordable form.

2. Reimbursement to County of MC&FP Costs. Landowner hereby agrees to pay to the County a pro-rata share of the total cost of the preparation and processing of the MC&FP which is Six Hundred Forty-two Thousand Five Hundred Nineteen dollars and Eighty-four cents (\$642,519.84). The amount payable by Landowner is based on the floor area of the Project (9500 square feet) in proportion to the total projected commercial floor area within the Missouri Flat Planning area by the year 2015. In accordance with Board of Supervisors Resolution 295-2000 the fee is calculated as Forty-three cents (\$0.43) per square foot resulting in a total fee payable hereunder of Four Thousand Four Hundred Eighty-one dollars and Eighty-three cents (\$4,481.83). @ .47

4085 @ .43

3. Payment of TIM Fees. Landowner agrees that it shall pay TIM Fees in accordance with the fee schedule set forth in Board of Supervisors Resolutions Nos. 31-98 and 32-98, adopted on February 24, 1998, ("TIM Fee Schedule"), at the time of issuance of building permits for all or any portion of the Project. Applicant shall pay any increased TIM as provided below. Applicant agrees that any TIM Fees payable, up to the amounts set forth in the TIM Fee Schedule, shall be paid without offset, protest or objection. Applicant hereby waives and releases any claim it may possess, or may hereafter possess, with respect to the validity or applicability of the TIM Fees. Payment of such fees are a provision of this Agreement, and said waiver and release includes, but is not limited to, any claim that the fees exceed those which could be constitutionally or statutorily imposed on approval of the project. Applicant shall make no claim, and shall file no action, with respect to the validity or applicability of such fees. Payment of the fees shall be made notwithstanding any claim, protest, objection or legal action brought by any other person. Landowner shall not be entitled to participate in or utilize any program otherwise available from the County for deferral, partial payment, or payment in installments of TIM Fees, or any other such program other than full payment of TIM Fees at the time of building permit issuance.

3.1 Increased Fees. The County is considering an amendment to the TIM Fee Schedule in order to ensure compliance with Measure Y which amended certain portions of the County's General Plan and to ensure that the TIM Fee Schedule provides adequate revenues to finance needed roadway facilities. If such amendment has not occurred prior to the issuance of the building permit for the Project, at which time TIM Fees are customarily paid, Landowner agrees to pay additional fees in an amount which would have been paid had the amendment been effective prior to the time of building permit issuance, provided that, the TIM Fees so established are those in effect for all similarly situated commercial development within the Missouri Flat planning area. Landowner shall make such payment within thirty (30) days of demand by County. This obligation shall terminate five (5) years from the Effective Date, or upon payment by Landowner of an increased fee pursuant to this Section, it being the intent that the additional payment is to occur as a one time obligation and not a continuing obligation.

4. Satisfaction of Conditions and Issuance of Building Permits. County agrees that the execution and recordation of this Agreement fully satisfies the conditions of approval on PD97-06 and that the County shall issue building and other construction permits for improvements for the Project without further delay or obligation of Landowner other than the payment of customary fees or other obligations associated with the issuance of a building permit in the County.

5. Binding Covenants. The provisions of this Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall be binding upon and inure to the benefit of the parties and their successors in interest.

6. Term. The term of this Agreement shall commence on execution and recordation of this Agreement ("Effective Date") and shall extend for a period of five (5) years from that date, unless it is terminated, modified or extended by the mutual

written agreement of the parties. Provided however, any obligations undertaken by the parties pursuant to this Agreement which relate to Landowner's consent to participation in the CFD shall survive the expiration of this Agreement and shall not be affected in any way by such expiration.

7. 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, addressed to the persons and at the addresses shown below. The addresses for delivery of notice may be changed from time to time upon ten (10) days prior written notice. 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 County:

County of El Dorado
2850 Fairlane Court
Placerville, CA 95667
Attn: Planning Director

Notice to Landowner:

Burnham Pacific
100 Bush Street, 24th Floor
San Francisco, CA 94104
Attn: General Counsel

8. Authority to Execute. The person or persons executing this Agreement on behalf of Landowner warrant and represent that they have the authority to execute this Agreement on behalf of Landowner, and that they have the authority to bind Landowner to the performance of its obligations hereunder.

9. 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 sections and subsections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction.

10. 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 transaction 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.

11. Recording. The parties shall promptly execute this Agreement upon approval by the Board of Supervisors in such form as will allow the recordation of this Agreement. 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.

12. Severability. If any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, except as otherwise provided in this Agreement, the remainder of this Agreement, or the application of such term, covenant or conditions to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

DATE: January 19, 2001

LANDOWNER

BPP/GOLDEN STATE
ACQUISITIONS, LLC., a Delaware
limited liability company

By: BURNHAM PACIFIC OPERATING
PARTNERSHIP, LP., a Delaware limited
partnership, its Member-Manager

By: BURNHAM PACIFIC PROPERTIES,
INC., a Maryland corporation, its
General Partner

By: [Signature]
KEVIN CAVANAUGH

DATE: February 27, 2001

COUNTY OF EL DORADO

By: [Signature]
PENNY HUMPHREYS
Chairman
Board of Supervisors

ATTEST:

DIXIE L. FOOTE
Clerk of the Board of
Supervisors

By: [Signature]
Deputy Clerk
2-27-2001

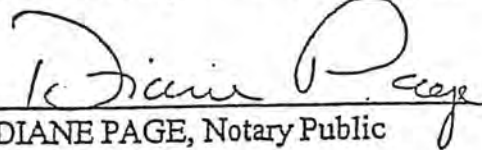
APPROVED AS TO FORM:

By: [Signature]
LOUIS B. GREEN
County Counsel

STATE OF CALIFORNIA)
County of El Dorado)

On February 27, 2001, before me, DIANE PAGE, Notary Public, State of California, personally appeared PENNY HUMPHREYS, Chair of the Board of Supervisors of the County of El Dorado, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


DIANE PAGE, Notary Public
State of California



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Francisco

} ss.

On 1/24/01

Date

, before me, P.M. Evans

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

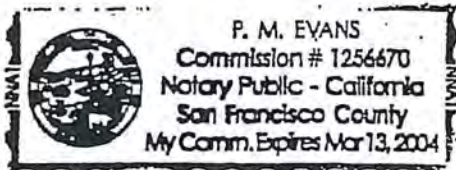
personally appeared

Kevin Cavanaugh

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

P.M. Evans

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

EXHIBIT A

Legal description of Shopping Center

PARCEL NO. 1:

A portion of the Northeast quarter of Section 23, Township 10 North, Range 10 East, MDB&M., more particularly described as follows:

Parcel 1, as shown on that certain Parcel Map filed in the office of the County Recorder, County of El Dorado, State of California, on May 26, 1982, in Book 30, of Parcel Maps, at page 149; and as corrected by Certificate of Correction recorded July 20, 1982, in Book 2090 of Official Records, at page 473.

PARCEL NO. 2:

A portion of the Northeast quarter of Section 23, Township 10 North, Range 10 East, MDB&M., more particularly described as follows:

Parcel 2, as shown on that certain Parcel Map filed in the office of the County Recorder, County of El Dorado, State of California, on May 26, 1982, in Book 30, of Parcel Maps, at page 149; and as corrected by Certificate of Correction recorded July 20, 1982, in Book 2090 of Official Records, at page 473.

PARCEL NO. 3:

A portion of the Northeast quarter of Section 23, Township 10 North, Range 10 East, MDB&M., more particularly described as follows:

Parcel 3, as shown on that certain Parcel Map filed in the office of the County Recorder, County of El Dorado, State of California, on May 26, 1982, in Book 30, of Parcel Maps, at page 149, and corrected by Certificate of Correction, recorded July 20, 1982, in Book 2090 of Official Records, at page 473.

1221



RECORDING REQUESTED BY

Board of Supervisors

WHEN RECORDED MAIL TO:

NAME:

MAILING BOARD OF SUPERVISORS
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ZIP CODE



El Dorado, County Recorder
William E. Schultz Co Recorder Office

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DEVELOPMENT AGREEMENT - SUNDANCE PLAZA - BY AND BETWEEN THE
COUNTY OF EL DORADO, PROSPECT INVESTMENT COMPANY, EL DORADO LAND,
LTD., AND SUNDANCE MISSOURI FLAT, LLC.

**RECORDER'S MEMO: Legibility
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DEVELOPMENT AGREEMENT

BY AND BETWEEN THE COUNTY OF EL DORADO,

PROSPECT INVESTMENT COMPANY, EL DORADO LAND, LTD., AND

SUNDANCE MISSOURI FLAT, LLC

RELATIVE TO THE DEVELOPMENT KNOWN AS

SUNDANCE PLAZA

This Development Agreement ("**Development Agreement**") is entered into this 15th day of DECEMBER, 1998, by and between the County of El Dorado, a political subdivision of the State of California, hereinafter the "**County**", Prospect Investment Company, a California limited partnership, and El Dorado Land, Ltd., a California limited partnership, hereinafter collectively "**Landowner**", and Sundance Missouri Flat, L.L.C., a California limited liability corporation, hereinafter "**Applicant**", Landowner and Applicant being referred to herein collectively as "**Developer**", pursuant to the authority of Sections 65864 *et seq.* of the Government Code of the State of California (the "**Development Agreement Statute**").

Recitals

A. Authorization. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Statute which authorizes the County and any person having a legal or equitable interest in real property to enter into a development agreement, establishing certain development rights in the property which is the subject of a development project application. In addition, a development agreement allows the County and such an applicant to voluntarily undertake obligations which are mutually beneficial but which otherwise could not be imposed upon the applicant as a condition of project approval, nor required of the County. It is the intent of the parties that the obligations contained herein are undertaken voluntarily for the mutual benefit of the parties, and are not imposed as conditions of approval of any project nor as exactions.

B. Property Description. Landowner and Applicant have legal or equitable interests in the real property which is the subject of this Development Agreement ("**Property**"). The Property consists of approximately 72.7 gross acres as shown on Exhibit "A" and described in Exhibit "B" attached hereto and incorporated herein by reference. As of the Effective Date (as defined in Section 1.D below) Landowner owns in fee the property identified as Assessor Parcel Nos. 327-120-19, 327-120-20, 327-120-21, 327-120-22, 327-100-04, and 327-110-06 on Exhibit "A" (the "**Landowner Parcels**"). Applicant owns in fee the remainder of the Property (the

"Applicant Parcels") and has entered into an agreement to purchase, or holds an option to purchase, the Landowner Parcels.

C. Project Description. The Property is located within the Missouri Flat Area (Planned Community #5) of the County. The Sundance Plaza Project (the "Project") consists of a 72.7 gross-acre site, including 3.7 acres to extend Headington Road from Missouri Flat Road to El Dorado Road, 0.51 acres of the Missouri Flat Cemetery, and 67.143 acres to be divided into 30 parcels (Lots 7-30 in Phase 1 and 1-6 in Phase 2). The Property is bordered by Missouri Flat Road and Prospector's Plaza to the east and Highway 50 to the south.

As is depicted on Exhibit "A", Developer intends to develop the Property, in two phases, for a maximum of 535,000 gross square feet of retail development. In the first phase, Developer will develop a shopping center that will provide approximately 394,278 gross square feet of retail development, including six anchor stores, a Target store, an office supply store, three shops and several smaller stores on approximately 57.53 acres of land. The application for the Development Plan for this first phase has been submitted to the County for approval. Although the application for the Development Plan of the second phase has not yet been submitted for approval, a preliminary site plan has been prepared and submitted to the County, pursuant to which Developer plans to develop a convenience center that will provide approximately 139,872 gross square feet of retail development, consisting of 1 major tenant, two anchors, two shops and a free-standing pad building on approximately 9.61 acres of land.

Phase 1 of the Project will provide a total of 2,129 parking spaces. Phase 2 is anticipated to provide 613 parking spaces, for an overall project total of 2,742 spaces. The existing Missouri Flat Cemetery would remain in its current location in approximately the center of the Sundance Plaza site.

The Project is subject to "Conditions of Approval" (including CEQA mitigation measures) which are attached hereto as Exhibit "C" and incorporated herein by reference (the "Sundance Conditions of Approval"). As further consideration for the agreements of the County in this Development Agreement, Developer agrees to take all steps reasonable necessary to satisfy each of the Sundance Conditions of Approval.

D. Project Background and Approvals.

1. Environmental Impact Report ("EIR"). In accordance with the California Environmental Quality Act ("CEQA"), on November 24, December 8, and December 15, 1998, the Board of Supervisors held a duly noticed and conducted public hearing. At the conclusion of these hearings, on December 15, 1998, the Board of Supervisors certified the EIR as adequate and complete, made specific findings, adopted a Statement of Overriding Considerations, and adopted a Mitigation Monitoring and Reporting Program ("MMRP").

2. Approved Land Use Entitlements. Following review and recommendation by the County Planning Commission, the Board of Supervisors has approved the following land use entitlements for the Property and in furtherance of the Project ("**Project Approvals**"):

- a. Rezone Z97-22 adopted by Ordinance 4520;
- b. Planned Development PD97-11 approved by motion of the Board of Supervisors on December 15, 1998 ;
- c. Ordinance No. 4521, adopting this Development Agreement DA98-01 ("**Adopting Ordinance**"); and
- d. Tentative Parcel Map P97-17 approved by motion of the Board of Supervisors on December 15, 1998.

E. Missouri Flat Road Master Circulation and Funding Plan; Development Agreement Goals. The Project is located on Missouri Flat Road, north of Highway 50, in the unincorporated area of the County of El Dorado. Missouri Flat Road, its interchange at Highway 50, and surrounding roadways currently are impacted by existing traffic which causes those roadways to operate at or near Level of Service F. Future development in the area of Missouri Flat Road, including the Project, will generate additional traffic which, if not mitigated, will worsen traffic congestion conditions on Missouri Flat Road and surrounding areas.

It is not feasible to address the impacts of future development without also addressing current deficiencies due, in large part, to the fact that the crux of the problem is the Missouri Flat Road Overcrossing/Interchange at Highway 50, which was not designed for the volumes of traffic that it currently experiences. The roadway improvements needed to address current deficiencies are currently unfunded. The Project, when combined with other planned commercial development in the Missouri Flat Area of the County, provides funding, through payment of Traffic Impact Mitigation ("**TIM**") Fees, for the roadway improvements needed for the Project and further provides a source of funds, in the form of incremental tax revenue, to finance the roadway improvements needed to overcome current deficiencies. Therefore, the roadway improvements needed to address current deficiencies, and to mitigate the future impacts of the Project, are integrally related.

Policy 2.1.4.8 of the El Dorado County General Plan calls for the adoption of a "specific plan, redevelopment plan, or a master circulation and funding plan" for the Missouri Flat Area by the County and restricts discretionary approvals of development projects in that area pending such adoption. The County, Developer and proponents of two other development projects in the Missouri Flat Area, El Dorado Villages and Wal-Mart, have cooperated in, and provided funding for, the development of such plan which is referred to as the Missouri Flat Area Master Circulation and Funding Plan ("**MC&FP**"). Following review and recommendation by

the County Planning Commission, the MC&FP was adopted by the Board of Supervisors on December 15, 1998.

The MC&FP identifies those traffic mitigation improvements needed to restore and maintain Level of Service E or better on Missouri Flat Road and surrounding roadways, taking into consideration both existing deficiencies in light of current traffic, and projected traffic impacts of anticipated new development. It also details a comprehensive funding program to accomplish those improvements which requires cooperation and coordination by the County and project applicants in the area. The funding plan relies primarily on two sources of funding for the improvements. One is use of traffic impact mitigation fees paid by new development in the TIM Fee Area. This source of funding ultimately will account for approximately forty-eight percent 48% of the total cost of all the improvements. The cost allocation from each funding source for individual improvements varies based on the nature and location of the improvement. The other source of funds is the use of a portion of the incremental property and sales tax revenues which will be generated by new development in the Missouri Flat Area. However, in order to effectively capitalize that projected cash flow, it is proposed that this second funding mechanism be secured by a special tax on properties in the area as they develop implemented through the establishment of a Community Facilities (Mello-Roos) District ("CFD"), which would secure bonds to be issued.

A central purpose of this Development Agreement is to provide the mechanism whereby County and Developer agree to the implementation of the MC&FP and create the binding obligations necessary to allow it to move forward. In particular, in consideration of the County's agreement to devote a certain portion of the incremental tax revenues for these purposes, Developer agrees to assist in securing such financing by agreeing to the formation of a Community Facilities District and to the authorization of a special tax in conformance with the terms of this Development Agreement and the MC&FP.

F. General Plan Consistency. The Board of Supervisors hereby finds this Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the County's General Plan, and, without limitation, that it carries out the purposes of Policy 2.1.4.8. Furthermore, the Board of Supervisors has reviewed the provisions of the MC&FP and this Development Agreement, and has determined that both are consistent with the provisions of Measure Y, which was approved by the voters of the County of El Dorado at the general election on November 3, 1998. The Board of Supervisors also finds and determines that approval of the MC&FP and this Development Agreement do not require voter approval pursuant to the terms of Measure Y.

G. Commitment of the Parties. Developer shall have a vested right to develop the Project in accordance with the terms and conditions of this Development Agreement. County, at the request of Developer, intends to cooperate with and assist Developer in development of the Project in the manner set forth in this Development Agreement. Development of the Project requires a major investment by Developer in public facilities, substantial front-end investment in

on-site and off-site improvements, and substantial commitment of Developer's resources to achieve the public purposes and benefits of the Project and the MC&FP for the County. The contributions of the Project to finance, and to provide a source of funding for, public facilities and dedications of land for public benefit are key elements of consideration for County's execution of this Development Agreement. County and Developer recognize and agree that, but for Developer's contributions to mitigate the impacts arising as a result of development entitlements granted pursuant to this Development Agreement, as well as existing deficiencies, County would not approve the development of the Property as provided by this Development Agreement. County's approval of the Project as provided herein is in reliance upon and in consideration of Developer's agreement to make contributions toward the cost of public improvements, as herein provided, to mitigate the impacts of the Project and existing deficiencies. Developer acknowledges that although funding provided through tax increment is based upon existing traffic deficiencies, in fact, the impacts of the Project cannot be mitigated without addressing those existing deficiencies, thereby resulting in Developer's willingness to participate in the financing of that portion of the funding.

County recognizes and has determined that the granting of vested development rights and assurances to Developer in accordance with the Development Agreement Statute will assist Developer in undertaking the development of the Project and thereby achieve the public purposes and benefits of the Project and the MC&FP. But for said commitments on the part of the County, Developer would not enter into this Development Agreement nor develop the Project.

H. Development Agreement Ordinance. County and Developer have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Ordinance of the County of El Dorado, Ordinance No. 3300 ("**Development Agreement Ordinance**").

I. Environmental Mitigation. The parties understand that the EIR was intended to be used in connection with each of the Project Approvals issued subsequent to certification of the EIR and any additional approvals hereafter needed for the Project ("**Subsequent Approvals**"). Consistent with other CEQA policies and requirements applicable to tiered EIR's, County agrees to use the EIR in connection with the processing of any Subsequent Approvals to the maximum extent allowed by law and not to impose on the Project any environmental mitigation measures unless required by CEQA to address impacts not considered by the EIR, nor to impose other conditions of approval other than those specifically imposed by the Project Approvals and the MMRP, or required or allowed by Applicable Law (as defined in Section 2.C.1 of this Development Agreement). In addition, to the extent consistent with CEQA policies and requirements applicable to tiered EIR's, the County agrees to use the EIR in connection with the processing of Subsequent Approvals to the maximum extent allowed by law. Without limiting the generality of the foregoing, in processing Subsequent Approvals, County agrees to apply the statutory and other exemptions afforded by CEQA, including, but not limited to, CEQA Guidelines Section 15268 and 15315, when appropriate under CEQA.

J. Project Benefits. County and Developer desire that the development of the Project pursuant to this Development Agreement will result in significant benefits to County and Developer by providing assurances to Developer that it will have the ability to develop the Property in accordance with this Development Agreement and providing assurances to County that the Property will be developed in accordance with the County's General Plan. Consistent with this desire, County has determined that the Project presents certain public benefits and opportunities which are advanced by County and Developer in entering into this Development Agreement. This Development Agreement will, among other things, (1) provide tax increment revenue for construction of roadway improvements necessary to mitigate existing deficiencies in traffic level of service, (2) reduce uncertainties in planning and provide for the orderly development of the Project, (3) strengthen the County's economic base and provide long-term jobs, in addition to short-term construction jobs, and (4) generate substantial revenue for the County and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

NOW, THEREFORE, in further consideration of the above recitals, all of which are expressly incorporated into this Development Agreement, and the mutual promises and covenants of the parties contained in this Development 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.A. Binding Covenants. The provisions of this Development Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall be binding upon and inure to the benefit of the parties and their successors in interest.

1.B. Interest of Landowner. Landowner is the owner of the Landowner Parcels, which is the only portion of the Property not currently owned by Applicant. The Landowner Parcels are subject to a purchase agreement and to an option agreement by which Landowner has agreed to sell the Landowner Parcels to Applicant. Landowner acknowledges that County requires it to execute this Development Agreement so that the whole of the Property will be subject to this Development Agreement.

1.C. Interest of Applicant and Landowner. Developer intends to hold a fee interest in the Property at all times necessary to the performance of its obligations hereunder and that all other persons holding legal or equitable interests in the Property are to be bound by this Development Agreement.

Notwithstanding anything set forth in this Development Agreement to the contrary:

a. The Property shall be subject to this Development Agreement, and any development of any portion of the Property shall be subject to and in accordance with the terms of this Development Agreement.

b. Neither Applicant, nor Landowner, are obligated by the terms of this Development Agreement to affirmatively act to develop all or any portion of the Property, pay any sums of money, dedicate any land, indemnify any party, or to otherwise meet or perform any obligation with respect to the development of the Property, except and only insofar as is required by County as a condition to the development of any portion of the Property owned by them, and only as such act or obligation is related to the subject party's development of that portion of the Property. Applicant and Landowner are not relieved of any obligations hereunder to give notice to County of any matters required hereunder, to obtain an assumption of the obligations of this Development Agreement from any assignee, to cooperate and share information with County, or otherwise perform acts not directly related to development of the Property.

c. Notwithstanding the provisions of Section 1.C.b. above, Developer shall perform, at the request of County, any of the acts called for in Section 5.A.4. of this Development Agreement whether or not development on the Property is proposed; provided, however, that the CFD Structure does not permit actual collection of any special tax on the Property until development occurs.

1.D. Term. The term of this Development Agreement shall commence on the Effective Date of the ordinance authorizing the approval and execution of this Development Agreement ("Effective Date") 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 Development Agreement or by the mutual written agreement of the parties. Any obligations undertaken by the parties pursuant to this Development Agreement which affects the security or payment of any CFD Bonds issued in accordance with this Development Agreement and secured by the special tax on the Property, including, but not limited to, Developer's consent to participation in the CFD and County's execution of a contribution agreement with the CFD, shall survive the expiration of this Development Agreement and shall not be affected in any way by such expiration, notwithstanding Section 17.85.016 of the Development Agreement Ordinance.

1.E. Assignment. Developer, and any subsequent assignor, 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 Development Agreement; provided, however, that any such sale, mortgage, hypothecation, assignment or transfer shall include the assignment of the rights, duties, and obligations arising under or from this Development Agreement applicable to the Property or portions thereof being assigned, transferred or sold, and the acceptance by the assignee of such rights, duties and obligations. Such assignment and assumption shall be in writing. Developer, and any subsequent assignor, shall notify County in writing of any such assignment within thirty (30) days after such assignment. The notice shall include the name and address of the assignee, and a description of

the property acquired. The name and address in the notice shall be deemed to be the location for delivery of notices pursuant to Section 1.H. below, unless an alternate address for delivery is specified in writing. County shall have no obligation to provide future notice to any assignee if the above notice is not given. Developer, and any subsequent assignor, shall also provide County with a copy of the written assignment and acceptance. Any and all successors and assignees of Developer shall have all of the same rights, benefits, and obligations of Developer under this Development Agreement.

1.F. Amendment of Development Agreement. This Development Agreement may be amended from time to time by mutual written consent of the County and the owner of the Property, or portion 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, that no amendment shall be made affecting Developer's obligations to participate in the MC&FP funding plan in a manner which would increase the liability, or decrease the security, of any other participating landowner without the written consent of all such affected landowners. Any amendment to this Development Agreement shall be operative only as to those specific portions of this Development Agreement expressly subject to the amendment, with all other terms and conditions remaining in full force and effect without interruption.

1.G. Project Approval Amendments. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:

1.G.1. Administrative Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval (other than this Development Agreement) or for a Subsequent Approval, the Planning Director or his designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with Applicable Law (other than that portion of Applicable Law sought to be amended) and this Development Agreement. If the Planning Director or his designee finds that the proposed amendment or modification is both minor and consistent with Applicable Law (other than that portion of Applicable Law sought to be amended) and this Development Agreement, the amendment or modification shall be determined to be an "Administrative Amendment" and the Planning Director or his designee may, except to the extent otherwise required by law, approve the Administrative Amendment without notice and public hearing. For the purpose of this Section 1.G.1 and by way of example, lot line adjustments, changes in pedestrian or bicycle paths, subdivision amendments which will not have a substantial or material impact on circulation within the Property or from the Property, minor changes in landscaping, variations in the location or design of buildings that do not substantially alter the design concepts of the Project, and variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, may be treated as Administrative Amendments.

1.G.2. Non-Administrative Amendments. Any request by Developer for an amendment or modification to a Project Approval (other than this Development Agreement) or a Subsequent Approval which is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to Applicable Law (other than Section 1.G.1, above).

1.G.3. Relationship to Amendments to Development Agreement. Administrative Amendments, and any Non-Administrative Amendment of a Project Approval or Subsequent Approval, which is in conformity with Applicable Law and this Development Agreement, and is not inconsistent with the uses and fundamental concepts of the Project Approvals, as determined by County, shall not require an amendment to this Development Agreement and shall automatically be deemed to be incorporated into the Project and vested under this Development Agreement; provided, that any such amendments are not inconsistent with and do not modify express provisions of this Development Agreement, do not change the proposed use of the Project as established in the Project Approvals, and do not significantly increase the total floor area of the proposed uses on the Property.

1.II. Notices. All notices required or provided for under this Development Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, addressed to the persons and at the addresses shown below. The addresses for delivery of notice may be changed from time to time upon ten (10) days prior written notice. 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: Planning Director
Copy to:	County of El Dorado 330 Fair Lane Placerville, CA 95667 Attn: Chief Administrative Officer
Notice to Landowner:	Prospect Investment Company and El Dorado Land Ltd. c/o Mr. John Johnson 5301 Grassy Run Road Placerville, CA 95667
Notice to Applicant:	Sundance Missouri Flat, LLC 1241 Hawks Flight Court El Dorado Hills, CA 94762

Attn: Dave Thuleen

1.I. Definitions. The following definitions shall govern usage in this Development Agreement.

1.I.1. "Community Facilities District." "CFD" or "Mello-Roos District" means the community facilities district to be formed under the Mello-Roos Community Facilities Act of 1982 ("Mello-Roos Act"), California Government Code Sections 53311, *et seq.*, pursuant to the MC&FP and this Development Agreement for the purpose of funding MC&FP Improvements.

1.I.2. "CFD Bonds" or "Bonds" means those bonds to be issued by the CFD under the Mello-Roos Act for the purpose of funding MC&FP Improvements. Such Bonds shall be obligations of the CFD, secured by the Special Tax to be authorized on properties proposed for development within the Missouri Flat Area pursuant to this Development Agreement, or otherwise. Such Bonds shall not be general obligations of the County, nor shall they be secured by any source of revenue or funds of the County other than the Special Tax.

1.I.3. "CFD Special Tax" or "Special Tax" means a special tax to be enacted by the CFD, which is consistent with the CFD Structure, for the purpose of securing CFD Bonds to be issued for the purpose of funding MC&FP Improvements. Developer is required to consent to authorization of the CFD Special Tax pursuant to Section 5.A.4 of this Development Agreement.

1.I.4. "CFD Structure" means those certain characteristics of the CFD and the CFD Special Tax which are conditions to Developer's obligations to consent to, join or annex the Property to the CFD, or to take other actions pursuant to Section 5.A.4. below. The CFD Structure, which sets forth those conditions, is attached hereto as Exhibit "D" and incorporated herein by this reference. The CFD Structure does not contain all of the terms and conditions which will have to be set forth for purposes of forming the CFD, developing the actual tax formula, and authorizing the Special Tax. County may structure the CFD and the Special Tax as it deems appropriate; provided, however, that it is consistent with the CFD Structure.

1.I.5. "El Dorado Villages Project" means a proposed development of a retail shopping center identified by the County as project number PD97-12/DA98-02.

1.I.6. "Environmental Impact Report" or "EIR" means the Environmental Impact Report for the Missouri Flat Area MC&FP and Sundance Plaza and El Dorado Villages Shopping Center Projects, State Clearinghouse No. 97092074. "Draft EIR" refers to the draft EIR dated April, 1998.

1.I.7. "Lucky's Expansion Project" means a proposed expansion of the Lucky's supermarket located in the Prospector's Plaza Shopping Center identified by the County as project number PD97-06..

1.1.8. "MC&FP Adoption Date" means December 15, 1998.

1.1.9. "MC&FP Improvements" means all of those certain roadway improvements proposed to be constructed pursuant to the MC&FP and identified as Phase I Roadway Improvements on page 3-25 of the Draft EIR; except that the construction of a 2-lane Headington Road, intersection improvements at Headington Road/El Dorado Road, and signalization and ramp improvements at the El Dorado Road interchange with Highway 50 shall not be included in the MC&FP Improvements, in that the use of Tax Increment Revenues for such improvements is not approved. It should be noted that the Draft EIR and the draft MC&FP defined both Phase I and Phase II MC&FP Improvements. In the review process, the County determined to approve only Phase I of the MC&FP. Therefore, those improvements previously referred to in various documents as Phase I Improvements are referred to herein as MC&FP Improvements, as modified.

Although for planning and study purposes, specific improvements have been identified as MC&FP Improvements and, in some cases, specific improvement design has been considered, the actual MC&FP Improvement may be those specifically identified or those which are functionally equivalent improvements and design.

1.1.10. "Missouri Flat Area" means the geographic area within the County identified as the Missouri Flat Area on Exhibit 3-3 (Proposed Missouri Flat Area Master Circulation and Funding Plan Area and Vicinity) at page 3-16 of the Draft EIR.

1.1.11. "Missouri Flat Area Master Circulation and Funding Plan" or "MC&FP" means that certain planning and policy document adopted by the Board of Supervisors of County on December 15, 1998.

1.1.12. "Missouri Flat Area Development" means the initial private retail use projected to develop in the Missouri Flat Area which will be sufficient to secure the funding of the MC&FP Improvements. Considering currently pending proposals, this is expected to consist of approximately 733,000 square feet of private retail use which is expected to occur by approximately the year 2005. Pending development proposals which, if approved and constructed, would comprise the Missouri Flat Area Development include the El Dorado Villages Project, the Wal-Mart Project, the Sundance Plaza Project (Phase I for which Project Approvals applications have been made), the Raley's Project, and the Lucky's Expansion Project. Additional development may be treated as Missouri Flat Area Development by County for funding purposes under the MC&FP if deemed to enhance the funding program. Although several pending projects have been identified as potentially comprising Missouri Flat Area Development, the MC&FP is designed to function regardless of the identity of specific development which proceeds. Therefore, Missouri Flat Area Development may consist of any development which would generate Projected Annual Taxable Sales (as that term is defined in Section 1.1.15, below) equal to or greater than that of the proposed projects specifically identified.

1.1.13. "Pending Development" means proposed non-residential development within the Missouri Flat Area which meets all of the following criteria:

- a. A specific use has been proposed sufficient to allow its traffic impacts to be assessed, and sufficient to allow an estimate of the anticipated Taxable Sales Targets to be calculated.
- b. The proposed development has obtained all discretionary approvals required from the County, but need not have obtained ministerial approvals such as building permits.
- c. The proposed development has obtained, or has provided reasonable evidence that it can obtain, all required discretionary approvals from other governmental agencies, and can satisfy the requirements of responsible agencies such as the Army Corps. of Engineers with respect to wetlands issues, and utility purveyors with respect to the availability of adequate utility infrastructure in the area of the proposed development.
- d. Satisfactory evidence is provided that the proposed buildings will be owner-occupied, or letters of intent, or similar business letters or written expressions of interest customarily given by retail tenants in connection with project financing, from tenants which will occupy approximately 50% of the project, including any anchor tenants which will be required for proceeding with the development.
- e. Satisfactory evidence is provided of the availability of financing for the project. Such evidence may consist of any of the following, or such alternative evidence as may be deemed by County to be substantially equivalent: (1) preliminary or conditional financial commitments for construction or take-out financing from qualified lending institutions; (2) satisfactory evidence that the project proponent intends to, and is financially able to, self-fund the project; or, (3) satisfactory evidence that equity capital (in the form of equity in land, cash or cash equivalents) is available in an amount equal to not less than 25% of the estimated cost of the project.
- f. The applicant has entered into an agreement with the County agreeing to submit its application for a building permit(s) for the development within one year after notice from County that Pending Development has reached the Threshold Level for Funding and all other preconditions to issuance of such building permits under the MC&FP have been satisfied. If an application for building permit is not submitted within the one year, the development shall no longer qualify as Pending Development unless it reestablishes its qualifications to be considered pending.
- g. The subject property has been included in the CFD and otherwise satisfied the requirements of the MC&FP relative to the issuance of building permits.

h. No other condition, fact or limitation exists upon which County reasonably determines that, notwithstanding compliance with all of the above, the proposed development is not capable of being accomplished within a reasonably foreseeable time frame.

1.1.14. "Project Approvals" means those certain development approvals and entitlements set forth in Recital D.2 of this Development Agreement.

1.1.15. "Projected Annual Taxable Sales" means the amount arrived at by multiplying the applicable Taxable Sales Target (as defined in Section 1.1.24) times the number of square feet devoted to the specific use or category of use to which the Taxable Sales Target applies. As dictated by the context in which it is used, the Projected Annual Tax Sales may be calculated for a particular property or project, or for the Missouri Flat Area in its entirety. Unless otherwise stated, Projected Annual Taxable Sales on a property or within an area includes only Projected Annual Taxable Sales generated by development which occurs after the MC&FP Adoption Date. For purposes of this Development Agreement, Projected Annual Taxable Sales shall be calculated only using the Taxable Sales Targets in Exhibit "E" and not actual market projections which may be made at any future time, except that, in calculating Projected Annual Taxable Sales for purposes of determining whether County is obligated to issue bonds or proceed with any MC&FP Improvements, County may consider any unique use of property which would cause the actual annual taxable sales to be significantly lower than the Taxable Sales Target.

1.1.16. "Property Tax Increment" means that portion of the County's share of the one percent (1%) ad valorem property tax levied under Article XIII A, Section 1(a) of the California Constitution which is generated by any increased assessed value attributable to buildings or structures constructed in the Missouri Flat Area after the MC&FP Adoption Date. For purposes of this Development Agreement, buildings or structures shall be deemed to be constructed after the MC&FP Adoption Date if the certificate of occupancy is issued after that date. Construction includes construction of buildings or structures on vacant land, the addition of buildings or structures on property on which other buildings or structures already exist, replacement of existing structures, and significant expansions of existing structures, but does not include the remodeling of existing structures.

Property Tax Increment does not include any revenues received by any public agency other than County, nor does it include any property tax revenues received under Article XIII A, Section 1(b), or is otherwise restricted in its purpose.

1.1.17. "Raley's Project" means the proposed construction of a Raley's supermarket on Missouri Flat Road south of Highway 50.

1.1.18. "Sales Tax Increment" means any unrestricted sales and use tax revenues received by County which are generated by transactions which occur in buildings or structures in the Missouri Flat Area, or their accessory areas, constructed after the MC&FP Adoption Date. For purposes of this Development Agreement, construction shall be deemed to

have occurred after the MC&FP Adoption Date if the certificate of occupancy for the structure is issued after that date. Construction includes construction of buildings or structures on vacant land, the addition of buildings or structures on property on which other buildings or structures already exist, replacement of existing structures, and significant expansions of existing structures, but does not include the remodeling of existing structures. Where construction consists of the expansion of an existing structure, the Sales Tax Increment attributable to the expansion shall be determined by pro rating total sales tax generated in the building based on the proportion the floor area in the expanded area devoted to retail sales bears to the total floor area in the building devoted to retail sales.

Sales Tax Increment does not include: (1) sales tax revenues restricted to specific uses, such as revenues received under Proposition 172 for public safety purposes; (2) any special tax or override in excess of the current one percent (1%) of sales tax currently received by County for general purposes; or, (3) any sales tax received by any public entity other than the County.

1.1.19. "Subsequent Approvals" means any land use approvals, entitlements and permits, other than Project Approvals, required to allow development of the Project in accordance with the Project Approvals.

1.1.20. "Sundance Project" or "Sundance" means the proposed construction of a regional shopping center identified by County as project number Z97-22/PD97-11/P97-17/DA98-01. The Sundance Project includes both Phase I of the project (regional shopping center) and Phase II (convenience center) as described in the EIR for the Sundance Project.

1.1.21. "Tax Increment Revenues" is an amount equal to eighty-five percent (85%) of Total Tax Increment. Pursuant to Section 6.B of this Development Agreement, and subject to the limitations set forth in that section, County commits to devote these funds equal to eighty-five percent of Total Tax Increment annually to MC&FP purposes in accordance with this Development Agreement. Total Tax Increment is used as a basis for determining the amount of County's obligation. However, the County's obligations under this Development Agreement, and the use of terms such as Total Tax Increment and Tax Increment Revenues, is not intended to be a pledge of that particular revenue source.

1.1.22. "Taxable Sales Target" means the projected annual retail sales per square foot for the various types or categories of uses as set forth in Exhibit "E" attached hereto and incorporated herein by this reference.

1.1.23. "Threshold Level for Funding" means the amount of non-residential development within the Missouri Flat Area which would generate sufficient Tax Increment Revenues to fund that portion of the cost of specified MC&FP Improvements which is to be funded through Tax Increment Revenues pursuant to the MC&FP, as well as the amount of TIM Fees projected to be required from development within the Missouri Flat Area to fund the TIM

Fee portion of the cost of those MC&FP Improvements. The Threshold Level for Funding shall be determined based on the Taxable Sales Targets established for the particular proposed use as shown in Exhibit "E". The amount of Tax Increment Revenue and cash flow required for specified MC&FP Improvements shall be based upon the estimated cost of the Improvements, and taking into consideration the nature, source and cost of funding which is then available and proposed for use in financing the specified Improvements.

11.24. "Total Tax Increment" means the total of Property Tax Increment plus Sales Tax Increment.

11.25. "Traffic Impact Mitigation Fees" or "TIM Fees" means fees charged by the County on new development for the purpose of mitigating the traffic impacts of the new development. For purposes of this Development Agreement, TIM Fees shall refer only to those fees collected pursuant to the programs referred to as the TIM Fee Program and the State TIM Fees program, and not Roadway Impact Fees (RIF) charged in the El Dorado Hills/Salmon Falls area.

11.26. "Wal-Mart Project" or "Wal-Mart" means the proposed construction of a Wal-Mart retail discount store which is identified by County as project number 794-08/PD94-02.

SECTION 2.

DEVELOPMENT OF THE PROPERTY

2.A. Permitted Use and Entitlements. The permitted land uses, density and intensity of use of the Property, timing or phasing of development, zoning, provisions for reservation or dedication of land for public purposes, and the location and size of major transportation, sewer, drainage and water facilities and improvements shall be those set forth in the Project Approvals as of the Effective Date, in this Development Agreement, and in the Applicable Law (as defined in Section 2.C.1. below). It is the intent of this Development Agreement that upon the Effective Date that the development of the Property shall be allowed pursuant to the requirements set forth in the Project Approvals and in this Development Agreement and that all further development of the Property shall be done in accordance with the Project Approvals and Subsequent Approvals. In the event of any conflict between the provisions of this Development Agreement and any other resolution, rule, regulation or policy of the County now in existence, the provisions of this Development Agreement and the Project Approvals shall control. However, this shall not prohibit the County from applying any ordinance, resolution, regulation, rule or policy in effect on the Effective Date to the processing of any Subsequent Approval if it is not inconsistent with, and does not prevent development of the Property in accordance with, the Project Approvals and this Development Agreement.

2.A.1. Retail Development. Through its approval of the Project Approvals, County has granted land use to the Property, subject to this Development Agreement, allowing

for the development of a maximum of 535,000 gross square feet of retail space as shown on the Development Plan. Developer is entitled to construct the retail area in phases as determined by Developer. Uses permitted within the Project are those shown for the Property and contained in the Project Approvals, and as may be amended from time to time by the mutual written consent of the County and Developer.

2.B. Vested Rights. County acknowledges that Developer has, by entering into this Development Agreement and by County's approval of the Project Approvals, vested Developer's rights to develop the Project in accordance with the Project Approvals. It is the intent of County and Developer that the vesting of development rights of Developer shall include the permitted land uses, density and intensity of use of the Property, timing or phasing of development, height and size of buildings to be constructed (including without limitation the right to develop a project that is comparable in overall mass and appearance), zoning, provisions for reservation or dedication of land for public purposes, and the location and size of public improvements and other terms and conditions of development of the Project as set forth in the Project Approvals and this Development Agreement.

County recognizes and has determined that the granting of the vested right and assurance of fully developing the project as set forth in the Project Approvals and this Development Agreement is required by Developer in order to undertake the development of the Project and thereby achieve the public benefits of the Project and the MC&FP. In addition, this Development Agreement will provide assurances that the Project will be developed in a manner which incorporates the conditions and mitigation measures called for in the Project Approvals and will assist in the implementation of the MC&FP.

Similarly, County is relying on Developer's intent to develop the Property in accordance with the Project Approvals in planning for and moving forward with the MC&FP. The MC&FP makes certain assumptions based upon representations of Developer as to the proposed use of the Property. The Property will be included in the proposed CFD, as described in Section 5.A.4 below, and will assist the financing of the CFD through the right to impose a special tax on the Property. Success of the Property in generating Tax Increment Revenues will affect the financing plan and the timing of the MC&FP Improvements. Although County recognizes that financial, market and other factors affect Developer's ability to develop the Property in conformance with the Project Approvals, Developer recognizes that any changes in the proposed uses or size of facilities on the Property which significantly reduce the capacity for the generation of property and sales tax increment revenue affects the public benefit derived from this Development Agreement and upon which the determination to enter into this Development Agreement is based.

Developer agrees that, notwithstanding any otherwise applicable zoning or other land use regulations, policies or standards which may allow approval of amendments to the Project Approvals, the County may deny an application for a Substantial Amendment to the Project which would significantly reduce the capacity of the Property to generate the property or sales

tax revenue projected in the MC&FP for the Property, unless the Developer demonstrates that either: (1) the requested amendment will not have any significant negative effect on the MC&FP, including, but not limited to, timing of improvements or likelihood that projected Tax Increment Revenues generated by Missouri Flat Area Development will be sufficient to cover debt service and other costs associated with the bonds to be issued by the CFD, or (2) development of the Project as approved, or any reasonable alternative which would have significantly less impact on the MC&FP, is not feasible or economic.

But for said commitments on the part of County and Developer, the parties would not enter into this Development Agreement.

2.C. Rules, Regulations and Official Policies.

2.C.1. Applicable Law Defined. Except as otherwise set forth in this Development Agreement, the rules, regulations, official policies, and ordinances governing the permitted land uses, density and intensity of use of the Property, timing or phasing of development, height and size of the buildings, zoning, provisions for reservations or dedication of land for public purposes, location and size of public improvements, development fees and other terms and conditions of development of the Project as set forth in the Project Approvals, including, but not limited to, County's development fee structure and as the same may be adjusted pursuant to Section 2.D.1 of this Development Agreement, applicable to the Project, the Property and the Project Approvals vested by this Development Agreement (collectively the "Applicable Law") shall be those set forth in this Development Agreement and those which are in force and effect on the date of adoption of the ordinance approving this Development Agreement ("Vesting Date"); except that, solely for purposes of this Development Agreement, Measure Y, approved by the voters at the November 3, 1998, election, shall be treated as being in force and effect on the Vesting Date regardless of the fact that the actual effective date of Measure Y, in fact, is after the Vesting Date. The fact that Measure Y is deemed to be in effect on the Vesting Date shall not constitute a waiver by Developer of any right to challenge either the validity of Measure Y and any actions taken to implement Measure Y, or any interpretation of Measure Y which is proposed. "Applicable Law" shall also include any rules, regulations, official policies and ordinances that are not in force and effect on the Effective Date, but that are later adopted, and are applicable to the Project pursuant to Sections 2.C.4, 2.C.5, 2.D.1 or 2.D.2 of this Development Agreement, or by the subsequent agreement of the Parties.

2.C.2. Approvals as Applicable Law. Applicable Law shall include, without limitation, the Project Approvals and Subsequent Approvals as they may be issued from time to time in a manner consistent with the terms and provisions of this Development Agreement.

2.C.3. Uniform Codes. Notwithstanding anything to the contrary contained in this Development Agreement, County may apply to the Project, at any time during the term of this Development Agreement, then-current Uniform Building Code and other uniform construction codes, provided that such uniform codes shall apply to the Project only to the extent

that such codes have been adopted by County and are in effect with respect to similar development on a County-wide basis, except where such requirements may not be applied on a County-wide basis due solely to considerations of terrain and topography.

2.C.4. State and Federal Law. As provided in Government Code Section 65869.5, this Development Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of the Development Agreement, such provisions of this Development Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and County and Developer shall take such action as may be necessary to meet the minimum requirements of such state or federal law. Without limiting the foregoing, nothing in this Development Agreement shall preclude County from imposing on Developer any fee specifically mandated and required by state or federal laws and regulations.

2.C.5 No Conflicting Enactments. Unless ordered by a court of law, or to the extent required by State or Federal law, County shall not impose on the Project (whether by action of the Board of Supervisors, other local legislative body or by initiative, referendum or other means) any ordinance, resolution, rule, regulation, policy, standard, directive, condition or other measure (each, individually, a "**County Law**") not in effect on the Vesting Date that is in conflict with Applicable Law or this Development Agreement, that substantially increases the cost of constructing or developing the Project or any portion thereof, or that reduces the development rights or assurances provided to developer by this Development Agreement. The parties acknowledge that the Development Agreement Statute provides that this Development Agreement shall not prevent the County, in subsequent actions applicable to the Project, from applying new rules, regulations and policies which do not conflict with the Applicable Law or this Development Agreement, nor from denying or conditionally approving any subsequent project application on the basis of such new rules, regulations and policies and the Applicable Law. Without limiting the generality of the foregoing, and except as provided otherwise in this Development Agreement, any County Law, rule, regulation or policy, shall be deemed to conflict with Applicable Law or this Development Agreement or reduce the development rights provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

a. Change any land use designation or permitted use of the Project allowed by the Project Approvals or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage, floor area ratio, height of buildings, or number of proposed buildings or other improvements;

b. Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities for which the Developer could have applied and received on the Vesting Date, to the extent County has any

authority to limit or control the availability of such public utilities, services, or facilities necessary to serve the Project. This section shall apply to any moratoria applied to the provision of such public utilities, services, or facilities; provided, however, that nothing in this section shall require the provision of such utilities, services or facilities if the same are not available, or cannot be provided without direct threat to the public health and safety, and that nothing in this section shall require County to construct, finance, or otherwise provide for public utilities, services, or facilities not otherwise available;

c. Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner or require the issuance of additional permits or approvals by the County other than those required by this Development Agreement and Applicable Law which would result in having to substantially delay construction of the Project. This section shall apply to any moratoria enacted; except that nothing in this section shall require the provision of such utilities, services or facilities if the same are not available, or cannot be provided without direct threat to the public health and safety, and that nothing in this section shall require County to construct, finance, or otherwise provide for public utilities, services, or facilities not otherwise available;

d. Limit or control the location of buildings, structures, grading, or other improvements of the Project in any manner which significantly affects the cost or timing of the Project that is inconsistent with or more restrictive than the limitations included in the Project Approvals or the Subsequent Approvals (as and when they are issued):

e. Apply to the Project any County Law otherwise allowed by this Development Agreement that is not uniformly applied to similar types of development on a County-wide basis, except where regional or specific variations are allowed as a result of terrain, topography, availability or lack of availability of a specific service, or the need to address an identified condition specific to a particular area of the County, or impose against the Project any dedication or other exaction not authorized by Applicable Law:

f. Limit the processing of applications for, or obtaining of, Subsequent Approvals, except where based upon the lack of required public utilities, services or facilities, as allowed in subsections (b) and (c), above, other than roadway capacity.

If County attempts to apply to the Project a County Law which Developer believes conflicts with Applicable Law or this Development Agreement, Developer shall provide to County in writing a notice describing the legal and factual basis for Developer's position. The parties shall meet and confer within thirty (30) days after the date of such written notice with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. If no mutually acceptable solution can be reached, either party may take such action as may be permitted under this Development Agreement.

Notwithstanding anything to the contrary contained in this Development Agreement, nothing herein shall be construed to limit County's authority to apply new rules, regulations and policies to the Project which are consistent with Applicable Law, nor limit County's general police power to implement, based upon appropriate and adequate findings, specific measures necessary to alleviate legitimate and bona fide harmful and noxious uses, or protect against real and actual threats to the health and safety of County residents in which any rule, regulation or policy imposed on the development of the Project shall be done to the minimum extent necessary to correct such bona fide harmful and noxious uses or protect against real and actual threats to the health and safety of County residents.

2.C.6. Further Assurances.

a. Developer reserves the right to challenge in court any County Law that would, in Developer's opinion, conflict with the provisions of this Development Agreement.

b. Should any initiative, referendum, or other measure be enacted, and any failure to apply such measure by County to the Project be legally challenged, Developer agrees to fully indemnify defend and hold harmless the County, its officers, employees and agents, against such challenge, including providing all necessary legal services, bearing all costs therefor, and otherwise holding the County harmless from all costs and expenses of such legal challenge and litigation, including, but not limited to, any award of attorneys' fees made against County. If Developer gives written notice to County of Developer's option, as real party in interest, not to defend such challenge, County, at its option may either (1) continue to defend such action, in which event Developer shall be relieved of its obligations under this Section 2.C.6.b. or (2) rescind the approvals which are the subject of the challenge and take such actions as are necessary to obtain dismissal of any pending actions or claims. In the latter event, Developer shall be obligated to indemnify and hold County, its officers, employees and agents, harmless from all costs and expenses incurred by County in connection with the defense and dismissal of any such action or claim.

2.C.6.A. Moratoria and Restrictions and Limitations on the Rate or Timing of Development. In the event a County Law is enacted (whether by action of the Board of Supervisors or otherwise, or by initiative, referendum, other than a referendum which specifically overturns County's approval of this Development Agreement, the Project Approvals for the Project or issuance of a Project Approval) which relates to the timing, phasing or sequencing of new development or construction in County or, more particularly, development and construction of all or any part of the Project, and that is in conflict with the Applicable Law or the Development Agreement, such County Law shall not apply to the Project, or any portion thereof.

2.C.6.B. Project Development Schedule. The development schedule for the buildout of the Project shall be that established by Developer consistent with the terms of this Development Agreement.

2.C.6.C. Subsequent Approvals. County agrees that certain other land use approvals, entitlements, and permits other than the Project Approvals may be necessary or desirable for the buildout of the Project (collectively, the "**Subsequent Approvals**"). Provided that such Subsequent Approvals are in conformity with the Project Approvals, Applicable Law and this Development Agreement, County shall act promptly to process any request for such Subsequent Approvals in a timely fashion. Developer acknowledges that in processing any Subsequent Approvals which require the exercise of discretion or judgment by any County officials, this Development Agreement is not intended to restrict or predetermine the manner in which the discretion or judgment is exercised; provided, that any action taken does not violate the terms of this Development Agreement.

2.C.7. Expiration of Vested Rights. Notwithstanding any other provision of this Development Agreement, at the conclusion of the first Annual Review conducted not less than eight years after the Effective Date of this Development Agreement, if the Developer has not obtained required Subsequent Approvals, including building permits, and commenced substantial construction on the Project, the Board of Supervisors of the County may give written notice to Developer of any ordinances, regulations, rules or policies affecting the development of the Project which, under the terms of this Development Agreement would not otherwise apply to the Project or any Subsequent Approvals, along with a notice of intent that such ordinances be made applicable to the Project. Any such ordinances, regulations, rules or policies contained in the notice may affect any aspect of the Project; except that such ordinances, regulations, rules or policies shall not prohibit the types of commercial uses approved in the Project Approvals, nor shall they significantly reduce the amount of floor area which may be developed. Upon receipt of such notice, Developer may do either of the following:

- a. File with the County an election to become subject to the ordinances, regulations, rules and policies specified in the notice, in which case such ordinances, regulations, rules and policies shall, at the expiration of two (2) years after the County's notice, become Applicable Law and shall be applicable to the Project and, except as modified herein, all vested rights under this Development Agreement shall remain in effect;
- b. Within two years after the County's notice, obtain required Subsequent Approvals and commence substantial construction on the Project, in which case all vested rights under this Development Agreement shall remain in full force and effect;

If, within two (2) years after the County's notice, Developer does neither of the above, then at the end of that period Developer's vested rights under this Section 2.C shall terminate. Project Approvals shall remain in effect, but the Project shall be subject to all then

existing, or thereafter adopted, ordinances, regulations, rules and policies, except as otherwise exempt by law.

2.D. Development Fees. Consistent with the terms of this Development Agreement, County shall have the right to impose only those development fees ("**Development Fees**") that are in effect upon the Effective Date of this Development Agreement, and will be due upon issuance of the building permits for the Project. The term Development Fees is intended to mean fees, charges or other exactions imposed by County in connection with the approval of a development project for the purpose of defraying all or a portion of the cost of public facilities, services or programs related to a development project and includes public facilities fees, in-lieu fees, impact fees, linkage fees, and mitigation fees, charges, or other exactions on development. Provided the Development Fees are consistent with the terms of this Development Agreement, Developer shall pay those Development Fees applicable to the Project that are in effect on the Vesting Date, and as adjusted by the County pursuant to its right to adjust such Development Fees during the term of this Development Agreement consistent with the conditions set forth in Section 2.D.1 of this Development Agreement. Developer retains the right to challenge any modification, amendment and/or adjustment of such Development Fees pursuant to Government Code Section 66021 and such right, and any applicable statute of limitations, shall begin to run from the date that County approves the imposition, amendment, modification and/or adjustment and not from the time the Development Fees are paid. Developer agrees to pay all Development Fees in effect on the Effective Date and hereby waives any claim that such Development Fees violate Government Code Sections 66000, *et seq.*, or any other statutory or constitutional provisions. Nothing in this section shall be deemed to apply to, prevent or limit the imposition of the special tax intended to be authorized under the CFD and MC&FP referenced in Section 5.A.4 of this Development Agreement to secure funding for the MC&FP Improvements.

2.D.1. Development Fees - Adjustments. County's Development Fees may be adjusted by County to account for increases or decreases in the cost of constructing the facilities or in providing the services for which such Development Fees are collected. As applied to Development Fees imposed for the construction of capital facilities, increases shall be limited to increases in the Engineering News Record Construction Cost Index ("**CCI**") for the Twenty Cities National Average, except insofar as specific Development Fees are fixed under this Development Agreement. As applied to Development Fees imposed for the cost of providing County services, increases shall be limited to increases in the Consumer Price Index for the San Francisco-Oakland-San Jose Area, published by the United States Department of Labor, Bureau of Labor Statistics ("**CPI**"). Such adjustments shall retain the same assumptions, methodology and list of improvements upon which such Development Fees were based at the time of the Effective Date of this Agreement; except that, not less than five (5) years after the Effective Date of this Development Agreement, and every five (5) years thereafter, County may modify such Development Fees to reflect changes in such assumptions, methodology and list of improvements upon which such Development Fees are based, as long as the amended Development Fees are applied to all similar projects which are similarly situated. In addition,

such five-year adjustment may include increases in actual estimated costs of providing the facilities or services in excess of the CCI or CPI for the applicable period.

In addition to the preceding adjustments, if it is determined that an adjustment to the TIM Fee Schedule is required solely in order to comply with the requirements of Measure Y, and such adjustments are made within one hundred eighty (180) days of the Effective Date or prior to the date on which Developer is required to pay TIM Fees, whichever is later, then any such adjustment shall be applicable; provided, that Developer is not waiving any rights it might have to challenge the validity of such adjustments, or the necessity of such adjustments in order for Developer to comply with Measure Y. Developer acknowledges that County intends to conduct a review of its TIM Fee program in light of the passage of Measure Y. Notwithstanding any other provision of this Development Agreement, and notwithstanding the fact that Developer may comply with all other laws, ordinances and regulations which otherwise would entitle Developer to a building permit for the Project, County may withhold issuance of a building permit in order to allow completion of that study if the issuance would otherwise occur within one hundred eighty (180) days of the Effective Date, unless Developer enters into an agreement with County to pay any modified TIM Fee which may result from the study within the one hundred eighty (180) days, and provides security deemed adequate by County.

If the County modifies any Development Fees based upon changes in such assumptions, methodology and list of improvements upon which the Development Fees were based less than five (5) years from the Effective Date, or less than five (5) years after the last allowable modification, those modifications to the Development Fees, whether increases or reductions, shall not go into effect with respect to the Project until the expiration of such five (5) year period.

2.D.2. Non-Development Fees. Developer understands and acknowledges that County would not enter into this Development Agreement absent County's ability, except for the limitations as to Development Fees provided in this Development Agreement, and as otherwise set forth in this Development Agreement including, but not limited to, Sections 2.D and 2.D.1 of this Development Agreement, to impose fees, charges, taxes, and assessments in effect at the time such fees, charges, taxes, or assessments are required to be paid, including, but not limited to, user fees, services fees, connection fees, regulatory fees (including processing fees), taxes or assessments ("**Non-Development Fees**"). Developer agrees to pay those Non-Development Fees attributable to the Project in effect at the time of payment of such Non-Development Fees and County shall have the right to revise or adopt Non-Development Fees applicable to the Project during the term of this Development Agreement so long as such Non-Development Fees are applied to all similar projects on a County-wide basis; except that application on a County-wide basis is not required where regional variations are based upon the fact that services or facilities for which the Non-Development Fees are charged are or are not available in different regions, upon variations in the services or facilities provided in different regions, or where the Non-Development Fees are calculated based upon the cost of providing the services or facilities on a regional basis. Developer retains the right to challenge the imposition.

modification, amendment and/or adjustment of such Non-Development Fees after the Effective Date as provided by law, and such rights, and any applicable statutes of limitations, shall begin to run from the date County approves the imposition, modification, amendment and/or adjustment and not from the time such Non-Development Fees are paid. Developer agrees to pay all Non-Development Fees in effect on the Effective Date and hereby waives any claim that such Non-Development Fees violate any statutory or constitutional provisions. Nothing in this section shall be deemed to apply to, prevent or limit the imposition of the special tax intended to be authorized under the CFD and MC&FP referenced in Section 5.A.4 of this Development Agreement to secure funding for the MC&FP Improvements.

2.E. MC&FP Traffic Capacity Limitations. The MC&FP Improvements are designed to provide traffic capacity which will address current deficiencies and provide capacity to serve a limited amount of additional development in the Missouri Flat Area. The capacity is sufficient to allow the Project and other currently pending development projects to meet the County's level of service standards of the County's General Plan and mitigate the traffic impacts of such development. Except as provided in Section 4.C.e. below, availability of traffic capacity is allocated to development on a first come, first serve basis. If, at the time Developer seeks any discretionary approval for the use of the Property, including, but not limited to Subsequent Approvals, development which has occurred subsequent to the Effective Date, plus any Pending Development which has priority in time over the Project, will generate traffic which will fully utilize the capacity provided by the MC&FP Improvements, nothing in this Section 2 shall obligate the County to grant such approval, if such approval would be inconsistent with the policies of the County's General Plan relating to traffic. The determination whether to grant such approvals shall be in accordance with ordinances, policies and regulations at the time. The purpose of this Section 2.E is not to require disapproval, but to allow such disapproval if otherwise required.

SECTION 3. GENERAL DEVELOPER OBLIGATIONS

3.A. Property Development and Public Improvements. The Property shall be developed and public improvements shall be made according to the Project Approvals and the Sundance Conditions of Approval and as set forth in this Development Agreement.

3.B. Dedication to County of Right-of-Way. Landowner agrees to provide to the County irrevocable offers of dedication of the right-of-way necessary for the construction of the streets and highways or other improvements as required by the Project Approvals or by this Development Agreement.

**SECTION 4.
GENERAL COUNTY OBLIGATIONS**

4.A. Vested Rights. By entering into this Development 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 Development Agreement, the Project Approvals, and Applicable Law. 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 Property for the uses and to the density or intensity of development or rate or timing of development set forth in this Development Agreement and the Project Approvals, provided Developer is not in default under this Development Agreement. It is the intent of this Section, in consideration of the substantial investment and commitments required of Developer to implement the Project, and in consideration of Developer's agreement to participate in the MC&FP funding plan, that the Property shall not be subject to any subsequently enacted ordinance or resolution whether adopted by the Board of Supervisors or the County electorate, which purports to amend the General Plan or to restrict the number of building permits or other development approvals which may be issued in any given year, or in any other manner limit the timing of development of the Project, except as provided in Section 2.C of this Development Agreement.

4.B. County's Cooperation. To the extent that applications and submittals by Developer are in conformity with the Project Approvals, Applicable Law and this Development Agreement, County agrees to diligently and promptly accept, review and take action on all subsequent applications and submittals made to County in furtherance of the Project. Similarly, County shall promptly review and act on improvement plans, conduct construction inspections and accept completed public facilities.

4.C. Building Permits. County shall issue building and other construction permits for improvements within the Project upon satisfaction of the following conditions:

- a. Developer shall have obtained all Subsequent Approvals required by the Applicable Law as prerequisite to issuance of a building or other construction permit.
- b. The application for building or other construction permit shall be in compliance with the Project Approvals, Subsequent Approvals, Uniform Codes, and any other applicable laws, regulations, requirements and standards applicable to such applications under the Applicable Law.
- c. Developer shall have paid all fees due and complied with all other conditions applicable to the issuance of the building permits.

d. Developer shall be in compliance with all terms of this Development Agreement.

e. The CFD called for in Section 5.A.4 of this Development Agreement shall have been formed, the special tax authorized and the Property included in the CFD, or annexed to it if not originally included. Developer agrees that County shall have no obligation to issue any building permit for the Property until the Property has been included in the CFD formed in compliance with the CFD Tax Structure; provided, however, that the County's right to withhold issuance of a building permit pursuant to this subsection shall be deemed waived in the event the CFD has not been formed by the date specified in Section 6.D of this Development Agreement as a result of the County's failure to timely initiate the actions required for the formation of the CFD as required by this Development Agreement or to diligently prosecute such proceedings to a conclusion, or if the CFD formed by such date is not in compliance with the CFD Structure. This right to withhold shall not be waived if the failure to form the CFD prior to the specified date is the result of any failure by Developer to perform any obligations under this Development Agreement or the legal inability of the County to form the CFD. For the purpose of this subsection, the CFD shall be deemed formed and the Special Tax shall be deemed authorized at such time as the actions by the County to form the CFD or authorize the Special Tax are complete, notwithstanding the pendency of any litigation concerning the validity of the actions in the absence of a court order prohibiting such actions. Notwithstanding any such waiver of the right to withhold a building permit, and the issuance of any building permits for the Project, Developer shall thereafter continue to be obligated by this Development Agreement to provide the necessary consents and take all other action required by this Development Agreement to allow or assist in the formation of the CFD in conformance with the CFD Tax Structure, and to authorize the CFD Special Tax. Except as expressly provided in this subsection, Developer hereby waives and releases any and all claims that County is obligated to issue any such building permit, and any claims for damages arising out of County's withholding of such building permits, if the CFD has not been formed and the Property included in the CFD, and the special tax authorized, or if the Developer is in breach of this Development Agreement.

f. Sufficient development has been proposed and qualified as Pending Development to meet the Threshold Level for Funding for those MC&FP Improvements needed to mitigate the traffic impacts of that Pending Development. In the event there is Pending Development sufficient to fund traffic mitigation measures for some, but not all, of the Pending Development, or if traffic generation from Pending Development would exceed the capacity of the MC&FP Improvements, as determined by General Plan policies, then priority of the development shall be determined by the order in which projects applied for, and submitted all required evidence of meeting the criteria for Pending Development. Such priority shall be lost if a building permit application is not made within the one year specified pursuant to the terms for qualifying as Pending Development. Notwithstanding the foregoing, in light of the financial commitments made to completion of the MC&FP, and the demonstrated commitments to move forward, the Project shall have its priority set as the date of the adoption of the MC&FP:

provided, that the Project otherwise satisfies the eight criteria set forth in Section 1.I.12 within twelve (12) months after the adoption of the MC&FP.

4.D. Inspections. Any building inspection request received by County from Developer shall be performed promptly after receipt of the request.

4.E. Right-of-Way Acquisition. County agrees, if necessary, to assist Developer in acquiring any off-site right(s)-of-way that are necessary for Developer to construct required off-site improvements as set forth in this section. To the extent that the acquisition of off-site right(s)-of-way are necessary for Developer to construct off-site improvements, including, but not limited to, roadways, wet or dry utility improvements, or drainage improvements, Developer shall be responsible for all costs of such acquisition, except to the extent County has agreed in this Development Agreement, or otherwise in writing, to assume any portion of that cost through the MC&FP, use of TIM Fees or in any other manner. Developer shall negotiate in good faith with any property owner from whom such interests must be acquired to attempt to agree upon such sale and acquisition. If, after such good faith negotiation, Developer is unable to acquire such right(s)-of-way, County shall assist in such acquisition as follows, subject to Developer fulfilling its obligations as set out.

If Developer is unable to obtain required right(s)-of-way after negotiating in good faith, Developer may make a written request for assistance to County. Such request shall be accompanied by accurate and sufficient legal descriptions prepared by a civil engineer or land surveyor of all right(s)-of-way needed. Each legal description shall be accompanied by a map showing the property to be acquired. To the extent applicable, separate legal descriptions shall be provided for rights-of-way which fall within any currently existing non-exclusive road easement and for rights-of-way which fall outside any such easement of record.

Developer shall be responsible for payment of all costs incurred by County in acquiring the required interests, including, but not limited to, all costs incurred by County in each acquisition, whether by negotiation or exercise of the eminent domain power. Such costs shall be deemed to include all costs incurred by the County to acquire the necessary rights-of-way pursuant to Title 7, Part III of the Code of Civil Procedure, commencing with section 1230.010 and shall include, but not be limited to, survey costs, costs of appraisal, costs for title search and guarantee, expert fees, attorneys fees, court costs, costs for preparation of acquisition agreements and other documents in the event eminent domain is not necessary for any rights-of-way, costs of public notice, costs of purchase of the property itself and interest thereon, cost of relocation requirements, and any other costs borne by the County in the acquisition of the property, including any property owner's attorneys fees, if awarded.

Within ten (10) days of receipt of a request from Developer, County shall notify Developer of the estimated cost of preparing an appraisal of the interests to be acquired, if needed. Developer shall deposit with County the estimated cost of the appraisal. Within forty-five (45) days after receipt of that deposit, County shall promptly cause the required appraisal to

be prepared. Within ten (10) days of receipt of the appraisal, County shall notify Developer of the initial projected costs of proceeding with each of the acquisitions, including, but not limited to, the expected purchase price, reasonable attorneys fees and other related costs, and Developer shall deposit the required amounts with County. County shall establish accounts for each of the required acquisitions. County shall provide Developer with regular accounting of the expenditures from said account. In the event Developer fails to deposit any necessary monies in a timely manner, the County may cease its efforts to obtain the rights-of-way until the required funds are deposited. If at any time County determines that the amounts deposited will be insufficient to complete the acquisition, County shall give written notice of the estimated additional funds required. Developer shall make such additional deposit within ten (10) days of the notice. Developer shall be entitled to the return of any funds remaining in any such account upon completion of the acquisition and payment of all costs incurred therein. In the event County is unable to obtain the necessary rights-of-way for any reason whatsoever, Developer shall not be entitled to the return of any monies required to be paid deposited hereunder except for the return of any unused deposits. In the event the actual costs of any acquisition exceed the moneys deposited, within ten (10) days of written notice from County of such deficiency Developer shall pay said amount to County.

Within thirty (30) days of deposit of the required funds by Developer, County shall negotiate with the owner of such off-site land to acquire the right(s)-of-way in question, including the making of any required offer. In the event such negotiations fail to acquire such right(s)-of-way within said thirty (30) day period, then within thirty (30) days County shall take the required actions to commence, and shall thereafter diligently prosecute to conclusion, an action(s) in eminent domain to acquire the needed right(s)-of-way. County shall take such steps as are necessary to allow construction to be completed in a timely manner, including seeking an order of possession to acquire and take immediate possession of such right(s)-of-way.

County shall be solely responsible for the prosecution of the eminent domain actions and shall make all decisions regarding the manner in which to proceed therein, except as provided in this paragraph. County acknowledges the substantial costs Developer would incur should acquisition of right(s)-of-way be delayed. Therefore, County agrees to use reasonable efforts and take all reasonable actions to expedite acquisition. County shall not abandon any eminent domain action filed without the consent of Developer, unless it is determined by County's legal counsel that the continued prosecution of the action could not be maintained in good faith or otherwise in conflict with the legal obligations of County and its attorneys. Neither the abandonment of any action nor any adverse judicial ruling shall affect Developer's obligations under this section, including, but not limited to, obligations to assume the costs incurred in the prosecution of the case, or as a result of the abandonment of any case.

County shall be entitled, at its sole discretion, to utilize attorneys in the Office of the County Counsel or to retain outside counsel to perform the acquisition legal work. To the extent the County utilizes County attorneys, the County shall be reimbursed at the normal internal billing rates for such attorneys or paralegals for work performed. In the event County determines

to retain outside counsel, County shall first consult with Developer regarding the selection of counsel and shall provide Developer the opportunity to comment thereon.

County does not represent or warrant by execution hereof any particular final result of any action filed by it, but simply that it will exercise its lawful authority and power in a fair and reasonable manner to accomplish the purposes of this Development Agreement, considering all of the circumstances.

Developer shall defend, indemnify and hold the County, its officers, agents and employees, harmless from any and all claims, liability, lawsuits and damages arising out of any counterclaim or independent action filed by any property owner against whom an action is commenced by County pursuant to this section.

**SECTION 5.
OBLIGATIONS OF DEVELOPER RELATED TO THE
MISSOURI FLAT AREA MASTER CIRCULATION
AND FUNDING PLAN**

5.A. Obligations of Developer. In consideration of the commitments of County contained herein, in order to implement the MC&FP and to achieve long-term mitigation of the traffic impacts of the Project, and in order to assure the benefits considered by the County in approving the Project, Developer hereby agrees to take the actions set forth in this Section 5.

5.A.1. Completion of Project. Applicant shall use reasonable efforts to substantially complete the Project, as approved, within the time frame anticipated in development of the MC&FP. Developer shall keep County apprised of the status of the project, including, but not limited to, anticipated dates of commencement and completion of construction, anticipated tenant mix, and any changes to construction design. Developer and County shall meet periodically, on a schedule to be established, to consult regarding the status of the Project and the MC&FP Improvements. Developer shall promptly advise County of any anticipated changes in the Project which would cause the Tax Incremental Revenues generated by the Project to deviate significantly from that projected in the MC&FP, including, but not limited to, any material change in proposed retail floor area or types of retail uses expected.

5.A.2. Exchange of Information. Developer shall cooperate with County in its efforts to implement the MC&FP by providing such information as may reasonably be required. In particular, Developer shall provide information such as the identity of proposed tenants and proposed schedules for construction and occupancy of the Project. Developer shall provide such information and disclosure as may be reasonably required by the County, its financial and legal advisors, and other consultants and representatives in the course of forming the CFD and issuing bonds for funding the MC&FP.

5.A.3. Payment of TIM Fees. Timely and full payment of TIM Fees by projects within the Missouri Flat Road area is an essential element of the funding for roadway improvements. Notwithstanding any other provision of this Development Agreement, Developer agrees that it shall pay TIM Fees in accordance with the fee schedule set forth in Board of Supervisors Resolutions Nos. 31-98 and 32-98, adopted on February 24, 1998, ("**TIM Fee Schedule**"), at the time of issuance of building permits for all or any portion of the Project. Developer shall pay any increased TIM Fees in conformance with Section 2.D.1. of this Development Agreement. Developer agrees that any TIM Fees payable, up to the amounts set forth in the TIM Fee Schedule, shall be paid without offset, protest or objection. Developer hereby waives and releases any claim it may possess, or may hereafter possess, with respect to the validity or applicability of the TIM Fees. Payment of such fees are a provision of this Development Agreement, and said waiver and release includes, but is not limited to, any claim that the fees exceed those which could be constitutionally or statutorily imposed on approval of the project. Developer shall make no claim, and shall file no action, with respect to the validity or applicability of such fees. Payment of the fees shall be made notwithstanding any claim, protest, objection or legal action brought by any other person. If, however, any such claim, protest, objection or legal action brought by any third person results in the invalidation of the TIM Fees so that the loss of such TIM Fees prevents implementation of the MC&FP, and County fails to act within a reasonable time to re-enact a TIM Fee schedule which is valid and allows the MC&FP to be implemented, then Developer shall be entitled to avail itself of any remedies made possible by such claim, protest, objection or legal action by the third person. Provided that the TIM Fees are used or held for purposes included in the MC&FP, Developer shall make no claim for return of such fees on the basis of the length of time held by County, whether or not such length of time exceeds that permissible under any statute, or for any other reason. County agrees to use that portion of the TIM Fees collected as is indicated in the MC&FP for the purposes included in the MC&FP.

Developer shall not be entitled to participate in or utilize any program otherwise available from the County for deferral, partial payment, or payment in installments of TIM Fees, or any other such program other than full payment of TIM Fees at the time of building permit issuance, unless expressly approved by the Board of Supervisors. The Board of Supervisors shall not be obligated to grant such approval.

5.A.4. Participation in CFD. Formation of the CFD called for in the MC&FP is an essential element in funding that portion of the cost of MC&FP Improvements which represent mitigation of existing roadway deficiencies which are integral to the accomplishment of mitigation of the traffic impacts of the Project. Developer hereby consents to the formation of the CFD and the imposition of the special tax as set forth in the MC&FP; provided that the structure of the CFD and the Special Tax authorized is in material conformance with the CFD Structure. Developer waives and releases any claims or objections it may possess, or may hereafter possess, with respect to the formation and implementation of the CFD or the authorization and imposition of the proposed special tax; provided, that it is consistent with the CFD Structure. Developer agrees, at the request of County, to take such steps as are necessary

for the formation and implementation of the CFD and the authorization of the special tax called for by the MC&FP. Such actions may include, but are not limited to, executing any consent to, or petition for, or ballot in favor of formation of the CFD and the authorization of the special tax; waivers of any objections to any of the proceedings to form the CFD or authorize the special tax; and, waiver of all election procedures and rights with respect to authorization for the special tax. Developer shall not file, or cause to be filed, any protest or objection to the formation of the CFD or the authorization of the special tax, and shall not file, or cause to be filed, any legal action challenging the formation of the CFD, the authorization, the imposition or collection of the special tax, or any other action to implement the CFD including, but not limited to, annexation of property to the CFD; provided the implementation of the special tax and the formation and implementation of the CFD are in compliance with the CFD Structure. In the event the CFD is formed without including the Property, and County later requests annexation of the Property to the CFD, Developer shall have all of the same obligations with respect to such annexation as are provided in this Section 5.A.4. with respect to the initial formation of the CFD and authorization of the special tax. Developer acknowledges the desirability of forming the CFD and taking such other actions as are required to commence validation proceedings as soon as possible. Therefore, the CFD may be formed and the special tax authorized, or the Property annexed to the CFD, at any time after the Effective Date, upon request of County. The Developer shall be required to take any action required under this Section 5.A.4. regardless of whether development on the Property has occurred or is then proposed; provided, that the CFD Structure for the CFD provides that the special tax shall not accrue or be collected on the Property until building permits have been obtained and construction commenced. Developer acknowledges that its protection against liabilities of the CFD being incurred prematurely lies in the limitations on the issuance of bonds set forth in Sections 6.H. below.

Developer shall provide to County a preliminary title report for the Property, and executed "lender's consents," consenting to the formation of the CFD and the authorization for the Special Tax from each lien holder having an interest in the property. The lender's consents shall be in a form reasonably acceptable to bond counsel for County. However, such documents need not be in recordable form.

5.A.5. Litigation Costs. Developer recognizes that certain legal and litigation costs will be incurred in the course of implementing the MC&FP. It will be necessary to file a validation action in order to market the bonds to be issued by the CFD. In addition, there is a possibility of legal challenges being filed by persons opposed to the MC&FP or to individual development projects. Developer agrees to contribute to the funding of such costs in the following manner:

a. **Project-Specific Challenge.** Developer shall be solely and fully responsible for all costs associated with any challenge to the Project, the Project Approvals, any Subsequent Approvals, and this Development Agreement. Developer shall defend, indemnify and hold harmless County, its officers, employees and agents, against any such challenges or claims, and against any legal actions brought to challenge such approvals, and against any costs.

expenses or liabilities incurred as a result thereof, including, but not limited to, costs of defense and any award of attorneys' fees made against County. This obligation shall not be deemed to expand Developer's obligations under Section 5.A.5.c, below, with respect to any action brought related to the MC&FP generally.

b. Validation Action. Developer shall contribute to the cost of any required validation actions brought in connection with the MC&FP, the CFD, or any related actions. Developer shall be responsible for that portion of the costs arrived at by multiplying the total cost by a factor determined in the same manner as is set forth in subsection (c), below related to challenges to the MC&FP. The parties acknowledge that such costs may be eligible for reimbursement from the proceeds of any bonds sold, and that County will use reasonable efforts to obtain reimbursement of such costs from the proceeds of such bond sale. However, Developer's obligation to partially fund such litigation is not conditioned upon such eligibility or upon the outcome of the action.

c. MC&FP-Related Challenges. Developer shall contribute to the cost of defending any legal challenges brought to challenge the MC&FP and any of the required implementation measures such as formation of the CFD, which are not specifically related to any development project which would be defended solely by the developer under Section 5.A.5.a. Developer shall be responsible for that portion of the costs arrived at by multiplying the total cost by a fraction, the numerator of which is the proposed floor area of the Project upon completion, and the denominator of which is one million five hundred thousand square feet. With respect to the Sundance Plaza Project, the proposed floor area of the Project shall include both Phase I and Phase II of the Sundance Plaza Project.

d. Separate Agreement. It is the intent of the parties that the obligations contained in this Section 5.A.5 shall be severable and shall survive any challenge to the validity of this Development Agreement. In order to ensure such survival, the obligations set forth in this Section 5.A.5 shall also be set forth in a separate agreement and executed by the parties.

SECTION 6. OBLIGATIONS OF COUNTY RELATED TO THE MISSOURI FLAT AREA MASTER CIRCULATION AND FUNDING PLAN

6.A. Obligations of County. In order to implement the MC&FP, improve existing traffic congestion problems in the Missouri Flat Area, ensure adequate traffic carrying capacity to accommodate future development in the area, and induce Developer to participate in the implementation of the MC&FP as set forth below, County hereby agrees to take the actions set forth in this Section 6. County hereby intends to bind itself to the extent allowed by law. However, the Developer and Landowner acknowledge and agree that:

a. Certain of the acts proposed to be performed by County pursuant to this Section 6 of the Development Agreement, such as the exercise of the power of eminent domain or the formation of the CFD, may require, pursuant to statute, that County make factual findings, or exercise its discretion in a manner prescribed by law, prior to taking such action. If County, in the exercise of reasonable diligence, is unable to make the required findings or exercise its discretion in the manner required by law, its failure to perform the acts required hereby shall not be a breach of this Development Agreement.

b. All acts required hereunder are intended to be performed in full compliance with law. If County is unable to perform any act called for because such act would conflict with any provision or requirement of law, including, but not limited to, Measure Y, County's failure to perform such act shall not be deemed a breach of this Development Agreement. The same shall apply to acts which, as a result of the application of law, cannot be performed in the manner anticipated (e.g. bonds cannot be issued in the time or manner as prescribed and receive the desired tax-exempt status). Without limiting the foregoing, County and Developer note the approval by the voters of El Dorado County of Measure Y at the November 3, 1998 election. County and Developer believe and maintain that approval of the Project and this Development Agreement are in conformance with the provisions of Measure Y.

c. The parties acknowledge that they intend all acts with respect to public finance or issuance of bonded indebtedness to be taken in the usual manner so as to maximize the likely success of the proposed validation action, compliance with debt limitation requirements, the tax exempt status of any CFD bonds issued, and full compliance with the requirements of the Internal Revenue Code and the Internal Revenue Service with respect to such indebtedness or bonds. Failure to take any act because of inability to meet such standards, even if the action and the manner in which it is to be performed is specified in this Development Agreement, shall not be a breach of this Development Agreement.

Notwithstanding the foregoing, the parties agree that adoption of the MC&FP and approval of this Development Agreement constitute legislative acts establishing the policies and actions to be taken with respect to satisfying Policy 2.1.4.8 of the El Dorado County General Plan and addressing the traffic congestion problems in the Missouri Flat Area. The actions required to be taken hereunder are in furtherance of those legislative policies and goals and are intended to be administrative implementation of those legislative act, even though such acts may require the exercise of discretion. Therefore, to the maximum extent allowed by law, the obligations of the County set forth in this Section are intended to be binding on the County.

The parties further acknowledge that the MC&FP sets forth a proposed schedule for funding and completing MC&FP Improvements. However, the MC&FP is intended to provide flexibility in the timing, phasing and sequencing of the MC&FP Improvements in order to accommodate financing and other needs. In particular, it is an underlying tenet of the MC&FP that construction of the MC&FP Improvements and the issuance of bonded indebtedness to finance such improvements shall only occur when sufficient funds, or funding sources, identified

in the MC&FP exist. County shall not be obligated under this Development Agreement to design or construct any improvements, or issue and sell any bonds, unless such funds or secure funding sources exist, and unless required bond issues can be successfully marketed upon terms which meet the financing needs of the MC&FP. No delay in the performance of County's obligations hereunder as the result of the absence of such funds or funding sources shall be a breach of this Development Agreement.

The obligations set forth in this section are those to be undertaken by the County pursuant to this Development Agreement. Nothing herein shall prevent County, at its sole discretion, from taking any additional actions not required by this Development Agreement to further the goals of MC&FP.

6.B. Tax Increment Funding. Under the MC&FP, approximately fifty-two percent (52%) of the total cost of the MC&FP Improvements is intended to be funded or financed using a portion of the Total Tax Increment generated by Missouri Flat Area Development. This represents County's contribution toward relieving existing traffic congestion and future traffic impacts not associated with new development. The balance is to be funded through the use of TIM Fees generated by new development, representing that portion of the cost attributable to the impacts of new development.

In order to satisfy County's commitment, County agrees annually to commit a sum equal to eighty-five percent (85%) of the Total Tax Increment generated by Missouri Flat Area Development in that year to funding MC&FP Improvements. However, in order to ensure compliance with Measure Y, the County shall not be required to commit Tax Increment Revenues to fund MC&FP Improvement costs in excess of Fourteen Million Nine Hundred and Thirteen Thousand One Hundred Eighty-eight Dollars (\$14,913,188). "Costs" for this purpose shall include only the costs of actual design, planning, acquisition and construction, and not financing costs or other expenses attributable to financing the underlying costs. County's obligation shall continue until all MC&FP Improvements are completed and all financial obligations related thereto have been discharged, or any remaining financial obligations have been fully funded through reserve accounts or similar mechanisms, so that the Property is no longer subject to the lien of the CFD special tax or there are sufficient moneys in the Special Reserve Account to make bond payments as they come due for the term of the CFD Bonds or to redeem the CFD Bonds. The Tax Increment Revenues may be used for any purposes consistent with the MC&FP including, but not limited to, direct payment for the cost of MC&FP Improvements on a pay-as-you-go basis, contribution of funds to the CFD for debt service and CFD costs associated with CFD bonded indebtedness used to fund MC&FP Improvements, repayment of TIM Fee advances made pursuant to Section 6.J of this Development Agreement, contributions to the CFD for redemption of bonds, payment of design and engineering costs, right-of-way acquisition, and accumulation of Tax Increment Revenues in a special account for future use consistent with the MC&FP with respect to MC&FP Improvements, such as accumulation of funds for future MC&FP Improvement projects. Except as may be expressly provided in this Development Agreement, the specific purpose for which the funds are used and

the timing of the use of such funds shall be at the discretion of the County to be exercised for the achievement of the goals of the MC&FP.

The County's use of the remaining fifteen percent (15%) of the Total Tax Increment shall be completely unrestricted.

The County's obligations under this Section 6.B shall cease when all MC&FP Improvements have been completed or fully funded, and when all other financial obligations of the parties which the Tax Increment Revenues would otherwise be used to reduce or discharge, have been fully discharged, or, any remaining financial obligations have been fully funded through reserve accounts or similar mechanisms, so that the Property is no longer subject to the lien of the CFD special tax or there are sufficient moneys in reserve to make bond payments as they come due for the term of the CFD Bonds or to redeem the CFD Bonds. At that time, County's use of all Total Tax Increment shall be completely unrestricted.

The County's obligations under this Section 6.B are to be funded exclusively by Tax Increment Revenues. No other source of County funds is being obligated by this Development Agreement. In no event shall the County's obligations to fund MC&FP Improvements exceed in any year eighty five percent (85%) of the Total Tax Increment received in that year from Missouri Flat Area Development. Nothing in the paragraph is intended to prevent the use in any year of funds accumulated, but not spent, during prior years from the committed Tax Increment Revenues, for any purposes consistent with the MC&FP.

6.B.1. Sequence of Use of Tax Increment Revenues Prior to Issuance of Bonds.

The purposes and sequence for which the Tax Increment Revenues shall be expended in any year prior to the issuance of any CFD Bonds to fund MC&FP Improvements shall be as follows.

6.B.1.a. **Special Reserve.** The County shall first deposit all of the remaining Tax Increment Revenues into the Special Reserve Account to be established pursuant to Section 6.C for the purpose of making available funds for bond debt service in the event that Tax Increment Revenues in any year are insufficient to fund that debt service, reducing the likelihood the collection of the Special Tax would be required. Such deposits shall continue to be made to the special Reserve Account until the Special Reserve Account, as supplemented by interest earned on such deposits, reaches One Million Five Hundred Thousand Dollars (\$1,500,000.00). This Special Reserve Account, and all interest earned thereon, shall remain in the possession of the County and shall be in addition to any bond reserves otherwise required to be established. This Special Reserve Account is to be established solely pursuant to the MC&FP and this Development Agreement and its use shall be limited solely by the terms of the MC&FP and this Development Agreement. Once the purpose for which the Special Reserve Account is established no longer exists, funds remaining therein shall be used for other purposes related to the MC&FP Improvements as stated in Section 6.B of this Development Agreement. When County's obligations under Section 6.B have been discharged as stated therein, any remaining funds in the Special Reserve Account shall be deposited in the general fund of County and their

use by County shall be unrestricted. This Special Reserve Account is established by County solely to reduce the likelihood of any necessity to collect the Special Tax due to insufficient Tax Increment Revenues in any year to fund the debt service.

6.B.1.b. TIM Fee Repayment. In the event the Special Reserve Account has been fully funded and bonds for the funding of MC&FP Improvements have not been issued, remaining Tax Increment Revenues shall be used to repay any Traffic Impact Mitigation Fees which have been advanced by the County pursuant to Section 6.J. below.

6.B.1.c. Other Related Purposes. In the event Tax Increment Revenues remain after reimbursement of TIM Fees pursuant to Section 6.B.1.b. above, and no CFD Bonds have been issued, such revenues shall be used by the County to fund MC&FP Improvements, or for any other purpose consistent with the MC&FP, as set forth in Section 6.B. The determination of the uses to which such revenues will be put shall be made by County in furtherance of the goals of accelerating completion of MC&FP Improvements, repaying any moneys advanced by County from other sources, reducing the need for issuance of bonded indebtedness, or the reduction of existing indebtedness, as in the judgment of County will result in the most effective implementation of the MC&FP.

6.B.2. Sequence of Use of Tax Increment Revenues Subsequent to Issuance of Bonds. Subsequent to the issuance of CFD Bonds for funding any MC&FP Improvements, Tax Increment Revenues in any year shall be used by County in the following sequence:

6.B.2.a. Contribution to CFD. Tax Increment Revenues shall first be contributed to the CFD up to an amount necessary to cover bond debt service and other expenses of the CFD which would otherwise be funded by the special tax authorized pursuant to the CFD, in accordance with Section 6.E, below.

6.B.2.b. Replenishment of Reserve Account. Tax Increment Revenues remaining after contributions to the CFD shall be used to replenish the Special Reserve Account in an amount equal to the amount of any funds that have been drawn down from that account to pay debt service as provided in the MC&FP.

6.B.2.c. Repayment of TIM Fees. Tax Increment Revenues remaining shall be used to repay any advance of Traffic Impact Mitigation Fees which were advanced by the County pursuant to Section 6.J. below, for the purpose of funding any portion of the planning, designing or construction of MC&FP Improvements which otherwise is appropriately allocated to the County as addressing existing roadway deficiencies.

6.B.2.d. Additions to Special Reserve Account. Tax Increment Revenues remaining shall be deposited in the Special Reserve Account to the extent required, if any, to increase the Special Reserve Account to levels established by the MC&FP.

6.B.2.e. MC&FP General Reserve. Any remaining Tax Increment Revenues shall be placed in a general reserve to be used as deemed appropriate by the County for the funding of MC&FP Improvements. Such uses may include, but are not necessarily limited to, those set forth in Section 6.B, above.

6.C. Establishment of Special Reserve Account. The County shall establish a Special Reserve Account for the purpose of receiving moneys pursuant to Section 6.B.1.a. of this Development Agreement. Moneys deposited in that Account shall be used solely for the purpose of a reserve against any annual shortfall in Tax Increment Revenues which would trigger collection of the Special Tax under the CFD. Once the purpose for which the reserve has been created no longer exists, any remaining funds in the Special Reserve Account shall be used first for any of the purposes set forth in Section 6.B, above, or if discharged pursuant to that section, any remaining funds shall be deposited in the General Fund of the County and may be used by the County without restriction.

6.D. Formation of Community Facilities District. As soon as is reasonably practicable, based on the advice of County's bond counsel and financial consultants, but in no event later than one hundred and eighty (180) days after the Effective Date of this Development Agreement, the County shall initiate and expeditiously process to conclusion proceedings for the formation of a Community Facilities District pursuant to the Mello-Roos Community Facilities Act, Title 5, Division 2, Chapter 2.5 of the California Government Code, Sections 53311 *et seq.* The CFD shall be established for the purpose of funding MC&FP Improvements in accordance with the MC&FP. The CFD shall be formed and the Special Tax shall be authorized and levied consistent with the CFD Structure.

The CFD shall include the Property, and any other Missouri Flat Area Development which has received County approvals and which are obligated to participate in the MC&FP and the CFD by reason of have entered into development agreements so providing, by any other condition of approval, or which are otherwise required or willing to participate. To the extent allowed by law, County shall require all Missouri Flat Area Development to participate in the MC&FP and the CFD. County, subject to compliance with applicable provisions of law, shall annex additional Missouri Flat Area Development to the CFD as such projects are approved and become obligated or willing to participate. Once all Missouri Flat Area Development has been included in the CFD, the annexation of any additional projects shall be at the sole discretion of the County which may elect to annex such projects or withhold such projects to be included in subsequent roadway improvement programs.

Developer acknowledges that the MC&FP is intended to provide maximum flexibility in financing the MC&FP Improvements. Therefore, the financing of MC&FP Improvements is dependent upon the development of sufficient retail uses to secure the funding, and not upon specific development. Missouri Flat Area Development is intended to represent sufficient development to fund the MC&FP Improvements. The Project is expected to develop in a time frame which will result in its being Missouri Flat Area Development. However, in the event

development of the Project does not occur within the time anticipated, and other development occurs prior to the Project or other development on the Property, that other development may constitute sufficient Missouri Flat Area Development so that inclusion of the Property in the CFD to fund MC&FP Improvements is not necessary or would overburden the MC&FP Improvements. If that is determined to be the case, in the sole discretion of County, and at the County's request, Developer agrees that it will consent to the Property being included in a community facilities district for the purpose of funding improvements beyond the MC&FP Improvements to accommodate development which occurs after the completion of the Missouri Flat Area Development; provided, that the obligations of Developer under such community facilities district are consistent with the CFD Structure. In such case, all of Developer's obligations contained in Section 5.A.4 shall apply with respect to such later community facilities district. In addition, if the Property has previously been included in the CFD, but not developed, then Developer agrees to take all actions necessary to all the Property to be severed from the CFD so that it can be included in that community facilities district.

6.F. Contribution to CFD. Subject to the limitations set forth herein, County shall annually contribute to the CFD an amount sufficient to allow payment of the total annual debt service on CFD Bonds outstanding which were issued to fund MC&FP Improvements, plus such other expenses of the CFD which would otherwise be funded by the CFD Special Tax. In no event shall the County's contribution to the CFD in any year exceed the Tax Increment Revenues from Missouri Flat Area Development, except that nothing in this section is intended to prevent the use of the Special Reserve Account established pursuant to Section 6.C, above. There shall be no carry-over obligations on the part of the County in the event that if the Tax Increment Revenues are less than is required for debt service and other costs of the CFD in the year. The County shall not be required to make any contribution from the then current year's Tax Increment Revenues for prior years when contributions fell short of that necessary to cover CFD expenses.

Upon formation of the CFD, the County shall enter into an agreement, or otherwise make a binding commitment to contribute such funds annually to the CFD. Such commitment shall be in a form recommended by County's bond counsel. County shall deliver a copy of such written commitment to Developer as soon as the County executes the commitment. Among other recommended terms, the commitment shall provide that the annual contributions shall not exceed an amount determined to be the fair value for the use of the MC&FP Improvements being funded through the CFD Bonds for which the contributions are being made, and shall provide for abatement of the contributions in the event the MC&FP Improvements are materially damaged or destroyed so that there is substantial interference with the use of the MC&FP Improvements, all in a form recommended by bond counsel for the County.

6.F. Authorization of Bonds. As soon after formation of the CFD as is recommended by bond counsel for purposes of commencing the validation action called for in Section 6.G, County shall take such actions as are required by law to authorize the issuance of CFD Bonds for the purpose of funding MC&FP Improvements. The amount of the authorization shall be the

maximum reasonably feasible amount based upon the advice of the County's financial advisors and bond counsel, taking into consideration projections for anticipated rate of Missouri Flat Area Development, expected Tax Increment Revenues, and the anticipated timing for the sale and use of said bonds. County and CFD shall have no obligation to issue or sell any bonds at the time of such authorization, and shall not be obligated to issue or sell any bonds until the criteria set forth in Section 6.H. are met.

6.G. Validation Action. If recommended by County's bond counsel at the earliest time recommended by bond counsel, County shall file, or cause to be filed, in a court of competent jurisdiction, an action designed to validate the issuance and sale of bonds, and all preliminary actions which are prerequisite to such sale, such as formation of the CFD, the contribution agreement between County and CFD, and the provisions of this Development Agreement as they relate to the funding of the MC&FP.

6.H. Sale of Bonds. It is the intent of the parties that MC&FP Improvements be funded, undertaken and completed expeditiously. At the same time, it is the intent of the parties that sufficient Tax Increment Revenues be available to service all bonded indebtedness incurred for such purposes, and all associated costs, in order to minimize any likelihood that such costs will need to be funded through the collection of the special tax by the CFD. To accomplish these concurrent goals, the MC&FP was developed to allow maximum flexibility in the timing, phasing and scope of MC&FP Improvements, and the associated funding, so that MC&FP Improvements, or increments of MC&FP Improvements, can be undertaken or deferred in response to the actual development of Missouri Flat Area Development and the generation of Tax Increment Revenues.

Consistent with these purposes, the County, from time to time, shall take such steps as are reasonably necessary to cause the sale of CFD Bonds to finance the completion of MC&FP Improvements, or increments thereof. The timing, phasing and sequencing of MC&FP Improvements, and the timing and amount of any bond issue, except as is expressly provided otherwise in Section 6.H.1 of this Development Agreement, shall be at the discretion of the County based upon the availability of adequate Tax Increment Revenues to support the financing, and the timeliness of the improvements in the schedule of MC&FP Improvements.

If sources of funds for MC&FP Improvements, other than CFD Bonds, become available on terms which are comparable or favorable to the terms upon which bond financing is available, County, in its sole discretion, may substitute such funding sources for all or part of the bond financing contemplated. This provision is intended to allow the County to take advantage of favorable financing which may be available to the benefit of County and Developer. Such substitution of funding sources shall not affect or modify the obligations or liabilities of County or Developer with respect to the repayment or securing of such funds. The County's and Developer's obligations to provide for repayment through Tax Increment Revenues and the CFD Special Tax, respectively, shall remain in effect in the same form as is provided with respect to repayment of the CFD Bonds. Such alternative funding sources can be used without the consent

of Developer only if all of the following conditions are met: (1) the total cost of the alternative funding over the term of the financing does not exceed the total cost of the bond funding which it replaces; (2) the debt service for the alternative funding in any year does not exceed the projected debt service for the replaced bond funding in that respective year; (3) the amortization schedule for repayment of the alternative funding does not exceed in length the projected term for repayment of the replaced bond funding; and, (4) the Developer's obligations and liabilities set forth in the CFD Structure remain unchanged. Alternative funding sources which are deemed mutually beneficial, but do not meet the criteria set forth above, may be used with the written consent of both County and Developer without amending this Development Agreement.

In addition, County, at its discretion, may structure or restructure its contribution arrangement under Section 6.F, above, in such fashion as is deemed appropriate either to reduce the costs of the financing or in order to meet legal requirements. Any such structuring or restructuring shall conform to the CFD Structure and all of the criteria set out in the immediately preceding paragraph with respect to alternative funding sources.

6.H.1. Restriction on Issuance of CFD Bonds. The Property will be subject to the lien of a special tax to secure CFD Bonds issued to fund MC&FP Improvements. The MC&FP contemplates that the contribution of Tax Increment Revenues by the County to the CFD will be sufficient to fund the debt service and costs of the CFD so that the special tax will not need to be imposed on the Property. Therefore, County agrees that it will not cause any CFD Bonds to be issued until sufficient Missouri Flat Area Development has been constructed and occupied to result in Projected Annual Taxable Sales which will generate Tax Increment Revenues sufficient to fund such debt service and CFD costs, and until the Special Reserve Account has been funded to the initial level of One Million Five Hundred Thousand Dollars (\$1,500,000.00). With respect to subsequent issues, CFD Bonds shall not be sold unless the Special Reserve Account contains at least one year's debt service for all outstanding CFD Bonds plus the proposed issue.

6.II.2. Issuance of Bonds to Fund Missouri Flat/Highway 50 Interchange Phases 1a and 1b. The MC&FP contemplates the sale of CFD Bonds to fund 52% of the total cost of improvements to the Missouri Flat Road/Highway 50 Interchange. This improvement is expected to be segmented into phases identified as 1a and 1b as set forth in the MC&FP. The Bonds may be issued in a single issuance or in separate annual issuances corresponding to construction phases based on advice of County's financial consultants and bond counsel. County shall take the necessary steps to cause the CFD Bonds to be issued for these purposes, and thereafter to cause the interchange improvements to be constructed, when all of the following conditions have been met:

a. The validation action referred to in Section 6.G of this Development Agreement shall have been successful and final. No other legal action shall be pending which would threaten the validity of the bonds or the capability to service the bond debt.

b. The necessary design and engineering work has been completed, required governmental review and approvals have been obtained and are final, and construction is scheduled so that issuance of the bonds is timely, and not premature, in light of the anticipated construction schedule for the improvements.

c. Sufficient TIM Fees have been collected and are available to fund the remaining portion of the improvement which are to be funded from that source, representing the share of the costs attributable to new development.

d. Missouri Flat Area Development shall have occurred, been occupied, and placed into service having Projected Taxable Sales, not otherwise encumbered for purposes of the MC&FP, which will generate Tax Increment Revenues sufficient to service the debt on the bonds proposed to be issued, as well as other related administrative and operating costs of the CFD. In the event it is determined that Phase 1a of the Missouri Flat Road/Highway 50 Interchange improvements can be accomplished independent of Phase 1b, and that it is economic and feasible to have a separate bond issuance for Phase 1a, then that issuance may occur when the Projected Taxable Sales will generate Tax Increment Revenues sufficient to service that smaller issue.

e. The Missouri Flat Area Development being relied upon to generate the Projected Taxable Sales shall have been complete and in use for not less than one (1) year, and shall have a taxable sales generation record which supports the conclusion that actual taxable sales will approximate the Projected Taxable Sales.

f. The Missouri Flat Area Development being relied upon to generate the Projected Taxable Sales shall have been included in or annexed to the CFD and shall be subject to the special tax.

g. The Special Reserve Account called for in Section 6.C shall contain at least One Million Five Hundred Thousand Dollars (\$1,500,000.00).

h. The proposed bond issue is in full compliance with the requirements of the Securities and Exchange Act and any other laws or regulations applicable to such issue, and County or CFD are able to obtain all required opinions of counsel and other normal prerequisites to such issue.

i. The County or CFD, as required, shall have completed the due diligence investigation required and found the bond issue to be in conformity with the usual and customary standards regarding the security of such issue.

6.I. Reimbursement of MC&FP Costs. The cost of developing the MC&FP, including, but not necessarily limited to, the cost of traffic engineering, planning, economic analysis, legal analysis, drafting and environmental review, have been borne by the County.

Developer, El Dorado Villages and Wal-Mart under a series of cost sharing agreements. The original agreement was dated June 18, 1996, and was superseded by an agreement dated April 15, 1997, as amended. This work has analyzed both current traffic conditions in the Missouri Flat Road area and projected traffic generated by projected development through approximately the year 2015 (approximately 1,500,000 square feet) based upon General Plan policies and analysis, and has developed a master circulation plan to mitigate those impacts and a funding plan which has developed a means of funding the required mitigation. In the absence of such work, any project proponent would be required to perform such environmental, traffic and financial analysis and to develop a mechanism for mitigating the impacts of the proposed project. Given the interrelated nature of anticipated traffic impacts from new development and existing transportation deficiencies, such task would require an effort essentially equivalent to that put into the MC&FP, if, in fact, such analysis were feasible in the context of an individual project. Therefore project proponents in the Missouri Flat Area, other than Developer, El Dorado Villages and Wal-Mart will benefit fully from the work funded by these developments and the County, and will avoid the costs of such work. Although County has approved only what has been referred to in preliminary documents as Phase I of the MC&FP, which is expected to accommodate approximately one-half of the projected 2015, the planning, economic and environmental work done with respect to the MC&FP has continuing value in developing a master circulation and funding plan for development beyond that which is contemplated in Phase I as described in the EIR. Therefore, it is appropriate to provide for the payment of such fees by development beyond that immediately contemplated in the event it occurs.

Therefore, County shall develop and impose on non-residential development in the Missouri Flat Area, including development in the Sundance Plaza Project, the El Dorado Villages Project and the Wal-Mart Project, a permit processing fee calculated to charge such development its fair share of the costs of preparing the MC&FP based on the floor area of the proposed development in proportion to the total floor area of development projected in the year 2015 (one million five hundred thousand square feet). Such fees shall be used to reimburse County, Developer, El Dorado Villages and Wal-Mart, at least quarterly to the extent fee revenues are available, for the costs incurred by them in developing the MC&FP. As between Landowner and Applicant, reimbursements shall be payable to the party which actually made the original cost contribution. For purposes of this calculation, the total floor area of the Sundance Plaza Project shall include both Phase I and Phase II of that Project. If any of the parties which contributed to the cost of the MC&FP and related actions (Sundance, El Dorado Villages, Wal-Mart or County) are applicants for building permits, they shall receive a credit against any such fees up to the amount contributed by that party under the cost sharing agreement. In the event any of the parties have actually contributed more under the cost sharing agreement than others, that party shall first receive reimbursement until the parties' contributions are equalized. Thereafter, the receipts shall be distributed equally until parties have received full reimbursement of their contributions, adjusted for cost of living increases, less any amounts credited against fees which would otherwise have been charged. To the extent permitted by law, County will include in the fees established under this section a reasonable charge for reimbursing the County and Developer any costs of litigation incurred by County and Developer in defending any legal action

challenging the MC&FP or related actions of general applicability, but not Project-specific litigation. Any litigation costs recovered through such fees shall be first applied to reimburse any party which incurred expenses in excess of its share as set forth in this Development Agreement. Thereafter, reimbursements shall be made in proportion to the contributions made by each party.

Reimbursable litigation costs incurred by the Developer, El Dorado Villages and Wal-Mart shall be accounted for separately from expenditure under the cost sharing agreements. Any fees collected shall first be used to reimburse the parties for reimbursable litigation costs. Once all such costs have been reimbursed, fees collected shall be devoted to reimbursement of costs incurred under the cost sharing agreement.

6.J. Advance of TIM Fees. Tax Increment Revenues and Bond proceeds will not be available for several years after completion adoption of the MC&FP and approval of this Development Agreement. In order to accelerate completion of certain MC&FP Improvements, County agrees to advance funds in accordance with the MC&FP, but only to the extent funds are available, from TIM Fees held or received from development in the TIM Fee area, to fund portions of the cost of those Improvements which are scheduled to be funded through Tax Increment Revenues. Such funds shall be used for design work, right-of-way acquisition and construction related to certain MC&FP Improvements as called for in the MC&FP. Such advances shall not exceed Four Million One Hundred Thousand Dollars (\$4,100,000.00) without County's approval.

In particular, County has completed, or is in the process of completing, the Missouri Flat Road South Widening Phase 1 and Phase 2 improvements which are being fully funded out of TIM Fee revenues. The estimated total cost of those improvements is Five Million Seven Hundred Eight Thousand Five Hundred Dollars (\$5,708,500.00). Of that amount, Two Million Three Hundred Ninety Seven Thousand and Five Hundred Seventy Dollars (\$2,397,570.00) represents TIM Fees funds advanced pursuant to this section which are to be credited toward the County's commitment. The balance of the advances are to be made, if needed, for the design, right-of-way acquisition, and construction of other MC&FP Improvements such as the Missouri Flat Road/Hwy. 50 interchange or the Pleasant Valley/Missouri Flat Road Connector.

Such advances shall be repaid, with interest, out of bond proceeds or Tax Increment Revenues, as available, as called for in the MC&FP and, subject to the availability of funds in a timely manner and taking into consideration the priorities established for use of tax increment funds, in accordance with the schedule set forth in the MC&FP. The current schedule calls for approximately Two Million Dollars (\$2,000,000.00) to be repaid from the proceeds of the first bond issuance, with the balance to be paid in annual increments over a period of approximately eight (8) years.

SECTION 7. ANNUAL REVIEW

7.A. Annual Review. County shall, at least every twelve (12) months during the term of this Development Agreement, review the extent of good faith compliance by Developer with the terms of this Development Agreement. Such periodic review ("Annual Review") shall be limited in scope to compliance with the terms and conditions of this Development 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.

7.A.1. Request for Information. Upon not less than thirty (30) days written notice by the Planning Director of County, Developer shall provide such information as may be requested by the Director and deemed by the director to be required in order to ascertain compliance with this Development Agreement.

7.A.2. Review Process. In the same manner as in Section 1.H, County shall deposit in the mail to Developer a notice of the pending contract review not less than ten (10) days prior to completion of such annual review. Such notice shall give the time and place of any scheduled hearing and designate the location at which Developer may obtain all staff reports or any written materials relating to contract performance. County may charge a reasonable fee for the duplication and distribution of such written materials. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Development Agreement before, the Board of Supervisors or, if the matter is referred to the Planning commission or other officer of the County, then before said Commission or officer. A noticed public hearing shall not be required, but may be held at the election of the County. Formal rules of evidence shall not apply in any proceedings related to this annual review. A finding by County of good faith compliance by Developer with the terms of this Development Agreement shall be conclusive with respect to the performance of Developer during the period preceding the review.

7.B. Costs. County may charge to Developer the reasonable costs of conducting the annual review.

SECTION 8. DEFAULT, ENFORCEMENT AND REMEDIES

8.A. Default. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provisions of this Development Agreement shall constitute a default.

8.A.1. Notice. In the event of alleged default or breach of any term or condition of this Development Agreement, the party alleging such default or breach shall give the other

party not less than thirty (30) 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 thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

8.A.2. Initiation of Proceedings for Remedies. After notice and expiration of the thirty (30) day period, either party to this Development Agreement at its option may institute legal proceeding pursuant to this Development Agreement or give notice of intent to terminate the Development Agreement pursuant to California Government Code Section 65868 and regulations of the County implementing said Government Code Section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review by the Board of Supervisors within thirty (30) days in the manner set forth in Government code Sections 65865, 65867 and 65868 and County regulations implementing said sections.

8.A.3. Termination. 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 Development Agreement to the other party.

8.A.4. Cure. No party shall be deemed to be in default of any term or provision of this Development Agreement if, within thirty (30) days of notice of alleged default, the party alleged to be in default cures the default or, if the default is incapable of cure within that time, commences to cure the default and thereafter proceeds expeditiously to cure the default.

8.A.5. Annual Review. Evidence of default may also arise in the course of a regularly scheduled periodic review of this Development Agreement pursuant to Government Code Section 65865.1 and Section 7.A of this Development Agreement. If either party determines that the other party is in default following the completion of the normal scheduled periodic review, said party may give written notice of intent to terminate this Development Agreement as set forth in this section, specifying in said notice the alleged nature of the default, and potential actions to cure said default, and shall specify a reasonable period of time in which such default is to be cured. If the alleged default is not cured, or if not capable of cure within the time allowed then commenced and diligently prosecuted to completion, within thirty (30) days or within such longer period specified in the notice, or if the defaulting party waives its right to cure such alleged default, the County may terminate or modify this Development Agreement.

8.A.6. Effect of Termination. The parties acknowledge that certain of the obligations under this Development Agreement relate to the funding of the MC&FP, and that the County and other entities may take actions or incur debt in reliance on actions to be taken under this Development Agreement. Certain of those actions will be implemented through document other than this Development Agreement such as granting of consent by Developer to the formation of a CFD, formation of the CFD and execution of a contribution agreement *or other binding commitment* between County and the CFD. The parties agree that termination of this

Development Agreement, for default or otherwise, shall in no way affect the validity of any such actions taken prior to termination of the Development Agreement.

8.B. Specific Performance. In addition to any other remedies provided in law or equity, the terms of this Development Agreement shall be specifically enforceable by any court of competent jurisdiction. With respect to the execution of any documents, consents or other materials by Developer required to grant consent to the formation of the CFD or to authorize the CFD special tax in conformance with this Development Agreement, such specific performance shall include the authority of the court to order the execution of such documents on behalf of the Developer by any person designated by the court to act on behalf of, or as attorney for, the Developer.

8.C. No Building Permit During Default. In addition to any other remedies provided in law or equity, no building permit shall be required to be issued or building permit application accepted for any structure on the Property if the permit applicant, or person on whose behalf the permit is being obtained, owns or controls any property subject to this Development Agreement, and if such applicant or any entity or person controlling such applicant is in default of the terms and conditions of this Development Agreement.

8.D. 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.

8.E. Enforced Delay, Extension of Times of Performance. In addition to the specific provisions of this Development Agreement, performance by either party hereunder shall not be deemed to be in default where, and to the extent that, delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to the other party 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.

8.F. Applicable Law and Attorneys' Fees. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party for breach of this Development Agreement or to enforce any provisions herein, the prevailing party to such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court.

SECTION 9 MISCELLANEOUS PROVISIONS

9.A. No Joint Venture or Partnership. It is understood and agreed by and between the parties hereto that the Project is a private development. No partnership, joint venture or other association of any kind is formed by this Development Agreement.

9.B. Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party challenging the validity of any provision of this Development 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 Development Agreement. Nothing in this section shall be deemed to modify or limit any other provisions of this Development Agreement providing for the funding of such litigation.

9.C. Authority to Execute. The person or persons executing this Development Agreement on behalf of Developer warrant and represent that they have the authority to execute this Development Agreement on behalf of Applicant and Landowner, and that they have the authority to bind both Applicant and Landowner to the performance of their obligations hereunder. All owners of beneficial interests in the Property have executed or consented to the recordation of this Development Agreement.

9.D. Construction of Agreement. The language in all parts of this Development Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. The captions of the sections and subsections of this Development Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction.

9.E. 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 Development 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 transaction contemplated by this Development Agreement, and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement.

9.F. No Third Party Beneficiaries. This Development Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns, except as is expressly provided otherwise in this Section 9.H. No other person shall have any right of action based upon any provision in this Agreement; except, that, any property owner within the Missouri Flat Area whose property has been included in the CFD, and whose liability would be increased or security decreased by any proposed amendment to this Development Agreement shall have the right to enforce the provision contained in Section 1.F which calls for the consent of such property owners in such event.

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

9.II. Recording. The parties shall promptly execute this Development Agreement upon approval by the Board of Supervisors in such form as will allow the recordation of this Development Agreement. The County Clerk shall cause a copy of this Development Agreement to be recorded with the El Dorado County Recorder no later than ten (10) days following execution of this Development Agreement by County.

9.I. Severability. If any term, covenant or condition of this Development Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, except as otherwise provided in this Development Agreement the remainder of this Development Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Development Agreement shall be valid and be enforced to the fullest extent permitted by law.

Notwithstanding the foregoing, it is acknowledged by Developer and County that a central purpose of this Development Agreement is to provide for the funding of MC&FP Improvements in accordance with Section 5 and 6 of this Development Agreement. If any provision of this Development Agreement is held invalid or unenforceable, and such invalidity or unenforceability renders it impossible or infeasible to fund the MC&FP Improvements in a manner materially comparable to that contemplated by this Development Agreement, then such provision shall not be severable. In such event, the parties shall negotiate in good faith to attempt to agree upon modifications to the Development Agreement which would cure the invalidity or unenforceability and accomplish the purposes of the Development Agreement. If the parties are unable to agree upon such modifications, this Development Agreement shall terminate and be of no further force and effect upon giving of written notice by either Developer or County of such failure to reach agreement.

DATE: 1-5-99

COUNTY OF EL DORADO

By: 

J. MARK NIELSEN

Chairman Pro Tem
Board of Supervisors

12/15/98
(Bd. dte.)

ATTEST:

DIXIE L. FOOTE
Clerk of the Board of
Supervisors

By: *[Signature]*
Deputy *[Signature]*
(2/15/98)
(dte)

DATE: 1/28/99

APPROVED AS TO FORM:

[Signature]
LOUIS B. GREEN
County Counsel

SUNDANCE MISSOURI FLAT, LLC,
a California limited liability corporation
"Applicant"

By: ROEBBELEN LAND CO.
Its: GENERAL PARTNER
by *[Signature]* GEN. PTR.

DATE: 3-8-99

PROSPECT INVESTMENT COMPANY,
a LIMITED PARTNERSHIP, "Landowner"

By: *[Signature]*
Its: GENERAL PARTNER

DATE: 3-8-99

EL DORADO LAND, LTD.,
a LIMITED PARTNERSHIP, "Landowner"

By: *[Signature]*
Its: GENERAL PARTNER

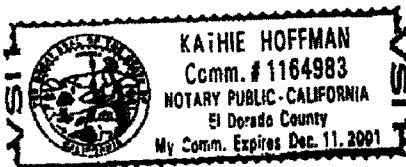
035271

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of El Dorado } ss.On 3/8/99 before me, Kathie Hoffman,
(DATE) (NOTARY)
personally appeared David Thuleen
SIGNER(S)

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



WITNESS my hand and official seal.

Kathie Hoffman
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

- ☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
 NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

OTHER

RIGHT THUMBPRINT
 OF
 SIGNER



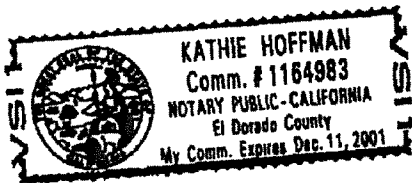
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ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of EL Dorado } ss.On 3/8/99 before me, Kathie Hoffman,
(DATE) (NOTARY)
personally appeared John A. Johnson
SIGNER(S)

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



WITNESS my hand and official seal.

Kathie Hoffman
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
 NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

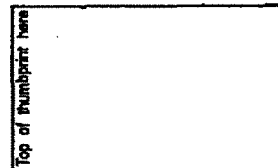
TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

OTHER

RIGHT THUMBPRINT
 OF
 SIGNER



035271

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of El Dorado } ss.On 3/8/99 before me, Kathie Hoffman,
(DATE) John A. Johnson (NOTARY)
personally appeared _____
SIGNER(S)

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



WITNESS my hand and official seal.

Kathie Hoffman
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

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☐ OTHER: _____

SIGNER IS REPRESENTING:
 NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT _____

NUMBER OF PAGES _____

DATE OF DOCUMENT _____

OTHER _____

RIGHT THUMBPRINT
 OF
 SIGNER



035271

STATE OF CALIFORNIA)
County of El Dorado)

On January 5, 1999, before me, DIANE PAGE, Notary Public,
State of California, personally appeared J. Mark Nielsen,
Chairman Pro Tem of The Board of
Supervisors of The County of El Dorado
personally known to me (or proved to me on the basis of satisfactory evidence)
to be the person (s) whose name (s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

Diane Page
DIANE PAGE, Notary Public
State of California



035271

EXHIBIT "A"

PROPERTY SITE MAP

PARCEL / SITE PLAN EXHIBIT

SUNDANCE PLAZA

COUNTY OF EL DORADO, STATE OF CALIFORNIA

DEVELOPER: WILSON & ASSOCIATES, INC.

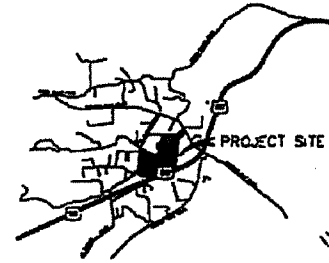
1000 S. HIGHWAY 50, SUITE 100
EL DORADO, CALIFORNIA 92631
TEL: (951) 681-1111
FAX: (951) 681-1112
WWW.WILSON-CA.COM

AS SHOWN 8/14/08

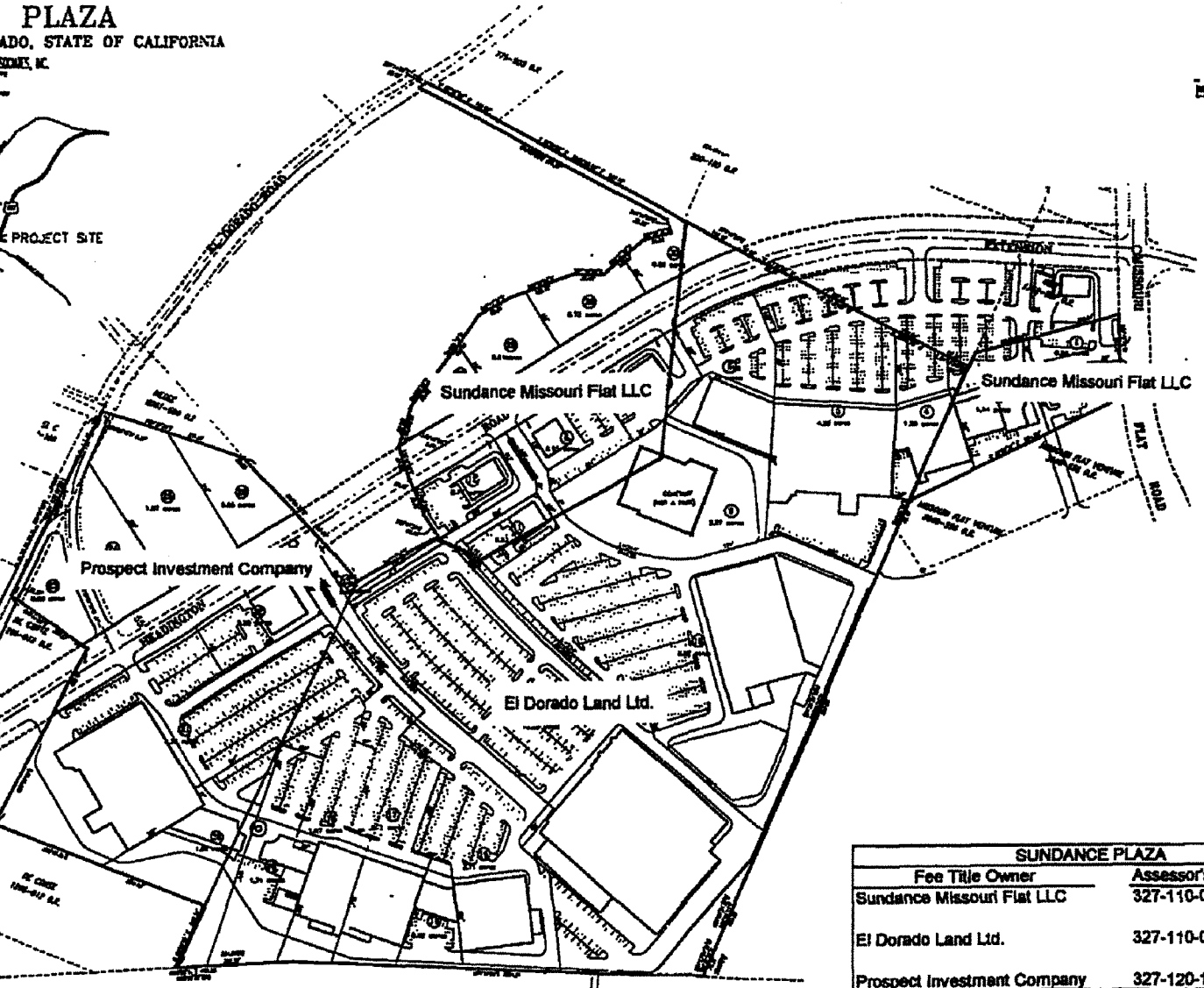


GRAPHIC SCALE

1" = 100'



VICINITY MAP
SEE



SUNDANCE PLAZA	
Fee Title Owner	Assessor's Parcel #
Sundance Missouri Flat LLC	327-110-02, 327-130-02
El Dorado Land Ltd.	327-110-04, 08
Prospect Investment Company	327-120-19, 20, 21, 22

U.S. HIGHWAY 50

035271

EXHIBIT "B"

PROPERTY DESCRIPTION

The land referred to in this Report is situated in the State of California and is described as follows:

County: El Dorado

City: unincorporated area

All that portion of the Northwest quarter of the Northeast quarter of Section 23, Township 10 North, Range 10 East, M.D.B.&M., more particularly described as follows:

BEGINNING at a point which is South 2° 46' West 393 feet from the Northwest corner of the Northeast quarter of Section 23, Township 10 North, Range 10 East, M.D.B.&M., thence South 2° 46' West 34.8 feet; thence South 1° 57' West 364.8 feet; thence North 42° 22' East 706.4 feet to the centerline of the County Road; thence North 19° 22' West along the centerline of said County Road 102.6 feet; thence continuing along said centerline North 30° 50' West 76.3 feet to a point which is distant North 54° 0' West 480 feet from the point of beginning; thence South 54° 0' West 480 feet to the point of beginning.

SAVING AND EXCEPTING THEREFROM the following described parcel:

BEGINNING at the most Westerly point of the parcel herein described from whence the North quarter corner of said Section 23 bears North 57° 42' 40" West 326.17 feet; thence from said point of beginning North 53° 17' 20" East 119.42 feet; thence South 31° 32' 40" East 76.30 feet; thence North 20° 04' 40" East 102.60 feet; thence South 41° 39' 20" West 132.03 feet; thence on a curve to the right through an angle of 03° 18' 21" with a radius of 840.00 feet; and the chord of which bears North 25° 02' 30" West 48.46 feet; thence North 23° 23' 20" West 157.71 feet to the point of beginning, as set forth in deed recorded March 15, 1968 in Book 869 of Official Records, page 278.

Assessors Parcel No.: 327-130-02

VESTING

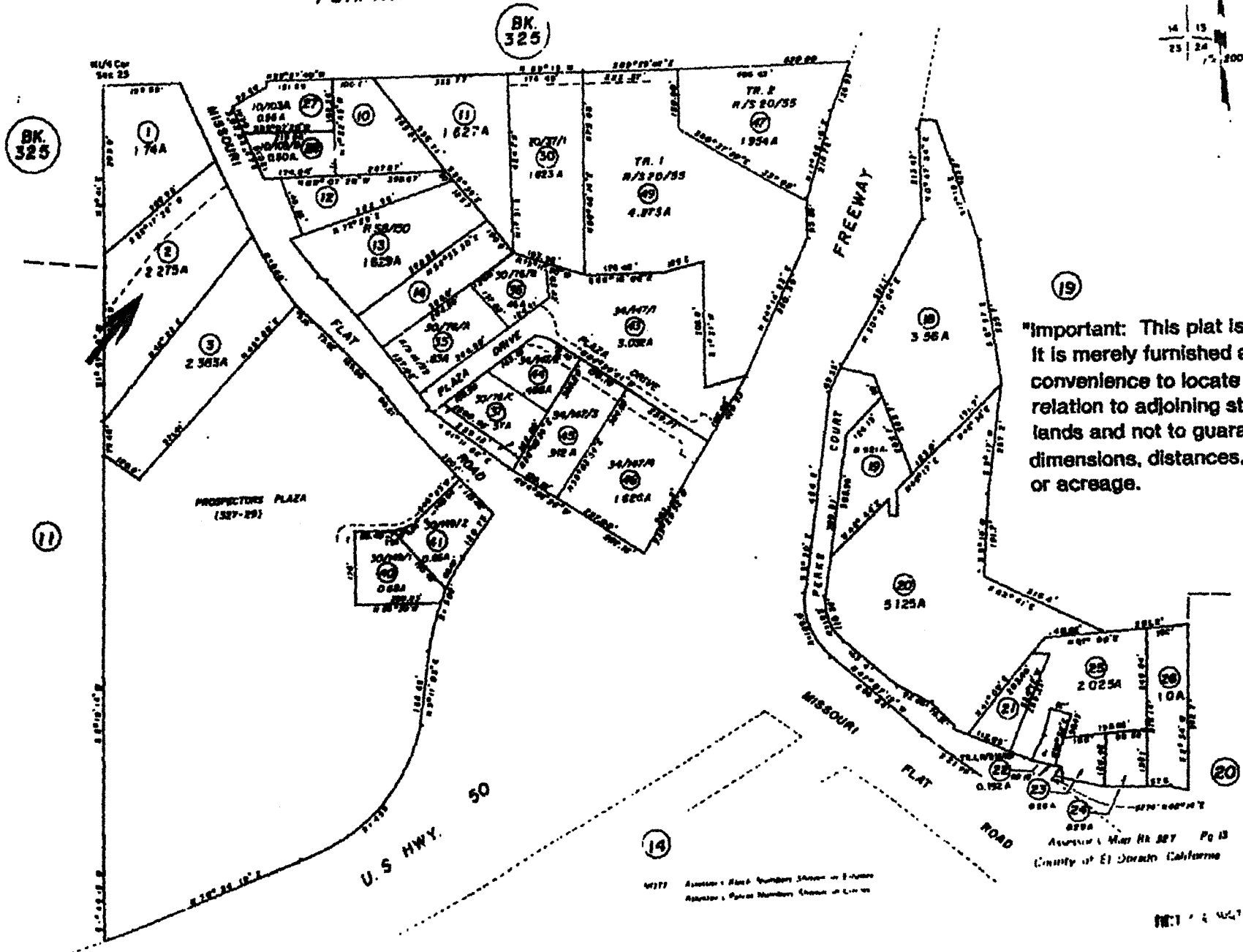
SUNDANCE MISSOURI FLAT, LLC
(WAS VOORHEES)

Sundance Missouri Flat, LLC (Was Voorhees)

POR. N. 1/2 SEC. 23, T. 10 N., R. 10 E., M. 4 D.

1/4 Acre Cont.

327.13



035271

Order No: 43674-D UPDATE

The land referred to in this Report is situated in the State of California and is described as follows:

County: El Dorado

City: unincorporated area

All that portion of the Northwest quarter of Section 23, Township 10 North, Range 10 East, M.D.B.&M., more particularly described as follows:

BEGINNING at the Northeast corner of the parcel herein described, a 3/4 inch capped iron pipe in a fence line, from which the North quarter corner of said Section 23 bears North 66° 23' 30" East 838.89 feet; thence from said point of beginning, along said fence line, North 83° 00' 20" West 756.68 feet to a similar pipe on the Southeasterly side of El Dorado Road; thence along a fence line, South 34° 11' West 22.48 feet to a similar pipe; thence leaving said fence line and said road South 83° 00' 20" East 694.21 feet to a similar pipe; thence South 41° 14' East 28.33 feet to a similar pipe on the Northwesterly bank of the El Dorado Irrigation District ditch; thence continuing South 41° 14' East 5.00 feet to the centerline thereof; thence along said centerline on the following courses and distances: South 52° 22' 30" West 71.95 feet; South 28° 23' West 132.53 feet; South 71° 10' West 70.46 feet; South 49° 00' West 169.73 feet; South 40° 12' 30" West 92.05 feet; South 14° 05' 20" West 186.50 feet; South 15° 09' 40" West 95.88 feet; South 03° 06' 40" East 101.69 feet; South 39° 47' East 88.80 feet; South 43° 00' 30" East 95.76 feet; South 52° 14' 30" East 64.14 feet; North 89° 36' 40" East 78.59 feet; South 81° 43' East 44.54 feet; and South 25° 10' East 11.06 feet to a 3/4 inch capped iron pipe at the Southwesterly corner of a concrete weir; thence leaving said ditch North 43° 06' 20" East 573.82 feet to a similar pipe; thence North 20° 04' 30" West 585.57 feet to the point of beginning.

Assessors Parcel No.: 327-110-02

VESTING

SUNDANCE MISSOURI FLAT, LLC
(WAS WINSTON)

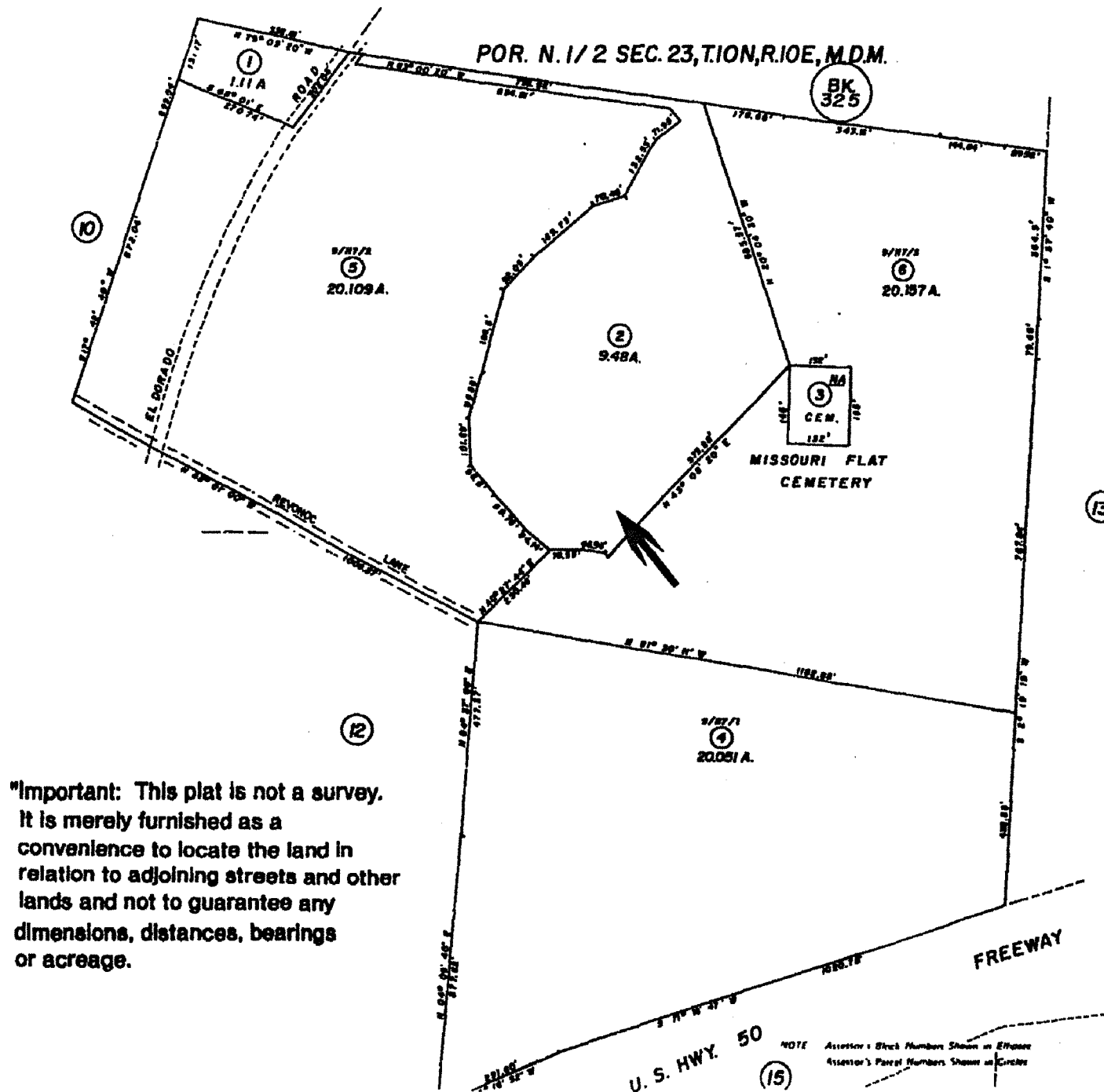
Sundance Missouri Flat, LLC (Was Winston)

Tax Area Code

327.11



035271



Assessor's Map Bk. 327 - Pg. 11.
County of El Dorado, California

Order No: 45588 UPDATE

The land referred to in this Report is situated in the State of California and is described as follows:

County: El Dorado

City: unincorporated area

PARCEL A:

A portion of the Northwest 1/4 of Section 23, Township 10 North, Range 10 East, M.D.M., more particularly described as follows:

Parcels 1 thru 4 inclusive, as shown on the Parcel Map, filed June 28, 1977 in Book 16, of PARCEL MAPS at page 6, El Dorado County Records.

Assessors Parcel No.: 327-120-19
327-120-20
327-120-21
327-120-22

PARCEL B:

Parcels 1 and 3 as said parcels are shown on that certain Parcel Map entitled "A portion of the Northwest 1/4 of Section 23, Township 10 North, Range 10 East, M.D.M.", filed December 31, 1975 in the office of the County Recorder of said county in Book 9 of Parcel Maps, at page 117.

Assessors Parcel No.: 327-110-04
327-110-06

VESTING

PARCEL A: PROPSECT INVESTMENT COMPANY
a limited partnership

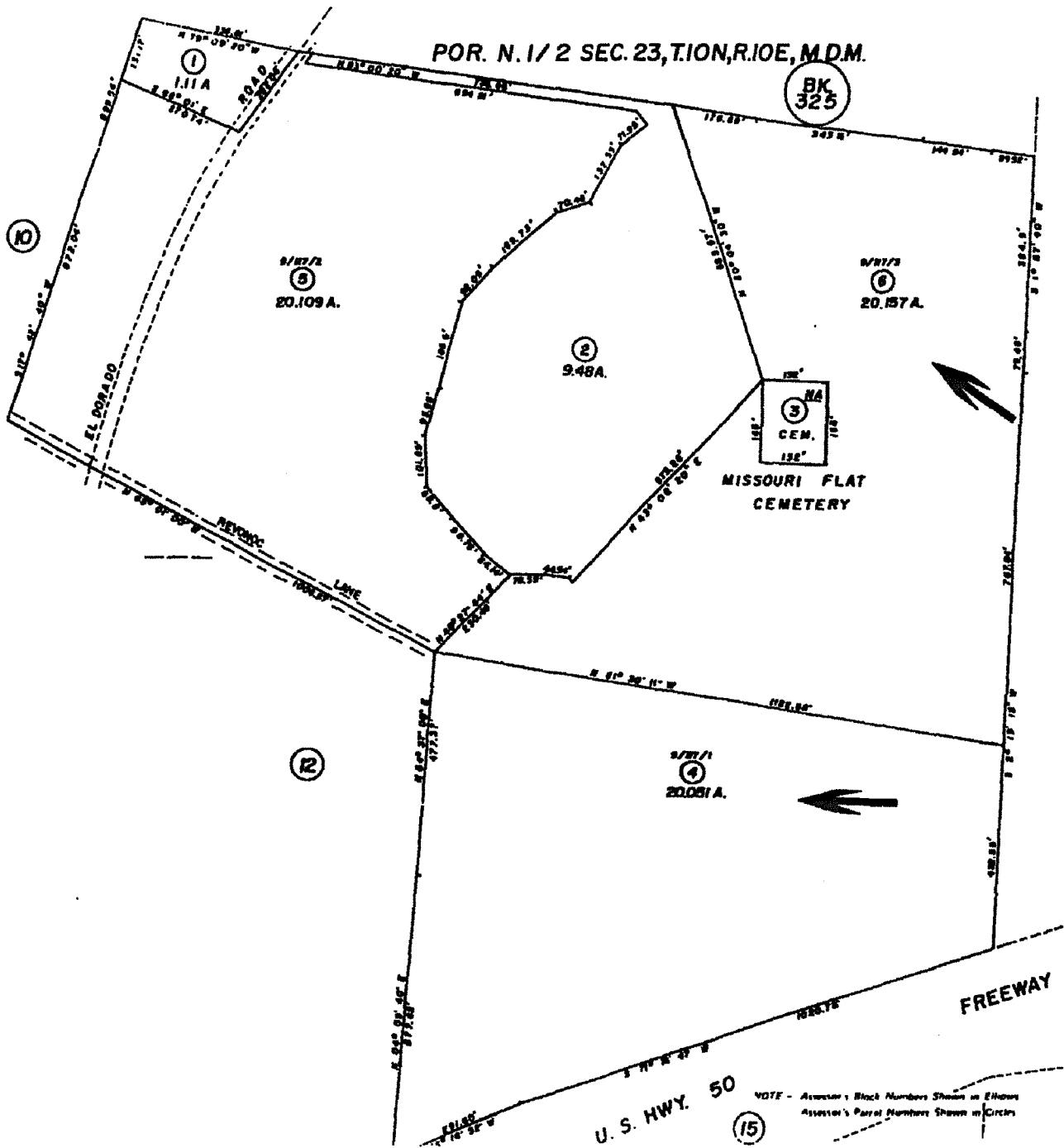
PARCEL B: EL DORADO LAND, LTD.

El Dorado Land, Ltd.

POR. N. 1/2 SEC. 23, T. 10N, R. 10E, M. 6M.

Tax Area Code

327.11



035271

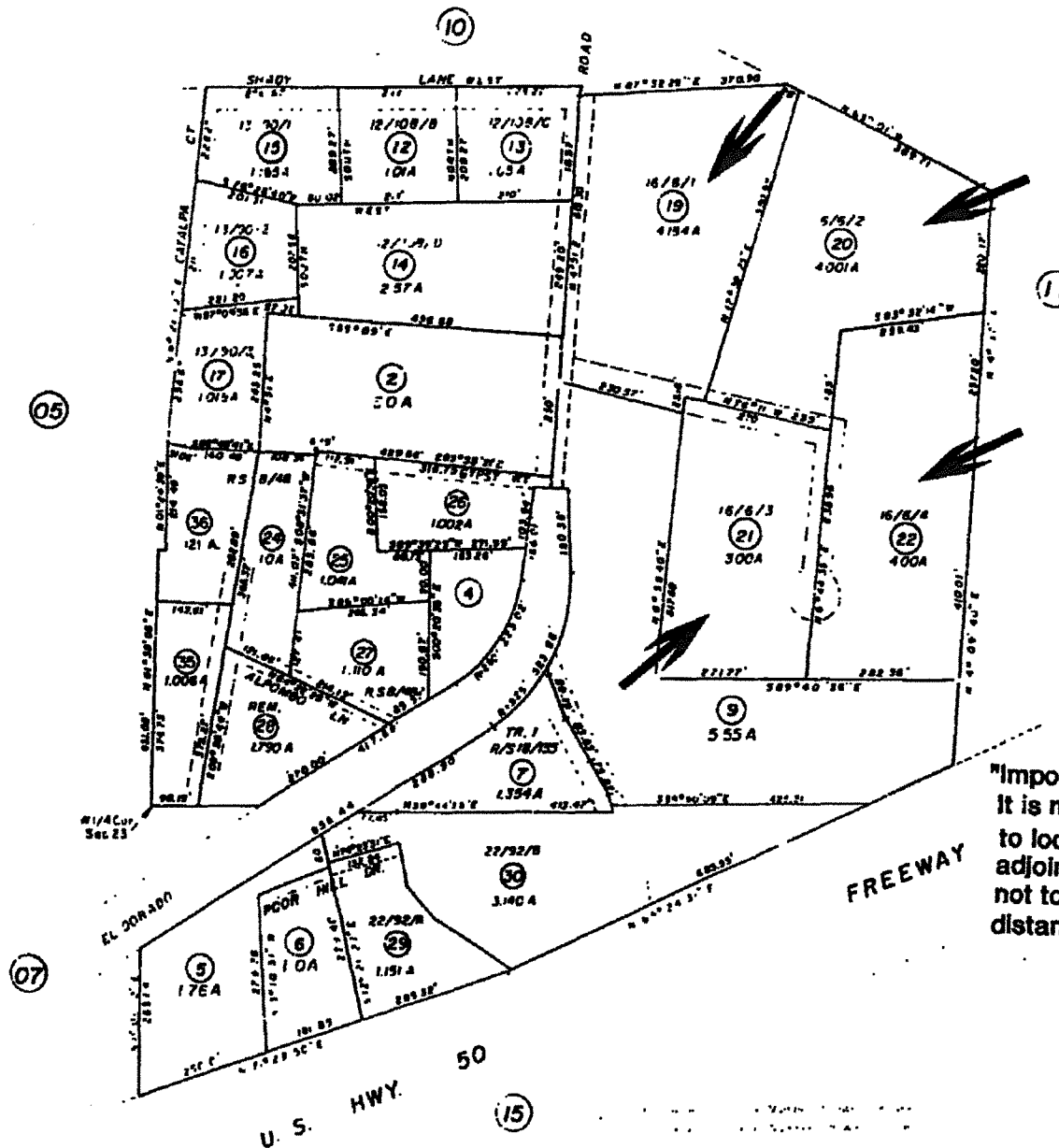
"Important: This plat is not a survey. It is merely furnished as a convenience to locate the land in relation to adjoining streets and other lands and not to guarantee any dimensions, distances, bearings or acreage.

Assessor's Map Bk. 327 - Pg. 11.
County of El Dorado, California

Prospect Investment Company

POR. W. 1/2 SEC. 23, T. 10N, R. 10E, M.D.M.

327.12



"Important: This plat is not a survey. It is merely furnished as a convenience to locate the land in relation to adjoining streets and other lands and not to guarantee any dimensions, distances, bearings or acreage.

Approved: 11/1/83 327 P. 12
 Dept. of S. & R. California

035271

EXHIBIT "C"

CONDITIONS OF APPROVAL

SUNDANCE PLAZA - As adopted by the Board of Supervisors December 15, 1998.

DA98-01

Findings

1. The Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the County General Plan.
2. The Development Agreement will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the County as a whole.
3. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values.
4. The Development Agreement is consistent with the provisions of Government Code §§ 65864 through 65869.5.
5. The Development Agreement contains a legal description of the subject property.

Z97-22

Findings

1. The proposed rezone is consistent with the General Plan Land Use Map and has been found to be supportable after assessment of the criteria in Policy 2.2.5.3.
2. A de minimis finding on the project's effect on fish and wildlife resources cannot be found and the project is therefore subject to the payment of California Department of Fish and Game fees per AB 3158.
3. The decision-making body has independently reviewed and certified the Final Missouri Flat Area and Sundance Plaza and El Dorado Villages Shopping Center EIR, prepared in accordance with State CEQA Guidelines §15132, prior to approving the project. The County has also considered and responded to Agency issues and concerns raised during review of the project (summarized in 'Agency Comments') through design modifications, or attached conditions of approval.
4. Significant and unavoidable impacts were identified in the Final EIR for the project and findings were prepared pursuant to Public Resources Code §21081. A Statement of Overriding Considerations was prepared pursuant to Public Resources Code § 21081(b). An El Dorado Villages Shopping Center Mitigation Monitoring and Reporting Program (MMRP) was prepared pursuant to Public Resources Code §21081.6. The decision-making

body has considered the EIR, the findings and Statement of Overriding Considerations, and the MMRP during the discretionary review of this project.

5. The project, as conditioned, complies with County General Plan policies, and development standards and regulations for Planned Developments, and underlying zoning.
6. The project is not considered detrimental to the public health, safety, and welfare.

PD97-11

Findings

1. A Planned Development application was filed in accordance with County Code Chapter 17.04 et. seq. The Planned Development, as conditioned, is found to be consistent with the County General Plan and related County regulations.
2. The decision-makers considered the architectural drawings of elevations of the proposed buildings in accordance with County Code 17.14.130 for applications in a commercial district facing a state highway.
3. The proposed Sundance Plaza is so designed to provide a desirable environment within its own boundaries.
4. The site is physically suited for the proposed uses.
5. Adequate services are available for the proposed uses including, but not limited to, water supply, sewage disposal, roads, and utilities.

PD97-11

Conditions

1. Only the following exhibits and documents are approved herein as part of the Development Plan for Sundance Plaza:
 - Exhibit B: Site Plan
 - Exhibit D: Preliminary Grading Plan
 - Attachment 4: Preliminary Landscape Concept
 - Attachment 6: Proposed Signage
 - Building Elevation Exhibit(s) (not attached; on file with the Planning Department)
2. Approval of this development plan authorizes the processing of building and grading permits for projects found to be consistent with the approved Development Plan and conditions of approval noted herein. Such building and grading permit applications are processed as a

ministerial permit, and approved by County departments. In those instances where the development plan establishes specific standards, they shall supercede County standards. In those instances where the development plan does not address an issue or standard, applicable County standards shall apply.

In those situations where, in the opinion of the Planning Director, there is a significant departure from the approved development plan, or if issues are discovered which are not readily clarified in the conditions of approval of the development plan, then the Planning Director shall first present such changes to the Planning Commission at a regular meeting (not requiring hearing notification) to determine if the Planning Commission can make a finding of consistency. If such a finding cannot be made, plans shall be modified to be brought into consistency or an amendment application filed for Planning Commission consideration at a public hearing.

3. Prior to issuance of a building permit, final plans for fire flow, building sprinklers, and fire hydrant locations will be approved by the Diamond Springs/El Dorado Fire Protection District. Fire Department Connections for the Automatic Fire Sprinkler Systems will be located no farther than 50 feet from a fire hydrant.
4. Prior to the issuance of Occupancy Permits, fire extinguishers will be required throughout all commercial buildings. Size and type will be approved by the Diamond Springs/El Dorado Fire Protection District.
5. Prior to initiation of grading, the applicant shall submit and have approved by the El Dorado County APCD, a fugitive dust prevention and control plan.
6. Prior to construction/installation of point source emissions units (e.g., commercial water heaters, gas station, cleaners) at Sundance Plaza, authority to construct applications shall be submitted to the APCD. Submittal of applications will include facility diagram(s), proposed equipment specifications, and emission factors.
7. Prior to issuance of a building permit, the applicant will obtain EID approval of a Facility Plan Report for water and wastewater distribution lines and facilities, requiring the prior payment to EID of \$240 in review fees.
8. Prior to the issuance of a building permit, the applicant will pay a maximum surcharge of \$2,000 per EDU to share in the cost of providing offsite peak flow storage if determined necessary by EID. In addition, the project applicant may be required to improve the sewage lift station along El Dorado Road to receive service. The necessary improvements will be addressed in the Facility Plan Report and installed prior to building occupancy.
9. The project applicant shall provide separated routes for bicycle and pedestrian traffic to allow unimpeded circulation within the property being developed as specified in policies 3.9.1.6 and 3.11.2.3 of the El Dorado County General Plan prior to the issuance of occupancy

permits. Said routes shall be shown on the Development Plan and approved by the Planning Director prior to issuance of building permits.

10. The applicant shall receive a "will serve" letter from the franchise refuse hauler, the El Dorado Disposal Company, Inc. prior to building permit issuance.
11. The applicant shall adhere to El Dorado County Ordinance, Section 8.42.600 et. al. regarding loading and collecting solid waste and recyclable materials.
12. The project will be permitted no more than one shopping center pylon sign (announcing various shopping center tenants) of not to exceed 1,021 square feet per side or 50 feet in height along the project frontage on U.S. Highway 50 for Phase 1 development. One additional shopping center pylon sign (announcing various shopping center tenants) of not to exceed 654 square feet per side or 35 feet in height will be allowed along the project frontage on Missouri Flat Road for Phase 2 development. The location of the shopping center pylon signs shall be in accordance with County Code 17.16.050. Minor adjustments may be made to the area of the pylon signs as long as the combined total area of 1,675 square feet is maintained. If individual back lighted letters are used in total or in part for this sign instead of the typical interior lighted "can" sign, a larger area may be allowed if approved by the Planning Commission.
13. No more than two onsite monument shopping center signs, not to exceed 10 feet in height and 80 square feet of area, will be permitted along entrance areas of the project. The final location of the monument signs shall be approved by the El Dorado County Planning Department.
14. One tenant monument sign will be permitted for each free-standing use not to exceed 6 feet in height and 48 square feet in area.
15. Building wall signs will be permitted not to exceed an average of 10 percent of the square footage of the building frontage on which it appears and meet the other standards specified in County Code §17.16.030. The frontage will include parapets or other wall features that extend beyond the structure of the wall.
16. Menu boards and directional signs for the fast food restaurants will be subject to the approval of the Planning Director.
17. Prior to issuance of any building permit, the applicant shall submit a sign design program as a minor amendment to the Development Plan which addresses criteria for color, style, sizes, materials for the pylon, monument, and wall signs. Such criteria, when approved by the Planning Commission, shall be applied to all permitted on-site signs. Temporary signing and banners are not permitted unless standards are provided in the sign program for such signing, including length of time such temporary signs are allowed.

18. All sign locations will comply with El Dorado County site distance requirements as defined in the "Design and Improvements Standards Manual."
19. Perimeter landscaping shall be provided within the project site's boundary between the project and U.S. Highway 50, Missouri Flat Road, and Headington Road. A minimum of 5 feet of landscape shall also be provided on the Sundance Plaza site along the Phase 1 and Phase 2 frontage of Prospectors Plaza, along the Lindsay property, and on the portion of site to be excluded parcel (labeled 'N.I.C.') at the center of Phase 1 adjacent to Headington Road, and any other area where parking (including access) is adjacent to any private property.
20. A final landscape plan identifying the number of proposed trees and shrubs, in addition to their planting size (landscape palette provided already) will be provided prior to issuance of a grading permit. The minimum trees and shrubs within perimeter landscaping shall be in accordance with County Code §17.18.090.
21. For each of Phase 1 and Phase 2 of development, parking lot landscaping shall include shade trees, distributed evenly throughout, placed as to provide canopy cover over 50 percent of the total parking within 15 years of securing the first building permit for each development phase. Canopy trees from a minimum fifteen (15) gallon container size or equal shall be planted within the parking lots, and satisfy the requirements of the water conserving landscape ordinance. Parking areas shall contain at least two (2) tree species, with at least one type being a large shade tree and at least one type of accent tree to delineate aisles and announce entries.
22. Planters shall utilize live landscape materials that will ultimately achieve 75 percent coverage of the planter area. Landscape treatments and shrub plantings shall be located as not to impair visibility for pedestrians or motorists. In areas where plants are susceptible to damage by vehicular traffic or pedestrian circulation, the landscape materials shall be protected by appropriate curbs, tree guards, or other acceptable means.
23. Landscape maintenance shall be provided by the applicant or successor shopping center owner, or as agreed through binding tenant agreements. For each month during the first year of planting, the vitality and health of all landscape shall be monitored. During this time, non-living landscape of comparable quality, size, and texture, shall be replaced at the originally planted size (different plants may be used, at the discretion of the Planning Director, if they would provide for a more vigorous or sustainable landscape). Quarterly from the second through the fifth year of planting, the vitality and health of all landscape shall be monitored. During this time, non-living landscape of comparable quality, size, and texture, shall be replaced at the originally planted size (different plants may be used, at the discretion of the Planning Director, if they would provide for a more vigorous or sustainable landscape).
24. In addition to EIR Mitigation Measure 4.3-12, parking lot light poles will be restricted to 30 feet or less and shall be incorporated into the parking lot landscape design.

25. Prior to the issuance of building permits, a color rendering utilizing the submitted texture and color board on file in the Planning Department for the project shall be approved by the Planning Director.
26. For any building facade in excess of 100 feet, the applicant will incorporate recesses and projections along at least 20 percent of the length of the facade. Such recesses or projections shall be a minimum depth of 12 inches.
27. For buildings in excess of 50 feet in length on the front side, the project shall provide variations in roof lines to encourage greater architectural interest in the structure. Variations may be in the form of parapets concealing flat roofs and rooftop equipment, overhanging eaves, slope roofs, and three or more roof slope planes.
28. Screening of roof top equipment shall be provided to prevent visibility of any roof top equipment from passersby traveling along Missouri Flat Road, Headington Road, and U.S. Highway 50. The type and extent of screening shall be approved by the Planning Director.
29. Any trash enclosures situated along frontages of U.S. Highway 50, Missouri Flat Road, and Headington Road will be screened from direct passersby view with architectural treatments (e.g. building finishes and colors) that correspond with adjacent buildings. Trash enclosures shall be a minimum of seven (7) feet in height to minimize outside views of enclosed dumpsters.
30. Prior to the first certificate of occupancy, the applicant shall construct a permanent perimeter fence and locking pedestrian gate, and separate locking vehicle gate for maintenance access at the Missouri Flat cemetery. The pedestrian gate shall remain open during the daylight hours, but be locked each night by 5:00 p.m. The design of the fence shall provide security and reflect the historic era of the cemetery and shall be approved by the El Dorado County Planning Director, with consultation with the El Dorado County Pioneer Cemeteries Commission and El Dorado County Cultural Resources Preservation Commission, with the General Services Director serving as the lead in the matter of impacts on cemeteries.
31. Prior to the first certificate of occupancy, the applicant shall design and install one sign near the cemetery pedestrian access to provide educational historic instruction and to enhance the public's understanding of the purpose and value of such cultural resources. This sign shall be a monument sign not to exceed five (5) feet in height, with a maximum 30 square feet in area.
32. The applicant will establish an endowment, trust fund, or other method, to be approved by the Planning Director and County Counsel, for the clean-up, care, and weed abatement of the cemetery grounds.

33. A letter of compliance with the Parcel Map Conditions of Approval from the local enforcement agencies shall be submitted to the Surveyor's Office prior to filing the parcel map.
34. The parking lot and walk areas shall not be used for outdoor sales or other events. However, an outdoor events plan, if approved by the Planning Commission as a minor amendment to the Development Plan, may authorize such activities. The outdoor events plan shall at a minimum address the magnitude, frequency, and location of such events.
35. The applicant shall submit a site improvement/grading plan prepared by a professional civil engineer to the Department of Transportation for review and approval. The plan shall be in conformance with the County of El Dorado "Design and Improvement Standards Manual," the "Grading, Erosion and Sediment Control Ordinance," the "Drainage Manual," the "Off-Street Parking and Loading Ordinance", and the State of California Handicapped Accessibility Standards.

P97-17**Conditions**

1. Where the applicant is required to make improvements on lands which neither the applicant nor the County has sufficient title or interest to make such improvements, prior to issuance of a building permit the applicant shall submit the following to the Department of Transportation Director for approval:
 - a. A legal description prepared by a civil engineer or land surveyor of the land necessary to be acquired to complete the off-site improvements;
 - b. Improvement plans prepared by a civil engineer of the required off-site improvements; and
 - c. An appraisal prepared by a professional appraiser of the cost of land necessary to complete the off-site improvements.

Prior to issuance of a building permit, the applicant shall enter into an agreement to complete the required off-site improvements, including the full costs of acquiring any real property interests necessary to complete the required improvements. In addition to the agreement, the applicant shall provide a cash deposit, letter of credit, or other acceptable surety in an amount sufficient to pay such costs including legal costs subject to the approval of County Counsel.

2. The applicant shall submit a site improvement/grading plan prepared by a professional civil engineer to the Department of Transportation for review and approval.

3. A Drainage Report shall be prepared by the developer to identify any impacts resulting from the increase in runoff due to the buildout of the subject property. A final drainage plan shall be prepared that identifies the improvements necessary to mitigate the impacts indicated in the drainage report. All hydrologic and hydraulic analyses, and the design of improvements shall be in accordance with the provisions of the County of El Dorado Drainage Design Manual.
4. The applicant shall obtain a grading permit and pay appropriate fees commensurate with the scope of the proposed project prior to commencement of any work performed.
5. Prior to issuance of a grading permit, an erosion, slope stabilization and revegetation plan shall be prepared for review and approval by the El Dorado Resource Conservation District and the County Department of Transportation.
6. All grading and erosion control, including driveway construction, shall be in compliance with the requirements of Chapter 15.14 of the El Dorado County Code, Grading, Erosion and Sediment Control Ordinance.
7. The interim alignment of El Dorado Road is classified as a Rural Major Collector and shall have an irrevocable offer of dedication, in fee, along the project frontage, for road and public utility purposes of 30 feet from centerline.
8. Missouri Flat Road is classified as a Rural Minor Arterial and shall have an irrevocable offer of dedication, in fee, of 60 feet from centerline.
9. The project will require encroachment permits onto Missouri Flat Road and El Dorado Road.
10. Prior to recording of the parcel map for Phase 1 of Sundance Plaza, the owner shall provide an access easement for ingress and egress to Prospectors Plaza and the Lindsay project at three locations, as indicated on the parcel map.
11. The applicant shall provide an irrevocable offer of dedication, in fee, of the necessary right-of-way to accommodate the ultimate 4-lane divided roadway for Headington Road, together with any necessary slope, public utility, or pedestrian easements. The location of the Headington Road extension shall be subject to the approval of the County Department of Transportation.
12. Vehicular Access Restriction for parcels adjacent to Missouri Flat Road and Headington Road shall be shown on the parcel map, except for the common access points approved by the Department of Transportation.
13. A Joint Access Agreement needs to be provided prior to filing the parcel map which permits joint use of the parking area and access over all parcels for vehicles, bicycles, and pedestrians. Said agreement is subject to County Counsel review.

14. The Headington Road extension, both on-site and off-site from Missouri Flat Road to El Dorado Road, shall be constructed as a condition of the project subject to the requirements of standard Plan 101A. The roadway design shall be for a two-lane divided road, with Class II bicycle lanes, a center turn lane median, and a six-foot wide sidewalk with curb and gutter along the side of Headington Road that fronts Sundance Plaza only. The applicant shall construct intersection improvements and signalize the Missouri Flat Road/Headington Road intersection concurrent with construction of the Headington extension. In addition, the County will evaluate whether a portion of the foregoing costs can be funded through a Missouri Flat Area Traffic Impact Mitigation Fee Program or another funding strategy acceptable to the County without creating a conflict with Measure Y.
15. The Interim El Dorado Road shall be subject to Standard Plan 101B, 36-foot paved roadway with 2-foot shoulders.
16. A 50-foot radius cul-de-sac shall be constructed at the terminus point of Court "A." The developer shall provide an irrevocable offer of dedication, in fee, for a right-of-way of 60 feet radius concentric with the constructed improvements.
17. The project shall be subject to the County Traffic Impact Mitigation (TIM) fee. Pursuant to Resolution 31-98, said fee shall be due upon the issuance of a building permit. If prior to the application for a building permit for said project a revised fee is established, such revised amount shall be paid.
18. The project shall be subject to the State system infrastructure traffic impact mitigation (TIM) fee. Pursuant to Resolution 32-98, said fee shall be due upon the issuance of a building permit. If prior to the application for a building permit for said project a revised fee is established, such revised amount shall be paid.
19. Project entrances shall be provided in accordance with Figure 5 of the Final Report, Traffic Access Study for Sundance Plaza (April 10, 1998), except for the Ultimate realignment of El Dorado Road.
20. The project applicant for Sundance Plaza shall be responsible for constructing a bus turnout and transit shelter along the project site frontage of Headington Road. The type and location of the specific facilities as well as the timing of their installation shall be determined by El Dorado County DOT with input from the El Dorado County Transit Authority. The determination of timing shall ensure that these transit improvements are in place commensurate with the extension of transit service along Headington Road. Also, the applicant shall provide a park-n-ride lot of a minimum 40 spaces on Lot 23. The desired number of spaces is 80. However, the ultimate number of spaces to be provided will depend on the quantity that can be accommodated on Lot 23. The design and landscaping will be subject to approval of the Department of Transportation, El Dorado County Transit Authority, and the El Dorado County Planning Department. The park-n-ride lot shall be constructed prior to final occupancy of any building.

21. The project applicant for Sundance Plaza shall be responsible for the construction of Class II bike lanes along any parcels on the project site that front on Missouri Flat Road. The timing of construction shall be determined by the El Dorado County Department of Transportation.
22. Project approvals shall be operative only upon execution and final approval of a development agreement requiring the applicant to participate in the Missouri Flat Area Master Circulation and Funding Plan including, but not limited to, participation in the Mello-Roos District to be formed to fund roadway improvements specified in the MC&FP.
23. The applicant shall create a passive neighborhood park, approximately 1.5 to 2 acres in size and including the retention basin, to be located in parcels 24, 25, and 26, bordering on El Dorado Road and property owned by Megee. This passive neighborhood park shall be maintained by the applicant, or successor, along with the retention basin. The improvements and landscaping shall be subject to the approval of the Planning Director. The park shall be completed prior to issuance of the certificate of occupancy for any construction in Phase I that cumulatively exceeds 300,000 square feet.
24. Sundance Plaza shall pay their fair share of the cost of the El Dorado Road/Highway 50 Interchange and the balance of such costs to be funded through the County TIM fee program or any other funding strategy acceptable to the County. In addition, the County will continue to evaluate including the cost of this interchange within the MC&FP without creating a conflict with Measure Y. No building permit shall be issued until the funding source is identified and a fair share is committed.

SUNDANCE PLAZA**ENVIRONMENTAL MITIGATION MEASURES****Land Use Mitigation Measures**

Mitigation Measure 4.2-1: Change in Land Use. No feasible mitigation measures are available to reduce this impact to a less-than-significant level.

Mitigation Measure 4.2-3: Land Use Compatibility. Implement Mitigation Measures 4.3-9, 4.3-12, 4.5-4, 4.5-12, 4.6-4(a), and 4.6-7. No further feasible mitigation measures are available to reduce this impact to a less-than-significant level.

Visual Resources Mitigation Measures

Mitigation Measure 4.3-4: Short-term Visual Changes. For any properties that will be cleared and graded and that will be exposed for 8 or more months, the applicant shall broadcast seed the property with a native wildflower mix. The seeded area will be irrigated to establish the plant life. Once plant life is established, or after one complete winter season, irrigation may no longer be required to sustain vegetation. For areas that are seeded in the fall, irrigation is not required since it would take advantage of winter and spring rains.

Mitigation Measure 4.3-9: Long-term Visual Changes. Sundance Plaza is already required to undergo design review, including the submittal and approval of a landscaping plan, as part of the Planned Development application process. For this mitigation, the landscaping plan approved for the Sundance Plaza project shall include a landscaping theme along the entire frontage of Headington Road (between Missouri Flat Road and El Dorado Road) that incorporates native trees and shrubs.

Prior to issuance of the first occupancy permit at Sundance Plaza, this entire landscape frontage shall be planted. This landscape area shall be irrigated sufficiently to ensure that plants are well-established. The applicant shall ensure, through an agreement with the Sundance Plaza developers, lease agreements with tenants or other mechanisms approved by El Dorado County, that this landscape area is maintained for plant vitality (including on-going irrigation, if necessary) and for weed and trash removal. Any plants that are not successfully established or in a healthy living condition for up to five (5) years after initial planting shall be replaced with in-kind vegetation. There are no additional feasible mitigation measures to reduce significant long-term visual impacts of the Sundance Plaza project.

Mitigation Measure 4.3-12: Nighttime Lighting. Approval of any retail project in the MC&FP Area, Sundance Plaza, or El Dorado Villages Shopping Center, shall be subject to the following lighting standards which are fashioned after the draft El Dorado County lighting standards being considered for inclusion in the updated County Zoning Ordinance.

- a. Any commercial, industrial, multi-family, civic, or utility project that proposes to install outdoor lighting shall submit plans for such lighting, to be reviewed by the Planning Director as part of a site plan review. If the project requires a design review, special use permit or development plan application, said lighting plan shall be included as part of that application, and shall be subject to approval by the approving authority.
- b. Lighting plans shall contain, at a minimum, the location and height of all light fixtures, the manufacturer's name and style of light fixture, and specifications for each type of fixture.
- c. All outdoor lighting shall conform to the following standards:
 - 1) Parking lot and other security lighting shall be top and side shielded to prevent the light pattern from shining onto adjacent property or roadways, excluding lights used for illumination of public roads.
 - 2) External lights used to illuminate a sign or the side of a building or wall shall be shielded to prevent the light from shining off of the surface intended to be illuminated. Bottom lighting shall be prohibited.
 - 3) Lights that shine onto a road in a manner which causes excessive glare and may be considered to be a traffic hazard shall be prohibited.
 - 4) Outdoor floodlights shall not be projected above the horizontal plane.
 - 5) Lighting of outdoor display area, including but not limited to vehicle sales and rental, and building material sales, shall be turned off within 30 minutes after the closing of the business. Security lighting, as approved by the Planning Director may remain on after the close of business.

Transportation and Circulation Mitigation Measures

Mitigation Measure 4.4-1: Phase 1 (Year 2005) - Intersection Operations. Project applicants for development projects in the MC&FP area shall be responsible for the construction of the following improvement.

- El Dorado Road/Headington Road - Sundance Plaza shall install a traffic signal and construct southbound left- and right-turn lanes, an eastbound left-turn lane, and a westbound right-turn lane. The improvements at this intersection shall also include the realignment of El Dorado Road directly across from the entrance to Anchor 2 as described in the *Final Report, Traffic Access Study for Sundance Plaza*, Fehr & Peers Associates, Inc., April 10, 1998. The Sundance Plaza applicant shall be reimbursed for this improvement, per the Reimbursement Agreement with the County, with MC&FP funds.

Improvements to this intersection are included in the MC&FP and costs in excess of the applicant's fair share would be considered for reimbursement from revenues collected through the MC&FP. The specific reimbursement language shall be effected through a Development Agreement between El Dorado County and the Sundance Plaza applicant. Implementation of these improvements would reduce Impact 4.4-1 to less than significant.

Mitigation Measure 4.4-2: Phases 1 and 2 - Intersection Operations (MC&FP Area). Implementation of Phases 1 and 2 of the MC&FP would increase traffic volumes resulting in the deterioration of p.m. peak hour intersection operations to LOS F at the Missouri Flat Road/El Dorado Road intersection and at the El Dorado Road/Mother Lode Drive intersection. This impact is considered significant.

Project applicants for development projects in the MC&FP area shall be responsible for improvements to the following intersections.

- ▶ Missouri Flat Road/El Dorado Road - install a traffic signal and construct exclusive eastbound and westbound left-turn lanes on the Missouri Flat Road approaches.
- ▶ El Dorado Road/Mother Lode Drive - install a traffic signal and construct exclusive northbound and southbound left-turn lanes on the El Dorado Road approaches.

The specific timing of these improvements will depend on traffic growth at these locations from new development in the MC&FP. El Dorado County DOT shall monitor these locations and determine when signalization would be appropriate. The applicants for Sundance Plaza and El Dorado Villages shall each pay their fair share of the cost of the signals, and the balance of such cost will be funded through the County TIM fee program or any other funding strategy acceptable to the County. In addition, the County will continue to evaluate including the cost of the signals within the MC&FP without creating a conflict with Measure Y.

Mitigation Measure 4.4-3: Development Projects - Intersection Operations. The project applicant for Sundance Plaza shall participate in the MC&FP. This plan would result in the implementation of roadway improvements by 2005 that would provide adequate service levels at all study intersections.

Completion of these improvements would not occur until 2005. Therefore, LOS F conditions at the Missouri Flat Road/Highway 50 EB Ramps intersection, the Missouri Flat Road/Highway 50 WB Ramps intersection, and at the Missouri Flat Road/Mother Lode Drive intersection would be exacerbated by Sundance Plaza traffic until 2005. Also, LOS D conditions at the Missouri Flat Road/Prospector Plaza intersection would be exacerbated by Sundance Plaza traffic until 2005.

As a result, Impact 4.4-3 would be significant and unavoidable under the short-term conditions and less than significant under the long-term conditions.

Mitigation Measure 4.4-4: Development Projects - Intersection Operations.

Implement Mitigation Measures 4.4-1 and 4.4-3.

Completion of these improvements would not occur until 2005. Therefore, LOS F conditions at the Missouri Flat Road/Highway 50 EB Ramps intersection, the Missouri Flat Road/Highway 50 WB Ramps intersection, and at the Missouri Flat Road/Mother Lode Drive intersection, would be exacerbated by Sundance Plaza traffic until 2005. Also, LOS D conditions at the Missouri Flat Road/Prospector Plaza intersection would be exacerbated by Sundance Plaza traffic until 2005.

As a result, Impact 4.4-4 would be significant under the short-term conditions and less than significant under the long-term conditions.

Mitigation Measure 4.4-5: Development Projects - Transit Facilities. The project applicant for Sundance Plaza shall be responsible for constructing a bus turnout and transit shelter along the project site frontage of Headington Road. The type and location of the specific facilities as well as the timing of their installation shall be determined by El Dorado County DOT with input from the El Dorado County Transit Authority. The determination of timing shall ensure that these transit improvements are in place commensurate with the extension of transit service along Headington Road. Implementation of these improvements would reduce Impact 4.4-5 to less than significant.

Mitigation Measure 4.4-6: Development Projects - Bicycle and Pedestrian Facilities. The project applicant for Sundance Plaza shall be responsible for the construction of Class II bike lanes along the project site frontage of Missouri Flat Road. The timing of construction shall be determined by the El Dorado County DOT. In addition, the project applicant shall provide separated routes for bicycle and pedestrian traffic to allow unimpeded circulation within the property being developed as specified in policies 3.9.1.6 and 3.11.2.3 of the *El Dorado County General Plan* prior to the issuance of occupancy permits. These routes shall be identified on the tentative map for Sundance Plaza and shall be subject to review and approval by El Dorado County DOT. Implementation of these improvements would reduce Impact 4.4-6 to less than significant.

Air Quality Mitigation Measures

Mitigation Measure 4.5-1: Phase I (Year 2005) or Phase 2 (through Year 2015) Short-term Grading and Construction Air Quality Impacts. Project applicants for retail development and roadway improvements projects in the MC&FP Area, and applicants for Sundance Plaza and El Dorado Villages Shopping Center projects, shall implement the following measures, including compliance with applicable El Dorado County APCD rules and regulations, as applicable during grading and construction periods:

- a) Comply with El Dorado County APCD Rule 223 (Fugitive Dust), as required by the Air Pollution Control Officer. Compliance may include, but is not limited to, implementation of the following measures:

- Application of water or suitable chemicals or other specified covering on material stockpiles, wrecking activity, excavation, grading, sweeping, clearing of land, solid waste disposal operations, or construction or demolition of buildings or structures (all exposed soil shall be kept visibly moist during grading);
 - Installation and use of hoods, fans and filters to enclose, collect, and clean the emissions of dusty materials;
 - Covering or wetting at all times when in motion of open-bodied trucks, trailers or other vehicles transporting materials which create a nuisance by generating particulate matter in areas where the general public has access.
 - Application of asphalt, oil, water or suitable chemicals on dirt roads;
 - Paving of public or commercial parking surfaces;
 - Removal from paved streets and parking surfaces of earth or other material which has a tendency to become airborne;
 - Alternate means of control as approved by the Air Pollution Control Officer.
- b) Use only low-emission mobile construction equipment (e.g., tractor, scraper, dozer, etc.).
- c) Maintain construction equipment engines in proper operating condition.
- d) Develop and implement construction activity management techniques, such as extending construction period, reducing number of pieces used simultaneously, increasing distance between emission sources, reducing or changing hours of construction, and scheduling activity during off-peak hours.
- e) Comply with El Dorado County APCD Rule 224 (Cutback and Emulsified Asphalt Paving materials).
- f) Comply with El Dorado County APCD Rule 215 pertaining to architectural coatings.
- g) Obtain permission from the APCD and/or the local fire agency prior to burning of wastes from land development clearing, depending upon the time of year the burning is to take place. Only vegetative waste materials may be disposed of using an outdoor fire.

Mitigation Measure 4.5-2: Short-term Grading and Construction Air Quality Impacts. Implement Mitigation Measures 4.5-1(a) through (g). No further mitigation measure are available.

Mitigation Measure 4.5-4: Phase 1 (Year 2005) Regional Operational Emissions. In addition to compliance with all applicable rules and regulations of the El Dorado County APCD, project applicants for retail development and roadway improvement projects in the MC&FP Area, and applicants for Sundance Plaza and El Dorado Villages Shopping Center projects, shall implement the following measures, as applicable, to the extent allowable under state law:

- a) Proponents of individual point sources of emissions, such as gas stations or dry cleaners, shall submit authority-to-construct applications to the APCD prior to the construction or installation of such facilities. Such applications are required to include facility diagrams, proposed equipment specifications, and emission factors.
- b) Design the site to maximize access to existing transit lines.
- c) Construct lighted transit shelters and/or multimodal transfer stations for transit users (Major projects only).
- d) Design and implement "shop by telephone" or "shop by computer" services (Major projects only).

Mitigation Measure 4.5-6: Regional Operational Emissions. Implement Mitigation Measures 4.5-4 (a) through (d). No further mitigation measures are available.

Mitigation Measure 4.5-12: Exposure of Sensitive Receptors to Toxic Air Contaminants. Implementation of the following mitigation measures would reduce this impact to a less-than-significant level:

- a) Implement Mitigation Measure 4.5-4(a)
- b) Applicants for authority-to-construct from the El Dorado County APCD shall prepare a health risk assessment for point sources that have the potential to emit toxic air contaminants. Resultant health risks shall not exceed the APCD's thresholds for cancer and non-cancer risks.

Mitigation Measure 4.5-13: Exposure of Sensitive Receptors to Toxic Air Contaminants. Implement Mitigation Measure 4.5-4(a) and Mitigation Measure 4.5-12(b). No further mitigation measures are required.

Noise Mitigation Measures

Mitigation Measure 4.6-1: Phase I (Year 2005) or Phase 2 (Through Year 2015) Short-term Construction Noise Impacts. Construction activities shall be conducted in accordance with the County noise regulation or limited to the following hours and days:

- Between the hours of 7:00 a.m. and 7:00 p.m. on any weekday
- Between the hours of 8:00 a.m. and 6:00 p.m. on Saturdays
- Prohibited on Sundays and holidays within 150 feet of occupied residences

At the time of the letting of the construction contract, it shall be demonstrated that engine noise from excavation equipment would be mitigated such that resultant noise levels do not exceed those provided in Table 6-2 of the General Plan by keeping engine doors closed during equipment operation. For equipment that cannot be enclosed behind doors, lead curtains shall be used to

attenuate noise to levels that do not exceed the County's non-transportation noise standard (Table 6-2 of the General Plan).

Mitigation Measure 4.6-2: Short-term Construction Noise. Implement Mitigation Measure 4.6-1. No further mitigation is required.

Mitigation Measure 4.6-4: Stationary Noise Source.

NOTE: Item b. does not apply to Sundance Plaza.

a. Implementation of the following mitigation measures would ensure that stationary source noise impacts associated with the proposed Sundance Plaza project are reduced to a less-than-significant level:

- The project applicant for Sundance Plaza shall ensure that loading and unloading activities at the loading area associated with proposed Anchor 1 shall be prohibited during evening (7 p.m. to 10 p.m.) or nighttime (10 p.m. to 7 a.m.) hours while the parcel located approximately 350 feet to the southwest (i.e., APN 327-120-07) remains in residential use.
- In the event that the proposed Anchor 1 parcel is used as an automotive service center, the project applicant for Sundance Plaza shall ensure that the use of impact wrenches shall be prohibited during evening (7 p.m. to 10 p.m.) or nighttime (10 p.m. to 7 a.m.) hours while the parcel located approximately 350 feet to the southwest (i.e., APN 327-120-07) remains in residential use.
- The project applicant shall ensure that stationary source noise levels from the Sundance Plaza project site do not exceed the levels provided in Table 6-2 of the El Dorado County General Plan.

Mitigation Measure 4.6-7: Phases 1 and 2 (Through Year 2015) Traffic Noise. Implementation of the following mitigation measures would ensure that traffic noise impacts are reduced to a less-than-significant level:

- The project applicant for the Sundance Plaza project shall contribute on a fair-share basis to the funding of traffic noise attenuation measures, such as sound barriers, noise berms, or setbacks, required to ensure that traffic noise levels do not exceed applicable County standards, as presented in Table 6-1 of the General Plan. The project's fair share shall be determined by the County, in consultation with the project applicant, based on the project's relative contribution to the traffic noise level.
- Prior to the completion of the proposed Headington Road extension, inhabited residences within 200 feet of the roadway centerline shall be equipped with double-pane glass windows, to be paid for by the project applicant.

Earth Resources Mitigation Measures

Mitigation Measure 4.7-2: Liquefaction. Prior to the issuance of grading permits for Sundance Plaza or El Dorado Villages Shopping Center, applicants shall submit grading plans in accordance with Uniform Building Code (UBC) Appendix Chapter 33 (A33) provisions. According to Section 3305 of the UBC (found in A33, 'Excavation and Grading'), the Appendix "... sets forth rules and regulations to control excavation, grading and earthwork construction, including fills and embankments; establishes the administrative procedure for issuance of permits; and provides for approval of plans and inspections of grading construction." Included in Section 3309 of this UBC Appendix are definitions of "engineered grading" and "regular grading" and the grading requirements for each, and standards for the preparation of soils engineering reports and grading geology reports. The criteria for preparation of a liquefaction study are identified. Additional standards regarding cuts and fills (Sections 3312 and 3313, respectively and Section 3314) are included in this Appendix as are standards for drainage and terracing, erosion control, grading inspection and completion of work.

In addition, prior to the issuance of grading permits for Sundance Plaza and El Dorado Villages Shopping Center, the grading plans shall be in accordance with the *County of El Dorado Design and Improvement Standards Manual* (El Dorado County 1990): Volume IV (Erosion Control Requirements and Specifications) which establish the grading and drainage requirements that must be met in grading plans (Section 1), and sets forth the critical area planting construction specification (Section 2); and the standards, as applicable, from Volume V (Design Standard Details) which provides the design standards and detail drawings that are intended to be guidelines for various County roads, cul-de-sacs, storm drain inlets, ditches, utility pole locations, channels, gates, underground trenches, vehicle barriers, swales, slope protection, and others. Any additional specifications required by County DOT shall also be adhered to by the applicant for grading plans.

These plans shall include geotechnical studies and designs appropriate for the site conditions encountered. The earthwork on these projects shall be constructed as engineered fill and will exceed the minimum relative density for liquefaction. Standard construction practices to be employed when wet areas are encountered would include construction of drainage systems to de-water springs and wet areas.

Mitigation Measure 4.7-6: Ground Shaking.

The California Health and Safety Code requires that buildings be designed to resist stresses developed by earthquakes. Accepted seismic design criteria are presented in the Uniform Building Code (UBC), Chapter 23, regarding wood-frame buildings, and Chapter 16, Division III. Division III provides the design specifications for resist the effects of seismic ground motions; included in this Division are the following: criteria selection for structural systems (e.g., bearing walls, building frame, moment-resisting frame system, dual system) (§1627), engineering standards for minimum design lateral forces and related effects (e.g., the design for the shear forces at the base of structures, vertical distribution of force, and horizontal distribution of shear) (§1628); dynamic lateral-force procedures (§1629); lateral force on elements of structures, nonstructural components and equipment

supported by structures (§1630); detail systems design requirements (§1631); and nonbuilding structures (§1632). Although wood-frame buildings of not more than two stories in height in unincorporated areas are exempt under the California Earthquake Protection Law, prior to the issuance of building permits for retail or roadway improvement projects in the MC&FP Area, or for Sundance Plaza or El Dorado Villages Shopping Center, proposed structures shall be designed to the design factors presented for UBC Zone 3, as a minimum. Final design standards shall be in accordance with the findings of detailed geologic and geotechnical analyses for the proposed building sites.

Mitigation Measure 4.7-10: Slope Stability and Erosion Potential.

Prior to issuance of grading permits for retail or roadway improvement projects located within the MC&FP Area, or for Sundance Plaza or El Dorado Villages Shopping Center, erosion and ground instability mitigation measures shall be designed in conformance to Chapter A33 of the 1994 edition of the Uniform Building Code (see Mitigation Measure 4.7-2 for description), the County of El Dorado Grading, Erosion and Sediment Control Ordinance (1991), and the El Dorado County grading ordinances found, principally, in the *County of El Dorado Design and Improvement Standards Manual* (El Dorado County 1990) Volume IV (Erosion Control Requirements and Specifications) and Volume V (Design Standard Details), and as specified by County DOT. Prior to the issuance of grading permits, grading design plans shall incorporate the findings of detailed geologic and geotechnical investigations. These findings shall include methods to control soil erosion and ground instability. Measures to control soil erosion include, but are not limited to, the following:

1. Uncemented silty soils are prone to erosion. According to requirements as set forth in Section 402 (p) of the Clean Water Act as amended in 1987, erosion control measures (appropriate Best Management Practices) should be implemented during construction which conform to the National Pollution Discharge Elimination System, Storm Drain Standards, and local standards. Cut slopes and drainage ways within native material shall be protected from direct exposure to water run off immediately following grading activities. All collected runoff flow should outlet on an apron of crushed rip-rap to dissipate the energy of the runoff. Cut and fill surfaces, particularly embankment slopes, should be protected from sheet, rill and gully erosion by revegetation of exposed slopes. If revegetation can not be completed and established prior to the onset of the rainy season, erosion control matting should be stapled to the exposed slopes.

Any cut or fill slopes and their appurtenant drainage facilities shall be designed in accordance with Uniform Building Code guidelines. In general, soil slopes shall be no steeper than 2:1 (horizontal to vertical) unless authorized by a qualified professional. Slope angles shall be designed to conform to the competence of the material into which they are excavated.

2. Drainage facilities shall be lined as necessary to prevent erosion of the site soils immediately following grading activities.

3. During construction, trenches greater than 5 feet in depth shall be shored, sloped back at a 2:1 slope angle, or reviewed for stability by a qualified professional in accordance with the Occupational Safety and Health Administration regulations if personnel are to enter the excavations.
4. Rainfall shall be collected and channeled into an appropriate collection system designed to receive the runoff, minimize erosion, and convey the runoff off-site. Conduits intended to convey drainage water off site shall be protected with energy dissipating devices as appropriate, and in some areas potentially lined with an impermeable, impact-proof material.
5. Parking facilities, roadway surfaces, and buildings all have impervious surfaces which concentrate runoff and artificially change existing drainage conditions. Collection systems shall be designed where possible to divert natural drainage away from structures, to collect water concentrated by these surfaces, and to convey water away from the site in accordance with the National Pollution Discharge Elimination System, Storm Drain Standards, and El Dorado County standards.
6. Where structures are to be constructed between the bedrock exposed in a cut slope and engineered fill, mass grading may include sub-excavation of the bedrock portions of the building pads to a depth of 1 foot below the bottom of the footings and reconstruction of the pads with engineered fill.

Hydrology and Water Quality Mitigation Measures

Mitigation Measure 4.8-1: Runoff Volume. The following mitigation measure is for the potentially significant impact of runoff quantity associated with development in the MC&FP Area, including the Sundance Plaza and El Dorado Villages Shopping Center projects.

Prior to the approval of a tentative map, or for projects without maps, issuance of a building permit, a project applicant for retail development or roadway improvements in the MC&FP Area, including the project applicants for Sundance Plaza and El Dorado Villages Shopping Center projects, shall submit and obtain approval of the project drainage report by the El Dorado County Department of Transportation. This report shall demonstrate that post-development stormwater peak discharge levels from the project will remain at existing peak levels through the use of one or all of the following alternative mitigation measures. The drainage report shall be prepared by a Certified Civil Engineer and shall be in conformance with the El Dorado County Drainage Manual adopted by the Board of Supervisors in March 1995. The project applicant shall be financially responsible for his/her portion of stormwater drainage facility maintenance requirements and agreements. The drainage report shall include, at a minimum, written text addressing existing conditions, the effects of project improvements, all appropriate calculations, a watershed map, potential increases in downstream flows, proposed onsite improvements, and drainage easements, if necessary, to accommodate flows from the site.

- a) Design and construction of an onsite detention facilities of adequate size to reduce peak discharge to pre-development levels. The detention facility may be incorporated into the parking lot design. If a detention facility is incorporated into the proposed parking lot, parking within the facility area shall be restricted during storm events through the placement of cones to ensure vehicles are not damaged by detained water. Permanent maintenance of the detention facility shall include semi-annual inspections to ensure facility integrity and debris removal as necessary.
- b) Design and construction of a regional detention facility of adequate size to reduce peak discharge to pre-development levels. The detention facility may serve as a regional basin for multiple sites. Permanent maintenance of the detention basin shall include semi-annual inspections to ensure facility integrity and debris removal as necessary.

and/or

- c) Improvements to existing storm drainage system to reduce peak discharge to pre-development levels. This may include up-sizing of pipes, culverts, etc., at downstream locations. Permanent maintenance of the drainage facilities shall include semi-annual inspections to ensure facility integrity and debris removal as necessary.

Mitigation Measure 4.8-2: Short-Term Surface Water Quality Degradation.

New developments of generally 5 acres or greater are subject to a National Pollutant Discharge Elimination System (NPDES) permit. The purpose of the permit is to protect water quality from development that would discharge into Waters of the U.S. The need for an NPDES permit would be triggered with any application for development of five acres or greater in the MC&FP Area, and the development of Sundance Plaza and El Dorado Villages Shopping Center. In addition, private development projects are subject to the County of El Dorado Grading, Erosion and Sediment Control Ordinance (1991), which requires the submittal of an erosion control plan. The following mitigation measure is for the significant impact of short-term surface water quality degradation that would occur during the development of the MC&FP Area, and the Sundance Plaza and El Dorado Villages Shopping Center sites as individual projects:

- a) Prior to issuance of a grading permit for a retail or roadway improvement project of 5 acres or greater in the MC&FP Area, or for Sundance Plaza or El Dorado Villages Shopping Center projects, the developer shall obtain from the California State Water Resources Control Board a General Construction Activity Stormwater Permit under the National Pollutant Discharge Elimination System (NPDES) and comply with all requirements of the permit to minimize pollution of stormwater discharges during construction activities.
- b) Prior to issuance of a grading permit for a retail or roadway improvement project in the MC&FP Area, or for Sundance Plaza or El Dorado Villages Shopping Center projects, the project applicant shall submit to the Resource Conservation District and the El Dorado County Department of Transportation, for review and approval, an erosion control plan consistent with the County's Grading, Erosion and Sediment Control Ordinance. The

erosion control plan shall indicate that proper control of siltation, sedimentation and other pollutants will be implemented per NPDES permit requirements. The plan shall address storm drainage during construction and proposed BMPs (Best Management Practices) to reduce erosion and water quality degradation. The plan shall include a BMP monitoring program that provides for regular inspections to: 1) ensure proper installation of BMPs; 2) monitor the effectiveness of the BMPs; 3) ensure proper maintenance of the BMPs; and 4) determine if adjustment of the BMPs due to changed drainage patterns is required. All on-site drainage facilities shall be constructed to El Dorado County Department of Transportation specifications, as provided in El Dorado County's Drainage Manual (1995), Grading, Erosion and Sediment Control Ordinance (1991), and Design and Improvement Standards Manual (1990). BMPs shall be implemented throughout the construction process. The following BMPs will be implemented as necessary:

Soil Stabilization Practices

- ▶ Straw Mulching
- ▶ Hydromulching
- ▶ Jute Netting
- ▶ Revegetation
- ▶ Preservation of Existing Vegetation

Sediment Barriers

- ▶ Straw Bale Sediment Barriers
- ▶ Filter Fences
- ▶ Straw Bale Drop Inlet Sediment Barriers

Site Construction Practices

- ▶ Winterization
- ▶ Traffic Control
- ▶ Dust Control

Runoff Control in Slopes/Streets

- ▶ Diversion Dikes
- ▶ Diversion Sales
- ▶ Sediment Trap

Mitigation Measure 4.8-3: Long-Term Surface Water Quality Degradation.

The following mitigation measure is for the significant impact of long-term surface water quality degradation that would occur after the retail development and roadway improvements in the MC&FP Area, and the Sundance Plaza and the El Dorado Villages Shopping Center as individual projects:

- a) The developers of retail projects in the MC&FP Area, and developers of Sundance Plaza and El Dorado Villages Shopping Center shall construct on-site detention facilities. These facilities shall be constructed at the commencement of grading, and be maintained throughout the construction period to receive stormwater runoff from graded areas to allow capture and settling of sediment prior to discharge to receiving waters.

- b) Prior to issuance of a grading permit for retail or roadway improvement projects in the MC&FP Area, and Sundance Plaza and El Dorado Villages Shopping Center, the project applicant shall develop a surface water pollution control plan (i.e., parking lot sweeping program and periodic storm drain inlet clearing) to reduce long-term surface water quality impacts. Parking lot sweeping shall occur on a weekly basis, and storm drain inlet clearing shall occur semi-annually. The plan shall also include the installation of oil, gas and grease trap separators in project parking lots. Project plans will incorporate catch basin inserts and filters along with cleaning schedules. As specified under the Monitoring Program and Reporting Requirements sections of the NPDES General Permit, sampling of receiving waters with accompanying laboratory analysis will be conducted for typical stormwater constituents of concern (pH, Total Suspended Solids, Specific Conductance, Total Organic Carbon, Oil and Grease, and Waste Oil Metals) during two storm events producing significant runoff during the wet season, which is defined as from October through April. The project applicant shall develop a financial mechanism, to be approved by the El Dorado County Department of Transportation, which ensures the long-term implementation of the program.

Biological Resources Mitigation Measures

Mitigation Measure 4.9-2: Loss of Habitat for California Red-legged Frog.

- a) Prior to issuance of a grading permit for any MC&FP retail development or roadway improvement projects, a qualified biologist will consult with USFWS to determine whether red-legged frogs could potentially occur on the project site.
- b) If the USFWS determines that there is no potential for the occurrence of red-legged frog on the project site, the species may be assumed absent and no further mitigation is necessary.
- c) If USFWS determines that surveys are necessary to determine whether red-legged frogs could occur on the project site, a survey will be conducted in accordance with the methods outlined in *Guidance on Site Assessment and Field Surveys for California Red-legged Frogs* (USFWS 1997).
- d) Prior to issuance of a grading permit, a red-legged frog survey will be completed for the Sundance Plaza and the El Dorado Villages Shopping Center.
- e) The results of the red-legged frog survey will be summarized in a report to be provided to the USFWS Ecological Services Division, Sacramento Field Office. This report will also include additional information related to survey as described under USFWS protocol (USFWS 1997).
- f) If no red-legged frogs are found during the survey, and the survey results are acceptable to USFWS, this species will be presumed absent and no further mitigation will be necessary.

- g) If red-legged frogs are found, the project proponent will consult with USFWS under Section 7 or Section 10 to determine a future course of action, including whether incidental take authorization is needed. Through consultation and negotiations with USFWS, appropriate mitigation and avoidance measures will be determined and required to be implemented for the take authorizations.

NOTE: This Mitigation Measure has already been completed. A focused survey for California red-legged frog was conducted according to USFWS protocol, and was found not to be present on the site.

Mitigation Measure 4.9-8: Raptor Nest Disturbance.

- a) Prior to issuance of a grading permit for any MC&FP retail development or roadway improvement projects, and Sundance Plaza and El Dorado Villages Shopping Center, it will be determined whether grading or tree removal is proposed during the raptor nesting season (February 1 to August 31).
- b) If no grading or tree removal will occur during the raptor nesting season, no further mitigation will be necessary.
- c) If grading or tree removal is proposed during the raptor nesting season, a focused survey for raptor nests shall be conducted by a qualified biologist during the nesting season to identify active nests on the project site. The survey will be conducted no less than 14 days, and no more than 30 days prior to the beginning of grading or tree removal. The results of the survey will be summarized in a written report to be submitted to CDFG prior to the beginning of grading.
- d) If nesting raptors are found during the focused survey, no grading or tree removal will occur within 500 feet of an active nest until the young have fledged (as determined by a qualified biologist) or until the project applicant receives written authorization from CDFG to proceed. If nest trees are unavoidable, they shall be removed during the non-breeding season.

Mitigation Measure 4.9-9: Oak Woodland Degradation.

- a) Prior to issuance of a grading permit for any MC&FP retail development or roadway improvement projects, and Sundance Plaza and El Dorado Villages Shopping Center, the project proponent shall submit a tree survey to the El Dorado County Planning Department for approval. A map of all oak trees to be removed or disturbed during project construction will be included with the tree survey. The tree survey will also include a determination of the existing canopy cover on the project site (as determined from base line aerial photography or by site surveys performed by a qualified licensed arborist or botanist) and a preservation and replacement plan.
- b) Oaks not approved for removal that are within 200 feet of the grading activity shall be protectively fenced 5 feet beyond the dripline and root zone of each oak tree (as determined by a certified arborist). This fence, which is meant to prevent activities that result in soil

compaction beneath the canopy or over the root zone, shall be maintained until all construction activities are complete. No grading, trenching, or movement of construction equipment shall be allowed to occur within fenced areas. Protection for oaks trees on slopes and hillsides will include installation of a silt fence. A silt fence shall be installed at the upslope base of the protective fence to prevent any soil drifting down over the root zone.

- c) To ensure that proposed replacement trees survive, a mitigation monitoring plan, including provisions for necessary replacement of trees, will be incorporated into the preservation and replacement plan. Detailed performance standards will be included to ensure that an 80% survival rate is achieved over a 5-year period. Annual reports identifying planting success and monitoring efforts will be submitted to the El Dorado County Planning Department and CDFG. During monitoring, the following information will be evaluated: average tree height, percent of tree cover, tree density, percent of woody shrub cover, seedling recruitment, and invasion by non-native species. Temporary irrigation equipment will be installed to facilitate sapling survival during the first several years of growth. During the revegetation process, tree survival will be maximized by using deer screens or other maintenance measures as recommended by a certified arborist.
- d) If the existing canopy cover is less than 10%, no further mitigation will be necessary.
- e) If the existing canopy cover exceeds 10%, the project will be subject to the canopy cover retention and replacement standards presented under Policy 7.4.4.4 of the El Dorado County General Plan.
- f) Mitigation could occur on-site within the slope areas around the project perimeter and potentially within project landscaping, or for Sundance Plaza only, within the park or cemetery. Partial mitigation of this impact may also occur off-site potentially in open space areas of other large projects in El Dorado County, similar to the concept practiced in Serrano open space areas.

Mitigation Measure 4.9-10: Loss of Jurisdictional Waters of the United States, Including Wetlands.

Prior to issuance of a grading permit, for the MC&FP (excluding Sundance Plaza site) or roadway improvement projects, a determination, through the formal Section 404 wetlands delineation process, shall be made by a qualified biologist whether potential jurisdictional Waters of the United States, including wetlands are present on the project site.

NOTE: Item a) does not apply to Sundance Plaza.

- b) If wetlands on the site are determined to be jurisdictional and can be avoided, no further mitigation will be required.
- c) If jurisdictional Waters of the United States, including wetlands greater than 1/3 acre in size, are present and would be filled as a result of the project, authorization of a Section 404

permit shall be secured from USACE and a Section 1600 agreement shall be secured from CDFG, as appropriate.

- d) As part of the permitting process, mitigation of impacts to jurisdictional Waters of the United States, including wetlands, will be identified and implemented. The acreage will be replaced or rehabilitated on a "no-net-loss" basis in accordance with USACE regulations. Habitat restoration, rehabilitation, and/or replacement shall be at a location and by methods agreeable to USACE. Habitat compensation will also be in accordance with El Dorado County which has adopted a "no-net-loss" policy under General Plan Policy 7.3.3.2; this policy allows wetland habitat compensation on- or off-site, but at a minimum 1:1 ratio. Also in accordance with General Plan Policy 7.3.3.2, a wetland study and mitigation monitoring program will be submitted to the County and concerned state and federal agencies (i.e., USACE, CDFG) for review prior to permit approval.
- e) All grading plans will include adequate setback for preserved seasonal and perennial drainages. Measures to minimize erosion and runoff into seasonal and perennial drainages that are preserved will also be included in all grading plans. Appropriate runoff controls such as berms, storm gates, detention basins, overflow collection areas, filtration systems, and sediment traps shall be implemented to control siltation and the potential discharge of pollutants into preserved drainages.
- f) Mitigation could occur on-site within on-site detention ponds, or other natural areas on the site, or for Sundance Plaza within the proposed park; or it could occur off-site within wetland mitigation banks such as the Sheridan Wildlands bank.

NOTE: A wetlands delineation has been prepared for the project site and has been submitted to the U.S. Army Corps of Engineers for verification.

Cultural Resources Mitigation Measures

Mitigation Measure 4.10-1: Disturbance of Cultural Resources. Implementation of the following mitigation measure would reduce impacts related to the disturbance of known or unknown cultural resources, but not to a less-than-significant level.

NOTE: Items a) and b) do not apply to Sundance Plaza.

- c) If any prehistoric or historic artifacts, or other indications of cultural resources are found once project construction is underway, all work must stop within 20 meters (66 feet) of the find. A qualified archaeologist shall be consulted for an immediate evaluation of the find before resuming ground-breaking construction activities within 20 meters of the find. If the find is determined to be an important archaeological resource, the resource shall be either avoided, if feasible, or recovered consistent with the requirements of Appendix K of the State CEQA Guidelines.

- d) In the event of discovery or recognition of human remains in any location other than a dedicated cemetery, no further excavation or disturbance of a project site or any nearby area reasonably suspected to overlie adjacent human remains can occur until the County Coroner has been informed and determines that no investigation of the cause of death is required. If the remains are of Native American origin, the agency must solicit the Native American Heritage Commission to see whether that agency can identify descendants of the deceased Native American(s). If, within 24 hours of being notified by the Commission, such descendants offer the lead agency recommendations for treating or disposing of the remains and any associated grave goods, such recommendations should be followed, unless the landowner disagrees with the recommendation, in which case the Native American Heritage Commission shall mediate the dispute. If the Native American Commission was unable to identify a descendant, or the descendant fails to offer a recommendation within 24 hours after being notified by the Commission, or the Commission could not mediate a dispute between the descendants and the landowner to the latter's satisfaction, further work on the project may proceed, but the landowner must rebury the remains and any grave goods "with appropriate dignity on the property in a location not subject to subsurface disturbance."

Mitigation Measure 4.10-2: Disturbance of Important Cultural Resources.

Implementation of the following mitigation measures would reduce potential impacts to "important archaeological resources" or "historical resources", but not to a less-than-significant level.

- a) To reduce potential impacts to the Missouri Flat cemetery, but not to a less-than-significant level, the Sundance Plaza project applicant shall implement the following measures:
1. Establish the boundaries of the cemetery. Methods used to establish boundaries must include but may not be limited to:
 - A. Conducting test excavations in locations of subsurface anomalies identified in the ground-penetrating radar survey to determine if anomalies are characteristics of gravesites, rock formations, or other deposits.
 - B. Comparing plotted historical (i.e., 1920s) cemetery boundaries with current boundaries to determine the nature of subsurface anomalies identified in the ground-penetrating radar survey to determine if anomalies are characteristics of gravesites, rock formations, or other deposits.
 - C. Completing a sketch map of surface features at the cemetery by a qualified archaeologist.
 - D. Consultation with the El Dorado County Pioneer Cemeteries Commission and El Dorado County Cultural Resources Preservation Commission, with the General Services Director serving as the lead.

2. A fence with locking gate shall be installed around the perimeter of the proposed 2.51-acre cemetery parcel prior to the commencement of construction activities on the Sundance Plaza project site to prevent vandalism during construction and operation of the project. High-visibility orange construction fencing shall be used during construction of the project to prevent disturbance by grading and construction activities. Placement of the fencing shall be monitored by a qualified archaeologist and a representative of the El Dorado County Pioneer Cemeteries Commission.
3. All ground-disturbing activity within 100 feet of the cemetery shall be monitored by a qualified archaeologist.
4. Replace the orange construction fencing with a permanent fence and gate. Post a permanent sign at the cemetery that indicates the name of the cemetery, describes its historic importance and specifies the laws protecting it and penalties for infractions.
5. Landscaping and any restoration at the cemetery shall be done in consultation with qualified professional in historic preservation.
6. Adequate lighting shall be provided so that the cemetery is illuminated at night to help prevent vandalism.
7. Security patrols shall be provided to help guard against vandalism at the cemetery.
8. The applicant shall extend an irrevocable offer of dedication for the entire 2.51-acre parcel to El Dorado County to be used for cemetery purposes. As the alternative, the applicant shall record the 2.51-acre parcel as a separate property with a land use restriction that would prevent any future development or use of the parcel, except as a cemetery.

Mitigation Measure 4.10-4: Disturbance of Previously Undiscovered Cultural Resources.

Apply mitigation measures 4.10-1(c) and (d), and no further mitigation is available to reduce this impact to a less-than-significant level.

Mitigation Measure 4.10-6: General Plan Consistency--Protection of Cemeteries.

Apply mitigation measure 4.10-2(a), and no further mitigation is required.

Fire Services Mitigation Measures

Mitigation Measure 4.11-3: Phase 1 Response Time. Prior to the approval of final subdivision maps, or in the case of no subdivision, issuance of building permits, for retail projects in the MC&FP Area, the Fire District shall assess a developer fee to purchase and install signal light pre-emption devices on all Fire District response vehicles. The project applicant for Sundance Plaza shall pay the Fire District for the cost of purchase and installation of such devices, which shall be purchased and installed by the Fire District prior to the signalization of the Missouri Flat Road/Headington

Road intersection, as proposed by the Sundance Plaza project applicant. Project applicants for subsequent discretionary projects shall reimburse the Sundance Plaza project applicant, on a fair-share basis, for the cost of such signal light pre-emption devices. Each project's fair-share shall be based on traffic contribution, as determined by the Fire District in consultation with the El Dorado County Department of Transportation.

Mitigation Measure 4.11-6: Long-term Fire Protection.

Implement Mitigation Measure 4.11-3. In addition, prior to approval of Improvement Plans, the project applicant shall be required to design infrastructure necessary to achieve fire flows as specified by the Diamond Springs-El Dorado Fire Protection District and EID.

Mitigation Measure 4.11-7: Phases 1 and 2 (Through Year 2015) Response Times.

Implement Mitigation Measure 4.11-3 and no other mitigation is required.

Wastewater Mitigation Measures

Mitigation Measure 4.13-1: Phase 1 (Year 2005) Wastewater Treatment. At the time of final map approval or, in those cases where subdivision maps are not proposed with the project, issuance of building permits for retail projects in the MC&FP Area, project applicants shall pay Facility Capital Charges as required by EID. The fees provide for the project's contribution to increased sewage flows at the wastewater treatment plant as well as infrastructure improvements that may be required as a result of the project's proportional increase in sewage flows.

Prior to the issuance of occupancy permits for retail projects in the MC&FP Area, the project applicants or their successors in interest shall demonstrate to the County through written correspondence or notification from EID that EID has adequate infrastructure and treatment capacity to accommodate the increase in wastewater flow attributable to such projects.

Mitigation Measure 4.13-3: Phases 1 and 2 (Through Year 2015) Wastewater Treatment.

Implement Mitigation Measure 4.13-1, and no further mitigation is required.

Mitigation Measure 4.13-4: Phases 1 and 2 (Through Year 2015) Wastewater Infrastructure.

Implement Mitigation Measure 4.13-1, and no further mitigation is required.

Water Mitigation Measures

Mitigation Measure 4.14-2: Phases 1 and 2 (Through Year 2015) Water Consumption.

Prior to the approval of a final subdivision map or, in those instances where subdivision maps are not proposed with the project, issuance of building permits for retail projects in the MC&FP Area or for El Dorado Villages Shopping Center, project applicants shall obtain water meters or equivalent water guarantees from EID or other governing water purveyor in the MC&FP Area. This mitigation measure shall be applied as a mitigation measure or condition of approval for each retail development project in the MC&FP Area, and for El Dorado Villages Shopping Center.

In addition, no grading permit shall be issued for a retail project, or any portion thereof, assumed in Phases 1 or 2 of the MC&FP or for El Dorado Villages Shopping Center, unless and until the landowner has reached final agreement with EID regarding fully vested right to water service to the portion of the project site affected by the grading permit.

Mitigation Measure 4.14-5: Phases 1 and 2 (Through Year 2015) Water Distribution.

Prior to approval of a final subdivision map or, in those instances where subdivision maps are not proposed with the project, issuance of building permits for retail projects in the MC&FP Area, or for Sundance Plaza or El Dorado Villages Shopping Center, project applicants shall prepare an FPR in accordance with the requirements of EID or other governing water purveyor in the MC&FP Area, and obtain approval of the FPR for the provision of water distribution facilities. This mitigation measure shall be applied as a mitigation measure or condition of approval for each retail development project in the MC&FP Area, for Sundance Plaza, and for El Dorado Villages Shopping Center. Prior to issuance of building permits, the FPR specifications shall be incorporated into the improvement plans for each retail project within the MC&FP Area.

Prior to the approval of a final subdivision map or, in those instances where subdivision maps are not proposed with the project, issuance of building permits for retail projects in the MC&FP Area or for Sundance Plaza or El Dorado Villages Shopping Center, El Dorado County shall assure that mitigation measures provided in Sections 4.3 (Visual Resources), 4.5 (Air Quality), 4.6 (Noise), 4.7 (Earth Resources), 4.9 (Biological Resources), and 4.10 (Cultural Resources) that are to be implemented prior to the approval of a final subdivision map or, in those instances where subdivision maps are not proposed with the project, issuance of building permits for retail projects in the MC&FP Area are fully implemented.

Hazardous Materials Mitigation Measures

Mitigation Measure 4.17-1: Potential for Exposure to Existing or Potential Sources of Contamination.

Note: Item f) is not applicable to Sundance Plaza.

- a) Prior to the approval of a retail project in the MC&FP Area, the project applicant shall conduct, and submit for review by El Dorado County Environmental Management Department, a database search of hazardous materials sites that meets the requirements of Public Resources Code §21092.6.
- b) If the database search reveals the potential for contamination on the project site, then prior to project approval, the project applicant shall submit a Phase I site assessment report, prepared by a qualified professional in compliance with the ASTM E 1527-97 standard, for review by El Dorado County Environmental Management Department.
- c) If the Phase I site assessment report indicates the presence of existing or potential onsite contamination, the project applicant shall contact the appropriate local, state, and/or federal

- agencies. The project applicant shall coordinate with the agency to prepare a remediation plan in accordance with applicable local, state, and federal regulations, requirements, and/or guidelines.
- d) The remediation plan shall be approved by the El Dorado County Environmental Management Department, and made a condition of approval of a tentative map for retail projects in the MC&FP Area (if one is sought), with full remediation to be completed prior to issuance of a final map. If a tentative map is not part of the application request, then the remediation plan shall be approved by the El Dorado County Environmental Management Department prior to issuance of a grading permit, with remediation to be completed prior to issuance of a building permit.
 - e) A condition shall be placed on all tentative maps for Sundance Plaza regarding hazardous materials. That condition will state that the project applicant shall prepare, and have approved by the El Dorado County Environmental Management Department and/or other applicable state and local agencies, a remediation plan to address the hazardous materials identified in the 1990 Ebasco Environmental report, 1997 Youngdahl & Associates report, and electrical transformers, if proposed for disturbance or relocation on the site. Full remediation shall occur in compliance with the remediation plan prior to the issuance of the first final map for each phase of development.

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EXHIBIT "D"

CFD STRUCTURE

Exhibit [D]

DESCRIPTION OF THE MISSOURI FLAT COMMUNITY FACILITIES DISTRICT

BACKGROUND

This Exhibit defines and describes the proposed Missouri Flat Community Facilities District (CFD) that is referenced in the Development Agreement. Once formed, the CFD will provide a flexible, market-accepted mechanism for issuing debt and providing a method for sharing costs and risks. The Missouri Flat CFD, along with other aspects of the proposed Missouri Flat road improvement funding, is described in the *Missouri Flat Master Circulation and Funding Plan (MC&FP)*.

The MC&FP was created by the County to implement the *County General Plan* adopted in 1996. As many as 20 policies contained in the *General Plan* are implemented by the MC&FP and related development and road improvements. The MC&FP establishes a master circulation (road improvement) program, including twelve specific road improvement projects organized into two phases of road improvements. The MC&FP also includes the policies and programs needed to pay for the road improvements.

The total MC&FP funding requirement estimated to be \$30 million (1996\$) will be paid, in part, with cash derived from the County's Traffic Impact Mitigation (TIM) Fee program, with the balance derived from CFD bond proceeds. The TIM Fee portion of funding reflects the proportional share of project costs based upon additional travel demand generated by new commercial development. The CFD portion of funding reflects the County's policy to eliminate existing traffic congestion in the Missouri Flat Area.

In a manner similar to other CFDs, any debt issued by the Missouri Flat CFD will be secured by a special tax lien upon properties within the CFD boundary; however, because the landowners and developers will be paying their proportional share of road improvement costs through the County's TIM Fee program, the CFD debt service will be funded, as specified in the individual Development Agreements, from a portion of the incremental sales taxes and property taxes derived from new commercial development in the Missouri Flat area. This funding will be allocated annually by the Board of Supervisors pursuant to an agreement between the CFD and the County and also the individual development agreements with retail commercial developers.

The preparation of the MC&FP included extensive and detailed market and financial analysis which evaluated the cash flow requirements associated with funding road improvements under a variety of development phasing and financing assumptions. The analysis also included detailed market analysis and forecasts of sales and property

taxes. The market analysis concluded that sufficient market demand presently exists for the currently proposed commercial retail projects, with most sales being derived from expenditures currently being made in Sacramento County by El Dorado County residents.

The nature of the financing proposed in the Financing Plan, involving significant issuance of debt, use of incremental future sales and property tax flows, and use of a land secured financing district (the CFD) creates a number of potential risks for both public and private participants. Recognizing this concern, the financial analysis has included both conservative assumptions and a number of risk management features. One such feature is a special reserve fund equaling a year of debt service in addition to the normal bond reserve fund that would derive from the bond issues. This fund will be built from incremental sales and property taxes accruing prior to the first bond issue.

The El Dorado County Board of Supervisors will form the Missouri Flat CFD following the certification of the Project EIR, adoption of the MC&FP, and adoption of the development agreements with the individual project proponents. The development agreements will stipulate the funding relationships between the County, the CFD, and the Developers/subsequent property owners. Initially, the CFD would contain only those properties that are the subject of current development proposals (i.e., Sundance Plaza, El Dorado Villages, and Walmart) totaling an estimated 733,000 square feet of retail space. Only these properties would initially be included in the CFD and be subject to the special tax. As the County processes additional commercial development proposals within the MC&FP Area, they would need to be added to the CFD as a means of securing the improvements required to resolve traffic deficiencies. All of the commercially designated properties in the Missouri Flat area over this time will be included in the CFD. Exceptions may be made for small properties and/or properties that require no discretionary approvals.

DESCRIPTION OF PROPOSED SPECIAL TAX FORMULA

The following narrative provides a description of how the Missouri Flat CFD Special Tax Formula would operate. As mentioned above, the special tax is a contingent source of funding in the event that sales tax performance for commercial retail properties fall below that necessary to support debt service. With projected "coverage" ratios in the range of 1.5, the likelihood that a net tax liability would exist is small.))

1. TAXABLE SALES TARGETS AND MAXIMUM ANNUAL TAXES

Six categories of use will be reflected in the Rate and Method of Apportionment. These six classes of use will apply to each development parcel, as appropriate.

Retail Category	Average Retail Sales per square foot ¹ Performance Target	Maximum Annual Special Tax per square foot GLA ²
National Discount Retailer Stand-Alone ³	\$300.00	\$2.55
Home Improvement ⁴	\$240.00	\$2.05
Regional Retail (department stores and related "in line" shops) ⁵	\$220.00	\$1.90
Supermarket ⁶	\$150.00	\$1.30
Other Retail ⁷	\$160.00	\$1.35
Non-Retail Commercial ⁸	\$ 0.00	\$0.25

- ¹ Average Retail Sales per square foot reflect industry averages for the specified categories or retail uses. Actual sales performance of individual retail outlets within shopping centers may be higher or lower. Taxable Sales Targets for Original Parcels will be derived by multiplying Average Retail Sales Per Square Foot subject to State sales taxes by Gross Leaseable Area including all enclosed sales areas including outside garden sales area (GLA) as vested by the Development Agreements. Non-retail uses (financial institutions, etc.) will have a Maximum Annual Special Tax per square foot of \$0.25.
- ² Maximum Special Tax Levy will be calculated by multiplying the Performance Target by one percent (the local portion of State sales taxes). The product will be reduced by the Tax Rate Factor of .85, rounded to the nearest \$0.05 to establish the Maximum Special Tax to be applied to each square foot of GLA.
- ³ Includes big box, large membership club, and other off-price or high-value retailers such as Wal-Mart.
- ⁴ Includes Home Depot, Home Base, Orchard Supply, or other large home improvement/hardware stores, lumber yards, building material suppliers, etc.
- ⁵ Includes Target, Kmart, PriceCostco, Petsco, Ross Dress for Less, J. C. Penney's, Borders Books, Barnes & Noble, Bed and Bath, or other department stores, shoes, specialty apparel shops, jewelry stores, etc., which are typically found in regional malls.
- ⁶ Includes all grocery stores, including supermarkets, small produce and meat shops, etc.
- ⁷ Includes all other types of retail including drug stores, restaurants, small convenience stores, gas stations, video stores, beauty supply stores, service commercial such as nurseries, auto repair, etc.
- ⁸ Includes all other commercial, non-residential uses such as banks, professional offices, etc.

2. REPORTING

The property owner or retail operator will be required to provide taxable sales reports quarterly by submitting copies of State Board of Equalization (SBE) sales tax forms or receipts. The County will verify accuracy of the sales reports by comparison with quarterly SBE data provided by the County's retail data consultant. All sales tax reports and other retail sales information provided to the County would be kept confidential to the extent allowed by law.

3. ANNUAL TAX LEVY

Each year the County will levy the special tax upon taxable parcels within the CFD. The tax assigned to each taxable parcel will be based on the steps described below. The Special Tax liability will not be placed on the assessor's tax roll in the typical manner; rather, the County will "direct bill" for the special tax liability each year.

Step 1: The County will determine if taxable sales receipts and property tax revenues are adequate to meet the CFD debt service requirement for the payments due in the following calendar year. If the committed percentage of incremental tax revenues appears adequate to pay for debt service, then each parcel will receive a 100 percent credit against the maximum special tax and no payment will be due.

If the committed percentage of tax revenues are not sufficient to meet debt service and the special reserve fund balance is less than the amount necessary to meet the shortfall, then parcels not achieving their Taxable Sales Target will not receive 100 percent credit against the maximum special tax.

In determining the adequacy of the tax revenues for the following year, the County will review various factors, including:

- Status and draws on special reserve fund.
- Sales and property tax history.
- Status of improvement bond issues and changes in debt service schedules.

If there is insufficient current property and sales tax revenues to cover debt service, then:

Step 2: The County will review taxable sales reports provided by property owners and compare with SBE data provided by the County's retail data consultant.

Step 3: The County will determine if each Original Parcel or Successor Parcel, as appropriate, independently met its Taxable Sales Target. As to each parcel that has met its Taxable Sales Target, there will be a 100 percent credit against the maximum special tax.

If there is insufficient current property and sales tax revenues, parcels that did not reach Taxable Sales Target will be identified, then:

Step 4: The County will determine the difference between Taxable Sales Target and Actual Taxable Sales during the prior four quarters for which data is available. The County will determine if factors causing the difference are likely to continue into future and, if so, in what degree.

Step 5: The County will determine the total current debt service allocable to each parcel that did not meet its Taxable Sales Target ("Underperforming Parcel"), and subtract from that amount the current property and sales tax revenues actually generated by the Underperforming Parcel. The County will determine the total current property and sales tax revenues left after paying the current debt service allocable to the parcels that did meet their Taxable Sales Target ("Excess Revenue"). The County will allocate the Excess Revenue and monies in the special reserve fund among the parcels in proportion to current property and sales tax revenues actually generated by each Underperforming Parcel. Any portion of the current debt service allocable to an Underperforming Parcel still remaining unpaid ("Unpaid Balance") will be payable in accordance with Step 6.

Step 6: The County will directly bill each Underperforming Parcel its Unpaid Balance determined in Step 5.

4. PAYMENT OF SPECIAL TAXES AND FORECLOSURE ACTION

If the County determines it is necessary to bill a property owner for the special tax, the bill will be sent out by October 1 of the calendar year in which the deficiency occurs.

Fifty (50) percent of the payment will be delinquent December 10 of the same year and 50 percent will be delinquent by April 10 of the following year.

Delinquent payments will be subject to standard county charges for delinquent tax payments.

If taxes are delinquent as of April 10, County will institute foreclosure proceedings within 90 days.

While special taxes are delinquent or foreclosure action is pending, the County will use the following sources in the prescribed order to fund debt service requirements:

- a. Committed sales and property tax revenues in excess of the debt service requirement (the coverage provided from other parcels meeting their Taxable Sales Targets).
- b. The special reserve fund.

- c. The bond reserve fund.

5. RECONCILIATION

If, after levying and billing the special tax, the County determines that there is adequate tax revenues to meet debt service requirements, the County will reimburse the property owner for any special taxes paid. This reconciliation is made on a year-by-year basis only; there is no carryover from one year to the next. Following the first year or two there generally will be no need for reconciliation since the amount of revenue available will be accrued in the prior year.

The determination of "adequate tax revenues" that enable the County to make the determination of the ability to pay debt service could include a revision in the taxable sales estimates, adjustments due to late reporting, payment of delinquent taxes, or proceeds from foreclosures sales.

6. ASSIGNMENT OF SPECIAL TAXES

a. Assignment of Special Taxes to Original Parcels

The County Chief Administrative Officer shall determine the Maximum Annual Special Tax applicable to parcels existing or shown in a pending subdivision map at the time the CFD is formed ("Original Parcels") or to parcels created after the formation of the CFD ("Successor Parcels") by applying the Maximum Annual Special Tax per square foot to the Gross Leaseable Area (GLA) that is approved for development by the County and vested in each Development Agreement, using one of the six retail use classifications identified in Section 1, above. The determination of use classification for each Original Parcel or Successor Parcel and the GLA shall be determined when the first building permit is issued for construction of a commercial building on such parcel.

b. Assignment of Maximum Special Tax to Successor Parcels.

In the event of a subsequent subdivision of an Original Parcel, the County shall assign the Maximum Special Tax to each Successor Parcel as follows:

- Determine whether the Successor Parcels are Taxable Parcels or Tax-Exempt Parcels.
- Calculate the percentage of each taxable Successor Parcel's GLA to the total GLA (square footage) to that of the Original Parcel; then,
- Multiply this percentage by the Maximum Special Tax assigned to the Original Parcel. This will be the new Maximum Special Tax for each Successor Parcel.

The sum of the Maximum Special Taxes for all new Successor Parcels will always equal the Maximum Special Tax for the previous Original Parcel.

- Maximum Special Tax assigned to Successor Parcels may be adjusted at the option of the Original Parcel Owner to reflect changes in commercial uses. For example, a Successor Parcel created from subdivision of an Original Parcel designated "Regional Retail" for the purpose of building a financial institution (bank) could be assigned the Maximum Annual Special Tax for the Non-Retail Commercial category; however, Maximum Annual Special Tax for the aggregate of the Successor Parcels must always equal the Maximum Annual Special Tax for the Original Parcel. This may mean that Maximum Annual Special Taxes for certain Successor Parcels exceed the rates shown in Item 1, above.

c. Allowable transfer of Special Tax

In the event that an Original or Successor parcel, through a loss of developable land, will have a higher Special Tax per acre of developable land than other Taxable parcels in the CFD, the revised Maximum Special Tax may be adjusted further by shifting the tax to other Taxable Parcels throughout the CFD and subject to the following provisions:

- (i) any decrease in one Taxable Parcel's Maximum Special Tax is offset by an equal increase in the Maximum Special Tax of another Taxable Parcel or Parcels to ensure that there is no net loss in total Maximum Special Taxes;
- (ii) all adjustments are agreed to by the affected property owners and the County and comply with the requirements of the Act; and,
- (iii) none of the transferred Special Taxes will be spread to Tax-Exempt Parcels.

h)

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EXHIBIT "E"

TAXABLE SALES TARGETS

EXHIBIT E**DESCRIPTION OF PROPOSED SPECIAL TAX FORMULA**

The following narrative provides a description of how the Missouri Flat CFD Special Tax Formula would operate. As mentioned above, the special tax is a contingent source of funding in the event that sales tax performance for commercial retail properties fall below that necessary to support debt service. With projected "coverage" ratios in the range of 1.5, the likelihood that a net tax liability would exist is small.

1. TAXABLE SALES TARGETS AND MAXIMUM ANNUAL TAXES

Six categories of use will be reflected in the Rate and Method of Apportionment. These six classes of use will apply to each development parcel, as appropriate.

Retail Category	Average Retail Sales per square foot ¹ Performance Target	Maximum Annual Special Tax per square foot GLA ²
National Discount Retailer Stand-Alone ³	\$300.00	\$2.55
Home Improvement ⁴	\$240.00	\$2.05
Regional Retail (department stores and related "in line" shops) ⁵	\$220.00	\$1.90
Supermarket ⁶	\$150.00	\$1.30
Other Retail ⁷	\$160.00	\$1.35
Non-Retail Commercial ⁸	\$ 0.00	\$0.25

- ¹ Average Retail Sales per square foot reflect industry averages for the specified categories or retail uses. Actual sales performance of individual retail outlets within shopping centers may be higher or lower. Taxable Sales Targets for Original Parcels will be derived by multiplying Average Retail Sales Per Square Foot subject to State sales taxes by Gross Leaseable Area including all enclosed sales areas including outside garden sales area (GLA) as vested by the Development Agreements. Non-retail uses (financial institutions, etc.) will have a Maximum Annual Special Tax per square foot of \$0.25.
- ² Maximum Special Tax Levy will be calculated by multiplying the Performance Target by one percent (the local portion of State sales taxes). The product will be reduced by the Tax Rate Factor of .85, rounded to the nearest \$0.05 to establish the Maximum Special Tax to be applied to each square foot of GLA.
- ³ Includes big box, large membership club, and other off-price or high-value retailers such as Wal-Mart.
- ⁴ Includes Home Depot, Home Base, Orchard Supply, or other large home improvement/hardware stores, lumber yards, building material suppliers, etc.
- ⁵ Includes Target, Kmart, PriceCostco, Petsco, Ross Dress for Less, J. C. Penney's, Borders Books, Barnes & Noble, Bed and Bath, or other department stores, shoes, specialty apparel shops, jewelry stores, etc., which are typically found in regional malls.
- ⁶ Includes all grocery stores, including supermarkets, small produce and meat shops, etc.
- ⁷ Includes all other types of retail including drug stores, restaurants, small convenience stores, gas stations, video stores, beauty supply stores, service commercial such as nurseries, auto repair, etc.
- ⁸ Includes all other commercial, non-residential uses such as banks, professional offices, etc.