ORDINANCE NO. 1511

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA, APPROVING A PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF RIALTO AND LYTLE DEVELOPMENT COMPANY, EL RANCHO VERDE GOLF, LLC AND PHARRIS SYCAMORE FLATS LLC

WHEREAS, a Pre-Annexation and Development Agreement ("*Development Agreement*") between the City of Rialto, a California general law municipal corporation ("*City*"), and (i) Lytle Development Company, a California corporation, (ii) El Rancho Verde Golf LLC, a Delaware limited liability company and (iii) Pharris Sycamore Flats LLC, a California limited liability company, owners of legal title to the certain real property currently located within both the unincorporated territory of the County of San Bernardino and the boundaries of City (the "*Property*"), a copy of which is attached hereto and incorporated herein as Exhibit "A," has been proposed for the purpose of defining and memorializing the rights and obligations of such parties regarding the development of the Property; and

WHEREAS, on May 30, 2012 the Planning Commission of the City of Rialto conducted a duly-noticed public hearing regarding the Development Agreement, and at its conclusion, after considering the testimony and all other evidence submitted by Owner, City staff, and interested parties, adopted its Resolution No. 12-14, approving the Findings described in Section 1 hereof and recommending that the City Council approve the Development Agreement; and

WHEREAS, the City Council conducted a duly-noticed public hearing on June 26, 2012 and July 24, 2012 regarding the Development Agreement, and considered the recommendation of the Planning Commission and the testimony and all other evidence submitted by Owner, City staff, and interested parties, and approved the Development Agreement.

NOW, THEREFORE, the City Council of the City of Rialto does hereby ordain as follows:

Section 1. Findings

A. General Plan and Specific Plan Consistency. The provisions of the Development Agreement are consistent with the General Plan of the City and the Lytle Creek Ranch Specific

Plan.

B. Compliance with Legal Requirements. The provisions of the Development Agreement comply with the requirements of Article 2.5 of Chapter 4 of Division 1 of Title 7 of the California Government Code, commencing with Section 65864, Article XI, Section 7 of the California Constitution and the City Development Agreement Ordinance incorporated into its Municipal Code as Chapter 18.79 of Title 18.

C. Financially Self-Sustaining Development. The intent of the Development Agreement is that the development of the Property will be financially self-sustaining, so that it imposes no additional financial burden on the residents, property owners or taxpayers in other portions of the City, by providing for the payment of all costs for the public facilities and City services necessary to serve such development.

D. Not Adverse to Health, Safety and Welfare. Adoption of the Development Agreement, under current and known circumstances, will not be detrimental to the health, safety or welfare of persons residing, conducting business or owning property in the area of the Project or elsewhere in the City.

E. Municipal Rights and Benefits. Adoption of the proposed Development Agreement will provide substantial municipal rights and benefits to the City of Rialto in addition to those which the City otherwise could secure, including but not limited to the following:

(i) Increased Impact Fees. The payment of Development Impact Fees in excess of the fees currently charged by the City for other development within the City.

(ii) Development Agreement Fee. The payment of Development Agreement Fees.

(iii) Increased Tax Revenue. Increased ad valorem real property and sales tax and other revenues to the City.

(iv) Reducing Vehicle Miles Travelled. The reduction of vehicle trips by implementing a transportation demand management program that takes advantage of alternative modes of mass transit within the City.

(v) Pedestrian Mobility. Encouraging pedestrian mobility through the

provision of walking paths, signage guiding pedestrians to nearby destinations and through preservation of significant open space to create pleasant environments that encourage walking.

(vi) Sustainable Design. Good faith efforts to include sustainable design at a LEED certifiable level for commercial and industrial uses and green building standards for residential construction.

(vii) Pedestrian Connection. The inclusion of a public pedestrian trail along the northernmost portion of Property.

(viii) Pedestrian Environment on Riverside Avenue. The inclusion of improvements that enhance the pedestrian environment on Riverside Avenue, including bus turnouts, enhanced landscaping and other pedestrian amenities.

(ix) Reduce Traffic Congestion. The inclusion of improvements and the contribution of fees to improvements that will reduce congestion on local streets and the regional transportation network such as Interstate I-15.

(x) Public Schools. The inclusion of the construction of an elementary school and a K-8 school which will benefit residents without the Project and well as within the Project.

(xi) Open Space. Over 900 acres of natural open space will be preserved in perpetuity.

(xii) Parks and Recreation. Park and recreation improvements including:

- 21.0 acres of neighborhood parks;
- 23.5 acres devoted to the "Grand Paseo," a greenbelt that will vary in width from between 70 feet and 100 feet and contain picnic areas, seating, and landscaping;
- The Sports Park containing lighted soccer fields and baseball diamonds, playgrounds, concession facilities, restrooms and picnic areas;
- 10.0 acres devoted to private recreation centers (two 3-acre recreation centers with swimming pool and one 4-acre recreation center with swimming pool and water play area for children);

- 3.0-acre Active Adult recreation center (private for Active Adult homeowners only);
- 27.2 acres of linear open space/recreation land, trails and walkways.

Section 2. Compliance Review. The proposed Development Agreement and City Code Section 18.79.070 requires periodic review of such Agreement by the City Council at least once every twelve months after its execution, to ascertain good faith compliance with terms of such Agreement by the Owner and any successor in interest.

Section 3. Annexation Contingency. The effectiveness of the Development Agreement is contingent upon completion of the annexation to the City of portions of the Property now located within the unincorporated area of the County of San Bernardino. That completion is also subject to the negotiation of a Tax Exchange Agreement between the City and County that is acceptable to the City.

Section 4. Approval. The City Council hereby approves the Development Agreement, with any non-substantive typographical or scrivener errors corrected by the City Administrator, and authorizes the Mayor to sign said Development Agreement after it has been signed by all the other parties to such Development Agreement with the following addition to the Development Agreement:

a. ***Section 8.1.3:***

A Master Parcel Map shall be filed by the developer for Neighborhood II (2,567 single family units). A Master Parcel Map is a map that subdivides large tracts of land into smaller parcels for the purpose of later selling or otherwise transferring the parcels for further subdivision in accordance with an approved Specific Plan, or for the purpose of securing financing, but not for the purpose of creating either individual residential lots for sale to end-user homeowners, and not for the purpose of allowing construction or other improvements on non-residential parcels.

Upon submittal of the Master Parcel Map, the developer shall submit final conceptual design plans for the following Open Space/Recreation Planning Areas (PA) within Neighborhood II: PA Nos. 81, 85, 86, 87, 88, 95, 96, 97, 99 and 101 (234 acres total). The Open Space/Recreation design plans shall specify the location and size of <u>either</u> a 19,000 square foot clubhouse facility to be constructed as part of the permitted golf course reconfiguration or a recreation center of comparable size and

utility to be included as part of alternative recreational amenity to be subsequently approved by the City.

Prior to issuance of the 500th Certificate of Occupancy within Neighborhood II (excluding Planning Area No. 92), the clubhouse facility or recreation center shall be constructed consistent with the design plans to be subsequently approved by the City. The Planning Areas designated for Open Space/Recreation shall be completed pursuant to the approved design as follows:

By the 500th Certificate of Occupancy- 58.5 acres;
By the 1,026th Certificate of Occupancy- 117 acres;
By the 1,540th Certificate of Occupancy - 175 acres; and
By the 2,053rd Certificate of Occupancy-234 acres.

Section 5. Recordation. Pursuant to Government Code Section 65868.5, the City Clerk is directed to record a copy of said Development Agreement with the County Recorder of San Bernardino County within 10 days after the Mayor's signing of the Development Agreement.

Section 6. Publication. The City Clerk also shall certify to the passage and adoption of this ordinance and cause the same to be published in the San Bernardino Sun, a newspaper of general circulation in the City, in accordance with the provisions of Section 18.79.080 of the City Municipal Code and the California Government Code.

Section 7. Partial Invalidation Effect. If any court of competent jurisdiction holds any section, subsection, sentence, clause, phrase or portion of this ordinance invalid, such determination shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have enacted this ordinance and each section, sentence, clause or phrase hereof irrespective of any determination of invalidity.

PASSED, ADOPTED AND APPROVED at a regular meeting of the City Council this 24th day of July, 2012 by the following vote.

GRACE VARGAS, Mayor

ATTEST:

BARBARA A. McGEE, City Clerk

APPROVED AS TO FORM:

JIMMY L. GUTIERREZ, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF RIALTO)

I, Barbara McGee, City Clerk of the City of Rialto, do hereby certify that the foregoing Ordinance No. _____ was duly passed and adopted at a regular meeting of the City Council of the City of Rialto held on the _____ day of July, 2012.

Upon motion of Council Member _____, seconded by Council Member _____, the foregoing Ordinance No. _____ was duly passed and adopted.

Vote on the motion:

AYES:

NOES:

ABSTAINED:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of City of Rialto this _____ day of _____, 2012.

_____

BARBARA MCGEE, City Clerk

EXHIBIT 'A'

Pre- Annexation Development Agreement

PRE-ANNEXATION AND DEVELOPMENT AGREEMENT

Between

THE CITY OF RIALTO

And

LYTLE DEVELOPMENT COMPANY,

a California corporation

And

EL RANCHO VERDE GOLF, LLC

a Delaware limited liability company

And

PHARRIS SYCAMORE FLATS LLC

a California limited liability company

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PRE-ANNEXATION AND DEVELOPMENT AGREEMENT

This PRE-ANNEXATION AND DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into this __day of _____, 2012, by and between the CITY OF RIALTO, a municipal corporation (the "**City**") and (i) LYTLE DEVELOPMENT COMPANY, a California corporation ("**Lytle Development**"), (ii) EL RANCHO VERDE GOLF LLC, a Delaware limited liability company ("**El Rancho Verde**") and (iii) PHARRIS SYCAMORE FLATS LLC, a California limited liability company ("**PS Flats**"). Lytle Development, El Rancho Verde and PS Flats are collectively referred to herein as the "**Owners**" and individually as an "**Owner**. The City, Lytle Development, El Rancho Verde and PS Flats are collectively referred to herein as the "**Parties**" and individually as a "**Party**."

RECITALS

A. All capitalized terms used in the Recitals shall have the meanings given to such terms in Section 1 of this Agreement.

B. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the "**Development Agreement Statute**," Sections 65864 *et seq.*, of the California Government Code. The Development Agreement Statute authorizes the City to enter into an agreement with any person having a legal or equitable interest in real property, to provide for the development of such property and to vest certain development rights therein.

C. To ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City: (1) accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties; and (2) to offset such restraints, seeks the public benefits which are provided in this Agreement.

D. Based on the foregoing, the City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to the Development Agreement Statute (Section 65864, et seq. of the Government Code) and the rules and regulations adopted by the City for consideration of development agreements, pursuant to Section 65865 of the Government Code.

E. Lytle Development is the fee owner of a portion of the Property (the "**Lytle Property**"), legally described on Exhibits A-1.

F. El Rancho Verde is the fee owner of a portion of the Property (the "**El Rancho Verde Property**"), legally described on Exhibit A-2.

G. PS Flats is the fee owner of a portion of the Property (the "**PS Flats Property**"), legally described on Exhibit A-3.

H. An initial application for approval of the Specific Plan was submitted to the City on December 12, 2007.

I. Each of Lytle Development, El Rancho Verde and PS Flats may from time to time transfer all or portions of the Property to one or more developers who will succeed them, as the case may be, as the owner or owners under this Agreement with respect to those portions of the Property transferred. Development of the Property shall be undertaken by Lytle Development, El Rancho Verde and/or PS Flats, and/or successor owners.

J. City Procedures and Actions.

1. On July 13, 2010, the City Council introduced and adopted Ordinance No. 1471 approving this Agreement. The second reading of Ordinance No. 1471 was on July 27, 2010.

2. As a result of the ruling of the San Bernardino County Superior Court, dated September 30, 2011, in Case No. CIVDS 1011874, *Endangered Habitats League, et al. v. City of Rialto, et al.*, the court ordered the City to rescind its approvals for the Specific Plan, including approval of Ordinance No. 1471 for this Agreement. On November 22, 2011, the City Council adopted Ordinance No. 1495 rescinding approval of Ordinance No. 1471, the second reading of which was on December 13, 2011.

3. In compliance with the superior court's decision, the City has prepared a Recirculated Portions of the Draft Environmental Impact Report, and the City will reconsider the certification of the Environmental Impact Report, and reconsider approval of the Specific Plan, the General Plan Amendment, Zone Change, Initial Financing Map and this Agreement.

4. On May 30, 2012, the City's Planning Commission held a public hearing on the Agreement, and made certain findings and determinations with respect thereto, and recommended to the City Council that this Agreement be approved.

5. In accordance with the Development Agreement Statute, applicable City regulations, and other applicable law, the City Council on _____[insert date], after conducting a duly noticed public hearing, considered the recommendations of the Planning Commission, adopted Ordinance No. _____ (the "**Ordinance**"), to become effective on the thirty-first day after publication, approving this Agreement, having found that its provisions are consistent with the City's General Plan and with the Specific Plan, and having authorized the execution of this Agreement.

6. The City has approved, or as of the Effective Date will have approved the Existing Development Approvals, as that term is defined in Section 1, below, for the Development of the Property in accordance with the Development Plan.

K. The City has fully complied with all of the requirements of the California Environmental Quality Act with respect to review and approval of the Project and this Agreement, including without limitation the City's review, consideration and certification of the EIR, the Findings adopted by the City, the Statement of Overriding Considerations and a Mitigation Monitoring Plan applicable thereto.

L. This Agreement and the Project are consistent with the General Plan and the Specific Plan.

M. Purpose of this Agreement.

1. Owner Objectives. In accordance with the legislative findings set forth in the Development Agreement Statute, and with full recognition of the City's policy of judicious restraints on its police powers, Owners desire to obtain reasonable assurances that the Project may be developed in accordance with the Existing Land Use Regulations, in accordance with the terms of this Agreement, and subject to the Section 3.11 (Reservations of Authority). Owners anticipate making capital expenditures in connection with the Development of the Project in reliance upon this Agreement. In the absence of this Agreement, Owners would have no assurance that they could complete the Project for the uses and to the density and intensity of development set forth in this Agreement and in the Existing Development Approvals. This Agreement, therefore, is necessary to assure Owners that the Project will not be: (1) reduced in density, intensity or use from what is set forth in the Existing Development Approvals; (2) subjected to new rules, regulations, ordinances or official policies which are not related to compliance with State or Federal mandates or health and safety conditions; or (3) subjected to delays for reasons other than health and safety enactments related to critical situations such as, but not limited to, the lack of wastewater treatment capacity, flooding or restricted water supply, as examples.

2. Mutual Objectives. Development of the Project by the Owners in accordance with this Agreement will provide for the orderly development of the Property in accordance with the objectives set forth in the General Plan and in the Specific Plan and will be, at a minimum, fiscally neutral with respect to its impact on the City. Moreover, this Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. The Parties believe that such orderly development of the Project will provide many public benefits to the City through the imposition of development standards and requirements under the provisions of this Agreement, including without limitation, imposition of certain fees, public dedications and public improvement requirements, and will further important policies and goals of the City. Additionally, although Development of the Project in accordance with this Agreement will restrain the City's land use or other relevant police powers, this Agreement will provide the City with sufficient reserved powers during the term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to the City, Owners will receive assurances that the Project may be developed

during the term of this Agreement in accordance with the Existing Land Use Regulations, in accordance with the terms and conditions of this Agreement, and subject to the provisions of Section 3.11 (Reservations of Authority).

AGREEMENT

Based upon the foregoing Recitals, the Parties hereby agree as follows:

1. DEFINITIONS.

The following terms when used in this Agreement shall have the meanings set forth below:

The term "**Action**" shall have the meaning set forth in Section 16.3 below.

The term "**Annexation**" means addition of territory to the City, pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code sections 56000 et seq.

The term "**Building Permit**," with respect to any building or structure to be constructed on the Property, means a building permit for not less than the shell and core of such building or structure issued by the Division of Building and Safety of the City.

The term "**CEQA**" or "**California Environmental Quality Act**" means the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*), as may be amended from time to time.

The term "**Certificate of Occupancy**," with respect to a particular building or other work of improvement, means the final certificate of occupancy issued by the City with respect to such building or other work of improvement.

The term "**CFD**" means the Community Facilities District for the Project allowed to be formed pursuant to the CFD Act by a Local Agency.

The term "**CFD Act**" means the Mello-Roos Community Facilities Act of 1982 (California Government Code Section 53311 *et seq.*), as may be amended from time to time, authorizing the imposition of a special tax to fund capital facilities and maintenance services.

The term "**City Council**" means the City Council of the City.

The term "**Dedicate**" or "**Dedication**" means to offer the subject land for dedication at the time of recordation of the final subdivision map for which such dedication is a condition of approval or as otherwise provided in Section 8.

The term "**Defaulting Party**" shall have the meaning set forth in Section 9.1 below.

The term "**Development**" or "**Develop**" means the improvement of the Property for purposes of constructing and completing the structures, improvements and facilities comprising the Project, including, but not limited to: grading, the construction of infrastructure and public facilities related to the Project whether located within or outside

the Property, the construction of buildings and structures, and the installation of landscaping. "**Development**" or "**Develop**" also includes the operation, use and occupancy of, and the right to maintain, repair, or reconstruct, any private building, structure, improvement or facility after the construction and completion thereof; provided that such repair, or reconstruction takes place during the Term of this Agreement on parcels subject to this Agreement.

The term **"Development Agreement Fees"** means the monetary consideration charged by the City for entering into this Agreement, set forth on Exhibit "C" attached hereto.

The term "**Development Impact Fees**" means the monetary consideration, other than a tax or assessment charged by the City in connection with mitigating the Project-specific impacts of the Project and development of the public facilities related to development of the Project, including those fees, calculated on the basis of the number of residential units or square footage of non-residential development to be constructed, as set forth on Exhibit "C" attached hereto. Development Impact Fees do not include Processing Fees.

The term "**Development Plan**" means the Specific Plan Land Use Plan.

The term "**EIR**" means the _____ Environmental Impact Report certified by the City Council on _____, 201__ (SCH No. 2009061113; City Council Resolution No. _____), and any and all addenda thereto.

The term "**Effective Date**" of this Agreement means the effective date of the Ordinance approving this Agreement.

The term "**Existing Development Approvals**" means the Specific Plan, the EIR, the General Plan Amendment and Zone Changes and the Initial Financing Map.

The term "**Existing Land Use Regulations**" means all Land Use Regulations in effect as of the Effective Date, including all Existing Development Approvals.

The term "**Financing and Conveyance Map**" means any final subdivision map pursuant to the Subdivision Map Act, Government Code Sections 66410 *et seq*. which divides the Property into parcels or lots for financing and conveyance purposes only and which does not authorize development of any kind.

The term "**Force Majeure**" shall have the meaning set forth in Section 9.5 below.

The term "**General Plan**" means the City General Plan as it exists on the Effective Date, and as expressly amended by (i) General Plan Amendment/Zone Changes No. _____ approved by City concurrently with this Agreement (the "**GP Amendment and Zone Changes**"); and (ii) future amendments applicable to the Property, as approved by the Owners in the manner specified in Section 3.63.6 below.

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The term "**Grand Paseo**" means a park area containing all of Planning Areas 37, 45, 51, 56, 61, 67, and 75, all as described in the Specific Plan.

The term "**Initial Financing Map**" means the tract map number 18767, that is a Financing and Conveyance Map approved approximately concurrently with the approval of the other Existing Development Approvals.

The term "**LAFCO**" means the San Bernardino County Local Agency Formation Commission.

The term "**Land Use Regulations**" means all ordinances, resolutions, codes, rules, regulations and official policies of the City governing the development and use of land, including the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or Dedication of land for public purposes, and the design, improvement and construction and initial occupancy standards and specifications applicable to the Development of the Property. "Land Use Regulations" do not include any City ordinance, resolution, code, rule, plan, regulation or official policy, governing any of the following: (i) the conduct, licensing or taxation of businesses, professions, and occupations; (ii) other than as provided in this Agreement or approved by the voters to fund the debt service of a general obligation bond or other city purpose funded by a city-wide ad valorem tax, including but not limited to a tax to fund the existing City PERS contract obligations,, taxes and assessments of general application upon all residents of the City; provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land (e.g. excise tax) or to directly finance the construction or maintenance of any public improvement in respect of which the Owner is paying any fee or providing any improvement pursuant to Article 5 hereof; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

The term "**Local Agency**" means any public agency authorized to levy, create or issue any form of land secured financing over all or any part of the Project, including, but not limited to, the City.

The term "**Lot**" means any of the parcels legally created as a result of any approved final subdivision parcel or tract map or recordation of a condominium plan pursuant to the California Civil Code Section 1352 for the Property pursuant to the Subdivision Map Act, Government Code Sections 66410 *et seq*.

The term "**Master Subdivision Map**" means a vesting tentative tract map which encompasses substantially all or substantially all of the Property, as the same may be finally approved by the City, and subject to all terms and conditions contained in such tract map.

The term "**Mitigation Monitoring and Reporting Program**" means that certain mitigation monitoring and reporting program included as Appendix VI-B to the EIR.

The term "**Mortgage**" means a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a portion thereof or interest therein, is pledged as security, and contracted for in good faith and for fair value.

The term "**Mortgagee**" means the holder of a beneficial interest under a Mortgage, or any successor or assignee of any such Mortgagee.

The term "**Mortgagee Successor**" means a Mortgagee or any third party who acquires fee title or any rights or interest in or with respect to the Property or any portion thereof through foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise from or through a Mortgagee. If a Mortgagee acquires fee title or any right or interest in or with respect to the Property or any portion thereof through foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale and such Mortgagee subsequently conveys fee title to such portion of the Property to a third party, then such third party shall be deemed a Mortgagee Successor.

The term "**Municipal Code**" means the City of Rialto Municipal Code, as the same existed as of the Effective Date of this Agreement and as may be amended from time to time consistent with this Agreement.

The term "**Non-Defaulting Party**" shall have the meaning set forth in Section 9.1 below.

The term "**Owner**" means any of the Owners, and any of the Owner Successors during the period of time that each such person or entity owns fee title to any portion of the Property. The term Owner excludes all Purchaser/Users.

The term "**Owner Successor**" means any person or entity (other than a Purchaser/User) who acquires fee title to some or all of the Property from an Owner, prior to the development of such portion of the Property, and subject to the terms of this Agreement.

The term "Park Fees" means Development Impact Fees levied by the City for Park Development pursuant to Section 3.34 of the Municipal Code and for Open Space pursuant to Section 3.44 of the Municipal Code.

The term **"Permitted Transferees"** means Lytle Development Joint Venture III, a California joint venture, Pharris III, LLC, a California limited liability company, Lytle Development Joint Venture II, a California joint venture, Pharris II, LLC, a California limited liability company, a person or entity (i) that controls, is controlled by or is under common control with an Owner, (ii) that is a wholly owned subsidiary of an Owner, or (iii) if an entity, one that results from the merger of an Owner with such other entity and the entities described in Section 12.2.

The term **"Pre-Qualified Developer"** means a publicly traded builder or developer or a privately held merchant builder with a minimum net financial worth of

Five Million Dollars and who has constructed at least 75 homes in California during the preceding five year period.

The term "**Project**" means the development of the Property pursuant to this Agreement, the Existing Land Use Regulations and the Existing Development Approvals, as depicted on Exhibit "B" attached hereto.

The term "**Property**" means the real property which is the subject of this Agreement and which is comprised of all of the Lytle Property, the El Rancho Verde Property, and the PS Flats Property.

The term "**Property Owner's Association**" or "**POA**" means an association formed among the owners of real estate located within the Property (as the same may be subdivided from time to time), including but not limited to one or more homeowners' association and/or other associations of owners of residential, industrial, commercial, educational and retail property.

The term "**Processing Fees**" means the following: (i) the City's normal fees for processing, environmental assessment/review, tentative tracts/parcel map review, plan checking, site review, site approval, administrative review, building permit (plumbing, mechanical, electrical, building), inspection and similar fees imposed to recover the City's costs associated with processing, review and inspection of applications, plans, specifications, etc.; (ii) fees and charges levied by any other public agency, utility, district or joint powers authority whether or not such fees are collected by the City, and whether or not such fees are used for maintenance or capital outlay purposes.

The term "**Proposed Project Facilities**" means those improvements set forth on Exhibit "D" attached hereto.

The term "**Purchaser/User**" shall have the meaning set forth in Section 2.62.62.6 below.

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The term "**Quimby Act**" means Sections 66477 *et seq.*, of the California Government Code as implemented by Chapter 18.79 of Title 18 of the Municipal Code.

The term "**SANBAG**" means the San Bernardino Associated Governments, the council of governments and transportation planning agency for the County of San Bernardino.

The term "**Sports Park**" means a park area containing approximately 35.7 gross acres, to be located in Planning Area 72, improved with the facilities and equipment described in the Specific Plan and in Exhibit "H" attached hereto.

The term "**Specific Plan**" means the Lytle Creek Ranch Specific Plan, approved by City pursuant to Ordinance _____, adopted on _____, 20___.

The term **"Taxes"** means general or special taxes, including but not limited to ad valorem property taxes, sales taxes, transient occupancy taxes, utility taxes or business

taxes of general applicability citywide which do not burden the Property disproportionately to similar types of development in the City and are not imposed as a condition of approval of a development project. Taxes do not include Development Impact Fees, Development Agreement Fees, Processing Fees, Traffic Impact Mitigation Fees or fair share mitigation fees.

The term "**Term**" shall have the meaning set forth in Section 2.4 below.

The term "**Third-Party Legal Challenge**" means any referendum or third-party action or legal action that is instituted and which might affect or challenge the validity or enforceability of the Ordinance or this Agreement including its Exhibits, or any provision thereof, or any document implementing the provisions contained in this Agreement including its Exhibits.

The term "**Traffic Impact Mitigation Fees**" shall have the meaning set forth in Section ~~005.6~~ below.

The term "**Uniform Construction Codes**" shall have the meaning set forth in Section 3.11.4 below.

The term "**Zoning Code**" shall refer to the City of Rialto Municipal Code, Title 18, Chapters 18.02 *et seq.*, as the same existed as of December 10, 2007, (i) as amended by any zone change relating to the Property approved concurrently with the approval of this Agreement, and (ii) as the same may be further amended from time to time consistent with this Agreement.

2. EFFECT OF AGREEMENTS.

2.1 Effect of Development Agreement. The Parties intend and direct that this Agreement be the full understanding between the Parties as to their respective rights and obligations with respect to development of its portion of the Property, and that any interpretation of or dispute with respect to such rights and responsibilities be resolved by reference to this Agreement.

2.2 City Release As To Actions Prior To Effective Date. The City forever discharges, releases and expressly waives as against Owners and their respective partners, members, attorneys and employees any and all claims, liens, demands, causes of action, excuses for nonperformance (including but not limited to claims and/or defenses of unenforceability, lack of consideration, and/or violation of public policy), losses, damages, and liabilities, known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, based in contract, tort, or other theories of direct and/or of agency liability (including but not limited to principles of *respondeat superior*) that it has now or has had in the past, arising out of or relating to this Agreement, and the currently existing land use plans for the Property or any portion thereof.

2.3 Owners Release As To Actions Prior To Effective Date. Each of Owners forever discharges, releases and expressly waives as against the City and it's respective councils, boards, commissions, officers, attorneys and employees any and all claims,

liens, demands, causes of action, excuses for nonperformance (including but not limited to claims and/or defenses of unenforceability, lack of consideration, and/or violation of public policy), losses, damages, and liabilities, known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, based in contract, tort or other theories of direct and/or of agency liability (including but not limited to principles of *respondeat superior*) that they have now or have had in the past, arising out of or relating to this Agreement, and the currently existing land use plans for the Property or any portion thereof.

2.4 Term. The term of this Agreement (as the same may be extended, the "**Term**") shall commence on the Effective Date and, except for those provisions in this Agreement that expressly survive the expiration of this Agreement, shall continue thereafter for a period of twenty-five (25) years from and after the Effective Date, with two (2) additional optional extensions of five (5) years for each extension, at the sole discretion of Owner, upon satisfaction of the conditions stated in this Section 2.4, unless this Agreement is terminated, modified or extended by circumstances set forth in this Agreement or by mutual written consent of all of the Parties. As a condition to Owner's right to extend the Term as set forth in the preceding sentence, as of the twenty-fifth anniversary of the Effective Date (subject to any Force Majeure delays) Certificates of Occupancy shall have been issued for both (a) not less than fifty percent (50%) of the residential units permitted by the Existing Development Approvals and (b) not less than fifty percent (50%) of the square feet of commercial space permitted by the Existing Development Approvals. As a further condition to Owner's right to extend the Term as set forth in the preceding sentence, as of the thirtieth anniversary of the Effective Date (subject to any Force Majeure delays) Certificates of Occupancy shall have been issued for both (a) not less than seventy percent (70%) of the residential units permitted by the Existing Development Approvals and (b) not less than seventy percent (70%) of the square feet of commercial space permitted by the Existing Development Approvals. However, in the event that maximum number of residential units or maximum square footage of industrial and commercial development is reduced by action of other governmental entities with jurisdiction or by a court, the maximum number of residential units and/or commercial space shall be reduced accordingly and the aforementioned percentages prorated.

2.5 Termination If Annexation has not Occurred. The provisions of this Agreement shall terminate with respect to any portion of the Property for which an application for annexation has not been filed with LAFCO within one year following the date upon which the Existing Development Approvals and all federal and state permits required for the Development of the Property are final and all litigation with respect thereto and this Agreement has been finally resolved and no longer subject to appeal or further judicial review, whichever is the last to occur, subject to the provisions of Section 6, but in no event later than 10 years after the Effective Date of this Agreement. Notwithstanding any other provision of this Agreement, this Agreement may be terminated by the City in its sole discretion if, for any reason, the annexation to the City of the properties described in Exhibit B as Neighborhood II and Neighborhood III is not completed within 10 years following the Effective Date of this Agreement. At the

discretion of the City, the annexation of Neighborhoods II and III shall be conducted concurrently.

2.6 Termination Upon Sale Of Individual Lots To Public And Completion Of Construction. The provisions of this Agreement shall terminate with respect to any individual Lot and such Lot shall be released from and shall no longer be subject to this Agreement (without the execution or recordation of any further document or the taking of any further action) upon the satisfaction of both of the following conditions: (i) the Lot has been finally subdivided and sold, leased (for a period longer than one (1) year as evidenced by a lease) or otherwise conveyed to a member of the public or any other ultimate purchaser or user (collectively, a "**Purchaser/User**") which is not an Owner; and (ii) a Certificate of Occupancy has been issued for the building or buildings on the Lot or a final inspection of the building(s) has been approved by the City authorizing occupancy. The City shall cooperate with the Owner, at no cost to the City, in executing in recordable form any document that the Owner may submit to confirm the termination of this Agreement as to any such Lot.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Applicable Regulations; Vested Right To Develop. During the Term of this Agreement, the terms and conditions of development applicable to the Property, including but not limited to the permitted uses of the Property, the density and intensity of use, maximum height and size of proposed buildings and provisions for the reservation and dedication of land for public purposes, shall be those set forth in the Existing Land Use Regulations and in the Existing Development Approvals subject to the provisions of Section 3.11 of this Agreement. The maximum number of residential units authorized to be constructed hereunder and the maximum square footage of industrial and commercial development, without regard to any density bonus or incentive or concession for child care pursuant to Government Code Sections 65915 through 65918 or other similar legislation or regulation the right to which is hereby waived by Owners, is 8,407 units and 849,420 square feet of industrial and commercial development. However, in the event that maximum number of residential units or maximum square footage of industrial and commercial development is reduced by action of other governmental entities with jurisdiction, or by a final decision of a court, the maximum number shall be reduced accordingly which reduction shall be reported within 90 days thereafter by written notice to the City.

3.1.1 Vested Right To Develop. Subject to the terms and conditions of this Agreement, Owners shall each have the vested right to carry out and develop the Property in accordance with the Existing Land Use Regulations and the Existing Development Approvals. In furtherance of the foregoing, Owners each retains the right to apportion the uses, intensities and densities, between itself and any subsequent Owners, upon the sale, transfer, or assignment of any portion of the Property, so long as such apportionment is consistent with the Existing Development Approvals and the Existing Land Use Regulations.

3.1.2 Right To Future Approvals. Subject to the City's exercise of its police power authority as specified in Section 3.11.7, Owner shall each have a vested right: (i) to receive from the City all future development approvals for the Property that are consistent with, and implement, the Existing Land Use Regulations, the Existing Development Approvals and this Agreement; (ii) not to have such approvals be conditioned or delayed for reasons which are inconsistent with the Existing Land Use Regulations, the Existing Development Approvals or this Agreement; and (iii) to develop the Property in a manner consistent with such approvals in accordance with the Existing Land Use Regulations, the Existing Development Approvals and this Agreement.

3.1.3 Vesting of Future Approvals. Subject to Section 3.6 below, any future development approvals for the Property, including without limitation general plan amendments, zone changes, or parcel maps or tract maps, shall upon approval by the City be vested in the same manner as provided in this Agreement for the Existing Land Use Regulations and the Existing Development Approvals.

3.2 Tentative Subdivision Maps. With respect to applications by an Owner for tentative subdivision maps for all or portions of the Property, such Owner may file and process vesting tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of the City's subdivision ordinance, as the same may be amended from time to time. The term of such tentative maps shall be extended automatically to be co-terminus with the Term of this Agreement. Owners have advised City that Owners intend to file multiple final subdivision maps, as may be determined by each Owner in its sole and absolute discretion. City agrees that it shall permit the filing of multiple final subdivision maps in accordance with the procedures set forth in Government Code Section 66456.1.

3.3 Financing And Conveyance Maps. Owners may file one or more tentative tract maps dividing the Property into separate legal lots or parcels for financing and conveyance purposes only (each, a "**Financing and Conveyance Map**"). A Financing and Conveyance Map shall not authorize any Development of the Property, and shall not be subject to any condition, exactions, or restrictions other than monumentation and other similar conditions that do not require the payment of money by Owners and do not require the installation or construction of any infrastructure improvements by Owners, and which the City commonly imposes on similar financing and conveyance maps.

3.4 Processing Of Applications And Permits. Upon satisfactory completion by one or more Owners of all required preliminary actions and payment of appropriate Processing Fees, if any, the City shall promptly proceed to process, check, and make a determination on all applications for development and building approvals within the times set forth in the Permit Streamlining Act (Chapter 4.5 (Section 65920) of Division 1 of Title 7 of the California Government Code), the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the California Government Code) and other applicable provisions of law, as the same may be amended from time to time.

3.5 Other Governmental Permits. Provided that an Owner pays the reasonable cost of such cooperation, the City shall cooperate with such Owner in its efforts to obtain such additional permits and approvals as may be required by any other governmental or quasi-governmental agencies having jurisdiction over the applicable portion of the Property for which such permit or approval is sought, provided that such permits and approvals are consistent with the Existing Land Use Regulations, the Existing Development Approvals and other City approvals for development of the Property; and provided further that such approvals are consistent with applicable regulatory requirements. The City does not warrant or represent that any other governmental or quasi-governmental permits or approvals will be granted.

3.6 Subsequent General Plan Amendments And Zone Changes. Owners shall be vested in their respective right to the development of the Property in accordance with the Existing Land Use Regulations and the Existing Development Approvals. Accordingly, any general plan amendments or zone changes or any other regulatory approvals with respect to development of any portion of the Property will not become effective as to such portion of the Property unless consented to in writing by all Owners of the portion of the Property affected by such general plan amendment or zone change who may exist as of the date of such general plan amendments or zone changes or any other regulatory approvals and are consistent with CEQA and any other applicable provisions of general law then in existence. By this paragraph the City does not represent that it will accept, process or approve any general plan, zone change or other regulatory action; provided that the City shall, subject to and consistent with its police power authority, accept, process and approve all regulatory actions required in order to effectuate the vested rights and benefits to the Owners contained in this Agreement.

3.7 Construction of Commercial Development. Owner agrees to phase the development of commercial development within the City in accordance with the following schedule.

Phase 1 – 1,681 residential units – 50,000 square feet of commercial

Phase 2 – 3,363 residential units – an additional 50,000 square feet of commercial for a cumulative total of 100,000 square feet of commercial

Phase 3 – 5,044 residential units – an additional 50,000 square feet of commercial for a cumulative total of 150,000 square feet of commercial

Phase 4 – 6,726 residential units – an additional 50,000 square feet of commercial for a cumulative total of 200,000 square feet of commercial

Phase 5 – 8,407 residential units – an additional 50,000 square feet of commercial for a cumulative total of 250,000 square feet of commercial.

Owner shall not commence construction of any phase of residential development following Phase 1 until such time as construction has commenced for the amount of commercial construction required for the previous phase of residential development. Once commenced, construction shall be completed within twelve (12)

months. If not completed within twelve months, no further residential building permits shall be issued for that phase until the required commercial construction has been completed and certificates of occupancy issued.

3.8 Transfers to Non-Profit Entities. In the event an Owner transfers title to property that was assumed to be developed for industrial or commercial purposes in the economic analysis of the Project prepared by Stanley R. Hoffman and Associates, dated May 6, 2010, to a non-profit entity, other than schools, churches and government facilities, that receives an exemption from ad valorem real property taxes, and the transfer materially and adversely impacts the fiscal effect of the Project on the City, Owner shall compensate City for the lack of real property tax revenue in a manner mutually acceptable to Owner and City.

3.9 Public Benefits.

3.9.1 Local and Regional Public Benefits. This Agreement provides assurances that the public benefits identified below in this Section 3.9 will be achieved and developed in accordance with the terms of this Agreement. The Project will provide local and regional public benefits to the City, including without limitation:

(i) Increased Impact Fees. The Owner will pay Development Impact Fees in excess of the fees currently charged by the City for other development within the City as set forth in Exhibit C.

(ii) Development Agreement Fee. The Owner will pay Development Agreement Fees as set forth in Exhibit C.

(iii) Increase Tax Revenue. The development of the Property in accordance with the terms of this Agreement will result in increased ad valorem real property and sales tax and other revenues to the City.

(iv) Reducing Vehicle Miles Travelled. The Project will reduce vehicle trips by implementing a transportation demand management program that takes advantage of alternative modes of mass transit within the City.

(v) Pedestrian Mobility. The Project encourages pedestrian mobility through the provision of walking paths, signage guiding pedestrians to nearby destinations and through preservation of significant open space to create pleasant environments that encourages walking.

(vi) Sustainable Design. The Owner will use their good faith efforts to include sustainable design at a LEED certifiable level for commercial and industrial uses and green building standards for residential construction.

(vii) Pedestrian Connection. The Project will include a public pedestrian trail along the northernmost portion of Property.

(viii) Pedestrian Environment on Riverside Avenue. The Project will include improvements that enhance the pedestrian environment on Riverside Avenue, including bus turnouts, enhanced landscaping and other pedestrian amenities.

(ix) Reduce Traffic Congestion. The Project will include improvements and contribute fees to improvements that will reduce congestion on local streets and the regional transportation network such as Interstate I-15.

(x) Public Schools. The Project will include the construction of an elementary school and a K-8 school which will benefit residents without the Project and well as within the Project.

(xi) Open Space. Over 900 acres of natural open space will be preserved in perpetuity.

(xii) Parks and Recreation. Park and recreation improvements include:

- 21.0 acres of neighborhood parks
- 23.5 acres devoted to the "Grand Paseo," a greenbelt that will vary in width from between 70 feet and 100 feet and contain picnic areas, seating, and landscaping
- The Sports Park containing soccer fields and baseball diamonds, playgrounds, concession facilities, restrooms and picnic areas
- 10.0 acres devoted to private recreation centers (two 3-acre recreation centers with swimming pool and one 4-acre recreation center with swimming pool and water play area for children)
- 3.0-acre Active Adult recreation center (private for Active Adult homeowners only)
- 27.2 acres of linear open space/recreation land, trails and walkways

3.10 Assurances To Owner. The Parties acknowledge that the substantial public benefits to be provided by Owners to the City pursuant to this Agreement are in consideration for and reliance upon assurances that the City will permit Development of the Property in accordance with the terms of this Agreement. Accordingly, the City shall not attempt to restrict or limit the Development of the Property in any manner that would conflict with the provisions of this Agreement. The City acknowledges that Owners cannot at this time predict the timing or rate at which the Property will be developed. The timing and rate of development depend on numerous factors such as market demand, interest rates, absorption, completion schedules and other factors which are not within the control of Owners or the City. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance notwithstanding that the construction company and the city had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property in accordance with the zoning. The California Supreme Court reached this result on the basis that the consent judgment failed to address the timing of development. It is the

intent of the Parties to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that all Owners shall have the vested right to develop the Property in such order and at such rate and at such time as such each such Owner deems appropriate within the exercise of such Owner's sole subjective business judgment, notwithstanding the adoption of an initiative after the Effective Date by the City's electorate to the contrary. In addition to and not in limitation of the foregoing, but except as set forth in the following sentence, it is the intent of the Parties that no City moratorium or other similar limitation relating to the rate or timing of the Development of the Property or any portion thereof, whether adopted by initiative, referendum or otherwise, shall apply to the Property to the extent that such moratorium, referendum or other similar limitation is in conflict with the express provisions of this Agreement. Notwithstanding the foregoing, Owners acknowledge and agree that nothing herein is intended or shall be construed as (i) overriding any provision set forth in this Agreement relating to the phasing of development of the Project; (ii) overriding any provision of the Existing Land Use Regulations or the Existing Development Approvals relating to the phasing of development of the Project; or (iii) restricting the City from exercising the powers described in Section 3.11 of this Agreement to regulate development of the Property. Nothing in this Section 3.9 is intended to excuse or release an Owner from any obligation set forth in this Agreement which is required to be performed on or before a specified calendar date or event without regard to whether or not one or more Owners proceeds with any portion of the Project.

3.11 Reservations Of Authority. Notwithstanding any provision set forth in this Agreement to the contrary, the laws, rules, regulations, official policies and conditions of approval set forth below in this Section 3.11 shall apply to and govern development of the Property.

3.11.1 Consistent Future City Regulations. City ordinances, resolutions, regulations and official policies adopted or approved after the Effective Date pursuant to procedures provided by law which do not conflict with the Existing Land Use Regulations, the Existing Development Approvals, and this Agreement shall apply to and govern development of the Property. Without limitation, any future City regulations, whether adopted by voter initiative or City Council action or otherwise, which materially increase the cost of development (except future fees adopted on a city-wide basis as referenced in Section 5.2.3 below), reduce the density or intensity of the Project below that permitted by the Existing Land Use Regulations and the Existing Development Approvals or materially limit the rate, timing or sequencing of development of the Property, or otherwise materially restrict any of the permitted uses, density, improvements, and construction shall be deemed inconsistent with this Agreement and shall not be applicable to the development of any portion the Property, unless the Owner of such portion of the Property expressly so consents. The Parties understand and agree that this Section 3.11.1 applies to the City's future adoption of ordinances, resolutions, regulations and official policies, but not to the imposition of conditions on future discretionary applications such as subdivision maps, conditional use permits, master plans, or similar approvals. The extent to which the City may impose conditions in connection with the evaluation of such subordinate discretionary applications is governed by the standards set forth in Section 3.11.6, below.

3.11.2 Overriding State and Federal Laws and Regulations. State and federal laws and regulations, including those of their regional agencies or departments such as the Regional Water Quality Control Board, which override the Owner's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations and official policies which are necessary to enable the City to comply with such overriding state and federal laws and regulations; provided, however, that (i) none of the Owners waives its right to challenge or contest the validity of any such state, federal or local laws, regulations or official policies; and (ii) in the event that any such state or federal law or regulation (or City ordinance, resolution, regulation or official policy undertaken pursuant thereto) prevents or precludes compliance with one or more provisions of this Agreement, the Parties agree to consider in good faith amending or suspending such provisions of this Agreement as may be necessary to comply with such state or federal laws, provided that no Party shall be bound to approve any amendment to this Agreement unless this Agreement is amended in accordance with the procedures applicable to the adoption and amendment of development agreements as set forth in the Development Agreement Statute and each Party retains full discretion with respect thereto.

3.11.3 Public Health And Safety. Any City ordinance, resolution, regulation, or official policy, which is reasonably necessary to protect persons on the Property in the immediate community, or both, from conditions dangerous to their health, safety, or both, shall apply to the Property notwithstanding that the application of such ordinance, resolution, regulation, or official policy or other similar limitation would result in the impairment of Owner's vested rights under this Agreement. Any such regulations must constitute a valid exercise of the City's police power and must be applied and construed so as to provide the Owner, to the maximum extent possible, with the rights and assurances provided under this Agreement.

3.11.4 Uniform Construction Codes. Provisions of the building standards set forth in the Uniform Construction Codes shall apply to the Property. As used herein, the term "**Uniform Construction Codes**" collectively currently includes the 2007 California Building Codes, the 2007 California Electric Code, the 2007 California Plumbing Code, the 2007 California Mechanical Code, the 2006 Uniform Solar Energy Code, the 2006 Uniform Swimming Pool, Spa and Hot Tub Code, the 1997 Uniform Housing Code, the 1997 Uniform Administrative Code and the 2007 California Fire Code (including amendments thereto by the San Bernardino Fire Authority), as modified and amended by official action of the City in accordance with the provisions of Health and Safety Code Section 17958.7. Notwithstanding the foregoing, no construction within the Project shall be subject to any provision in any of the subsequent Uniform Construction Codes, adopted by the State of California, but modified by the City which is more restrictive than the provisions of subsequent Uniform Construction Codes of the City, notwithstanding the fact that the City has the authority to adopt such more restrictive provision pursuant to the California Building Standards Law, including but not limited to California Health and Safety Code Section 18941.5.

3.11.5 Prevailing Wages. Owner shall carry out the Development of the Property in conformity with all applicable federal and state labor laws (including, without

limitation, if applicable, the requirement under California law to pay prevailing wages and to hire apprentices). The Parties believe that the Development is not considered to be a "public work" under California law because the Project is receiving no financial assistance from City other than the reimbursement of the costs of constructing the public improvements required by City as a condition of approval of the Project, in accordance with Section 1720(c)(2) of the California Labor Code and this Agreement. Therefore, only the construction of such public improvements may be subject to the requirements of Labor Code Section 1720, *et seq.* relating to the payment of prevailing wages and the hiring of apprentices. Notwithstanding the foregoing, Owner shall be solely responsible for determining and effectuating compliance with such laws, and City makes no representation as to the applicability or non-applicability of any of such laws to the construction of the Improvements or any part thereof. Owner hereby expressly acknowledges and agrees that City has not previously affirmatively represented to Owner or its contractor(s) with respect to the Development of the Project, in writing or otherwise, that the work to be covered by this Agreement is not a public work, as defined in Section 1720 of the Labor Code. Owner hereby agrees that Owner shall have the obligation to provide any and all disclosures or identifications required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. Owner shall indemnify, protect, defend and hold harmless the City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense and/or increased costs (including reasonable attorneys fees, court fees, and other litigation costs including but not limited to fees of expert witnesses) which, in connection with construction related to the Development of the Project (as defined by applicable law and/or California labor law), results in or arises from the following: (1) the noncompliance by Owner with any applicable state and/or federal law (including, without limitation, if applicable, the requirement to pay prevailing wages and to hire apprentices); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Owner to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the Parties that, in connection with the Development of the Project, including, without limitation, any and all public works (as defined by applicable law), Owner shall bear all risks of payment or non-payment of prevailing wages and hiring of apprentices under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the Development of the Project by any Owner.

3.11.6 Eminent Domain. The City shall not be required to exercise its power of eminent domain in connection with the Project, except as may be required for any mitigation measure included in the Existing Development Approvals that requires any of the Owners to acquire real property not part of the Property. In the event Owner is unable, after exercising reasonable efforts, including but not limited to its rights under Sections 1001 and 1002 of the California Civil Code, to acquire the necessary property interests, and if so requested by the Owner and upon the Owner's provision of adequate

security for costs the City reasonably may incur, the City shall use reasonable good faith efforts to negotiate the purchase of the necessary real property at a price acceptable to the Owner. Upon the failure of the City to acquire such real property by negotiation, the City agrees to consider use of its eminent domain power to acquire such real property. However, nothing in this Agreement shall be construed to require the City to acquire such real property by the exercise of such powers, which shall be exercised only in the sole discretion of the City and only after the City has determined that there is substantial evidence of each of the following:

(i) The public interest and necessity require the acquisition of such property for the purpose of constructing or installing public improvements thereon;

(ii) Such public improvements are planned and located in the manner that will be more compatible with the greatest public good and the least private injury;

(iii) Such property is necessary for such public improvement; and

(iv) That either the offer required by California Government Code Section 7267.2 has been made to the Owner or Owners of the property, or that offer has not been made because such Owner or Owners of record cannot be located with reasonable diligence.

Prior to undertaking any proceedings for voluntary acquisition or condemnation, the City and the Owner subject to the requirement to acquire such property shall enter into an agreement which requires the Owner's deposit with the City of an amount of funds estimated by the City to be necessary to reimburse it for all costs and expenses incurred relative to such acquisition or condemnation, including without limitation, the City staff time, voluntary acquisition or judicial award costs, court costs, appraisal and engineering costs, attorney's fees, expert witness fees and other reasonably necessary litigation costs. The failure of such Owner or Owners to enter into such agreement with the City shall relieve the City of all of its obligations pursuant to this Section 3.11.6 of this Agreement; provided, however, that such Owner or Owners shall still be obligated to construct the required public improvement or substitute improvements and facilities, at no greater cost, as determined by the City.

3.11.7 Police Power. In all respects not provided for in this Agreement, the City shall retain full rights to exercise its police power to regulate the development of the Property, and any uses or developments requiring a site plan, tentative tract map, master plan, or other discretionary permit or approval as required pursuant to the Existing Land Use Regulations or Existing Land Use Approvals. The City's discretion with respect to such actions shall be exercised consistent with the Owner's vested rights under this Agreement as set forth in Section 3.1. The City acknowledges pursuant to Government Code Section 65865.2 that the conditions, terms, restrictions, and requirements for subsequent discretionary actions or permits shall not prevent

Development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

4. Specific Plan.

4.1 Specific Plan. Land use and development on the Property shall be governed by the Specific Plan and this Agreement. Notwithstanding any other provision of this Agreement, the Owners shall have the right but not the obligation to build the uses specified in the Specific Plan at the locations specified in the Specific Plan.

4.2 Priority Of Specific Plan. The City has determined that the Specific Plan is consistent with the General Plan and the Zoning Code. As such, the Specific Plan shall be the primary document governing the use and development of the Property and in the event of a conflict shall prevail over any other of the Existing Development Approvals.

5. FEES.

5.1 Processing Fees. During the Term of this Agreement, the City may require Owners to pay all Processing Fees applicable to the Development of the Project, at the rates then in effect with respect to the applicable application date.

5.2 Development Impact Fees.

5.2.1 Limit on Exactions, Mitigation Measures, Conditions and Development Fees. Except for those fees expressly set forth in Section 5.6 below and subject to the changes permitted by Section 5.2.3 below, the City shall charge and impose only those exactions, mitigation measures and conditions, including, without limitation, dedications as are set forth in the Existing Development Approvals, and those fees relating to development or the privilege of Developing the Property as are expressly set forth in Exhibit "C" attached hereto, and no others.

5.2.2 Payment of Development Impact Fees. Each Owner shall pay all Development Impact Fees with respect to Development commenced on the portion of the Property owned by such Owner. The Development Impact Fees for wastewater collection and treatment, police, and fire set forth on Exhibit "C" of this Agreement shall be calculated and paid concurrent with the issuance of a Building Permit for a building, and shall be calculated based upon the number of residential units or square footage of non-residential development included in such building. Except for the wastewater collection and treatment, police, and fire Development Impact Fees, all other Development Impact Fees and the Development Agreement Fee shall be calculated and paid concurrent with the issuance of a Certificate of Occupancy for a building, and shall be calculated based upon the number of residential units or square footage included in such building.

5.2.3 Fee Reset Date. Except as provided in Sections 5.4 through 5.6, all Development Impact Fees shall be fixed for a period commencing on the issuance of the first grading permit for the Project other than grading for the Sports Park Facility and ending on the date that is the tenth anniversary of the issuance of the first grading permit

or June 30, 2025 whichever occurs first (the "**Fixed Fee Period**"). On the day after the end of the Fixed Fee Period (the "**First Fee Reset Date**"), all Development Impact Fees shall be recalculated to be equal to the applicable Development Impact Fees generally charged on the First Fee Reset Date by the City to all developments within the City (regardless of whether such new fees are more or less than the Development Impact Fees previously in effect). If this Agreement is extended for an initial five year period as provided in Section 2.4, on June 30, 2035 (the **"Second Fee Reset Date"**), all Development Impact Fees and any new citywide fees shall be recalculated to be equal to the applicable Development Impact Fees and new citywide fees generally charged on the Second Fee Reset Date by the City to all developments within the City (regardless of whether such new fees are more or less than the Development Impact Fees previously in effect). If this Agreement is extended for a second five year period as provided in Section 2.4, on June 30, 2040 (the **"Third Fee Reset Date"**), all Development Impact Fees and any other new citywide fees shall be recalculated to be equal to the applicable Development Impact Fees generally charged on the Third Fee Reset Date by the City to all developments within the City (regardless of whether such new fees are more or less than the Development Impact Fees previously in effect). The City and Owner shall execute an amendment to Exhibit "C" and shall attach the revised Exhibit C to this Agreement to reflect the new Development Impact Fees established as of the Fee Reset Dates. After recalculation on the Fee Reset Dates, all Development Impact Fees shall then be fixed at such new amounts for the remaining Term of this Agreement. The Owners shall have the option to pre-pay Development Impact Fee for up to 1,000 residential permits at any time prior to the First Fee Reset Date. All remaining unpaid Development Impact Fees that would be applicable to all approved residential units for the entire Project, but for which no Building Permits have then been issued, and such pre-paid Development Impact Fees shall be calculated at the rates set forth on Exhibit "C" of this Agreement, or in Section 5.6 below.

5.3 Storm Drain Fees. The Owners shall treat all storm water within the Project boundaries without discharge into the City's existing storm drain system and therefore, no off-site infrastructure for the collection, treatment, handling or transportation of storm water shall be constructed in connection with the Project. Accordingly, the Owners shall be exempt from all storm drain fees, charges, hook-up fees or other similar charges.

5.4 Wastewater Facilities.

5.4.1 Wastewater Fees. The City levies two capital facilities fees related to wastewater: (i) a wastewater collection fee; and (ii) a wastewater treatment fee. The wastewater collection fees shall be fixed in accordance with Section 5.2.3 above, however, wastewater treatment fees shall be based on the applicable fee in effect at the time the fee is due as provided in the Municipal Code. However, if from time to time the City reduces the wastewater treatment fees it charges to any other development consisting of 20 residential units or more, then the wastewater treatment fee shall be automatically reduced to equal the wastewater treatment fee charged to the other development for a period of one year following the issuance of the last building permit for such other development.

5.4.2 Construction of Wastewater Collection Infrastructure in Lieu of Fees. If any additions, improvements and/or upgrades to the City's wastewater collection system outside the boundaries of the Property are required in connection with any Development of the Project, then the Owner shall have the option to elect to construct some or all of such additions, improvements and/or upgrades, at their sole cost and expense. The Owner completing any such works of improvement shall be entitled to offset the actual costs incurred by such Owner for the design, permitting, construction and installation of such works of improvement against any wastewater collection-related Development Impact Fees that may otherwise be payable in connection with future development of the portion of the Property owned by such Owner. As the Owner is not constructing any portion of the wastewater treatment facility, no offset shall be applied to the wastewater treatment fee. Any offsets against Development Impact Fees available to any Owner may be freely transferred among the Owners by delivering written notice of such transfer to the City.

5.4.3 Wastewater Treatment Capacity. The City shall use its best efforts to obtain the required permits and construct the needed improvements to the City wastewater treatment facilities in order to serve the Project. Owner shall keep City apprised of its building permits expectations (for the next 12 months) on January 15th and July 15 of each calendar year so that the City may plan its expansion responsibilities.

5.5 Park Fees. Owner will be constructing, installing and improving the park and recreation facilities listed below, which are deemed to be park, recreation and/or open space for the purpose of complying with the Municipal Code park dedication requirements. Within Neighborhoods II and III, with the exception for the Sport Park and except as provided below, all parkland and open space shall be maintained by POA, the developer, the Owner or such other entity as approved by the City. Provided that all required parks and recreation facilities are constructed and installed in accordance with the Specific Plan and this Agreement, the Project will not be subject to the imposition of Park Fees by the City. The City acknowledges that the value of the land and improvements for the park, recreation and open space land and facilities exceeds the aggregate of all park fees which may be charged by the City pursuant to the Municipal Code in connection with the proposed Development of the entire Project.

Developer and/or Owners shall construct and install within the Project boundaries the following park and recreation facilities:

(a) the Grand Paseo Park, which consists of approximately 24 acres of meandering multi-purpose improved trail ranging in width from 70 feet to 100 feet and connecting all of the recreational elements in the Specific Plan for Neighborhood 3. The Grand Paseo also will include picnic areas, benches, walkways, and other recreational elements;

(b) three (3) publicly accessible parks (each containing approximately three acres), contiguous to the Grand Paseo Park, equipped with typical neighborhood park facilities, which could include picnic facilities, shade structures, playgrounds, turf areas, and related facilities;

(c) four (4) private recreation centers totaling approximately 12 acres, which will be gated and accessible only to the residents of the Project. These centers will include clubhouse facilities, restrooms, and other amenities including swimming pools;

(d) the Sports Park;

(e) Neighborhoods I and IV of the Project shall provide improved parkland within these neighborhoods in accordance with this Agreements requirement of 3 acres per 1,000 residents, utilizing a per dwelling unit population factor of 3.153 persons per dwelling unit. The appropriate parkland requirement shall be calculated and displayed within the respective underlying subdivision tentative maps at such time said tentative map is processed (within Neighborhoods I and IV). The minimum acceptable park proposed for public maintenance shall be 3 acres

(f) .

5.6 Traffic Impact Mitigation Fees.

5.6.1 Fees to be Established. The City has established a development impact fee for the purpose of collecting funds to pay for the cost of constructing transportation improvements. The fee includes freeway interchange and arterial roadway improvements which are partially funded by SANBAG under the Measure I 2010-2040 Program and which are identified in a list of improvements submitted by the City and approved by SANBAG (the "Nexus List"). The fee also includes local improvements which are not subject to reimbursement under the Measure I 2010-2040 Program. The Traffic Impact Mitigation Fee established by the City includes interchange, arterial, and local improvement components. Subject to the provisions of Section 5.6.3 below, each Owner shall be obligated to pay the applicable Traffic Mitigation Fee established by the City with respect to the portion of the property then owned by such Owner.

5.6.2 Riverside Avenue/Sierra Avenue Project. At the first available date for amending the Nexus List eligible for reimbursement from SANBAG under the Measure I 2010-2040 Program, the city shall add a project(s) for improving Riverside Avenue and Sierra Avenue along the frontage of the property (the Riverside/Sierra Project). The City Acknowledges that it may need to delete other arterial roadways of equivalent value from the Nexus List or increase the unfunded deficiency. The estimated current cost for the Riverside/Sierra Project is $8,300,000. The Owner shall be entitled to a credit or reimbursement for the actual cost of constructing the Riverside/Sierra Project against the Traffic Impact Mitigation Fees provided Owner complies with the approved rules and procedures for such credits or reimbursements, including as applicable the payment of prevailing wages for the cost of labor related to the improvements.

5.6.3 Increase to Traffic Impact Mitigation Fees. The City has established the amount of Traffic Impact Mitigation Fees for a single residential unit for the calendar year 2010 (the "**Base Fee**") as $2,776 per residential unit and $1,923 per

multi-family residential unit as illustrated in Exhibit C-1. The Base Fee will be increased or decreased on January 1 of each year to an amount equal to the product obtained by multiplying (i) the Base Fee by (ii) the factor recommended by SANBAG to adjust the Traffic Impact Mitigation Fee based upon inflationary costs for construction projects .

5.7 Owner to Construct Traffic Improvements and Pay Fair Share Fees. The Mitigation Monitoring and Reporting Program identifies a series of traffic infrastructure improvements that will be required in connection with the development of the Project. The completion of the traffic improvements as set forth in the Mitigation Monitoring and Reporting Program shall be the sole and only obligation of Owners. All of the traffic infrastructure improvements as set forth in the Mitigation Monitoring and Reporting Program shall be designed and constructed in accordance with all applicable laws, policies and regulations then in effect, and in accordance with the specifications for such traffic improvements applied generally to similar traffic improvements.

6. ANNEXATION

The Development Agreement's effectiveness is subject to the annexation of the Property into the City. In the event LAFCO requires the City to include certain inhabited island areas within the City as shown on Exhibit "I" (the "County Inhabited Islands"), the Owner agrees to include the LAFCO Islands within the application for annexation of the Property. City and Owner agree to use their best efforts to accomplish the annexation of the Property to the City. In the event that annexation of portions of the Property is not approved by the Local Area Formation Commission, or for any other reason is not annexed to the City, then any such portions shall be excluded from this Development Agreement. City agrees, subject to the negotiation of a tax allocation agreement with the County of San Bernardino acceptable to City, to use its best efforts to expeditiously accomplish the annexation of the Property, or such portions thereof as may be approved by Owner, to the City.

7. PAYMENT FOR CERTAIN PUBLIC IMPROVEMENTS AND FINANCING OF SAME

7.1 Owner's Obligations to Construct and Fund Construction. Owners have the obligation to pay fees for, construct or cause to be constructed, and to pay for the construction of, the Proposed Project Facilities (as identified in Exhibit D).

7.2 Formation of the CFD. Subject to the provisions of this Section 7, a CFD may be established to finance certain police, fire and park maintenance costs (incurred as a result of development of the Property) through the levy of a services special tax in the amount of One Hundred Four Dollars ($104.00) per residential unit (the "Services Special Tax") located within the boundaries of such CFD. The City and Owner hereby agree to cooperate in good faith to form such a CFD, which will encompass and encumber the Property for the purposes of funding the Services Special Tax for as long as such police, fire and park maintenance services are required. Final terms and conditions regarding the formation of the CFD, its boundaries, shall be determined jointly by the City and Owner provided, however, that under no circumstances will the aggregate special tax levy on any

parcel of the Property exceed 2% of the value of such parcel.. Owner hereby acknowledges that the City will determine, in its sole discretion, whether or not to finally form the CFD; provided, however, that should the City decide not to form a CFD for the purposes set forth above, either party may terminate this Agreement upon providing the other party with 30 days of prior written notice prior to the actual termination date. If, despite the parties' good faith efforts, the parties are unable to agree upon an alternative means of financing the Special Services Tax, either party may terminate this Agreement upon providing the other party with 30 days written notice prior to the actual termination date.

7.3 Sports Park. [OMITTED]

7.4 CFD Petition. Owners may execute and deliver to the City a petition as described in Section 53318(c) of the California Government Code (the "**CFD Petition**") at such time as Owners may determine. Upon the delivery of the CFD Petition, the City shall initiate and conduct the required proceedings for the consideration of the formation of a CFD as set forth in Government Code Section 53311 *et seq*., including but not limited to, the City adopting a Resolution of Intention to establish the CFD within ninety (90) days from the submission of the CFD Petition and the payment of any applicable deposit, and then the City holding a public hearing on the establishment of the CFD within thirty (30) days to sixty (60) days after the adoption of the Resolution of Intention and the City shall use its best efforts to adopt a CFD on the terms set forth in the CFD Petition.

7.4.1 Cooperation for Formation. Subject to the limitations set forth in this Agreement, Owners shall cooperate with the City and take all reasonable actions to accomplish the formation of the CFD and the levying of such special taxes.

7.5 Reimbursement Agreements. If and to the extent that any Owner constructs or installs any infrastructure and/or facilities that have a capacity or size in excess of that required for use solely within the Project, the City shall enter into reimbursement agreements with Owners providing for reimbursement to Owners (including a reasonable rate of interest) of all costs and expenses incurred by Owners and/or the Owner that may construct such improvements for that portion of the dedications, public facilities and/or infrastructure that the City, pursuant to this Agreement, may require pursuant to the Existing Land Use Regulations, to the extent that they are in excess of those reasonably necessary to mitigate the impacts of the Project or development on the Property. City further agrees to adopt ordinances, including but not limited to those authorized by Government Code Section 66485 et seq., as may be required in order to impose a reimbursement obligation on other properties which may be served or benefited by the oversized infrastructure or facilities. Such reimbursement shall be contingent on collection of funds with which to make such reimbursement from other properties benefitted by such excess capacity, and shall not extend beyond the term of this Agreement.

8. DEDICATIONS AND CONVEYANCES OF PROPERTY INTERESTS.

8.1 Park Improvements.

8.1.1 Grand Paseo Park and Neighborhood Parks. On or before the date Certificate of Occupancies have been issued for an aggregate of 782 residential units within Neighborhood III on the Property, Owners shall improve certain neighborhood parks, based on the rate of 3 acres of park per 1,000 residential population. The parkland required by such date includes the following: (a) one (1) of the neighborhood parks identified in the Specific Plan, (b) approximately 7.7 acres of the Grand Paseo Park, and (c) one of the three private recreation centers contemplated by the Specific Plan. In addition to the parkland required in the foregoing sentence, on or before the date Certificate of Occupancies have been issued for an aggregate of 2,347 residential units within Neighborhood III on the Property, Owners shall improve certain additional neighborhood parks, based on the rate of 3 acres of park per 1,000 residential population. The parkland required by such date includes the following: (a) one (1) additional neighborhood park identified in the Specific Plan, (b) approximately 7.7 additional acres of the Grand Paseo Park, and (c) the second of the three private recreation centers contemplated by the Specific Plan. In addition to the parkland required above in this Section 8.1.1, on or before the date Certificate of Occupancies have been issued for an aggregate of 3,229 residential units within Neighborhood III, Owners shall improve certain additional neighborhood parks, based on the rate of 3 acres of park per 1,000 residential population. The parkland required by such date includes the following: (a) one (1) additional neighborhood park identified in the Specific Plan, (b) any of the Grand Paseo Park that has not then been completed, and (c) the third of the three private recreation centers contemplated by the Specific Plan. These improvements fully satisfy all Owners' obligations to the City with respect to neighborhood parks. Some of the Projects' park facilities (i.e. recreation centers) are to be privately owned and maintained for the exclusive benefit of the residents of the Project. The Grand Paseo Park and the attached neighborhood parks (portions of Planning Areas 40, 53, 60) will be public parks open to the public. Parks within Neighborhoods I and IV less than three (3) acres in size shall be maintained by the POA. Owners shall provide improved parkland within Neighborhoods I and IV or pay fees in accordance with the Quimby Act requirement of 3 acres per 1,000 residents utilizing a per dwelling unit population factor of 3.153 persons per dwelling unit.

8.1.2 Sports Park.

The Sports Park as generally described in Exhibit H shall be dedicated, designed and constructed upon the earlier to occur of the following:

(i) On or before the date Certificate of Occupancies have been issued for an aggregate of 3,000 residential units , the Owner shall offer to dedicate the land upon which the Sports Park is to be constructed. On or before the date Certificate of Occupancies have been issued for an aggregate of 3,500 residential units, Owner shall have completed final rough grading of the Sports Park site. Thereafter, on or before the date Certificate of Occupancies have been

issued for an aggregate of 4,203 residential units, Owner shall commence construction of the Sports Park with the Sports Park to be completed 9 months thereafter. Notwithstanding the foregoing, if during the CEQA process, the federal, or the state environmental permitting process or the imposition of subsequent governmental standards or requirements, the developable acreage of the project is diminished, the Owners reserve the right to diminish the size of the Sports Park as follows:

(a) If the number of approved residential building permits reaches 70% (5,885) of the maximum residential entitlement of 8,407 units with in Neighborhoods I, II, III and IV, the park shall consist of the entire Planning Area 72 (approximately 35.7 acres in size).

(b) If the number of approved residential units is between 65% and 70% of the maximum residential entitlement of 8,407 units (between 5465 and 5884 units), then the required park size shall be reduced to 29.0 acres.

(c) If the number of residential units is less than 65% of the maximum residential entitlement of 8,407 units (less than 5,465), then the required park size shall be reduced to 23.0 acres.

(ii) If only Neighborhoods II and III (or only neighborhoods II, III and IV) are annexed to the City, the offer of land dedication shall continue to be required on or before Certificates of Occupancy are issued for 3,000 residential units within neighborhoods II and III (and neighborhood IV if annexed). On or before the date Certificate of Occupancies have been issued for an aggregate of 3,500 residential units within neighborhoods II and III (and neighborhood IV if annexed), Owner shall have completed final rough grading of the Sports Park site. Thereafter, construction shall commence before the date Certificate of Occupancies have been issued for an aggregate of 4,203 residential units (which is equal to 69% of the summation of the units within Neighborhoods II and III) with park to be completed 9 months thereafter. Notwithstanding the foregoing, if during the CEQA process, the federal, or the state environmental permitting process or the imposition of subsequent governmental standards or requirements, the developable acreage of the project is diminished, the Owners reserve the right to diminish the size of the Sports Park as noted below. If developable acreage is lost for the reasons listed above, then for purposes of calculating the number of permits as referenced below, the said lost acreage shall be multiplied by the density of said lost acreage (as referenced from it's location on the Land Use Plan – Exhibit B) and subtracted from the maximum residential entitlement of 8,407 units.

(a) If the number of approved residential units reaches 70% (4,382) of the maximum residential entitlement of 6,260 units within Neighborhoods II and III, the Sports Park shall consist of the entire Planning Area 72 (approximately 35.7 acres in size).

(b) If the number of approved residential units is between 65% and 70% of the maximum residential entitlement of 6,260 units (between 4,069 and 4,381 units), then the required park size shall be reduced to 29.0 acres and the construction of the Sports Park shall start at 4,150 units with park to be completed 9 months thereafter.

(c) If the number of approved residential units is less than 65% of the maximum residential entitlement of 6,260 units (less than 4,069), then the required park size shall be reduced to 23.0 acres and the construction of the Sports Park shall start at 4,000 units with park to be completed 9 months thereafter.

(iii) The Sports Park shall be sized based upon the greater of the obligations established pursuant to (i) or (ii). The number of approved residential units shall be established upon completion of the state and/or federal permitting process, judicial review or the imposition of subsequent governmental standards or requirements. Within 90 days of receiving such action or actions as listed above, the owner shall report to the City the number of approved residential units upon which the City will base the Sports Park obligation. If developable acreage is lost for the reasons listed above, then for purposes of calculating the number of units, the said lost acreage shall be multiplied by the density of said lost acreage (as referenced from it's location on the Land Use Plan – Exhibit B) and subtracted from the maximum residential entitlement of 8,407 units.

(iv) As security for the construction of the Sports Park, Owner shall deposit with the City the sum of $2,442 per residential unit within Neighborhoods II and III at the time of the issuance of each residential building permit within Neighborhoods II and III until such time as the Owner commences construction of the Sports Park. The deposited funds shall be held by the City in an escrow account as security for the benefit of City to guarantee the construction of the Sports Park in accordance with the provisions of this Section 8.1.2. Upon commencement of construction of the Sports Park by Owner, the City shall release the funds in the escrow upon the request of Owner, which funds shall be utilized by Owner to pay for the cost of construction of the Sports Park. In the event Owner fails to construct the Sports Park as provided herein, City shall use the funds in the escrow account to construct the Sports Park to the extent of the available funds in the escrow account.

8.1.3 Open Space/Recreation Areas in Neighborhood II.

A Master Parcel Map shall be filed by the developer for Neighborhood II (2,567 single family units). A Master Parcel Map is a map that subdivides large tracts of land into smaller parcels for the purpose of later selling or otherwise transferring the parcels for further subdivision in accordance with an approved Specific Plan, or for the purpose of securing financing, but not for the purpose of creating either individual residential lots for sale to end-user

homeowners, and not for the purpose of allowing construction or other improvements on non-residential parcels.

Upon submittal of the Master Parcel Map, the developer shall submit final conceptual design plans for the following Open Space/Recreation Planning Areas (PA) within Neighborhood II: PA Nos. 81, 85, 86, 87, 88, 95, 96, 97, 99 and 101 (234 acres total). The Open Space/Recreation design plans shall specify the location and size of ***either*** a 19,000 square foot clubhouse facility to be constructed as part of the permitted golf course reconfiguration or a recreation center of comparable size and utility to be included as part of alternative recreational amenity to be subsequently approved by the City.

Prior to issuance of the 500th Certificate of Occupancy within Neighborhood II (excluding Planning Area 92), the clubhouse facility or recreation center shall be constructed consistent with the design plans approved by the City. The Planning Areas designated for Open Space/Recreation shall be completed pursuant to the approved design as follows:

By the 500th Certificate of Occupancy- 58.5 acres;
By the 1,026th Certificate of Occupancy- 117 acres;
By the 1,540th Certificate of Occupancy – 175 acres;
By the 2,053rd Certificate of Occupancy- 234 acres.

9. DEFAULT AND REMEDIES.

9.1 Notice And Opportunity To Cure. Before this Agreement may be terminated or action may be taken to obtain relief in a manner consistent with this Agreement, the Party seeking relief ("**Non-Defaulting Party**") shall comply with the notice and cure provisions of this Section 9.1. A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of any other Party ("**Defaulting Party**") to perform any material duty or obligation of said Defaulting Party in accordance with the terms of this Agreement. However, the Non-Defaulting Party must provide written notice ("**Default Notice**") to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Non-Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "default" of its obligations set forth in this Agreement if the Defaulting Party has failed to take action and cured the default within twenty (20) days after the date of such Default Notice (for monetary defaults), within thirty (30) days after the date of such Default Notice (for non-monetary defaults), or within such lesser time as may be specifically provided in this Agreement. If, however, a non-monetary default cannot be cured within such thirty (30) day period, as long as the Defaulting Party does each of the following, then the Defaulting Party shall not be deemed in breach of this Agreement:

(i) within twenty (20) days of the Default Notice, notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

(ii) within twenty (20) days of the Default Notice, notifies the Non-Defaulting Party of the Defaulting Party's proposed course of action to cure the default;

(iii) promptly commences to cure the default within the thirty (30) day period;

(iv) makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

(v) diligently prosecutes such cure to completion.

9.2 Default Procedures. Subject to Section 9.3 and Section 9.4, in the event of a default, the Non-Defaulting Party, at its option, may institute an action pursuant to Section 9.6 to cure, correct, or remedy such default, enjoin any threatened or attempted violation, enforce the terms of this Agreement by specific performance (including injunctive relief), or pursue any other remedy otherwise permissible under this Agreement. In addition to or as an alternative to exercising the remedies set forth in this Section 9.2, if there occurs a material default by an Owner, the City may give notice of its intent to terminate or modify this Agreement with respect to the portion of the Property owned by such Owner, and may carry through on that notice and intent to terminate, pursuant to the Development Agreement Statute or related City regulations, in which event the matter shall be scheduled for consideration and review by the City Council in the manner set forth in the Development Agreement Statute or related City regulations.

9.3 Limitations on Defaults. Notwithstanding any provision in this Agreement to the contrary, a default by an Owner shall not constitute a default by a Purchaser/User or any other owner of a portion of the Property which is not the owner of the Property that is the subject of the default. Likewise, a default by a Purchaser/User with respect to a Lot (or group of Lots) it owns or leases shall not constitute a default by the applicable Owner, nor shall the default of the owner of a portion of the Property not owned by the applicable Owner constitute a default of the applicable Owner. Therefore, (i) no Purchaser/User shall have any liability to the City (or otherwise) for or with respect to any default of the applicable Owner or any default of any other Owner or other Purchaser/User, (ii) the applicable Owner shall have no liability to the City (or otherwise) for or with respect to any default by any other Owner or by any Purchaser/User, and (iii) the City's election to terminate this Agreement as a result of a default by an Owner or a Purchaser/User shall not result in a termination of this Agreement with respect to either (x) any portion of the Property not owned by such Owner or (y) those Lots owned or leased by a Non-Defaulting Party until such time that this Agreement would otherwise terminate in accordance with its terms.

9.4 Parties' Exclusive Remedies.

9.4.1 Limitation on Remedies. The Parties acknowledge that they would not have entered into this Agreement if either Party were to be liable in damages under or with respect to this Agreement, the Existing Land Use Regulations, or the application thereof, or any permit or approval sought by City or an Owner in accordance with the Existing Land Use Regulations, except as provided in this section. Accordingly, Owners each covenant on behalf of themselves and their successors and assigns, not to sue the City, and the City on behalf of itself and its successors and assigns, not to sue any Owner, for damages or monetary relief for any breach of this Agreement or arising out of or connected with any dispute, controversy or issue regarding the application, interpretation or effect of this Agreement, the Existing Land Use Regulations, or any land use permit or approval sought in connection with the development or use of the Property or any portion thereof. The Parties agree that declaratory and injunctive relief, mandate, and specific performance shall be their sole and exclusive judicial remedies, except for the limited right to pursue monetary damages provided in Section 9.4.2 below.

9.4.2 Recovery of Out-of-Pocket Losses and Damages. Notwithstanding Section 9.4.1 above, the Parties may pursue and obtain the additional remedies set forth below:

(i) Additional Costs and Measures. If additional mitigation measures, conditions, requirements, or obligations are imposed by the City on an Owner or any portion of the Property (i.e., in addition to those provided for in the Specific Plan) in violation of this Agreement ("**Objectionable Conditions**"), the matter shall be submitted directly to binding arbitration pursuant to Section 9.7 for resolution as a non-monetary default (the Parties acknowledging and agreeing that any disputes arising under this sub-paragraph need not comply with the requirements of Section 9.6).

(ii) Restitution of Improper Development Impact Fees. In the event any Development Impact Fees or taxes are imposed on Development of the Property other than those authorized pursuant to this Agreement, an Owner shall be entitled to recover from City restitution of all such improperly assessed fees or taxes, together with interest thereon at the rate of specified in Article XV, Section 1 of the California Constitution from the date such sums were paid to City to the date of restitution.

(iii) Restitution Arising from Other Agreements. Owners may seek and recover monetary damages arising from agreements and/or approvals granted or entered into by the City and any third parties that materially and adversely affect the rights or obligations of the Owners under this Agreement (each, an "**Objectionable Agreement**"); provided that Owners shall have no right to recover any amounts under this Section 9.4 unless and until both (a) the matter shall be submitted directly to binding arbitration pursuant to Section 9.7 (the Parties acknowledging and agreeing that any disputes arising under this sub-paragraph need not comply with the requirements of Section 9.6, and (b) if the arbitration award is adverse to the City, the City fails or refuses to refrain from entering into or rescind, as the case may be, the Objectionable Agreement. Notwithstanding the foregoing in this Section 9.4.2, if the City refrains from entering into

or rescinds the Objectionable Agreement, the City shall not be required to pay any monetary damages under this Agreement.

(iv) City may sue Owner for the payment of sums due from Owner to City under this Agreement pursuant to obligations incurred by Owner with respect to the development of the Project to the extent due and payable up to and include the time of the default of Owner.

9.5 Force Majeure/Supervening Events. A Party shall not be deemed to be in default under this Agreement where delays or failures to perform are due to any cause without the fault and beyond the reasonable control of such Party, including to the extent applicable, the following: war; insurrection; acts of terrorism; acts of mass violence; strikes; walk-outs; the unavailability or shortage of labor, material, or equipment; riots; floods; earthquakes; the discovery and resolution of hazardous waste or significant geologic, hydrologic, archaeological, paleontological, or endangered species problems on the Property; fires; casualties; acts of God; governmental restrictions imposed or mandated by other governmental entities; with regard to delays of an Owner's performance, delays caused by the City's failure to act or timely perform its obligations set forth herein; with regard to delays of the City's performance, delays caused by an Owner's failure to act or timely perform its or their obligations set forth in this Agreement; inability to obtain necessary permits or approvals from City, County, or other governmental entities; enactment of conflicting state or federal statutes or regulations; judicial decisions; or litigation not commenced by such Party (collectively, "**Force Majeure**"). For each day during which a Force Majeure event occurs, the Term of this Agreement shall be extended by one day. Notwithstanding the foregoing, any delay caused by the failure of the City or any agency, division, or office of the City to timely issue a license, permit, or approval required pursuant to this Agreement shall not constitute an event of Force Majeure extending the time for the City's performance hereunder. A Party shall be entitled to a delay in performance for a period of time equal to the period during which any Force Majeure event occurs; provided that such Party deliver to the other Party written notice of such delay or impossibility of performance within a reasonable time after the commencement of such delay resulting from a Force Majeure event. The Parties may mutually agree in writing for a longer period for excused performance due to a Force Majeure event. If a Party's performance is rendered impossible due to a Force Majeure event, such performance may be excused in its entirety in writing by the other Party. In no event shall adverse market or financial conditions constitute an event of Force Majeure extending the time for a Party's performance hereunder.

9.6 Dispute Resolution. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IF ANY CLAIM OR CONTROVERSY THAT ARISES OUT OF OR RELATES TO, DIRECTLY OR INDIRECTLY, THIS AGREEMENT OR ANY DEALINGS BETWEEN THE PARTIES CANNOT BE SETTLED BY THE PARTIES WITHIN THIRTY (30) DAYS AFTER EITHER PARTY IS FIRST PROVIDED WRITTEN NOTICE OF THE CLAIM OR CONTROVERSY BY THE OTHER, THE MATTER SHALL BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638

THROUGH 645.1, EXCEPT AS OTHERWISE MODIFIED HEREIN. THE PARTIES SHALL COOPERATE IN GOOD FAITH TO ENSURE THAT ALL NECESSARY AND APPROPRIATE PARTIES ARE INCLUDED IN THE JUDICIAL REFERENCE PROCEEDING. IF A LEGAL PROCEEDING IS INITIATED BASED ON ANY SUCH DISPUTE, THE FOLLOWING SHALL APPLY: (1) THE PROCEEDING SHALL BE BROUGHT AND HELD IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED UNLESS THE PARTIES AGREE TO A DIFFERENT VENUE; (2) THE PARTIES SHALL USE THE PROCEDURES ADOPTED BY JAMS FOR JUDICIAL REFERENCE AND SELECTION OF A REFEREE (OR ANY OTHER ENTITY OFFERING JUDICIAL REFERENCE DISPUTE RESOLUTION PROCEDURES AS MAY BE MUTUALLY ACCEPTABLE TO THE PARTIES); (3) THE REFEREE MUST BE A RETIRED JUDGE OR LICENSED ATTORNEY WITH SUBSTANTIAL EXPERIENCE IN RELEVANT REAL ESTATE MATTERS; (4) THE PARTIES TO THE JUDICIAL REFERENCE PROCEDURE SHALL AGREE UPON A SINGLE REFEREE WHO SHALL HAVE THE POWER TO TRY AND DECIDE ANY AND ALL OF THE ISSUES RAISED, WHETHER OF FACT OR OF LAW, WHICH MAY BE PERTINENT TO THE MATTERS IN DISPUTE, AND TO ISSUE A STATEMENT OF DECISION THEREON. ANY DISPUTE REGARDING THE SELECTION OF THE REFEREE SHALL BE RESOLVED BY JAMS OR THE ENTITY PROVIDING THE REFERENCE SERVICES, OR, IF NO ENTITY IS INVOLVED, BY THE COURT IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 AND 640; (5) THE REFEREE SHALL BE AUTHORIZED TO PROVIDE ALL REMEDIES AVAILABLE IN LAW OR EQUITY APPROPRIATE UNDER THE CIRCUMSTANCES OF THE CONTROVERSY; (6) THE REFEREE MAY REQUIRE ONE OR MORE PRE-HEARING CONFERENCES; (7) THE PARTIES SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE; (8) A STENOGRAPHIC RECORD OF THE REFERENCE PROCEEDINGS SHALL BE MADE; (9) THE REFEREE'S STATEMENT OF DECISION SHALL CONTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW TO THE EXTENT APPLICABLE; (10) THE REFEREE SHALL HAVE THE AUTHORITY TO RULE ON ALL POST-HEARING MOTIONS IN THE SAME MANNER AS A TRIAL JUDGE; (11) THE PARTIES SHALL PROMPTLY AND DILIGENTLY COOPERATE WITH EACH OTHER AND THE REFEREE AND PERFORM SUCH ACTS AS MAY BE NECESSARY FOR AN EXPEDITIOUS RESOLUTION OF THE DISPUTE; (12) SUBJECT TO SECTION 15.3, EACH PARTY TO THE JUDICIAL REFERENCE PROCEEDING SHALL BEAR ITS OWN ATTORNEYS' FEES AND COSTS IN CONNECTION WITH SUCH PROCEEDING; AND (13) THE STATEMENT OF DECISION OF THE REFEREE UPON ALL OF THE ISSUES CONSIDERED BY THE REFEREE SHALL BE BINDING UPON THE PARTIES, AND UPON FILING OF THE STATEMENT OF DECISION WITH THE CLERK OF THE COURT, OR WITH THE JUDGE WHERE THERE IS NO CLERK, JUDGMENT MAY BE ENTERED THEREON. THE DECISION OF THE REFEREE SHALL BE APPEALABLE AS IF RENDERED BY THE COURT. THIS PROVISION SHALL IN NO WAY BE CONSTRUED TO LIMIT ANY VALID CAUSE OF ACTION, WHICH MAY BE BROUGHT BY ANY OF THE

PARTIES. THE PARTIES ACKNOWLEDGE AND ACCEPT THAT BY EMPLOYING THIS JUDICIAL REFERENCE PROCEDURE THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

LYTLE DEVEL.'S INITIALS	PS FLAT'S INITIALS	CITY'S INITIALS

EL RANCHO VERDE'S INITIALS

9.7 Arbitration of Disputes. RECOGNIZING THAT TIMELY AND EFFECTIVE ENFORCEMENT OF THIS AGREEMENT IS CRITICAL TO THE PARTIES, IF FOR ANY REASON THE JUDICIAL REFERENCE PROCEDURES IN SECTION 9.6 ARE LEGALLY UNAVAILABLE AT THE TIME A DISPUTE WOULD OTHERWISE BE REFERRED TO JUDICIAL REFERENCE (OR DO NOT APPLY BY THE EXPRESS TERMS OF THIS AGREEMENT), THEN, UPON THE WRITTEN DEMAND OF EITHER PARTY, THE DISPUTE SHALL BE RESOLVED BY BINDING ARBITRATION IN ACCORDANCE WITH THE AMERICAN ARBITRATION ASSOCIATION'S COMMERCIAL ARBITRATION RULES, EXCEPT AS FOLLOWS. THE ARBITRATION SHALL BE CONDUCTED BY ONE ARBITRATOR WHO IS A RETIRED SUPERIOR, APPELLATE OR FEDERAL COURT JUDGE OR AN ATTORNEY WITH NOT LESS THAN FIFTEEN (15) YEARS EXPERIENCE IN REAL ESTATE MATTERS; A LIST OF POTENTIAL ARBITRATORS WHO CAN ENSURE THAT ANY DISPUTE CONCERNING A NON-MONETARY DEFAULT CAN BE HEARD AND DETERMINED WITHIN NINETY (90) DAYS OF NOTICE OF ARBITRATION SHALL BE APPROVED BY THE PARTIES AS OF THE SECOND EFFECTIVE DATE. TO THE EXTENT THE RELIEF REQUESTED IN THE ARBITRATION SEEKS TO COMPEL THE PERFORMANCE OF A LEGISLATIVE ACT AND/OR THE ISSUANCE OF A WRIT OF MANDATE NOT PROPERLY THE SUBJECT OF AN ARBITRATION AWARD, THE PARTY SEEKING SUCH RELIEF MAY PROCEED BY JUDICIAL ACTION. THE ARBITRATION AWARD SHALL BE FINAL AND BINDING UPON THE PARTIES (EXCEPT IN CASE OF FRAUD OR UNDISCLOSED CONFLICT OF INTEREST ON THE PART OF THE ARBITRATOR) AND MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE ARBITRATOR SHALL BE EMPOWERED HEREBY TO ENTER SPECIFIC PERFORMANCE ORDERS AS SHALL, IN ITS DISCRETION, BE NECESSARY TO ENSURE THE TIMELY PERFORMANCE OF THE OBLIGATIONS OF THIS AGREEMENT BY EITHER OR BOTH OF THE PARTIES, SO AS TO AVOID THE DELAYS ASSOCIATED WITH OBTAINING SUCH RELIEF PURSUANT TO COURT ACTION. THE ARBITRATOR

MAY ALLOCATE THE FEES AND COSTS OF ARBITRATION BETWEEN THE PARTIES AND MAY AWARD COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, TO THE PREVAILING PARTY IN ACCORDANCE WITH SECTION 15.3. IN THE ABSENCE OF A DETERMINATION BY THE ARBITRATOR, EACH PARTY SHALL BEAR ITS PROPORTIONATE SHARE OF THE COSTS OF THE ARBITRATION AND THE ARBITRATOR AND ALL OF ITS OWN COSTS. NOTHING CONTAINED IN THIS SECTION SHALL RESTRICT ANY PARTY FROM SEEKING PRELIMINARY EQUITABLE RELIEF FROM THE COURT SYSTEM PENDING RESOLUTION OF THE ARBITRATION.

LYTLE DEVEL.'S INITIALS	PS FLAT'S INITIALS	CITY'S INITIALS

EL RANCHO VERDE'S INITIALS

10. ANNUAL REVIEW.

10.1 Timing Of Annual Review. During the Term of this Agreement, at least once during every twelve (12) month period after the Effective Date, the City shall review the good faith compliance of the Owners with the terms of this Agreement ("**Annual Review**"). The Annual Review shall be conducted by the City Council in accordance with the City's development agreement regulations.

10.2 Standards For Annual Review. During the Annual Review, Owners shall be required to demonstrate good faith compliance with the terms of this Agreement. If the City or its designee finds and determines that an Owner has not complied with any of the terms or conditions of this Agreement, then the City may declare a default by such Owner in accordance with Section 9 above. The City may only exercise its rights and remedies relating to any such event of default after the period for curing a default (as set forth in Section 9) has expired and the Owner in default has failed to cure the default. The costs incurred by the City in connection with the Annual Review process shall be paid by Owner. Nothing in this paragraph shall be construed to prohibit the City from declaring a default in accordance with Section 9 above, without first proceeding through an Annual Review.

10.3 Procedure on Review.

(a) Owners shall be required to demonstrate good faith compliance with the terms of this Agreement in any Annual Review and Owners shall have the burden of proof on this issue.

(b) Upon completion of a City staff analysis of the annual monitoring report submitted by the Owners for any Annual Review, the City Administrator shall submit a report to the City Council, setting forth the evidence concerning good faith compliance by Owners with the terms of this Agreement and recommended a finding on that issue. Any such report indicating lack of compliance with this Agreement shall be completed and provided to the City Council and Owners within 60 days after Owner's submission of such annual monitoring report.

(c) If the City Council finds, on the basis of substantial evidence, that Owners have complied in good faith with the terms of this Agreement, the review shall be concluded.

(d) If the City Council makes a preliminary finding that one or more Owners have not complied in good faith with the terms of this Agreement, the City Council may terminate this Agreement as to such Owner after delivery of a written notice of default ("*Default Notice*") to such Owner(s), provided such Owner(s) that such Owner(s) fail to cure that default within sixty (60) days , or to commence such cure and work diligently to complete that cure. Such Default Notice , or any notice of default as provided under subsection (b) above shall be given to such Owner(s) prior to or concurrent with any proceedings under Section 11.4. In the alternative, the City may, with the consent of the Owner, modify this Agreement in order to address the Default of the Owner.

10.4 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, Owner(s) shall be given an opportunity to be heard. Owner(s) shall be required to demonstrate good faith compliance with the terms of this Agreement; and shall have the burden of proof on this issue. If the City Council finds, based on substantial evidence, that one or more Owners have not complied in good faith with the terms of the Agreement, the City Council may terminate this Agreement, or, with the consent of the affected Owner, modify this Agreement, which modification may include such conditions as are reasonably necessary to protect the interest of the City, including a schedule for the completion of the development of fall of the Property during the term of this Agreement. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the California Code of Civil Procedure.

10.5 Certificate Of Compliance. If, at the conclusion of an Annual Review, Owner(s) are found to be in good faith compliance with this Agreement, City shall, within 30 days upon request of any Owner, issue a Certificate of Compliance ("Certificate"), stating that after the most recent Annual Review or Special Review, and based upon the information know and made know to the City Council: (i) this Agreement remains in effect; and (ii) no Owner is in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of such good faith compliance, shall state the Certificate is issued after an Annual and state the

anticipated dater of commencement of the next Annual Review. Any Owner may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by an Owner of an assignee or transferee of an Owner, City shall not be bound by such a Certificate if a default existed at the time of the Annual Review, but was concealed from the City Council by an Owner.

11. MORTGAGEE RIGHTS.

11.1 Encumbrances On The Property. The Parties hereto agree that this Agreement shall not prevent or limit any Owner, in any manner, from encumbering the Property or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use, or operation of the Property.

11.2 Mortgagee Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, and a Mortgagee Successor shall have the rights, benefits and remedies of the Owner (as applicable for the Owner that is the borrower for such Mortgagee Successor) under this Agreement and shall be subject to all of the terms and conditions of this Agreement.

11.3 Mortgagee Not Obligated. Notwithstanding the provisions of this Section 11, a Mortgagee and a Mortgagee Successor will not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of the Owner (as applicable to such Mortgagee and a Mortgagee Successor) or other affirmative covenants of such Owner, or to guarantee such performance, except that (i) the Mortgagee or Mortgagee Successor shall have the right to develop the portion of the Property then owned by such Mortgagee Successor under the Existing Land Use Regulations and the Existing Development Approvals; provided that the Mortgagee or Mortgagee Successor complies with the terms of this Agreement, and (ii) to the extent that any covenant to be performed by the applicable Owner is a condition to the performance of a covenant by the City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder. If a Mortgagee or Mortgagee Successor obtains from an Owner ownership of less than the entirety of the Property, said Mortgagee or Mortgagee Successor may request, and the City shall not unreasonably refuse, an apportionment of obligations under this Agreement that assigns to said Mortgagee or Mortgagee Successor (i) all of the obligations of the Owner that are applicable solely to that portion of the Property obtained by the Mortgagee or Mortgagee Successor plus (ii) a pro-rata share of those obligations of Owner under this Agreement that are not assigned to a specific portion of the Property.

11.4 Notice Of Default To Mortgagee; Right Of Mortgagee To Cure. Each Mortgagee shall, upon written request to the City, be entitled to receive written notice from the City of the results of the Annual Review and of any default by the Owner that is such Mortgagee's borrower of its obligations set forth in this Agreement. Each Mortgagee shall have a further right, but not an obligation, to cure such default within ten (10) days after receipt of such notice (for monetary defaults), within thirty (30) days after receipt of

such notice (for non-monetary defaults) or, if such default can only be remedied or cured by such Mortgagee upon obtaining possession of a portion of the applicable portion of the Property, such Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure such default within thirty (30) days after obtaining possession, and, except in case of emergency or to protect the public health or safety, the City may not exercise any of its judicial remedies set forth in this Agreement until expiration of such thirty (30) day period; provided that in the case of a default which cannot with diligence be remedied or cured within such thirty (30) day period, the Mortgagee shall have such additional time as is reasonably necessary to remedy or cure such default; provided Mortgagee promptly commences to cure the default within the thirty (30) day period and diligently prosecutes such cure to completion.

12. ASSIGNMENT.

12.1 Right To Assign. The qualifications and identity of an Owner are of particular concern to City. The Parties acknowledge that City has negotiated the terms of this Agreement in contemplation of the construction and installation of the Proposed Project Facilities and the sales tax, ad valorem tax and property tax increment to be generated by the development of the Project. Accordingly, for the term of this Agreement (a) no voluntary or involuntary successor in interest of Owner shall acquire any rights or powers under this Agreement, and (b) no transfer of ownership interests in the Property which cause majority ownership of Owner to transfer to another person or entity, (c) nor shall Owner make any total or partial sale, transfer, conveyance, assignment, subdivision, or lease of the whole or any part of the Property or the improvements thereon, (collectively referred to herein as a "Transfer"), shall occur without the prior written consent of City, except as provided herein. If any Transfer occurs without City consent if required herein, the transferring Owner shall continue to be liable for the performance of the designated obligations of the transferring Owner after the date of the assignment with respect to the portion of the Property so transferred. Notwithstanding the foregoing, without City's consent, each Owner may assign all of its rights under this Agreement to any person or entity (i) that is a Permitted Transferee or (ii) a Pre-Qualified Developer; provided that such person or entity assumes in writing all of the obligations of such Owner under this Agreement and notifies City in writing of the same. The assignment rights set forth above are in addition to any Mortgagee rights set forth in Section 11~~1111~~.

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12.2 Notwithstanding any provision of this Agreement to the contrary, City approval of a Transfer or other assignment of any portion of the Property under this Agreement shall not be required in connection with any of the following provided that such person or entity transferee assumes in writing all of the obligations of such Owner under this Agreement and notifies City in writing of the same:

(a) Any transfer to an entity or entities in which Owner retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

(b) The conveyance or dedication of any portion of the Property to City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction or operation of the Proposed Project Facilities.

(c) Any requested assignment for financing purposes, including the grand of a deed of trust to secure the funds necessary for land acquisition, construction and permanent financing of the Proposed Project Facilities.

(d) Any transfer of interests in an Owner for estate planning purposes to the heirs of such Owner, provided that such heirs retain a minimum of fifty-one percent (51%) of the ownership or beneficial interest of the transferor entity and retain management and control of the transferee entity.

(e) Any transfer of interest to a Pre-Qualified Developer.

In the event of an assignment by an Owner under subparagraphs (a) or (d) above, not requiring City's prior approval, Owner nevertheless agrees that at least thirty (30) days prior to such assignment it shall give written notice to City of such assignment and satisfactory evidence that the assignee has assumed the obligations of this Agreement.

12.3 City Consideration of Requested Transfer. City agrees that it will consider a written request for approval of a Transfer, and such approval shall not be unreasonably withheld, delayed or conditioned. Such request shall be accompanied by sufficient evidence regarding the proposed transferee's development qualifications and experience, and its financial commitments and resources, in sufficient detail to enable City to evaluate the proposed assignee pursuant to the criteria set for the herein , as determined by City. An assignment and assumption agreement, in form reasonably satisfactory to City's legal counsel shall be required for all proposed Transfers. Within thirty (30) days after the receipt of an Owner's written request for City approval of a Transfer, City shall either approve or disapprove such proposed Transfer or shall respond in writing by stating what further information, if any, City reasonably requires in order to determine whether or not to grant the requested approval. Upon receipt of such a response, Owner shall promptly furnish to City such further information as may be reasonably requested.

12.4 Assignee Subject To Terms Of Agreement. Following an approved Transfer, the Owner Successor's exercise, use, and enjoyment of that portion of the Property so transferred shall be subject to the terms of this Agreement to the same extent as if the Owner Successor were one of the Owners. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all permitted successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each and every portion thereof; and (c) is binding upon

each party, each of Owner' permitted assignees and successors in interest, during their respective ownership of the Property or any portion thereof.

12.5 Release Upon Transfer. If the City's approval of an assignment is required, then upon the written consent of the City to an Owner's partial or complete assignment of this Agreement (which consent shall not be unreasonably withheld, conditioned or delayed), or in the event of an assignment to a Permitted Transferee or a Pre-Qualified Developer, upon the express written assumption, in a form approved by the City, by the Owner Successor, the transferring Owner shall be relieved of its legal duty to perform such assigned obligations, except to the extent such Owner is in default hereunder with respect to the particular assigned obligations prior to said transfer.

13. INDEMNITY.

13.1 Indemnity By Owner. Each Owner, singularly and not jointly with any other Owner, hereby agrees to indemnify, defend, and hold harmless the City and its elected and appointed councils, boards, commissions, officers, agents, contractors and employees from and against any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) which may arise, directly or indirectly, from the acts, omissions, or operations of such Owner or successor to such Owner or its agents, contractors, subcontractors, or employees pursuant to this Agreement but excluding any damages under or with respect to this Agreement, the Existing Land Use Regulations, or the application thereof, or any permit or approval sought by City or an Owner in accordance with the Existing Land Use Regulations, except as provided in Section 9.4, and any loss resulting from the intentional or active negligence of the City or its elected and appointed councils, boards, commissions, officers, agents, contractors and employees, including any liability of the City for payment of prevailing wages under Section 3.11.5 of this Agreement, including a fine or assessment. Notwithstanding the foregoing, City shall have the right to select and retain counsel to defend any such action or actions and the Owner or successor to Owner providing the indemnification shall pay the cost thereof. The indemnity provisions set forth in this Agreement shall survive termination of this Agreement.

13.2 Indemnity By City. The City agrees to indemnify, defend, and hold harmless the Owners and the Owner Successors, and their respective partners, members, agents, contractors and employees from and against any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) which may arise, directly or indirectly, from the acts, omissions, or operations of the City or its officers, officials, agents, contractors, subcontractors or employees pursuant to this Agreement, but excluding any damages under or with respect to this Agreement, the Existing Land Use Regulations, or the application thereof, or any permit or approval sought by City or an Owner in accordance with the Existing Land Use Regulations, except as provided in this Section 10.4, and any loss resulting from the intentional or active negligence of a Developer Party, or its agents, contractors or employees. Notwithstanding the foregoing, Owner shall have the right to select and retain counsel to defend any such action or actions and City shall pay the cost

thereof. The indemnity provisions set forth in this Agreement shall survive termination of this Agreement.

14. THIRD-PARTY LEGAL CHALLENGE.

14.1 Owner's Obligation to Defend.

In the event of a Third Party Legal Challenge, Owners shall at Owner's expense, defend, indemnify and hold harmless City and its officials and employees from and against any claims, losses, or liabilities, including any award of attorneys' fees against the City, assessed or awarded against City by way of judgment, settlement, or stipulation. City shall have the right to approve counsel that Owner retains to represent City, which approval shall not be unreasonably withheld.

14.2 City's Election to Defend.

If City elects to conduct its own defense of a Third Party Legal Challenge, City shall do so at its own cost and expense. City shall enter into a joint defense agreement with Owner's counsel and cooperate fully with Owner's counsel.

14.3 Cooperation in the Event of Third Party Legal Challenge.

City agrees to promptly notify Owner in the event of a Third Party Legal Challenge and to cooperate with Owner in the event of a Third Party Legal Challenge. City shall not allow its default to be taken in such legal action or otherwise compromise the legal action or stipulate to any interim or permanent remedies without Owner's prior written consent. In the event of any Third Party Legal Challenge, to the maximum extent permitted by law, this Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending.

15. OPERATING MEMORANDA. The provisions of this Agreement require a close degree of cooperation between the City and Owners. The anticipated refinements to the Project and other development activity at the Property may demonstrate that clarifications to this Agreement and the Existing Development Approvals are appropriate with respect to the details of performance of the City and Owners. If, when, and as it becomes necessary or appropriate to make changes, adjustments or clarifications to matters, items or provisions, the Parties shall effectuate such changes, adjustments or clarifications through operating memoranda (the "**Operating Memoranda**") approved by the Parties in writing which reference this Section 15. Such Operating Memoranda shall not require public notices and hearings. The Parties may agree on changes to the mitigation requirements or project design features in Operating Memoranda without amending this Agreement. The City Manager shall be authorized, after consultation with and approval of Owners, to determine whether a requested amendment or clarification (i) may be effectuated pursuant to this Section 15 and is consistent with the intent and purpose of this Agreement and the Existing Development Approvals or (ii) is of the type that would constitute an amendment to this Agreement and thus would require compliance with the provisions of Section 16.2 below. The authority to enter into such Operating Memoranda

is hereby delegated to the City Manager, and the City Manager is hereby authorized to execute any Operating Memoranda hereunder without further City Council action.

16. MISCELLANEOUS.

16.1 Covenants. The provisions of this Agreement shall constitute covenants and restrictions which shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto.

16.2 Entire Agreement, Waivers And Amendments. This Agreement, together with the other documents and agreements attached hereto, constitutes the entire understanding and agreement of the Parties and supersedes all previous negotiations, discussions, and agreements among the Parties with respect to all or part of the subject matter hereof. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by any other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Parties with the terms of this Agreement thereafter. Any amendments or modifications to this Agreement must be approved by City in accordance with the Development Agreement Statute and must be in writing, signed by duly authorized representatives of all Owners then subject to this Agreement, and recorded in the Official Records of San Bernardino County, California.

16.3 Legal Expenses. In any judicial proceeding, arbitration, or mediation between the City and any Owner seeking enforcement of any of the terms and provisions of this Agreement (each, an "**Action**"), the prevailing Party in such Action shall recover all of its actual and reasonable costs and expenses (whether or not the same would be recoverable pursuant to Code of Civil Procedure Section 1033.5 or Civil Code Section 1717 in the absence of this Agreement), including expert witness fees, attorney's fees, and costs of investigation and preparation prior to the commencement of the Action. However, such recovery shall not exceed the dollar amount of the actual costs and expenses of the Party from whom such recovery is sought for such same Action ("**Non-Prevailing Party's Expenses**").

16.4 Constructive Notice And Acceptance. Every person who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

16.5 No Third-Party Beneficiaries. This Agreement and all of its terms, conditions, and provisions are entered into only for the benefit of the Parties executing this Agreement (and any successors in interest), and not for the benefit of any other individual or entity.

16.6 Relationship Of Parties. The City, on the one hand, and Owners, on the other hand, hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and any Developer Party joint venturers or partners.

16.7 Severability. If any term, provision, covenant, or condition of this Agreement is invalidated by a timely referendum, determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

16.8 Further Actions And Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other Parties to the extent necessary to implement this Agreement. Upon the request of a Party at any time, the other Parties shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

16.9 Estoppel Certificate. Any Party hereunder may, at any time, deliver written notice to any other Party requesting such Party to certify in writing that, to the best knowledge of the certifying Party (i) this Agreement is in full force and effect and a binding obligation of the Party; (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligations set forth in this Agreement or, if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. Any third-party including a Mortgagee shall be entitled to rely on the certificate.

16.10 Applicable Law; Venue. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. Any action at law or in equity arising under this Agreement or brought by any Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the Parties hereto waive all provisions of law providing for the removal or change of venue to any other court.

16.11 Non-Liability Of Officers, Employees and Other Parties. Notwithstanding anything in this Agreement to the contrary, (1) no official, officer, or employee of the City shall be personally liable to Owners or to any Owner Successors for any loss arising out of or connected with this Agreement or the Existing Land Use Regulations, and (2) no partner, member, affiliate, officer, agent or employee of any of the Owners or any Owner Successors, nor any of their respective partner's, member's or affiliate's separate property shall be personally liable for any claim arising out of or related to this Agreement. The liability of Owners and the Owner Party Successors under this Agreement shall be limited solely to the interest of such Owner or the Owner Successor in the Property.

16.12 Notices. Any notice or communication required hereunder between the Parties and or a Mortgagee or Mortgagee Successor must be in writing and may be given either personally, by registered or certified mail, return receipt requested If given by registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated herein below as the party to whom the notice is sent. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. A Party hereto may at any time, by giving ten (10) days' written notice to the other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:

City of Rialto
City Hall
150 South Palm Ave.
Rialto, CA 92376
Attn: Director of Development Services
Telephone: (909) 820-2535

With a copy to:

Attn: Rialto City Attorney
Law Offices of Jimmy L. Gutierrez
12616 Central Avenue
Chino, CA 91710
Telephone: (909) 591-6336

If to Lytle Development:

Lytle Development
2050 Main Street, Suite 250
Irvine, CA 92614
Attn: Ron Pharris, Chairman
Telephone: (949) 313-5808

With a copy to:

Roger A. Grable
Manatt, Phelps & Phillips LLP
695 Town Center Drive, 14th Floor
Costa Mesa, CA 92626
Telephone: (714) 371-2500

If to any of the other Owner:

[Name of Owner]
[To be provided]

Attn: [To be designated]
Telephone: [To be provided]

With a copy to:

Roger A. Grable
Manatt, Phelps & Phillips LLP
695 Town Center Drive, 14th Floor
Costa Mesa, CA 92626
Telephone: (714) 371-2500

16.13 Authority To Execute. Each Owner warrants and represents to the City that (i) it is duly organized and existing, (ii) it is duly authorized to execute and deliver this Agreement, (iii) by so executing this Agreement, the Owner is formally bound to the provisions of this Agreement, (iv) the Owner's entering into and performance of its obligations set forth in this Agreement does not violate any provision of any other agreement to which the Owner is bound, and (v) there is no existing or threatened litigation or legal proceeding of which the Owner is aware which could prevent such Owner from entering into or performing its obligations set forth in this Agreement.

16.14 Execution Of Agreement; Counterparts. This Agreement may be executed in any number of duplicate originals and all such duplicate originals, taken together, shall constitute one and the same agreement. The exchange of signature pages by facsimile or portable document format (PDF) transmission shall constitute effective delivery of such signature pages and may be used in lieu of the original signature pages for all purposes. Signatures of the parties hereto transmitted by facsimile or portable document format (PDF) shall be deemed to be their original signatures for all purposes. This Development Agreement shall constitute a valid and enforceable agreement between the City and each of the Owners.

16.15 Exhibits. This Agreement contains exhibits, attached hereto and made a part hereof by this reference. Said exhibits are identified as follows:

A-1 The Lytle Development Property

A-2	The El Rancho Verde Property
A-3	The PS Flats Property
B	Specific Plan Land Use Plan
C	Development Impact Fees
C-1	Traffic Impact Mitigation Fees
D	Proposed Project Facilities
E	Riverside Avenue and Sierra Avenue Improvements
F	Omitted
G	Omitted
H	Sports Park Facilities
I	County Inhabited Islands

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

CITY:

CITY OF RIALTO
a municipal corporation

By: _____
Mayor Grace Vargas

Dated: _____, 2012

APPROVED AS TO FORM

Law Offices of Jimmy L. Gutierrez, LLP

By: _____
, Esq.

Dated: _____, 2012

LYTLE DEVELOPMENT:

Lytle Development company,
a California Corporation

By: _____
Name: _____
Title: _____

Dated: _____, 2012

EL RANCHO VERDE:

EL RANCHO VERDE GOLF, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

Dated: _____, 2012

PS FLATS:

PHARRIS SYCAMORE FLATS LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

Dated: _____, 2012

APPROVED AS TO FORM

MANATT, PHELPS & PHILLIPS

By: _____
, Esq.

Dated: _____, 2012

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, _____, before me _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal

_____

Notary Signature

(SEAL)

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, _____, before me _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal

_____

Notary Signature

(SEAL)

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