



PLACER, County Recorder  
JIM MCCAULEY

DOC- 2012-0066789-00

RECORDING REQUESTED BY AND  
WHEN RECORDED, MAIL TO:

City Clerk  
City of Roseville  
311 Vernon Street  
Roseville, CA 95678  
Attn: Sonia Orozco

WEDNESDAY, JUL 25, 2012 9:16:37  
MIC \$0.00 | AUT \$0.00 | SBS \$0.00  
ERD \$0.00 | RED \$0.00 | \* \$0.00  
ADD \$0.00

Ttl Pd \$0.00 Rcpt # 02210157  
clk46mlfj1/SM/1-14

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**EIGHTH AMENDMENT OF  
DEVELOPMENT AGREEMENT BY AND BETWEEN  
THE CITY OF ROSEVILLE AND B.P.H. COMMUNITIES, L.L.C.  
RELATIVE TO THE NORTH ROSEVILLE SPECIFIC PLAN  
(Diamond Creek Parcel 31A)**

THIS EIGHTH AMENDMENT (the "**Eighth Amendment**") is entered into this 20<sup>th</sup> day of June, 2012 by and between the CITY OF ROSEVILLE, a municipal corporation ("City"), and B.P.H. COMMUNITIES, L.L.C. a California limited liability company (hereinafter "**Landowner**"), pursuant to the authority of Section 65864 through 65869.5 of the Government Code of California.

**WITNESSETH:**

A. On September 19, 1997, the City and Landowner's predecessor in interest entered into that certain agreement entitled "Development Agreement By and Between The City of Roseville and Diamond Creek Partners Relative to the North Roseville Specific Plan", which was recorded in the Official Records of Placer County on September 29, 1997, as Document No. 97-0059806 (the "**Original Development Agreement**").

B. Thereafter, City and Landowner's predecessor in interest entered into the following Amendments to the Original Development Agreement: the First Amendment, dated August 31, 1998 and recorded September 15, 1998 as Document No. 98-0073814; the Second Amendment, dated November 30, 1999 and recorded December 15, 1999 as Document No. 1999-0106726; the Third Amendment, dated October 9, 2002 and recorded November 14, 2002 as Document No. 2002-0143109; the Fourth Amendment, dated April 20, 2004 and recorded May 7, 2004 as Document No. 2004-0058294; the Fifth Amendment, dated September 15, 2004 and recorded November 12, 2004 as Document No. 2004-0151579; and the Sixth Amendment, dated March 15, 2006 and recorded March 21, 2006 as Document No. 2006-0029929; and the Seventh Amendment, dated March 7, 2007 and recorded April 11, 2007 as Document No. 2007-0036507 (collectively, the "**Prior Amendments**"). The Prior Amendments and Original Development Agreement are collectively referred to herein as the "**Development Agreement**." Except as otherwise defined herein, all

capitalized terms used herein shall have the meanings ascribed thereto in the Development Agreement.

C. This Eighth Amendment amends the Development Agreement as to the property identified in the North Roseville Specific Plan as a portion of Parcel 31 which property is more particularly described in **Exhibit "A"** attached hereto ("**Parcel DC-31A**"). This Eighth Amendment shall run with the land with respect to the Parcel DC-31A property.

D. On \_\_\_\_\_, 2012, the City Planning Commission, designated by Roseville Ordinance No. 3014 as the planning agency for purposes of development agreement review pursuant to Government Code Section 65867, in a duly noticed and conducted public hearing, considered this Eighth Amendment and recommended that the City Council approve this Agreement.

E. On February 21, 2007, the City Council ratified as adequate and complete the Addendum to North Roseville Specific Plan EIR and Mitigated Negative Declaration (the "**Addendum**") for the mixed use commercial and residential development of the Diamond Creek Villages Property. Mitigation measures were suggested in the Addendum and are incorporated in Parcel DC-31A (the "**Project**") and in the terms and conditions of this Agreement, as reflected by the findings adopted by the City Council concurrently with this Agreement.

F. The City Council has determined that the adoption of this Eighth Amendment involves no new impacts not considered in the Addendum; therefore, no further environmental documents relating to the adoption of this Agreement are required.

G. The City Council has found and determined that this Eighth Amendment of the Development Agreement is consistent with the General Plan and the North Roseville Specific Plan.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Amendment of Development Agreement. The following sections of the Development Agreement for a portion of Parcel 31, are hereby amended as follows:

a. Revised Recital 5 (Entitlements). Recital 5 of the Development Agreement is revised with respect to Parcel DC-31A to read as follows:

"5. Entitlements. The Planning Commission has approved the following land use entitlements for Parcel DC-31A, which entitlements are the subject of this Agreement:

5.1 A Major Project Permit Modification Stage 2;

5.2 The Tentative Subdivision Map (the "**Tentative Map**") and Design Guidelines for development of the residential DC-31A Property, as approved by the Planning Commission; and

5.3 This Eighth Amendment to Development Agreement, as adopted by Ordinance No. \_\_\_\_\_ (the "Adopting Ordinance") and as amended hereby."

The approvals described in paragraphs 5.1 through 5.3, inclusive, are referred to herein as the "Entitlements."

b. Revised Section 3.2.7 (Entire Park Land Obligation). With respect to Parcel DC-31A Section 3.2.7 of the Development Agreement is hereby revised in its entirety to read as follows:

**"3.2.7A Neighborhood Parkland Dedication.** In accordance with the parkland dedication requirement for the Parcel DC-31A property, Landowner shall provide in consideration of dedication a small .25 acre minimum urban relief area and green space in an acceptable location and configuration on the DC-31A Property as shown on the Tentative Map. Landowner shall develop, and the City shall own and maintain said urban relief area as a public recreation area. The landowner shall be responsible for amending North Roseville CFD#2 Rate & Method of Apportionment (RMA) to add a new improvement zone for the Project to include maintenance and administration costs sufficient to maintain the urban relief areas, adjacent parking areas and the interior street trees concurrent with the Model Home building permits. The urban relief areas, adjacent parking and street trees shall also be constructed/installed, as approved by the Parks Director, prior to occupancy of the fifteenth home for the subdivision being granted, or occupancy of the homes on Lots 79-84 being granted, whichever occurs first.

**3.2.7B Park Fees and Credits:**

- (a) **Neighborhood Park Fees.** Each single family unit within the project will be subject to paying the current established single family Neighborhood Park Fee, which is initially \$2,394 per residential unit.
- (b) **City Wide Park Fees.** Each residential unit within the project will pay the City Wide Park Fee of \$1,911, plus CCIs (as defined below) with a credit of \$595.00 for meeting land dedication requirements, for a net City Wide park fee of \$1,316 per residential unit.
- (c) **Pooled Unit Park Fees.** Notwithstanding Section 3.2.8, the parties agree that the 30 units remaining unused from the original plan area have an obligation to pay the pooled unit park fee of \$581.00 per unit. This fee shall be charged on the first 30 units developed in the project and will be paid upon issuance of those building permits.
- (d) **Annual Fee Adjustments.** All park fees outlined above, excluding the open-space dedication in-lieu payment, are subject to standard annual City fee adjustment increases on July 1."

(e) Pro-Rata Refund Upon Completion of Development and Parks. At the completion of all residential and neighborhood park development, if there is a remainder fund balance, City shall, within sixty (60) days of filing a notice of completion of the last neighborhood park or bike trail improvement for the North Roseville Specific Plan area, refund the Landowner, a pro-rata share of the remainder fund balance."

c. Revised Section 3.3 (School Fee Agreements). With respect to Parcel DC-31A Section 3.3 of the Development Agreement is hereby revised in its entirety to read as follows:

"3.3 School Fee Agreements. Landowner has entered into separate written agreements with the Roseville City School District and the Roseville Joint Union High School District to fully mitigate the impacts of development of the Parcel DC-31A property on said school districts. These agreements have been updated to reflect the new school population resulting from the Project. Landowner has provided City with executed copies of such updated agreements. From and after execution thereof, City agrees that so long as Landowner is not in default of said agreements, City shall not refrain from approving any subdivision maps or other such entitlements for the Parcel DC-31A property or from issuing any building permits for development thereof consistent with the Entitlements on the basis of adverse impacts of such development on school facilities. Landowner agrees that a default under either of these school agreements shall also constitute a default under this Agreement with the City. Either School District may request that the City join in its agreement with Landowner to evidence the City's support thereof and the City will cooperate therewith and join in either school agreement as an additional party thereto, subject to its approval of the terms and conditions thereof."

d. Revised Section 3.4 (Electric). With respect to Parcel DC-31A Section 3.4 of the Development Agreement is hereby revised in its entirety to read as follows:

"3.4 Electric. Landowner shall provide electric utility improvements as provided in this section.

3.4.1 Notices. Landowner shall include a notice in the project CC&R's and its sales document advising property owners adjacent to the public utility easements in which 60kV overhead lines may be constructed (as shown on Exhibit "E-2") that the City may utilize portions of these easements to construct and maintain the 60kV overhead electric lines.

Landowner shall include a notice in the project CC&R's and its sales document advising property owners that there is a 4 foot private maintenance easement from edge of alley for the repair or maintenance of private electric, gas, cable, telephone, sewer, and water utilities.

3.4.2 Electric Facilities. Landowner agrees that any relocation, rearrangement, or change to the existing electric facilities due to this development shall be at the Landowner's expense.

3.4.3 Electric Efficiency and Demand Reduction. In order to mitigate demand for energy supplies and comply with state mandated energy efficiency goals, the following energy efficiency and load management requirements are hereby established:

1. All residential dwelling units will install residential air conditioning units with the following sets of parameters, as a minimum standard:
  - a. A Seasonal Energy Efficiency Rating ("SEER") of 2 points above the minimum, as defined by the State of California in the current Title 24 of the Code of California Regulations, an Energy Efficiency Ratio ("EER") of 12 or greater, and a thermal expansion valve ("TXV"). The SEER rating of 2 points above the minimum, as defined by the current Title 24, and an EER rating of 12 or greater along with a TXV will be specified on building plans and Title 24 compliance certificates at the time building permits are requested. The SEER and EER ratings will be verified with appropriate documentation. These requirements shall be utilized in the overall energy compliance calculations required for issuance of a building permit for any residential unit. Any variances must be approved by the Electric Department's Retail Energy Services Department.
2. A direct load control device will be installed on all new residential dwelling units to the extent and subject to availability of program funds at the time of final map approval. The device will cycle the air conditioner compressor on/off during summer high peak load hours and operate under the control of Roseville Electric. Roseville Electric will install and maintain the devices at no cost to the builder/homeowner and/or Landowner. Roseville Electric shall install the device in a manner that does not delay Landowner's construction or sale of the residence. Customers will be automatically enrolled in the load control program and must actively opt out. Additionally, Landowner shall disclose to all residential buyers the following: (1) their property has been installed with a Roseville Electric owned air conditioner cycling demand switch; (2) the home buyer is automatically enrolled in the program; (3) Landowner will provide the home buyer with an opportunity to opt out of the program at the time of close of escrow and that this information will be provided to the Roseville Electric Retail Services New Construction Program Manager. Note the disclosure stated in Section 3.18.7 as to the direct load control device.

In a further effort to reduce the residential energy load, the Landowner is encouraged to participate in the new construction energy efficiency programs, with regards to all dwelling units in the Project area. All energy efficiency programs are voluntary incentive based programs offered by Roseville Electric."

e. New Sections 3.6.10 through 3.6.13 (Water and Construction Waste). With respect to Parcel DC-31A, Sections 3.6.10 through 3.6.13 are hereby revised in their entirety to read as follows:

"3.6.10 Re-Circulating Hot Water System. For the purpose of providing a water conservation opportunity, every residential unit within the Project shall include a recirculating hot water system, or similar technology to provide instantaneous hot water at each hot water faucet."

"3.6.11 Contribution to Water Meter Retrofit Program. In furtherance of its water conservation program, City has implemented a Water Meter Retrofit Program. To participate in the Water Meter Retrofit Program and to provide a benefit to the City and existing residents, Landowner shall pay to City, at the time of building permit for each residential unit, the sum of \$115.00 per dwelling unit equivalent (DUE) inflated annually based upon the Construction Cost Index for the United States average of the 20-cities and San Francisco (CCI). Should the CCI no longer exist, the Director of Environmental Utilities shall choose a similar index which in his/her opinion fairly estimates the inflation factor applicable to construction."

"3.6.12 Water Softener Stubouts. As part of its development of the project, neither Landowner nor its successors shall provide water stubouts for the installation of water softeners. DC-31A Property CC&Rs shall prohibit the use and installation of water softeners."

"3.6.13 Construction Waste. Landowner shall require construction contractors and subcontractors to reduce construction waste by recycling a minimum of 50% of construction materials or that all construction debris be delivered to the Placer County Western Regional Materials Recovery Facility where recyclable material will be removed. Landowner shall require that contractors and subcontractors submit to the City's Environmental Utilities Department monthly records of waste diversion and disposal in order to verify compliance with this requirement."

f. Revised Section 3.9.12 (Master Plan Funding). With respect to Parcel DC-31A Section 3.9.12 is hereby revised in its entirety to read as follows:

"3.9.12 Transit Master Plan and Bikeway Plan Funding. Landowner shall pay its fair share, on a City-wide basis, of the Long Range Master Transit Plan (LRMTP), the Short Range Transit Plan (SRTP), and Bikeway Master Plan (BMP) for the Project. The fair share cost for this project is \$20/unit for the LRMTP, \$20/unit for the SRTP and \$20/unit for the BMP. Total City-wide fair share costs for all plans shall not exceed \$60 per residential unit. The fair share payment of \$60 per residential unit for all master plans shall be paid to the City upon issuance of the building permit for each unit within the Project."

g. Revised Section 3.9.13 (TSM - Residential Distribution of Marketing Materials). With respect to Parcel DC-31A Section 3.9.13 is hereby revised in its entirety to read as follows:

"Upon close of escrow for the sale of each residential unit, Landowner shall provide educational and marketing materials for alternative modes of transportation (i.e., deliver a Roseville Transit Services Guide and Bikeways Map) to each new homeowner with a 10-ride

general public punch pass for fixed route services. The packets of marketing materials and 10-ride punch passes shall be purchased by Landowner for the entire subdivision prior to occupancy of the first unit."

h. New Section 3.10.6 (Community Benefit Fee). With respect to Parcel DC-31A, Section 3.10.6 of the Development Agreement is hereby revised in its entirety to read as follows:

"3.10.6 Community Benefit Fee. As partial consideration for this Agreement, to offset a portion of the impact of the Project and the associated tax sharing agreement with Placer County, and to ensure that the Project will benefit current and future residents of Roseville, Landowner shall pay a Community Benefit Fee at the time of obtaining each residential building permit for the Project. The Community Benefit Fee for each low density and medium density residential unit shall be \$1,530. The Community Benefit Fee for each high density residential unit shall be \$1,010."

i. New Section 3.10.7 (South Placer Animal Control Shelter Fee). With respect to Parcel DC-31A, Section 3.10.7 of the Development Agreement is hereby revised in its entirety to read as follows:

"3.10.7 South Placer Animal Control Shelter Fee. Landowner shall pay the South Placer Animal Control Shelter Fee for the future construction of a South Placer Animal Control Shelter. The fee shall be paid upon issuance of each residential building permit in the amount of fifty dollars (\$50) per dwelling unit which amount shall be inflated annually based upon the Construction Cost Index for the United States average of the 20-cities and San Francisco (CCI)."

j. New Section 3.10.8 (Air Quality Program). With respect to Parcel DC-31A, Section 3.10.8 of the Development Agreement is hereby revised in its entirety to read as follows:

"3.10.8 Air Quality Mitigation. Landowner agrees that none of the residential units will be installed with wood stoves or wood fireplaces and any such stoves or fireplaces shall be limited to natural gas. The DC-31A property CC&R's shall include a restriction against any subsequent installation of wood stoves or wood fireplaces within any residential units."

k. New Section 3.18 (Property Owners Association and Disclosures). With respect to Parcel DC-31A, Section 3.18 is hereby revised in its entirety to read as follows:

"3.18.1 Property Owners Association. Landowner shall establish a Property Owners Association ("POA"), or alternative private financing mechanism, for the purpose of funding the maintenance obligations described in this Section. The maintenance obligations required by this Agreement to be funded by the POA and/or alternative private financing mechanism are as follows: (i) maintain and repair of all the private roadways, alleys and shared driveway aisles located within Parcel DC-31A.

Disclosures:

3.18.2 The Project CC&Rs shall disclose the location of bus stops and the possible operation of bus service in the locations identified on the Project Plans.

3.18.3 The existence of a Development Agreement on the Property. However, this notice shall not extend to the purchaser of a completed individual single family residential unit.

3.18.4 Recycled water will be used to irrigate landscape setbacks and medians along Diamond Creek Bl. and Blue Oaks Bl.

3.18.5 Location of schools and parks within one mile.

3.18.6 Masonry walls, including walls adjacent to landscape corridors and other public facilities, are owned by the City, which is responsible for their maintenance, repair and replacement.

3.18.7 Demand cycle control units operated by Roseville Electric on residential air conditioner units.

3.18.8 Solar envelope impact: Landowner shall disclose to all residential and nonresidential buyers that certain properties, specifically those adjacent to major arterials and collector streets where City-maintained landscaping is installed, may impact the buyer's opportunity to install solar panels or structures or the efficiency or effectiveness of such solar panels or structures. And that this is primarily due to the trees within the street landscapes as being generally medium to large shade trees, which may cast shade, leaf litter, or other natural affects onto the adjacent property.

Note: In the event Landowner records any Property CC&Rs, such CC&Rs shall include all the foregoing disclosures and the foregoing disclosures shall not be omitted or deleted from the CC&Rs without the City Attorney's prior written approval."

m. New Exhibit. With respect to Parcel DC-31A and subject to Section 3 below, new **Exhibit "A"** is attached hereto and hereby incorporated into and made a part of the Development Agreement.

2. Consistency with General Plan. The City hereby finds and determines that execution of this Eighth Amendment is in the best interest of the public health, safety and general welfare and is consistent with the General Plan.

3. Amendment. This Eighth Amendment amends, but does not replace or supersede, the Development Agreement except as specified herein. This Eighth Amendment only affects the development of the DC-31A Property described in **Exhibit "A"** attached hereto and does not amend or modify the rights or obligations associated with the development of any other Parcels within the Specific Plan.

4. Form of Amendment. This Eighth Amendment is executed in two duplicate counterparts, each of which is deemed to be an original.

**IN WITNESS WHEREOF**, the City of Roseville, a municipal corporation, has authorized the execution of this Amendment in duplicate by its City Manager and the attestation to this Amendment by its City Clerk under the authority of Ordinance No. \_\_\_\_\_, adopted by the Council of the City of Roseville on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, and Landowner has caused this Amendment to be executed.

**CITY:**

**CITY OF ROSEVILLE,  
a municipal corporation**

BY: \_\_\_\_\_  
Ray Kerridge  
City Manager

**LANDOWNER:**

By: B.P.H. COMMUNITIES, L.L.C. a California  
limited liability company

By: \_\_\_\_\_  
Jeffrey D. Morgan  
President

**ATTEST:**

BY: \_\_\_\_\_  
Sonia Orozco  
City Clerk

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
Brita J. Bayless  
City Attorney

**[ALL SIGNATURES MUST BE NOTARIZED]**

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of YOLO

On APRIL 26, 2012 before me, S. AMARO NOTARY PUBLIC  
(Here insert name and title of the officer)

personally appeared JEFFREY D. MORGAN

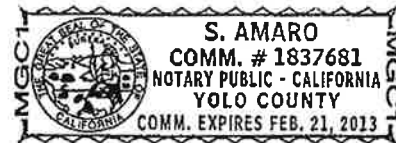
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

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

WITNESS my hand and official seal.

S. Amaro  
Signature of Notary Public

(Notary Seal)



## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

EIGHTH AMENDMENT OF DEVELOPMENT  
(Title or description of attached document)

ALREEMENT  
(Title or description of attached document continued)

Number of Pages 9 Document Date 4/26/2012

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)  
☐ Corporate Officer

(Title)

- ☐ Partner(s)  
☐ Attorney-in-Fact  
☐ Trustee(s)  
☐ Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, - is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

## **EXHIBIT A**

### **Legal Description**

That certain real property situated in the City of Roseville, County of Placer, State of California, described as follows:

Parcel 1, as said parcel is shown and delineated on that certain Parcel Map recorded November 30, 2007 in Book 34 of Parcel Maps, at Page 19, Placer County Records.

APN: 017-117-069-000