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(The Rockpile)

CF: D401-03-06 General Plan
Land Use elements/Amendments
Northeast Roseville Specific Plan
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CITY OF ROSEVILLE
BY *huc*

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ROSEVILLE AND
THE FRIEDMAN FAMILY LLC (THE ROCKPILE)**

TABLE OF CONTENTS

RECITALS	1
1. Authorization	
2. Property	
3. Prior Development Agreement	
4. Hearing	
5. Environmental Documentation	
6. Entitlements	
7. General and Specific Plans	
8. Substantial Costs to Landowner	
9. Need for Services and Facilities	
10. Contribution to Costs of Facilities and Services	
11. Development Agreement Ordinance	
12. Consistency with General Plan and Specific Plan	
I. AGREEMENT	3
SECTION 1: GENERAL PROVISIONS	3
1.1 Incorporation of Recitals	
1.2 Property Description and Binding Covenants	
1.3 Term	
1.3.1 Commencement, Expiration	
1.3.2 Termination Upon Landowner Request	
1.4 Amendment of Agreement	
1.5 Recordation	
1.6 Termination of Prior Development Agreement	
SECTION 2: DEVELOPMENT OF THE PROPERTY	4
2.1 Permitted Uses	
2.2 Vested Entitlements	
2.3 Rules, Regulations and Official Policies	
2.3.1 Inconsistency	
2.3.2 Application of Changes	
2.3.3 Authority of City	
2.4 City Fees, Taxes and Assessments	
2.4.1 Processing Fees and Charges	
2.4.2 Impact and Development Fees	
SECTION 3: LANDOWNER OBLIGATIONS	6
3.1 Development, Connection and Mitigation Fees and Financing	
3.1.1 No Park Fee	
3.1.2 No CFD	
3.1.3 Landscaping and Lighting District	
3.1.4 School Fee	
3.1.5 Fire Tax	

3.1.6	Light Rail Funding	
3.1.7	County-wide Facilities Fees	
3.2	Off-site Utilities and Improvements	
3.2.1	Power Purchase Agreement	
3.2.2	Water Softeners	
3.3	Transportation and TSM	
3.4	Environmental Documentation Mitigation Measures	
3.5	Waiver	
3.6	No Additional Off-site Dedications or Easements	
3.7	Landscape Setbacks	
3.8	Timing of Sidewalks, Landscaping and Bus Shelter	
3.9	Library Facilities	
SECTION 4: CITY OBLIGATIONS		8
4.1	City Cooperation	
4.2	No Credits or Reimbursements	
4.3	Applications for Permits and Entitlements	
4.3.1	Action by City	
4.3.2	Permits	
4.3.3	Personnel	
4.4	No Moratorium, Quotas, Restrictions or Other Growth Limitations	
4.5	Sewerage Capacity	
4.6	Essence of Agreement	
SECTION 5: DEFAULT, REMEDIES, TERMINATION		9
5.1	General Provisions	
5.2	Annual Review	
5.3	Enforced Delay, Extension of Times of Performance	
5.4	Legal Action	
5.5	Effect of Termination	
5.6	Applicable Law and Attorneys' Fees	
SECTION 6: HOLD HARMLESS AGREEMENT		12
SECTION 7: PROJECT AS A PRIVATE UNDERTAKING		12
SECTION 8: COOPERATION IN THE EVENT OF LEGAL CHALLENGE		12
SECTION 9: GENERAL		12
9.1	Enforceability	
9.2	City Finding	
9.3	Third Party Beneficiaries	
9.4	Severability	
9.5	Construction	
9.6	Other Necessary Acts	
9.7	Estoppel Certificate	
SECTION 10: NOTICES		13
II.	ASSIGNMENT	14
III.	FORM OF AGREEMENT; EXHIBITS	14

DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF ROSEVILLE AND
THE FRIEDMAN FAMILY LLC

This Development Agreement is entered into this 16th day of February 1999, by and between the CITY OF ROSEVILLE, a municipal corporation, hereinafter "City", THE FRIEDMAN FAMILY LLC, a California limited liability company, hereinafter "Landowner", pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of California.

RECITALS

1. Authorization. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, et seq., of the Government Code (the "Development Agreement Statute"), which authorizes the City of Roseville and an applicant for a development project to enter into a development agreement, establishing certain development rights in the Property which is the subject of the development project application.
2. Property. The subject of this Agreement is the development of that certain parcel of land, consisting of approximately 19.6± acres located in the City of Roseville, County of Placer, as described and shown on Exhibit "A-1" (hereinafter the "Property"), attached hereto and incorporated herein by this reference. Landowner represents that it owns the Property in fee and that all persons holding legal or equitable interests in the Property shall be bound by the Agreement.
3. Prior Development Agreement. This Agreement supersedes and replaces any prior development agreements concerning the Property, including the June 19, 1995 Agreement identified as an Amendment to the Development Agreement by and between the City of Roseville and the owners of Olympus Pointe Parcel 11 relative to the Northeast Roseville Specific Plan.
4. Hearing. On December 16, 1998, the City Planning Commission, designated 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 and recommended that the City Council approve this Agreement.
5. Entitlements. The City Council has approved the following land use entitlements for the Property, which entitlements are the subjects of this Agreement:
 - A. The Roseville General Plan, as amended by Resolution No. 98-466.
 - B. The Northeast Roseville Specific Plan, as amended, by Resolution Nos. 98-467.
 - C. The Rezoning of the Property pursuant to Ordinance No. 3307 dated January 6, 1999.

D. This Development Agreement, as adopted by Ordinance No. 3308 (the "Adopting Ordinance").

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

6. General and Specific Plans. Development of the Property in accordance with the Entitlements will provide orderly growth and development of the area in accordance with the policies set forth in the General and Specific Plans. For purposes of the vesting protection granted by this Agreement, except as otherwise provided herein, the applicable law shall be as set forth in the Entitlements as of the date hereof.
7. Environmental Documentation. On December 16, 1998, the City Council adopted a Negative Declaration (the "Negative Declaration") for the Entitlements. Mitigation measures of the Northeast Roseville Specific Plan EIR were incorporated by reference into the Negative Declaration and are incorporated to the extent feasible in the terms and conditions of this Agreement, as reflected by the findings adopted by the City Council concurrently with the Agreement.
8. Substantial Costs to Landowner. Landowner has incurred and will incur substantial costs in order to comply with conditions of approval of the Entitlements and to assure development of the Property in accordance with the Entitlements and the terms of this Agreement.
9. Need for Services and Facilities. Development of the Property will result in a need for municipal services and facilities, which services and facilities will be provided by City to such development subject to the performance of Landowner's obligations hereunder. Natural gas, telephone and cable television services will be provided by private service providers.
10. Contribution to Costs of Facilities and Services. Landowner agrees to contribute to the costs of such public facilities and services as required herein to mitigate impacts on the community of the development of the Property through the payment of impact fees at the issuance of building permits, and City agrees to provide such public facilities and services to assure that Landowner may proceed with and complete development of the Property in accordance with the terms of this Agreement. City and Landowner recognize and agree that but for Landowner's contributions to mitigate the impacts arising as a result of development entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement and that, but for City's covenant to provide the facilities and services necessary for development of the Property, Landowner would not and could not commit to provide the mitigation as provided by this Agreement. City's vesting of the right to develop the Property as provided herein is in reliance upon and in consideration of Landowner's agreement to make contributions toward the cost of public improvements through the payment of impact fees at the issuance of building permits as herein provided to mitigate the impacts of development of the Property as such development occurs.
11. Development Agreement Ordinance. City and Landowner have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Ordinance of the City of Roseville, Chapter 19.84 of the Roseville Municipal Code.

12. Consistency with General Plan and Specific Plan. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City finds and declares that this Agreement is consistent with the General Plan of the City of Roseville and with the Specific Plan.

I. AGREEMENT

SECTION 1: GENERAL PROVISIONS

1.1 Incorporation of Recitals. The Preamble, the Recitals and all defined terms set forth in both are hereby incorporated into this Agreement as if set forth herein in full.

1.2 Property Description and Binding Covenants. The Property is that property described in Exhibits "A-1" and "A-2". It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors in interest to and assigns of the parties hereto. Accordingly, all references herein to "Landowner" shall mean and refer to The Friedman Family LLC and each and every subsequent purchaser or transferee of the Property or any portion thereof from Landowner.

1.3 Term.

1.3.1 Commencement; Expiration. The term of this Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement. This Agreement shall extend for a period of twenty (20) years thereafter, unless said term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, said termination of the Agreement shall not affect any right or duty emanating from City entitlements on the Property approved concurrently with or subsequent to the approval of this Agreement.

1.3.2 Termination Upon Landowner Request. This Agreement may also be terminated, as to any separately-created parcel, at the election of the then property owner, when receiving a certificate of occupancy for a non-residential building on such parcel, by giving written notice to City of its election to terminate the Agreement for the Property. City shall cause any written notice of termination approved pursuant to this subsection to be recorded against the Property, at Landowner's expense, with the County Recorder.

1.4 Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of City and Landowner, in accordance with the provisions of the Development Agreement Statute and the Development Agreement Ordinance. The parties acknowledge that under the City Zoning Code and applicable rules, regulations and policies of the City, the Planning Director has the discretion to approve minor modifications to

approved land use entitlements without the requirement for a public hearing or approval by the City Council. Accordingly, the approval by the Planning Director of such minor modifications to the Entitlements consistent with this Agreement shall not constitute nor require an amendment to this Agreement to be effective.

1.5 Recordation. The City shall cause this Agreement, any amendment hereto and any other termination thereof to be recorded, at Landowner's expense, with the County Recorder within ten (10) days of this Agreement, amendment or termination becoming effective.

1.6 Termination of Prior Development Agreement. Upon recordation of this Development Agreement, any prior Development Agreement which has been recorded on all or any portion of the property shall automatically terminate and have no further force or effect to the extent it is inconsistent, herewith.

SECTION 2: DEVELOPMENT OF THE PROPERTY

2.1 Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, and location of public improvements, and other terms and conditions of development applicable to the Property shall be those set forth in the Entitlements and this Agreement.

2.2 Vested Entitlements. Subject to the provisions and conditions of this Agreement, City agrees that City is granting, and grants herewith, a fully vested entitlement and right to develop the Property in accordance with the terms and conditions of this Agreement and the Entitlements. City acknowledges that the Entitlements include the right to develop the Property in accordance with the Business Professional and Commercial component of the Northeast Roseville Specific Plan as shown on Exhibit "B" and the Community Commercial/Special Area Overlay-Northeast Roseville Specific Plan (CC/SA-NE) Zoning District. Such use shall be developed in accordance with the Entitlements, as such Entitlements provide on the effective date of this Agreement. Landowner's vested right to proceed with the development of the Property shall be subject to subsequent approvals, provided that any conditions, terms, restrictions and requirements for such subsequent approvals shall not prevent development of the Property for the use, or reduce the density and intensity of development, or limit the rate or timing of development set forth in this Agreement, so long as Landowner is not in default under this Agreement.

2.3 Rules, Regulations and Official Policies.

2.3.1 Inconsistency. To the extent any future rules, ordinances, regulations or policies applicable to development of the Property are inconsistent with the permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or provisions for reservation and dedication of land under the Entitlements as provided in this Agreement, the terms of the Entitlements and this Agreement shall prevail, unless the parties mutually agree to alter this Agreement. To the extent any future rules, ordinances, regulations or policies applicable to development of the Property are not inconsistent with the permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or provisions for

reservation or dedication of land under the Entitlements or under any other terms of this Agreement, such rules, ordinances, regulations or policies shall be applicable.

2.3.2 Application of Changes. This section shall not preclude the application to development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations. To the extent that such changes in City laws, regulations, plans or policies prevent, delay or preclude compliance with one or more provisions of this Agreement, City and Landowner shall take such action as may be required pursuant to Section 4.1 of this Agreement to comply therewith.

2.3.3 Authority of City. This section shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit discretion of City or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by City or any of its officers or officials, provided that subsequent discretionary actions shall not prevent or unreasonably delay development of the Property for the uses and to the density and intensity of development as provided by the Entitlements and this Agreement, in effect as of the effective date of this Agreement.

2.4 City Fees, Taxes and Assessments.

2.4.1 Processing Fees and Charges. Landowner shall pay those processing, inspection and plan check fees and charges required by City under then current regulations for processing applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Landowner hereunder.

2.4.2 Impact and Development Fees. Landowner shall pay those impact and development fees adopted by the City and in force as of the Effective Date of this Agreement, as such existing fees may be adjusted from time to time in accordance with applicable law or other fees as may be duly adopted in the future by the City in accordance with applicable law and Section 3; provided, however, Landowner's obligation to pay future fees is limited to those fees adopted on a City-wide basis or which apply uniformly to all properties within the city of Roseville which are zoned consistent with Landowner's zoning as set forth in the entitlements or which apply uniformly to all properties which are similarly situated by geographical location, drainage sheds or other distinguishable circumstances.

SECTION 3: LANDOWNER OBLIGATIONS

3.1 Development, Connection and Mitigation Fees and Financing. Except as otherwise provided herein, any and all required payments of development, connection or mitigation fees by Landowner shall be made at the time and in the amount specified by applicable City

ordinances in effect as of the date of this Agreement, subject to adjustment in accordance with applicable law, or as may be subsequently adjusted or adopted in accordance with the provisions of Section 2.4.2. Nothing in this Section shall be construed to constitute a waiver of the right of Landowner to protest an allocation of a particular burden or benefit associated with the updates of the foregoing fee programs.

- 3.1.1 No Park Fee. In accordance with the park financing plan for the Specific Plan, Landowner shall not be obligated to pay any park fees in connection with its nonresidential development of the Property.
- 3.1.2 No CFD. Landowner has been and will continue to be a full participant in NERSP Community Facilities District ("CFD") #1. Landowner has also fulfilled the property's obligations for participation in NERSP CFD #2. Landowner does not intend to participate in the formation of any additional community facilities district or other such public financing mechanism to finance its fair share of the cost of the Plan Area improvements and City agrees to exclude the Property from any such financing district unless otherwise requested by Landowner.
- 3.1.3 Landscape & Lighting District. Within sixty (60) days of effectuation of this Development Agreement the landowner agrees to submit all necessary petitions and/or authorizations pursuant to the Landscaping and Lighting Act of 1982, Section 22500 et seq. of the Streets and Highways Code to provide for annexation of the Property into Zone A of the Olympus Pointe Landscaping and Lighting District to finance the maintenance of landscape medians, landscape entry features, entry signage, the sculpture park and other improvements and to pay for electric utility costs for street lights within the Northeast Roseville Specific Plan.
- 3.1.4 School Fee. Landowner consents to and agrees that the Property shall bear its fair share of school fees to mitigate the impacts of the development on the Roseville City Elementary School District and the Roseville Joint Union High School District.
- 3.1.5 Fire Tax. During the term of this Agreement, Landowner or its successors shall pay the Fire Service Construction Tax set forth at Chapter 4.46 of the Roseville Municipal Code.
- 3.1.6 Light Rail Funding. Landowner consents to and agrees that the Property shall participate in its fair share of a city-wide funding mechanism for the extension of light rail into the city of Roseville.
- 3.1.7 County-wide facilities fee. Landowner and City intend, in accordance with the provisions of Section 2.4.2 above, that Landowner will pay the pending county-wide facilities impact fee if and when approved by the City.

3.2 Off-site Utilities and Improvements. Subject to Landowner's compliance with the terms of this Agreement, including Section 4.5, City acknowledges that all off-site utilities, road improvements and applicable rights of way and public utility easements necessary for development of the Property are installed and available to serve such development. Except

for the payment of fees required hereunder, Landowner shall not be obligated to provide or share in the cost to provide any offsite utility or road improvements in connection with development of the Property.

3.2.1 Power Purchase Agreement. Landowner shall purchase electric power for all non-residential uses within the Property from City of Roseville Electric for a period of five (5) years from the date of issuance of the final occupancy permit for the first permanent structure constructed in the Property, or until January 1, 2006, whichever occurs first. City will provide electric power at rates that are competitive with market rates in the industry as a whole for the delivery of power to the Property.

3.2.2 Water Softeners. No water softeners shall be used within the Property except for those approved by the Environmental Utilities Director. Property CC&Rs, if recorded shall include this provision.

3.3 Transportation and TSM. Landowner and its successors shall comply with the City's Transportation Systems Management Ordinance.

3.4 Environmental Document Mitigation Measures. Notwithstanding any other provision in this Agreement to the contrary, when Landowner elects to develop the Property, Landowner shall be bound by, and shall perform, all mitigation measures contained in the Negative Declaration related to such development which are adopted by the City and are identified in the mitigation monitoring plan as being a responsibility of Landowner.

3.5 Waiver. In consideration of the benefits received pursuant to this Agreement, Landowner, on behalf of itself and its heirs, successors in interests and assigns, waives any and all causes of action which it might have under the ordinances of the City of Roseville or the laws of the State of California or the United States with regard to any otherwise uncompensated or undercompensated conveyance or dedication of land or easements over the Property or improvements that are specifically provided for in this Agreement. This waiver shall not apply to any conveyances or dedications of land or easements that are not specifically contained in this Agreement and are subsequently desired by the City.

3.6 No Additional Off-Site Dedications or Easements. Landowner shall not be obligated to dedicate any off-site right of way or grant any off-site public utility easements as a condition of development of the Property.

3.7 Landscape Setbacks. For the roadways adjacent to the Property, Landowner shall establish the applicable landscape setbacks provided by the Northeast Roseville Specific Plan. Such setbacks shall be measured generally from back of curb, except along intersections, bus turnouts, turn lanes, etc., which facilities may encroach into the landscape setback. Such landscape setbacks shall be limited to landscaping, streetlights, utilities, sidewalks and related uses. Maintenance of landscaping installed within the setback shall be the responsibility of the Landowner.

3.8 Timing of Sidewalks, Landscaping and Bus Shelter. Sidewalks, landscaping and a bus shelter along Rocky Ridge Drive shall be installed within the landscape setbacks concurrently with the construction of the building(s) on the subject property. The construction

of multiple buildings and adjacent sidewalks, landscaping and the bus shelter may, at the Landowner's request, be phased at the discretion of the City. At the discretion of the City, Landowner may also enter into a Deferred Improvement Agreement with the City, in which case said Deferred Improvement Agreement shall provide for the timing of the installation of the sidewalks, landscaping and the bus shelter.

3.9 Library Facilities. Landowner agrees to participate and pay its fair share of the cost of library services in the event that the City should amend its current city-wide Public Facilities Fee to include library facilities or adopts any other equitable financing mechanism for the provision of library services provided the fee therefor is adopted prior to the issuance of the last building permit for the Property.

SECTION 4: CITY OBLIGATIONS

4.1 City Cooperation. The City agrees to cooperate with Landowner in securing all permits that may be required by City. In the event State or Federal laws or regulations enacted after this Agreement has been executed, or action of any governmental jurisdiction, prevent, delay or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such State and Federal laws or regulations or the regulations of other governmental jurisdictions. Each party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

4.2 No Credits or Reimbursements. Except through its payment of development fees, Landowner will not be financing construction of any public improvements and, therefore, City shall have no obligation to give any credits against fees or provide any reimbursements to Landowner in connection with Landowner's development of the Property.

4.3 Applications for Permits and Entitlements.

4.3.1 Action by City. City agrees that it will accept, in good faith, for processing review and action, all applications for development permits or other entitlements for use of the Property in accordance with the Entitlements and this Agreement, and shall act upon such applications in a timely manner.

4.3.2 Permits. Provided that Landowner is not in default under this Agreement, City shall not cease to issue building permits or certificates of occupancy for development of the Property that is consistent with the Entitlements.

4.3.3 Personnel. Nothing in this Agreement shall be construed to require City to hire or retain personnel for the purposes of evaluating, processing or reviewing applications for permits, maps or other entitlements or for the design, engineering or construction of public facilities in excess of those for which provision is made in the normal and customary budgeting process or fee schedules of City.

4.4 No Moratorium, Quotas, Restrictions or Other Growth Limitations. Subject to applicable law relating to the vesting provisions of development agreements, Landowner and

City intend that, except as otherwise provided herein, this Agreement shall vest the Entitlements against subsequent City resolutions, ordinances and initiative that directly or indirectly limit the rate, timing or sequencing of development or prevent or conflict with the permitted uses, density and intensity of uses or the maximum building heights and sizes as set forth in the Entitlements. Landowner shall, to the extent allowed by the laws pertaining to development agreements, be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted on a uniformly applied, city-wide or area-wide basis and directly concerns a public health or safety issue, in which case City shall treat Landowner in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by said public health or safety issue. City shall use its best efforts and due diligence to obtain the permits, approvals and financing necessary for such facilities and to design and complete the facilities on a timely basis.

By way of example only, an ordinance which precluded the issuance of a building permit because City had inadequate sewage transmission capacity to meet the demand therefor (either city-wide or in a designated sub-area of the City) would directly concern a public health issue under the terms of this paragraph and would support a denial of a building permit within the Property, so long as City were also denying city-wide or area-wide all other requests for building permits which require sewage transmission capacity and City was using its best efforts to resolve such capacity problem. However, an attempt to limit the issuance of building permits because of a general increase in traffic congestion levels in the City would not directly concern a public health or safety issue under the terms of this paragraph.

4.5 Sewerage Transmission Capacity. The total sewerage discharge from the site shall not exceed 102 Equivalent Dwelling Units ("EDU") unless otherwise approved by the Environmental Utilities Director. The sewerage discharge shall be directed into the sewer main at the west end of the site, provided however, that up to 15 EDU of discharge may be discharged into the sewer main in Rocky Ridge Drive if approved by the Environmental Utilities Director. The City shall not deny a permit on the grounds of inadequate sewerage transmission capacity if the total discharge from the site is less than 102 EDU's.

SECTION 5: DEFAULT, REMEDIES, TERMINATION

5.1 General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provisions of this Agreement shall constitute a default. In the event of alleged default or breach of any term or condition of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30)-day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty-day period, the other party to this Agreement at its option may institute legal proceedings pursuant to this Agreement or give notice of intent to terminate the Agreement pursuant to California Government Code Section 65868 and regulations of City implementing said Government Code Section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code Sections 65865, 65867 and 65868 and City regulations implementing such Sections.

Following consideration of the evidence presented in said review before the City Council, either party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

Evidence of default may also arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code Section 65865.1. If either party determines that the other party is in default following the completion of the normally scheduled periodic review, said party may give written notice of default of this Agreement as set forth in this section, specifying in said notice the alleged nature of the default, and potential actions to cure said default and shall specify a reasonable period of time in which such default is to be cured. If the alleged default is not cured within thirty (30) days or within such longer period specified in the notice, or if the defaulting party waives its right to cure such alleged default, the other party may terminate this Agreement.

No building permit shall be issued or building permit application accepted for any structure on the Property if the permit applicant owns and controls any property subject to this Agreement, and if such applicant or entity or person controlling such applicant is in default of the terms of this Agreement.

5.2 Annual Review. City shall, no more frequently than every twelve (12) months during the term of this Agreement except in the case of a Default by Landowner, review the extent of good faith substantial compliance by Landowner with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to Section 65865.1 of the Government Code and the monitoring of mitigation in accordance with Section 21081.6 of the Public Resources Code of the State of California. Notice of such annual review shall include the statement that any review of obligations of Landowner as set forth in this Agreement may result in termination of this Agreement. A finding by City of good faith compliance by Landowner with the terms of the Agreement shall be conclusive with respect to the performance of Landowner during the period preceding the review. Landowner shall be responsible for the cost reasonably and directly incurred by the City to conduct such annual review not to exceed \$500 annually, the payment of which shall be due within thirty (30) days after conclusion of the review and receipt from the City of the bill for such costs.

Upon not less than thirty (30) days written notice by the Planning Director of City, Landowner shall provide such information as may be reasonably requested and deemed to be required by the Planning Director in order to ascertain compliance with this Agreement.

In the same manner prescribed in Section 10, the City shall deposit in the mail to Landowner a copy of all staff reports and related exhibits concerning contract performance and, to the extent practical, at least ten (10) calendar days prior to any such periodic review. Landowner shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before the City Council or if the matter is referred to the Planning Commission before said Commission.

If City takes no action within thirty (30) days following the hearing required under Roseville Municipal Code Section 19.94.080, or any successor thereof or amendment thereto,

Landowner shall be deemed to have complied in good faith with the provisions of the Agreement.

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

5.4 Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. Provided, however, the sole remedy of City for any default of this Agreement by Landowner shall be to terminate this Agreement and the vesting of the Entitlements hereunder and to cease approving requests for development of the Property. All legal actions shall be initiated in the Superior Court of the County of Placer, State of California, or in the Federal District Court in the Eastern District of California.

5.5 Effect of Termination. If this Agreement is terminated following any event of default of Landowner or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement shall prevent Landowner from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.

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

SECTION 6: HOLD HARMLESS AGREEMENT

Landowner and its successors-in-interest and assigns, hereby agrees to, and shall defend and hold City, its elective and appointive boards, commissions, officers, agents, and employees harmless from any liability for damage or claims for damage for personal injury, or bodily injury including death, as well as from claims for property damage which may arise from the operations of Landowner, or of Landowner's contractors, subcontractors, agents, or employees under this Agreement, whether such operations be by Landowner, or by any of Landowner's contractors or subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Landowner or Landowner's contractors or

subcontractors, unless such damage or claim arises from the negligence or willful misconduct of City. The foregoing indemnity obligation of Landowner shall not apply to any liability for damage or claims for damage with respect to any damage to or use of any public improvements after the completion and acceptance thereof by City. In addition to the foregoing indemnity obligation, Landowner agrees to and shall defend, indemnify and hold City, its elective and appointive boards, commissions, officers, agents and employees harmless from any suits or actions at law or in equity arising out of the execution, adoption or implementation of this Agreement, exclusive of any such actions brought by Landowner, its successors-in-interests or assigns. City acknowledges hereby that the foregoing liability of Landowner shall be limited to its interest in the Property and that neither Landowner nor any of its partners, officers, shareholders, employees or agents shall have any personal liability therefor.

SECTION 7: PROJECT AS A PRIVATE UNDERTAKING

It is specifically understood and agreed by and between the parties hereto that the subject project is a private development. No partnership, joint venture or other association of any kind is formed by this Agreement.

SECTION 8: COOPERATION IN THE EVENT OF LEGAL CHALLENGE

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action.

SECTION 9: GENERAL

9.1 Enforceability. The City agrees that unless this Agreement is amended or canceled pursuant to the provisions of this Agreement and the Adopting Ordinance, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building regulation adopted by City, or by initiative, which changes, alters or amends the rules, regulations and policies applicable to the development of the Property at the time of approval of this Agreement, as provided by Government Code Section 65866.

9.2 City Finding. The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan.

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

9.4 Severability. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent

permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a party hereto of an essential benefit of its bargain hereunder, then such party so deprived shall have the option to terminate this entire Agreement from and after such determination.

9.5 Construction. This Agreement shall be subject to and construed in accordance and harmony with the Roseville Municipal Code, as it may be amended, provided that such amendments do not affect the rights granted to the parties by this Agreement.

9.6 Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

9.7 Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (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 under this Agreement, or if in default, to describe therein the nature of such default in the form attached hereto as Exhibit 'E.' The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees of Landowner.

SECTION 10: NOTICES

All notices required by this Agreement, the enabling legislation, or the procedure adopted pursuant to Government Code Section 65865, shall be in writing and delivered in person or sent by certified mail, postage prepaid.

Notice required to be given to the City shall be addressed as follows:

Planning Director
City of Roseville
316 Vernon Street, Room 104
Roseville, CA 95678

Notice required to be given to the Landowner shall be addressed as follows:

Friedman Family LLC
7750 College Town Drive
Suite 350
Sacramento, CA 95826

Attn: Mark Friedman, Managing Member

Either party may change the address stated herein by giving notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

II. ASSIGNMENT

Landowner shall have the full right to assign this Agreement as to the Property, or any portion thereof, in connection with any sale, transfer or conveyance thereof, and upon the express written assignment by Landowner and assumption by the assignee of such assignment in the form attached hereto as Exhibit "D" and the conveyance of Landowner's interest in the Property related thereto, Landowner shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Landowner," with all rights and obligations related thereto, with respect to such conveyed property.

III. FORM OF AGREEMENT; EXHIBITS

This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Agreement consists of 25 pages and exhibits, which constitute the entire understanding and agreement of the parties.

Approved this 6th day of January 1999, by the City Council of the City of Roseville.

CITY OF ROSEVILLE
a municipal corporation

THE FRIEDMAN FAMILY LLC
a California limited liability company

BY: 

ALLEN E. JOHNSON
City Manager

by: 

MARK FRIEDMAN
Managing Member

ATTEST:

BY:


CAROLYN PARKINSON
City Clerk

APPROVED AS TO FORM:

BY: :


MARK J. DOANE
City Attorney

STATE OF CALIFORNIA)
 : ss.
COUNTY OF PLACER)

On this 16 day of February in the year of 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared Allen E. Johnson personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose names is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Carolyn Parkinson

Notary Public in and for said State



THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AS FOLLOWS:

Title or Type of Document Development Agrmt.
Date of Document 2.11.99

Acknowledgment - All Purpose

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF California
COUNTY OF Sacramento

RECEIVED

On December 14, 1998 before me, Lee M. Kelly
personally appeared Mark Friedman
personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed in the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,

Lee M. Kelly
NOTARY PUBLIC IN AND FOR THE SAID STATE



CAPACITY CLAIMED BY SIGNER

- NAME OF PERSON(S) OR ENTITY(IES)
- INDIVIDUAL(S)
 - CORPORATE The Friedman Family, LLC
 - OFFICER(S) _____
 - PARTNER(S)
 - ATTORNEY-IN-FACT
 - TRUSTEE(S)
 - SUBSCRIBING WITNESS
 - GUARDIAN/CONSERVATOR
 - OTHER _____

SIGNER IS REPRESENTING

NAME OF PERSON(S) OR ENTITY(IES)

ATTENTION NOTARY: Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to unauthorized document.

Title or Type of Document Development Agreement +
Number of Pages 15
Date of Document _____
Signer(s) Other Than Named Above _____

**THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT THE RIGHT:**

This document is only a general form which may be proper for use in simple transactions and in no way acts, or is intended to act, as a substitute for the advice of an attorney. The printer does not make any warranty, either express or implied, as to the legal validity of any provision or the suitability of these forms in any specific transaction.



Legal Description

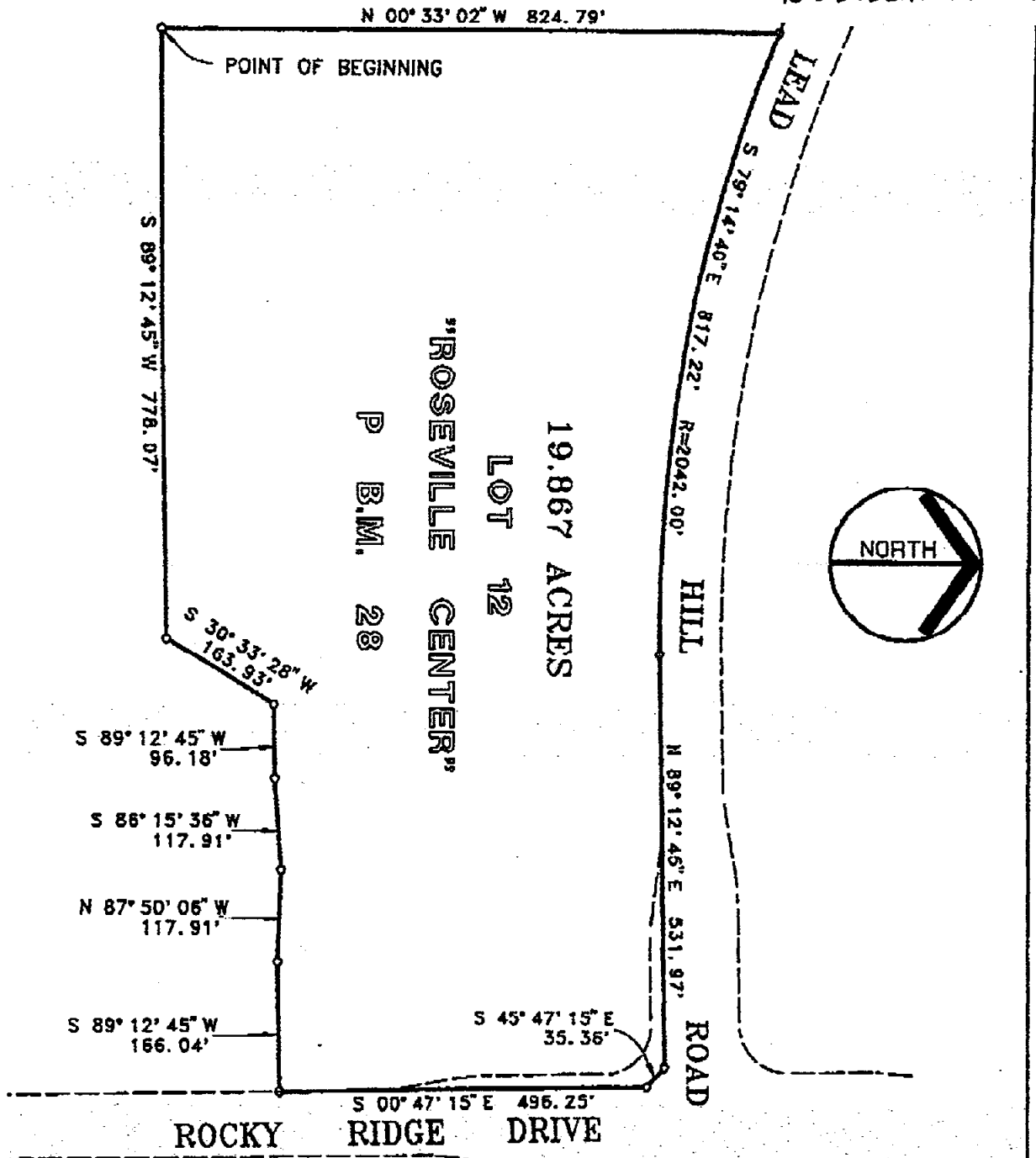
Lot 12, as shown on "Roseville Center", the official plat of which is filed in the office of the

Recorder of Placer County in Book P of Maps, Page 28, more particularly described as follows:

Beginning at the Southwest corner of said Lot 12; thence from said point of beginning along the boundary of said Lot 12, the following eleven (11) courses: (1) North $00^{\circ}33'02''$ West 824.79 feet, (2) curving to the left on an arc of 2042.00 feet radius, from a radial bearing of South $22^{\circ}17'54''$ West, said arc being subtended by a chord bearing South $79^{\circ}14'40''$ East 817.22 feet, (3) North $89^{\circ}12'45''$ East 531.97 feet, (4) South $45^{\circ}47'15''$ East 35.36 feet, (5) South $00^{\circ}47'15''$ East 496.25 feet, (6) South $89^{\circ}12'45''$ West 166.04 feet, (7) North $87^{\circ}50'06''$ West 117.91 feet, (8) South $86^{\circ}15'36''$ West 117.91 feet, (9) South $89^{\circ}12'45''$ West 96.18 feet, (10) South $30^{\circ}33'28''$ West 163.93 feet and (11) South $89^{\circ}12'45''$ West 778.07 feet to the point of beginning; containing 19.867 acres, more or less.

EXHIBIT A-2

TO DEVELOPMENT AGREEMENT



UNPUBLISHED WORK
© 1998
THE SPINK CORPORATION

[20.120]/743001:157

TITLE: BOUNDARY EXHIBIT
LOT 12, "ROSEVILLE CENTER",
P B.M. 28, CITY OF ROSEVILLE

DATE: 11/98 **JOB NO.:** 3267-003
DRAWN BY: J.K. **CHECKED BY:** J.K.

REVISION

CLIENT: FULCRUM CAPITAL

The Spink Corporation
2590 VENTURE OAKS WAY SACRAMENTO, CA 95833
PHONE: (916)925-5550 FAX: (916)921-9274
SCALE: 1"=200' CODE: Z-7 DR.NO.: H-8167

22

Chapter V (h)BUSINESS PROFESSIONAL AND COMMERCIAL COMPONENTDescription

The business professional and commercial land use component is intended to provide a mix of uses that are not usually found in a conventional office or commercial setting. This type of land use designation will provide a mixture of commercial and office uses that complement each other and allow greater design and use flexibility than traditional single-type land use designations.

Goals:

1. Promote a multi-use project that is compatible with the overall physical framework of the adjacent land uses.
2. Provide an opportunity for business professional and commercial uses that are compatible with each other and serve the needs of the surrounding area.

Goal 1: Promote a multi-use project that is compatible with the overall physical framework of the adjacent land uses.

Plan Policy:

1. Establish standards and guidelines to ensure high quality design.

Implementation:

- i. All projects within the plan area require prior approval pursuant to the City review process including review and approval by the City Design Review Commission. In addition to those standards listed below, projects within the business professional and commercial designation shall conform with the Design Guidelines contained in Chapter VII of this document (the Northeast Roseville Specific Plan), the Olympus Pointe Landscape Guidelines, the Olympus Pointe Signage Guidelines and project-specific Design Guidelines adopted for each parcel which is designated "Business Professional and Commercial."
- ii. Standards

The standards governing development shall be those set forth in the project-specific Design Guidelines adopted for each parcel which is designated "Business Professional and Commercial."

Goal 2: Provide an opportunity for business professional and commercial uses that are compatible with each other and serve the needs of the surrounding area.

Plan Policy:

Limit business professional and commercial uses to those that are compatible with the surrounding area:

Implementation:

- i. The following listed uses will serve to generally describe the uses permitted in this area:

Gasoline Sales

Includes establishments primarily engaged in the retail sale, from the premises, of petroleum products with the incidental sales of tires, batteries, and replacement items, lubricating services, minor repair services and may include drive through car washes, convenience eating places and neighborhood commercial. Typical uses include automobile service stations, filling stations and neighborhood commercial with gas sales.

Banks and Financial Services

Includes financial institutions including: banks and trust companies; lending and thrift institutions; credit agencies; brokers and dealers in securities and commodity contracts; security and commodity exchanges; holding (but not predominantly operating) companies; and other investment companies; vehicle finance (equity) leasing agencies. Automated teller machines (ATMs) located away from banks are included under the definition of "Personal Services."

Business Support Services

Includes establishments within buildings, providing other businesses with services including maintenance, repair and services, testing, rental, etc. Also includes:

- blueprinting
- business equipment and repair services (except vehicle repair)
- commercial art and design (production)
- computer-related services (rental, repair, maintenance)
- equipment rental businesses within buildings
- film processing laboratories
- mail advertising services (reproduction and shipping)
- outdoor advertising services
- photocopying
- photo-finishing

Commercial Recreation

Includes establishments primarily engaged in the provision of sports, entertainment, or recreation for participants or spectators. Types:

Amusement Center, includes public places of amusement or public places of business in which four (4) or more coin-operated amusement devices are installed and includes any place open to public, whether or not the primary use of the premises is devoted to the operation of such devices.

Indoor Entertainment, includes predominantly spectator uses conducted within an enclosed building, excluding Adult Entertainment uses. Typical uses include motion picture theaters, community assembly, and dance halls.

Indoor Sports and Recreation, includes predominantly participant sport and health activities conducted within an enclosed building. Typical uses include bowling alleys, billiard parlors, ice and roller skating rinks, indoor racquetball courts, soccer arenas, athletic clubs, and health clubs.

Eating and Drinking Establishments

Includes establishments primarily engaged in the sale of prepared food and beverages for on-premise consumption, but excludes bars. Types:

Fast Food with Drive Through, includes establishments primarily engaged in the preparation and retail sale of food and beverages at a walk up counter and at a drive through window, and may include seating.

Convenience, includes establishments primarily engaged in the preparation and retail sale of food and beverages, at a walk up counter and which does not include a drive through or provide for ordering at the tables, if any. Typical uses include pizza parlors, ice cream parlors, and sandwich shops.

Full Service, includes establishments primarily engaged in the preparation and retail sale of food and beverages, where food is ordered and served at a table, and which include sales of alcoholic beverages as an accessory or secondary service. Typical uses include full service restaurants.

Maintenance and Repair

Includes all uses that provide maintenance and repair services for furniture, appliances and equipment normally used within a building. Typical uses include sewing machine and appliance repair.

Medical Services

Includes establishments primarily engaged in the provision of personal health services on an outpatient basis ranging from prevention, diagnosis, and treatment; or rehabilitation services

provided by physicians, dentists, nurses, and other health personnel as well as the provision of medical testing and analysis service. Typical uses include medical offices, dental laboratories, medical laboratories, health maintenance organizations, immediate care facilities, and offices for physical therapists, chiropractors, and acupuncturists.

Neighborhood Commercial

Includes establishments primarily engaged in the provision of frequently or recurrently needed small personal items and services for residents within a reasonable walking distance. These uses are compatible with residential development due to low traffic and noise generation and include various retail sales and personal services of an appropriate size and scale to meet the above criteria. Typical uses include neighborhood grocery stores, drug stores, and beauty salons.

Offices, Professional

Includes professional or government offices. Typical uses include:

- accounting, auditing, and bookkeeping services
- advertising agencies
- architectural, engineering, and surveying services
- attorneys
- court reporting services
- data processing and computer services
- detective agencies and similar services
- secretarial and word processing services
- governmental offices including agency and administrative office facilities
- insurance agencies
- management, public relations and consulting services
- photography and commercial art studios
- real estate agencies
- writers and artists offices outside the home

Personal Services

Includes establishments primarily engaged in the provision of personal improvement or appearance, and similar non-business related or non-professional services. Typical uses include: barber shops; beauty salons; tailors; shoe repair shops; massage parlors; tattoo studios; automated teller machines; and dry cleaning pick up stations.

Retail Sales and Services

Includes establishments primarily engaged in the sales of goods and merchandise. Typical uses include:

- Auto parts
- Bakeries, retail
- Bicycle sales
- Department stores

- Drug and discount stores
- Furniture stores
- Hardware
- Orthopedic supplies
- Photography studios
- Self service laundries
- Sporting goods and equipment

Specialized Education and Training

Includes private establishments providing training or educational programs. Typical uses include:

Vocational Schools, includes business secretarial schools and vocational schools offering specialized trade and commercial courses and establishments furnishing educational courses by mail. Facilities, institutions and conference centers are included that offer specialized programs in personal growth and development (including fitness, environmental awareness, arts communications, and management, as examples).

Specialty Schools, includes specialized non-degree granting schools such as: music schools; dramatic schools; language schools; driver education schools; martial arts studios; ballet and other dance studios.

nersp8.cbp

ORDINANCE NO. 3308

AN ORDINANCE OF THE COUNCIL OF THE CITY OF ROSEVILLE
APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT
FOR THE NORTHEAST ROSEVILLE SPECIFIC PLAN
AND AUTHORIZING THE CITY MANAGER
TO EXECUTE IT ON BEHALF OF THE CITY OF ROSEVILLE

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1. In accordance with Chapter 19.84 of Title 19 of the Roseville Municipal Code, the Zoning Ordinance of the City of Roseville, the City Council has received the recommendation of the Planning Commission that the City of Roseville enter into an Amended Development Agreement for the Northeast Roseville Specific Plan (NERSP) area as described in the Amended Development Agreement, a copy of which is on file with the City Clerk and incorporated herein by reference as Exhibit "A," by and between the City of Roseville and the Friedman Family, LLC, a California limited liability company.

SECTION 2. FINDINGS. The City Council of the City of Roseville has reviewed the findings of the Planning Commission regarding the proposed amendment to the NERSP Development Agreement and makes the following findings:

1. The Amended Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the City of Roseville General Plan and any applicable Specific Plan;
2. The Development Agreement is consistent with the provisions of Chapter 19.84 of the Zoning Ordinance of the City of Roseville;
3. The Amended Development Agreement will not be detrimental to the health, safety and general welfare of residents in the City of Roseville;
4. The Amended Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and
5. The development permitted by the Amended Development Agreement will provide sufficient benefit to the City of Roseville to justify entering into the Amended Development Agreement.

SECTION 3. The Amended Development Agreement for the NERSP, by and between Sutter Health Central and the City of Roseville, is hereby approved and the City Manager is authorized to execute it on behalf of the City of Roseville.

SECTION 4. The City Clerk is directed to record the executed Amendment to Development Agreement within ten (10) days of the execution of the agreement by the City Manager with the County Recorder's office of the County of Placer.

SECTION 5. This ordinance shall be effective at the expiration of 30 days from the date of its adoption.

SECTION 6. The City Clerk is hereby directed to cause this ordinance to be published in full at least once within fourteen (14) days after it is adopted in a newspaper of general circulation in the City, or shall within fourteen (14) days after its adoption cause this ordinance to be posted in full in at least three public places in the City and enter in the Ordinance Book a certificate stating the time and place of said publication by posting.

PASSED AND ADOPTED by the Council of the City of Roseville this 6th day of January 1999, by the following vote on roll call:

AYES COUNCILMEMBERS: Earl Rush, Claudia Gamar, Randolph Graham, Harry Crabb

NOES COUNCILMEMBERS: None

ABSENT COUNCILMEMBERS: Dan Goodhall



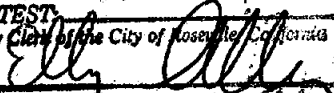
MAYOR

ATTEST:



City Clerk

The foregoing instrument is a correct copy of the original on file in this office.

ATTEST
City Clerk of the City of Roseville, California


DEPUTY CLERK

29

Ord 3308
pg 2