

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF ROSEVILLE AND  
D.R. HORTON, INC. – SACRAMENTO RELATIVE TO THE  
NORTHWEST ROSEVILLE SPECIFIC PLAN PARCEL 37**

This Development Agreement is entered into this 29th day of November, 2004, by and between the CITY OF ROSEVILLE, a municipal corporation (hereinafter "City"), and D.R. HORTON, INC. – SACRAMENTO, a California corporation (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 those certain parcels of land, consisting of approximately 10.4± acres as described in Exhibit "A-1" and shown on Exhibit "A-2" (hereinafter the "Property"), attached hereto and incorporated herein by this reference. Landowner represents that all persons holding legal or equitable interests in the Property shall be bound by the Agreement.
3. **Hearing.** On September 23, 2004, 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 Agreement and recommended that the City Council approve this Agreement.
4. **Mitigated Negative Declaration.** On October 6, 2004, the City Council ratified as adequate and complete the Mitigated Negative Declaration (the "Negative Declaration") for the Legacy Project (the "Project"). Mitigation measures were suggested in the Negative Declaration and are incorporated in 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.
5. **No Further Environmental Documents.** The City Council has determined that the adoption of this Agreement involves no new impacts not considered in the Mitigated Negative Declaration; therefore, no further environmental documents relating to the adoption of this Agreement are required.
6. **Entitlements.** The City Council has approved the following land use entitlements for the Property, which entitlements are the subject of this Agreement:
  - 6.1 The Roseville General Plan, as amended by Resolution No. 04-469 ;
  - 6.2 The Northwest Roseville Specific Plan, as amended by Resolution No. 04-470 ;
  - 6.3 The Rezoning of the Property pursuant to Ordinance No. 4138 , dated October 20 , 2004; and

6.4 This Development Agreement, as adopted by Ordinance No. 4139 (the "Adopting Ordinance").

The approvals described in paragraphs 6.1 through 6.3, inclusive, are referred to herein as the "Entitlements."

7. General Plan. Development of the Property in accordance with the Entitlements and this Agreement will provide orderly growth and development of the area in accordance with the policies set forth in the General Plan. 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.

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.

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 of the development of the Property on the City, 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 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, Article V, Chapter 19.84 of Ordinance No. 3014 of the Roseville Municipal Code.

12. Consistency with General Plan. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City has found and declared that this Agreement is consistent with the General Plan of the City of Roseville, as amended by Resolution No. 04-469.

## 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, upon satisfaction of

the conditions to recordation of the Agreement set forth in Section 1.3.1 below, 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 D.R. Horton, Inc. – Sacramento, 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 and the full execution of this Agreement by Landowner and City (the "Effective Date") and shall extend for a period of twenty (20) years after the date of such recordation, 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 Automatic Termination Upon Completion and Sale of Residential Unit. This Agreement shall automatically be terminated, without any further action by either party or need to record any additional document, with respect to any single-family residential lot within a parcel designated by the Project's zoning for residential use, upon completion of construction and issuance by the City of a final inspection for a dwelling unit upon such residential lot and conveyance of such improved residential lot by Landowner to a bona-fide good-faith purchaser thereof. In connection with its issuance of a final inspection for such improved lot, City shall confirm that: (i) the lot is included within the Services District required by Section 3.15, or other financing mechanism acceptable to the City, to the extent required hereby; and (ii) if and to the extent applicable to such lot, an affordable purchase or rental housing agreement has been recorded on the lot. The termination of this Agreement for any such residential lot as provided for in this Section 1.3.2 shall not in any way be construed to terminate or modify any assessment district or Mello-Roos Community Facilities District lien affecting such lot at the time of termination.

1.3.3 Termination Upon Landowner Request. This Agreement may also be terminated, at the election of the then property owner, with respect to any legally subdivided parcel designated by the Project's zoning for residential use (other than parcels designated for public use), when recording a final residential lot subdivision map for such parcel, by giving written notice to City of its election to terminate the Agreement for such parcel, provided that: (i) the parcel is included within the Services District required by Section 3.15, or other financing mechanism acceptable to the City, to the extent required hereby; and (ii) with respect to residential parcels, an affordable purchase or rental housing agreement, if required for such parcel pursuant to Section 2.5, has been recorded on the parcel. City shall cause any written notice of termination approved pursuant to this subsection to be recorded against the applicable parcel, at Landowner's expense, as the case may be, with the County Recorder within ten (10) days of receipt of such notice.

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. If the proposed amendment affects less than the entire Property, then such amendment need only be approved by the owner(s) in fee of the portion(s) of the Property that is subject to or affected by such amendment. 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 any minor modifications to the Entitlements which are consistent with this Agreement shall not constitute nor require an amendment to this Agreement to be effective.

1.5 Recordation. Except when this Agreement is automatically terminated due to the expiration of the Term or the provisions of Sections 1.3.2 or 1.3.3 above, the City shall cause this Agreement, any amendment hereto and any other termination Thereof to be recorded, at Landowner's expense, as the case may be, with the County Recorder within ten (10) days of the date of this Agreement or such amendment or termination becoming effective. Any amendment or termination of the Agreement to be recorded that affects less than all the Property shall describe the portion thereof that is the subject of such amendment or termination.

## 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 following land uses and approximate acreages for the Property:

Small Lot, Low Density Residential 71 units (LDR-6.83) on 10.4± acres.

all as set forth in Exhibit "B." Such uses 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 uses, 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, fees, 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, fees, 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 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 checking 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 Public Financing Limited to Specific Funding Mechanisms and Fees. This Agreement includes specific construction, funding and reimbursement obligations of Landowner and specific obligations of Landowner to participate in a community facilities district(s) or a similar financing district to fund the acquisition and construction of specific facilities and the maintenance of certain improvements. Landowner's obligation with respect to the participation of the Property in any funding mechanisms to support the construction of any other public facilities and improvements or the provision of public services in relation to development of the Property shall be to pay City fees related to the construction and provision of such public facilities authorized by ordinance to be collected by City as of the effective date of this Agreement as such fees may be adjusted from time to time in accordance with applicable law, or such other fees as may be duly adopted in the future by City from time to time in accordance with applicable law; provided, however, Landowner's obligation to pay future City 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 respective zoning as set forth in the Entitlements, or which apply uniformly to all properties which are similarly situated, whether by geographic location, drainage sheds or other distinguishing circumstances.

2.5 Affordable Housing. In exceedence of the goals and policies contained in City's General Plan, and subject to the provision by Landowner of affordable housing as described below and the other terms of this Agreement, Landowner shall develop or cause twenty-one percent (21%) of the total residential units which are actually constructed within its Property (under a breakdown of 12.7% of total development affordable to middle income households, 4.2% affordable to low income households, and 4.2% affordable to very low income households) to be developed as affordable housing, unless otherwise satisfied via payment of an in-lieu fee, as set forth below. In accordance with the terms of this Section and subject to adjustment based on actual development, Landowner shall provide three (3) units affordable for purchase to low-income households, and nine (9) units affordable for purchase to middle-income households in accordance with the provisions of Section 2.5.1 below. In addition, Landowner shall provide three (3) units affordable to very low income households, or may pay an in-lieu fee to be used to expand affordable housing opportunities for very low income households in accordance with the provisions of Section 2.5.2 below as an alternative to providing three (3) units affordable for purchase to very low income households. Any adjustment based on actual development shall be subject to the approval of the City's Economic & Community Services Director and/or Housing Programs Manager (collectively, the "Housing Manager").

In addition, other applications have been submitted for land use entitlements for other parcels in the City to be rezoned from non-residential to residential land uses, and should the City permit any of those property owners to satisfy their affordable housing obligations for both low and very low income households by payment of an in-lieu fee, the City shall, without amending this Agreement, allow Landowner the option to satisfy its affordable housing obligation for low income households by payment of the in-lieu fee to be paid to the City by those other properties.

The term "very low income" means households earning fifty percent (50%) of median income or less, "low income" means households earning fifty one percent (51%) to eighty percent (80%) of median income, and "middle income" means households earning eighty-one percent (81%) to one hundred percent (100%) of median income. Median income and allowable assets shall be determined in accordance with the General Plan Housing Element and City policy.

2.5.1 Affordable Purchase Residential Units. Landowner agrees that, subject to the provisions of Section 2.5 above, three (3) single family residential units shall be reserved for participation in the City's low income affordable purchase program, and nine (9) single family residential units shall be reserved for participation in the City's middle income affordable purchase program. Landowner shall make these affordable units available to low income and middle income households, as the case may be, without City subsidy.

2.5.1.1 Agreement Required. Prior to the approval of each (if more than one) final residential small lot subdivision map containing affordable purchase units, the parties shall enter into City's then current form Affordable Purchase Housing Development Agreement for such affordable purchase units. Specific requirements of the agreement will be determined by the Economic and Community Services Director.

2.5.1.2 Content. The Affordable Purchase Housing Development Agreement(s) shall, for each such residential lot subdivision, set forth, among other things, the distribution of affordable housing units within the subdivision (provided that, with approval of the Housing Manager, affordable units may be moved within the subdivision(s) without requiring amendment to the Affordable Purchase Housing Development Agreement), and Landowner's obligations for marketing the affordable units. No City subsidies will be required to provide residential purchase units affordable to low and middle-income households.

The Affordable Purchase Housing Development Agreement shall include specific requirements for marketing affordable purchase units, inclusion or modifications of amenities, exterior materials and finishes, alternate means of satisfying the affordable housing obligation, and best efforts requirements.

2.5.13 No City Subsidies. Developer agrees to provide all of the low and middle-income affordable purchase units without subsidy from the City.

2.5.2 In Lieu Affordable Housing Fund. In satisfaction of that portion of Landowner's affordable housing obligation not addressed through the reservation of three (3) low-income affordable purchase units and nine (9) middle income affordable purchase units pursuant to section 2.5.1 above, Landowner agrees to make provision for an additional three (3) very low income affordable units through an in lieu housing fund in the amount of \$50,000 per unit for a total of \$150,000. The in lieu funds shall be generated through a fee of \$2,133.00 per unit to be paid by all of the 71 residential units prior to issuance of a building permit for each unit, though such funds, or any part thereof, may be advance funded by a Community Facilities District or by Landowner, at Landowner's sole discretion. Landowner shall work in good faith with the Economic and Community Services Director to identify opportunities for use of the in-lieu fee revenue. The in-lieu fee revenues may be used for any of the following purposes:

- i. to subsidize the City's low income purchase or rental program;
- ii. to write down the purchase price of the reserved middle or low income purchase units in the Project to a price that is affordable to very low income households; or
- iii. to otherwise further the goal of expanding housing affordability for very low income households in any location in the City. Any adjustment based on actual development shall be subject to the approval of the City's Economic & Community Services Director and/or Housing Programs Manager (collectively, the, "Housing Manager").

2.5.3 Effect of New Legislation. Should new state legislation be enacted that mandates that the City, among other local governments in the Sacramento region, implement an affordable housing production standard that differs from the affordable housing obligations set forth in this Agreement, Landowner shall be obligated to comply with such mandated standard provided that (i) such standard is implemented City-wide; and (ii) such standard is not applied retroactively to residential units already constructed in the Project such that no more than ten percent (10%) of those unbuilt units are to be affordable to low income households.

## 2.6 Wetlands.

2.6.1 404 Permit. Landowner shall diligently pursue and obtain a permit from the U.S. Army Corps of Engineers to fill wetland resources on the Property, consisting of approximately 0.7 acres of wetlands. No preservation of wetlands is anticipated to be required on the Property.

## SECTION 3: LANDOWNER OBLIGATIONS

3.1 Development, Connection and Mitigation Fees. 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 then applicable City ordinances, either in effect as of the date of this Agreement subject to adjustment, or as may subsequently be adopted, in accordance with the provisions of Section 2.4.2 above. Wherever this Agreement obligates Landowner to design, construct or install any improvements, the cost thereof may be provided by Landowner or by the CFD or other such financing mechanism, subject to and in accordance with the provisions thereof.

3.2 Parks and Open Space. Landowner is required to meet the park dedication requirement of 9 acres per 1000 population which equates to 1.7 acres total divided among active neighborhood, city wide and open space parkland. Landowner shall meet these park obligations through in-lieu fees. Landowner shall pay an in-lieu fee for the 1.7 acres of park and open space dedication as set forth in Section 3.2.1 below.

3.2.1 Parkland Dedications. Landowner is required to dedicate the equivalent to 0.57 each acres of open space, neighborhood and city wide parkland as part of its 1.7 acre.

3.2.1.1 Neighborhood Park Fee. In accordance with the parkland dedication requirement for the Property, in addition to the funds to be provided and accumulated by the collection of the neighborhood park fees paid pursuant to this Agreement, Landowner shall pay an in-lieu fee of \$114,000.00, with fifty percent (50%), or \$57,000.00, payable upon the issuance of the first building permit, and the balance to be paid by November 1, 2005, to satisfy the neighborhood Parkland dedication requirement.

3.2.1.2 City Wide Parkland Dedication. The parties further acknowledge and agree that Landowner shall pay a City Wide in-lieu park fee to satisfy Landowner's City-wide park dedication requirement of 0.57 acres. This equates to \$114,000.00, with fifty percent (50%), or \$57,000.00, payable at the first building permit on the Property, and the balance paid by November 1, 2005.

3.2.1.3 Neighborhood and City-Wide Park Fees. Each unit within the project will be subject to paying the current established City Wide Park Fee, which is initially \$1,674.00 per single family residential unit with a credit for parkland dedication of \$521.00 per single family residential unit, for a net Citywide cash fee of \$1,153.00 per single family residential unit. The neighborhood park fee is \$720.00 per single family residential unit. Fees are subject to annual inflationary adjustment on July 1, and are based on the "CCF".

3.2.1.4 Open Space Dedication. The parties still further acknowledge and agree that Landowner shall pay an Open Space Component in-lieu fee to satisfy Landowner's open space dedication requirement of 0.57 acres, equating to \$17,100.00, with fifty percent (50%), or \$8,550.00, payable at issuance of the first building permit on the Property, and the balance paid by November, 1, 2005.

3.2.1.5 Entire Park Land Obligation. The City agrees that the commitments contained herein satisfy the General Plan park obligations for the dedication of neighborhood/community and City-wide parks and open space related to development of the Property.

3.3 School Fee Agreements. Landowner has entered into or negotiated separate written agreements with the Roseville City School District and the Roseville Joint Union High School District to mitigate the impacts of development of the Property on said school districts. 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 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.

3.4. Public Utilities Within Rights-of-Way. All public utilities shall be located within the rights-of-way to be granted by Landowner to City for the arterials, collectors and other local streets within the Property or within public easements granted by Landowner to City for such purposes. Accordingly, upon approval of the final residential small lot subdivision map (or any phase of it), Landowner agrees to grant and convey to City the rights-of-way for any arterials, collectors, local streets, or public easements that include the area within which such public utilities will be located. If such utilities need to be installed prior to the construction of the applicable street(s), Landowner shall grant a temporary public utility easement which shall merge with the rights-of-way or permanent public easements upon completion of the applicable street improvements.

Landowner shall also grant and convey to City with each of the foregoing roadway easements a non-exclusive, co-extensive easement for sidewalk/pedestrian egress purposes. Each such easement shall be as depicted in the applicable final subdivision map(s) and shall be located within right-of-way for the adjacent roadway as shown in the respective final map(s).

Nothing in this Agreement shall be construed to limit or restrict the right of the City to require the dedication of an easement for utility purposes related to development of any parcel when such requirement would be otherwise consistent with the reasonable exercise of the police

powers of the City and is reasonably related to a requirement to serve the parcel or parcels adjacent to the easement.

### 3.5 Electric Improvements

3.5.1 Streetlights. Concurrently with the construction of the adjacent roadways, Landowner agrees to construct, or finance construction of, streetlights within the Property, as directed by the Electric Utility Director. Except as may otherwise be permitted by the Electric Utility Director, no street shall be opened to the public unless and until streetlights have been installed in accordance with applicable requirements of the Electric Department.

3.5.2 Electrical Efficiency. In order to balance conservation efforts with energy supplies, residential air conditioning units shall have a Seasonal Energy Efficiency Ratio (SEER) of 2 points above minimum as defined by the State of California in Title 24 of the Code of California Regulations, and an Energy Efficiency Ratio (EER) of 12 or greater. Commercial air conditioning units of 5 tons or less (<65,000 Btu/h) shall meet the Consortium for Energy Efficiency (CEE) Tier II specifications. The SEER rating will be specified on building plans and Title 24 compliance certificates at the time building permits are requested. All two-story homes shall have zoned HVAC system with two units and two thermostats or one unit and two thermostats that will control the upstairs and downstairs independently. These requirements may be utilized in the overall energy compliance calculations required for the issuance of a building permit for a residential unit.

3.6 Drainage Improvements. Landowner shall provide drainage improvements as provided in this section.

3.6.1 Master Drainage Report. Prior to approval of any improvement plans for subdivision improvements for Landowner's Property, Landowner shall prepare a Master Drainage Report for its on-site drainage facilities to the satisfaction of the City Engineer. The Master Drainage Report shall identify the size, location and timing of all major drainage facilities proposed for the Property and the location and size of all overland drainage release points relative to drainage impacts and shall be accompanied by all supporting technical information and calculations, generally as shown in Exhibit "C."

3.6.2 Other Agency Approval. Landowner shall obtain and satisfy, at its expense, all permits and agreements as required by other agencies having jurisdiction over drainage, water quality or wetlands issues including, but not limited to, the Regional Water Quality Control Board ("RWQCB"), the U.S. Army Corps of Engineers and the California Department of Fish and Game. It is the Landowner's sole responsibility to obtain any additional and unforeseen permits and/or agreements that otherwise may be required by outside agencies for the development of any part of this project. Permitting and/or agreements for off-site improvements shall not restrict City from issuing building permits and occupancy permits for the Property.

Landowner shall prepare and implement a Storm Water Pollution and Prevention Plan (SWPPP) and shall construct and maintain Best Management Practices (BMPs) as required by law, the SWPPP, and as approved by the RWQCB, concurrently with construction of any improvements. Landowner shall obtain a permit from the RWQCB for the General Construction Storm Water Permit Compliance Program, as required by law, prior to the start of any construction, including grading.

3.6.3 Storm Drains. Landowner shall construct storm drain mains and laterals in accordance with said Master Drainage Report and with the City's then current improvement standards and general practices, and shall provide laterals to serve all parcels on the Property, including, but not limited to, park sites. Storm drain laterals shall be constructed to the property

line concurrently with the construction of connecting open channels or storm drain mains. Landowner may use "cast in place" pipe for storm drains which are 24" in diameter or larger.

3.6.4 Drainage Easements. Where drainage improvements to be owned and maintained by City are constructed by Landowner outside dedicated road rights-of-way, Landowner shall grant and City shall accept a non-exclusive public utility easement for the ownership and maintenance of such lines, together with access thereto for maintenance purposes only. Easement widths shall be granted in accordance with the City's then current Improvement Standards.

3.7 Water System Improvements. Landowner shall provide improvements to the potable water system as provided in this section.

3.7.1 Water Plan. Prior to approval of any improvement plans for any improvements for Landowner's property, Landowner shall prepare a Water Plan for its on-site water facilities, to the satisfaction of the Environmental Utilities Director. The general design of the water system is shown on Exhibit "D" hereto.

3.7.2 On-site Water Lines. Landowner shall provide on-site improvements to the water system as shown on Exhibit "D." All improvements to be constructed by Landowner, including mains, shall be designed and constructed pursuant to the City's then current Improvement Standards. Said improvements shall be subject to City plan review, construction inspection and final approval. Landowner shall pay current plan check and inspection costs as is incurred by City for review and inspection of such improvements.

3.7.3 Water System Sequencing. Water system improvements will be constructed as provided in the Water Plan concurrently with the construction of subdivision improvements, as generally shown on Exhibit "D." Extensions into the neighborhoods will be completed with development of each neighborhood. Water line extensions shall be sequenced to assure looped systems in all developing areas, except as otherwise approved by the Environmental Utilities Director.

3.7.4 Public Utility Easements. Where the water improvements to be constructed by Landowner are not located within road rights-of-way, as and when Landowner installs such water improvements, Landowner shall grant and City shall accept a non-exclusive public utility easement for the ownership and maintenance of such lines, together with access thereto for maintenance purposes only. Easement widths shall be granted in accordance with the City's then current Improvement Standards.

3.7.5 Water Softeners. No stub-outs for water softeners shall be provided for their installation within the Property.

3.7.6 Re-Circulating Hot Water System. For the purpose of providing a water conservation opportunity, the Developer shall install a re-circulating hot water system or similar technology that provides instantaneous hot water at each hot water faucet.

3.8 Sewer Improvements. Landowner shall provide on-site improvements to the sewer system as described in this Section.

3.8.1 Master Wastewater Plan. Prior to approval of any improvement plans for any improvements for the Property, Landowner shall prepare a Wastewater Plan for its on-site wastewater facilities, as shown on Exhibit "E" hereto, to the satisfaction of the Environmental Utilities Director. All sewer improvements shall be consistent with the Regional Wastewater Master Plan.

Subject to the above, the Wastewater Plan shall identify the size of the wastewater lines, as well as the timing of such improvements, required to serve the Property relative to wastewater demands and shall be accompanied by all supporting technical information and calculations.

Except for the improvements expressly described in the approved Wastewater Plan, Landowner shall have no obligation to install or pay for the installation of any off-site treatment or transmission facilities, except through the payment of sewer connection fees levied and collected by City at the time of development pursuant to then existing City ordinances.

3.8.2 Sewer Improvement Standards. Sewer improvements shall be designed and constructed pursuant to City's then current Improvement Standards and shall be subject to City plan review, construction inspection and final approval. Landowner shall pay then current plan check and inspection costs as incurred by City for review and inspection of such improvements.

3.8.3 Access to Manholes. All manholes shall be located so that they are accessible by City sewer maintenance vehicles, unless otherwise approved by the Environmental Utilities Director.

3.8.4 Public Utility Easements. Landowner shall be solely responsible for obtaining all easements and rights-of-way located outside of the Property that are required for the construction of the improvements identified by the Wastewater Plan. City shall provide Landowner with any rights-of-entry needed to connect these improvements to the City's existing lines. Where the wastewater improvements to be constructed by Landowner are not located within road rights-of-way, as and when Landowner installs such wastewater improvements, Landowner shall grant and City shall accept a non-exclusive public utility easement for the ownership and maintenance of such lines, together with access thereto for maintenance purposes only. Easement widths shall be granted in accordance with the City's then current Improvement Standards.

3.8.5 Sequencing of Wastewater Improvements. Wastewater improvements shall be installed in the sizes as provided in the approved Wastewater Plan concurrently with the construction of the road improvements described in Section 3.9 below, as generally shown on Exhibit "E." In any event, wastewater lines to be located within particular roadways shall be installed concurrent with the installation of the corresponding road improvements, if not installed prior thereto.

3.9 Road Improvements. Landowner, at its expense, shall provide the following road improvements in the manner and at the time as provided in this section.

3.9.1 Landowner Obligations. Landowner's obligation for off-site roadway improvements shall consist of the improvements listed in this Section 3.9.1. As to any roadway improvements to be constructed by Landowner hereunder, Landowner shall have the responsibility of securing all governmental permits necessary for such construction. The following roadway frontages shall be constructed;

3.9.1.1 Landowner shall widen Washington Boulevard along the Project frontage to accommodate a standard minor arterial street with a width of 38 feet from center line to back of curb, subject to the specifications set forth in conditions to the tentative subdivision map for the Project.

3.9.1.2 Landowner shall widen Junction Boulevard along the project frontage to accommodate a standard minor arterial street with a width of 38 feet from centerline

to back of curb, subject to the specifications set forth in conditions to the tentative subdivision map for the Project.

3.9.2 If deemed necessary by the City Engineer, Landowner shall modify the signals at the intersection of Junction Boulevard/Washington Boulevard and/or Washington Boulevard/Sawtell Road to meet traffic and construction standards. The City shall offer reimbursement to the project proponent for the costs of the signal modifications. Signal modification plans shall be made part of the improvement plans for the subdivision.

#### 3.9.4 Timing of Dedication and Construction of Road Improvements.

3.9.4.1 Upon recordation of a residential-lot subdivision map for any portion of the Property, Landowner shall dedicate the rights-of-way within the Property required for the necessary improvements described above, to the extent such improvements are public rather than private streets. Along the residential frontages, the right of way dedication shall include all that land within the landscape corridors.

3.9.4.2 Sidewalks and landscaping to be installed within the road rights-of-way concurrently with the subdivision improvements for the single-family residential-lot subdivision.

3.9.5 Road Improvement Standards. All improvements to be installed by Landowner shall comply with the City's then current standards for public streets. The rights-of-way required for such road improvements shall be as set forth in the City's Improvement Standards or as otherwise required of the subdivision conditions

3.9.6 Landscape Setbacks. For the roadways adjacent to the Property, Landowner shall provide a twenty-five (25') foot landscape setback along Junction Boulevard, Washington Boulevard, and ten (10) foot landscape setback along Sawtell Road. Such setbacks shall be measured generally from back of curb, except along intersections where bus turnouts, turn lanes, and other similar facilities may encroach into the landscape setback however; no landscape setback on Washington Boulevard or Junction Boulevard shall be less than twenty (20') feet. Such landscape setbacks shall be limited to landscaping, streetlights, utilities, sidewalks, sound walls and related uses, and shall be included in the road rights-of-way.

3.9.7 Traffic Mitigation Fees. Landowner agrees that the Property shall pay the then current Traffic Mitigation Fee applicable to the Northwest Roseville Specific Plan area of the City.

Landowner acknowledges that the Property is included in the assessment district formed pursuant to the Bizz Johnson Highway Interchange Joint Powers Authority (the "JPA") for the purposes of constructing interchanges along Highway 65 at Harding (Galleria) Boulevard/Stanford Ranch Road, Pleasant Grove Boulevard, Blue Oaks Boulevard and Sunset Boulevard.

Nothing in this Section shall be construed as an agreement to an allocation of assessment or benefit to a particular parcel or parcels or to constitute a waiver of the right of Landowner to protest an allocation of a particular assessment burden or benefit associated with the updates of the foregoing fee programs.

3.9.8 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 and operation

costs of light rail or Capital Corridor heavy rail line into the City of Roseville at such time as the funding mechanism is approved.

### 3.10 Miscellaneous Public Facilities and Services.

3.10.1 Fire Tax. During the term of this Agreement, Landowner or its successors shall continue to pay the Fire Service Construction Tax at issuance of building permit, as set forth at Chapter 4.46 of the Roseville Municipal Code. In the event that the Fire Service Construction Tax is not extended or otherwise discontinued, Landowner or its successors shall continue through project build out, to pay a fee at issuance of a building permit, equal in amount to the discontinued Fire Service Construction Tax. Landowner hereby consents to and waives any objection to the imposition of such substitute fee.

3.10.2 County-Wide Facilities Fee. Landowner shall pay the county-wide facilities impact fee adopted by the City, in the amount then being assessed by the City; provided, however, if such impact fee is not effective or is for any reason suspended by the City, then Landowner shall pay such fee in the amount previously assessed by the City. Such fee shall be paid upon the issuance of each building permit within the Property.

3.10.3 Community Benefit Fee. Landowner agrees to pay a Community Benefit Fee \$1,280 per single family residential unit as partial consideration for this Agreement and to ensure that the Project will benefit current and future residents of Roseville, due and payable at issuance of each building permit for single-family residential units on the Property. If Landowner is obligated to fund any advance in cash prior to the issuance of any CFD bond sale for the Property, then Landowner shall have the right to be reimbursed from the CFD for such cash advance upon the latter CFD bond sale. Landowner shall not be entitled to any fee credit for payment of this contribution.

3.10.4 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, and Bikeway Master Plan. The fair share payment for each shall be paid to the City upon issuance of the first building permit. Total City-wide fair share costs for all plans shall not exceed \$ 710.00 (\$10.00 per unit)

3.10.5 Road Improvements. Landowner shall provide required public transit facilities including bus turnouts, pads, and shelters as may be required by the City Engineer. Landowner shall also provide on-road bike lanes and related improvements (e.g., signs and striping) in accordance with the City's Bikeway Master Plan, and as may be required by the City Engineer within this project.

3.11 Liens, Encumbrances, Covenants, Conditions and Restrictions. Except as approved by the City or provided for by this Agreement, all property to be conveyed in fee to the City pursuant to this Agreement shall be free of any liens, financial encumbrances, special taxes, hazardous materials or assessments, provided the City's interest shall be subject to the application of the Project CC&Rs to the extent the conditions, covenants and restrictions thereof implement the provisions of this Agreement with respect to such interest. Landowner shall, for each such conveyance, provide to City at Landowner's expense a current preliminary title report and preliminary site assessment for hazardous substances in a form approved by the City Attorney. Any policy of title insurance required by City shall be at City's expense. Prior to such conveyance of any property by Landowner to the City, Landowner shall be responsible at its sole cost and expense to fill any wetlands located on the applicable property to be conveyed in accordance with the terms and conditions of the 404 Permit, to be obtained pursuant to Section 2.6.1 above.

3.12 Negative Declaration Mitigation Measures. Notwithstanding any other provision in this Agreement to the contrary, as and 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.

3.13 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 under compensated 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.

3.14 Completion of Improvements. City generally requires that all improvements necessary to service new development be substantially completed prior to issuance of building permits (except model home permits as may be provided by the City's Subdivision Ordinance). Provided, however, the City Engineer may approve the issuance of building permits and occupancy permits prior to completion of all of such improvements if the improvements necessary to provide adequate service to the portion of the property being developed are substantially complete to the satisfaction of the City Engineer.

All utilities to be installed by Landowner pursuant to Sections 3.5, 3.6, 3.7 and 3.8 will be subject to the review and approval of the City Environmental Utilities Director. In connection therewith, Landowner shall be responsible for coordinating the alignment of all such planned and future utilities within the applicable rights-of-way to the satisfaction of the City Environmental Utilities Department.

### 3.15 Services District.

#### 3.15.1 Formation.

3.15.1.1 Consent, Waiver and Special Benefit. No residential building permit shall be issued until the Property has been included into a CFD Services District. Landowner consents to and shall cooperate in such annexation or formation or other such financing mechanism for maintenance purposes (herein the "Services District"), and consents herewith to the levy of such special taxes as are necessary to fund the maintenance obligations described in this Section 3.15.1.1. For purposes of Article XIII D of the California Constitution, Landowner acknowledges hereby that all the services described herein to be provided by the Services District will provide a

"special benefit" to the Property as defined by said Article and that the foregoing support and consent shall apply as to any claim that any portion of the services supported by the special tax does not provide special benefit to the Property. The services district shall include the following:

A. Assessment for Stormwater Management which shall be initially assessed at \$18 per dwelling unit annually.

B. Assessment for Emergency Services which shall be initially assessed at \$285 per dwelling unit equivalent.

C. Assessment for Park Maintenance shall be as follows:

shall:

i. Obligations. The Services District, as described in Section 3.15.1,

1. Perform autumn leaf cleanup for public collector and local streets;
2. Maintain bus shelters within the Property, to the extent the City does not obtain alternative financing for such maintenance (e.g., through leasing these shelters for advertising); and
3. Maintain landscape corridors, common areas and subdivision signs to the Property, and overall any landscaping and lighting.

ii. Encroachment Permits, Landscape Maintenance Easements. Landowner and City agree to grant encroachment permit(s) or maintenance easements to the Services District, Landowner or City or their agents, employees, successors, assigns, agents and employees, for the purpose of entry into the landscape easement and setback areas or City property (including streets and rights-of-way) to perform the maintenance obligations described herein.

#### SECTION 4. CITY OBLIGATIONS

4.1 City Cooperation. The City agrees to cooperate with Landowner in securing all permits which 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 Credits and Reimbursements. Landowner may, pursuant to this Agreement, be financing construction of certain improvements which would otherwise be paid for by the City or other parties and which serve other properties or which would be financed by existing City fees. City and Landowner agree that, in consideration of the financing of such improvements by Landowner, and only where this Agreement explicitly so provides, Landowner shall be entitled to credits and reimbursement as follows:

4.2.1. Participation/Reimbursement By City. The parties agree that Landowner shall not be entitled to any reimbursement from the City for the construction of any public improvements required by this Agreement unless explicitly provided by the agreement.

4.2.2. Reimbursement by Third Parties. In the case of public road improvements which abut property or traverse through property owned by third persons, and other public improvements which are oversized to benefit property owned by third persons, Landowner shall be entitled to receive a reimbursement from the benefited property's owner (and not the City) for the pro rata cost of the improvements which exceed Landowner's obligation. Reimbursement may be provided directly from the owner abutting such improvements or from a community facilities district or any such other infrastructure financing district if such a district is formed by or includes such properties and includes monies for the construction of said improvements.

City shall use its best efforts, to the extent City has the authority to do so, to impose the obligation to pay said reimbursement, as a condition of development of such benefited property, at the time such property owner requests a discretionary approval or other such

entitlement from City for development of the benefited property whereby such condition can be imposed. Such reimbursement shall be due and payable on the earlier of issuance of a permit for a grading, improvement or construction on the benefited property, recordation of a final parcel or subdivision map for the benefited property or receipt of funds from an infrastructure financing district that is formed by or includes such benefited property. City's obligation to impose such condition and collect such reimbursement shall terminate upon any termination of this Agreement.

4.2.3 Reimbursable Hard Costs. The "hard costs" of construction to be reimbursed to Landowner by the City or a third party or to be paid by Landowner to any third party in accordance with the terms of this Agreement shall consist of the identifiable and commercially reasonable costs of the design, engineering and construction as actually incurred by Landowner or such third party for the reimbursable work.

4.2.4 Interest on Reimbursements. In each case in which this Agreement provides that Landowner is entitled to receive reimbursement for improvements from third parties or is required to pay reimbursement to third parties, Landowner shall be entitled to receive, or be obligated to pay, interest on the amount to be reimbursed (the "base amount") at the time when the reimbursement is to be paid.

4.2.5 Term for Credits and Reimbursements. City's obligation to provide any credits or to pay any reimbursements to Landowner that accrue hereunder shall terminate twenty (20) years after the effective date of this Agreement.

4.2.6 Not a Limitation. Nothing in the foregoing Section 4.2 shall be construed to limit Landowner from receiving, in consideration of the improvements to be constructed by Landowner hereunder, any other credits or reimbursements from City otherwise provided under then existing City policy, rule, regulation or ordinance.

#### 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 Maps and Permits. Provided that the Services District has been or will at the time of the requested final approval be formed and authorized to levy the special tax against the applicable portion of the Property in accordance with Section 3.15 hereof, and further provided that Landowner is not in default under this Agreement, City shall not refrain from approving final residential lot subdivision maps nor shall it cease to issue building permits, certificates of occupancy or final inspections for development of the Property that is consistent with the Entitlements. The acceptance, review and approval of any application for a final residential lot subdivision map, final non-residential subdivision map or building permit may be conditioned upon the submission of a petition to form the Services District or annex the Property into the Services District, as applicable. Prior to such formation and/or annexation, City shall accept, for review, processing and approval, consistent with the Entitlements, applications for tentative residential lot and non-residential subdivision maps and for tentative and final large-lot subdivision or parcel maps consistent with the Parcels described for the Property.

City acknowledges that under Government Code Section 66452.6, the term of a tentative subdivision map will be automatically extended for a period of time where a subdivider is obligated to install certain improvements located outside the boundaries of the subdivision. In determining the term of any tentative subdivision map approved by the City for the Property, or any portion thereof, and without limiting the effect of any other provisions of the

Government Code dealing with map extensions, the City agrees that, with the exemption of frontage improvements, the CFD Improvements described hereunder shall be treated as such off-site improvements for purposes of applying Section 66452.6 of the Government Code.

iii. 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 Subdivision Map Act Waiver. Notwithstanding any other provision of this Agreement, or of Sections 66452.1, 66452.2, 66456.2 and 66458, of the Government Code (or any successor or replacement statute), Landowner expressly waives the time limits for review and approval by City of tentative subdivision maps to the extent that each such period does not exceed one hundred fifty (150) days beyond the time otherwise provided by law, unless Landowner and City mutually agree to another time limit.

4.5 Limited Waiver of Protest Rights. In conjunction with any proceedings creating an assessment district or other applicable financing mechanism for which provision is made in this Agreement, Landowner waives herewith any right to protest which it may have under Section 2825 of the Streets and Highways Code to the extent that such protest would arise under Section 2825(a) through 2825(f) and Section 2825(h); but expressly retains the right of protest with respect to Section 2825(g).

4.6 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 initiatives that directly or indirectly limit the rate, timing, sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses 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 that public health or safety issue. By way of example only, an ordinance which precluded the issuance of a building permit because City had inadequate sewage treatment capacity to meet the demand therefore (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 treatment capacity, 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.

4.7 Essence of Agreement. The foregoing Sections 2, 3 and 4 are of the essence of this Agreement.

## 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, at least every twelve (12) months during the term of this Agreement, 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, 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 their 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 and/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 therefore.

## 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. 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  
311 Vernon Street, Room 104  
Roseville, CA 95678

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

D.R. Horton, Inc. -- Sacramento  
4401 Hazel Avenue, Suite 225  
Fair Oaks, CA 95628  
Attention: John Zellhoefer

With a copy to:

Sandberg, Lo Duca & Aland, LLP  
3300 Douglas Boulevard, Suite 365  
Roseville, CA 95661  
Attention: Marcus J. Lo Duca, Esq.

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.

## SECTION 11. ASSIGNMENT

From and after recordation of this Agreement against the Property, 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 "F" 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. Prior to recordation of this Agreement, any proposed assignment of this Agreement by Landowner shall be subject to the prior written consent of the City Manager on behalf of the City and the form of such assignment shall be subject to the approval of the City Attorney, neither of which shall be unreasonably withheld.

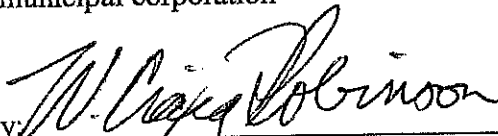
**SECTION 12. FORM OF AGREEMENT, EXHIBITS**

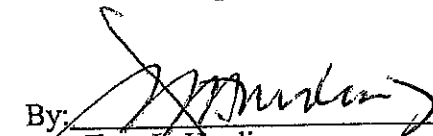
This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Agreement consists of twenty-two (22) pages and seven (7) exhibits, which constitute the entire understanding and agreement of the parties.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Ordinance No. 4139, adopted by the Council of the City of Roseville on the 20th day of October, 2004, and Landowner has caused this Agreement to be executed.

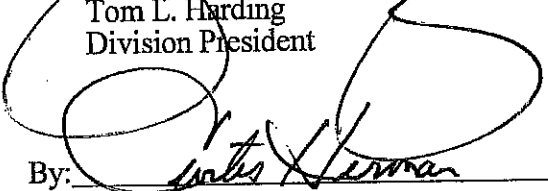
CITY OF ROSEVILLE,  
a municipal corporation


D.R. HORTON, INC. – SACRAMENTO,  
a California corporation

By:   
\_\_\_\_\_  
W. Craig Robinson  
City Manager

By:   
\_\_\_\_\_  
Tom L. Harding  
Division President


ATTEST:

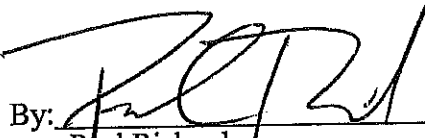
By:   
\_\_\_\_\_  
Assistant Secretary

By:   
\_\_\_\_\_  
Sonia Orozco  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

By:   
\_\_\_\_\_  
Mark J. Doane  
City Attorney

By:   
\_\_\_\_\_  
Paul Richardson  
Planning Director

**ACKNOWLEDGEMENT**

State of California            )  
  )ss.  
County of Sacramento        )

On OCTOBER 19, 2004, before me Michelle Vossen, Notary Public, personally appeared TOM L. HARDING & CURTIS HERMAN personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/hers/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.

Michelle Vossen  
Notary Public

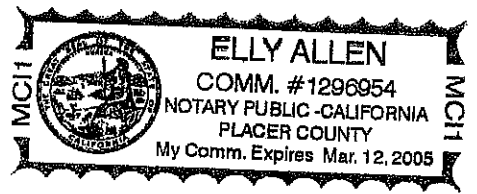


STATE OF CALIFORNIA            )  
  :  ss.  
COUNTY OF PLACER            )

On this 29<sup>th</sup> day of November in the year of 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared W. Craig Robinson, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

*Elly Allen*  
Notary Public in and for said State



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

Title or Type of Document: Development Agreement

Date of Document: November 29, 2004

Acknowledgment – All Purpose

LIST OF EXHIBITS

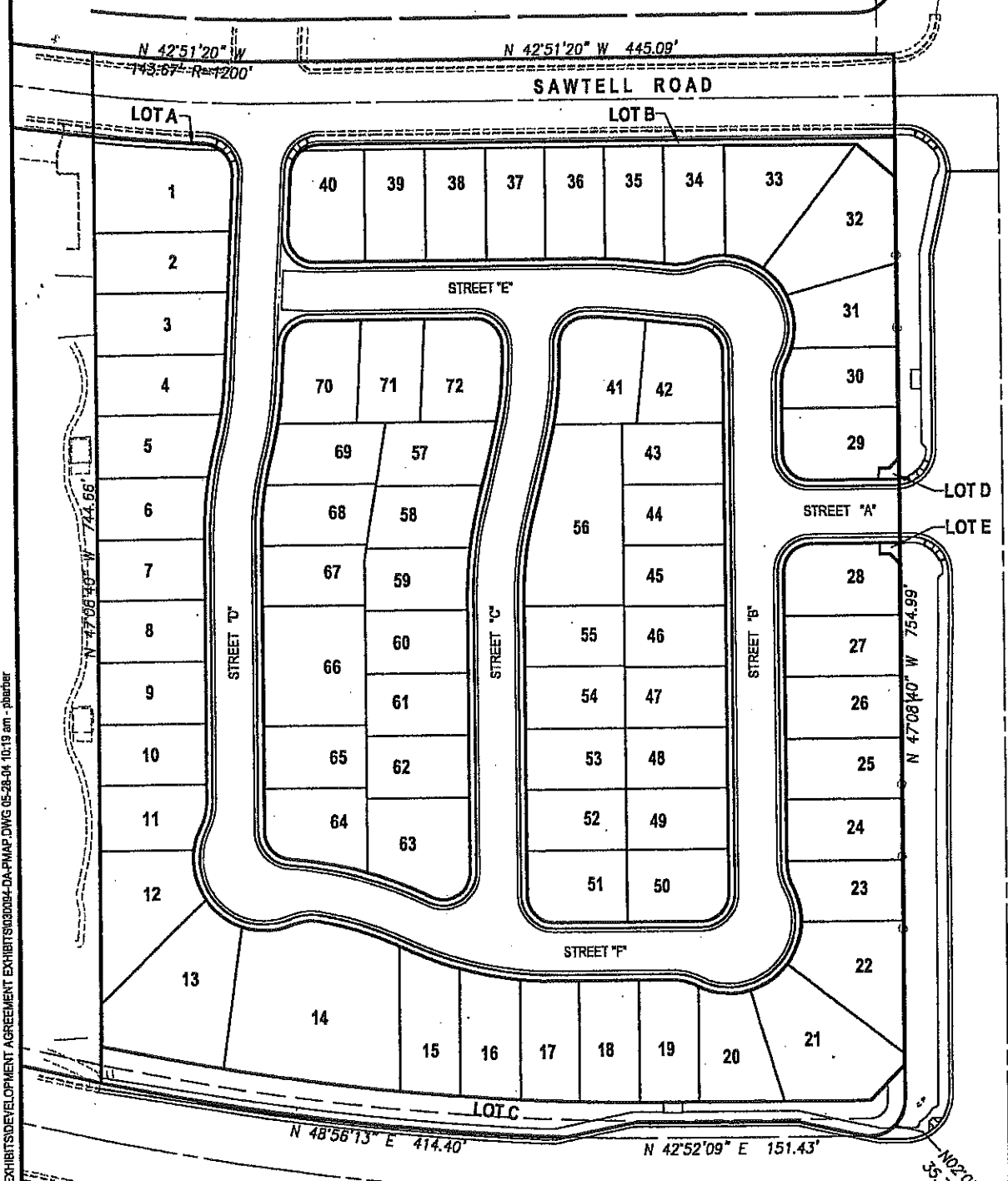
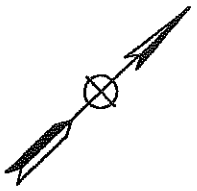
|         |       |                                      |
|---------|-------|--------------------------------------|
| Exhibit |       |                                      |
|         | "A-1" | -- Legal Description of the Property |
|         | "A-2" | -- Diagram of the Property           |
| Exhibit | "B"   | -- Land Use Map for the Property     |
| Exhibit | "C"   | -- Drainage Lines                    |
| Exhibit | "D"   | -- Water Lines                       |
| Exhibit | "E"   | -- Sewer Lines                       |
| Exhibit | "F"   | -- Form of Assignment                |

**EXHIBIT "A-1"**  
**LEGAL DESCRIPTION OF THE PROPERTY**

All that certain real property situate in the City of Roseville, County of Placer, State of California, described as follows:

Parcel 3 as said parcel is shown and so designated on that certain parcel map filed in Book 19 of Parcel Maps, Page 120, Placer County Records.

# EXHIBIT "A-2" DIAGRAM OF THE PROPERTY

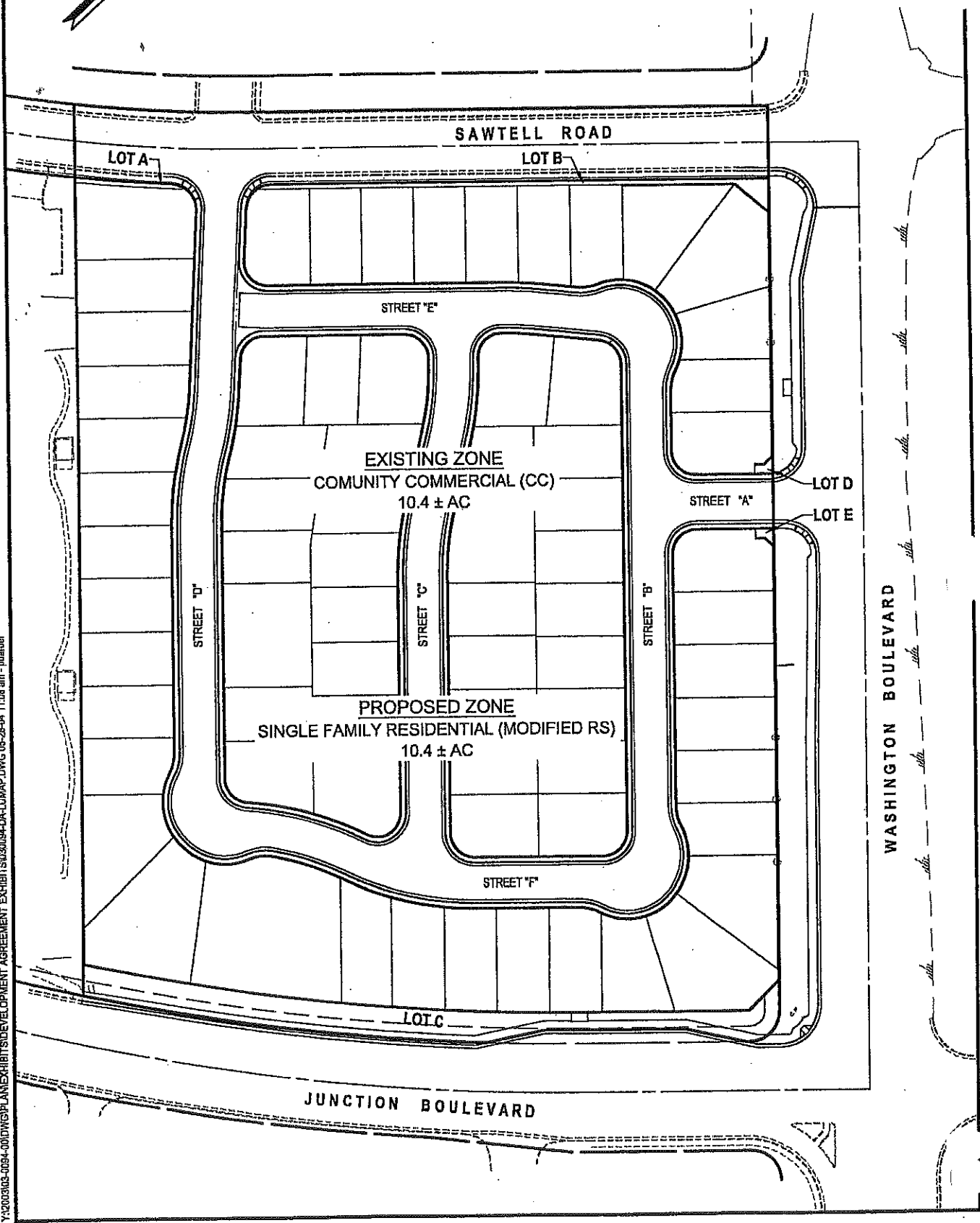
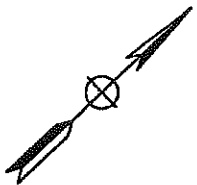


Y:\200303-0194-010\DWG\PLAN\EXHIBITS\DEVELOPMENT AGREEMENT EXHIBIT\303003-04-DA-PWAC.DWG 05-28-04 10:19 am - pbarber

WASHINGTON BOULEVARD

$N 02^{\circ}08'15'' W 35.59'$   
 $P=25'$

# EXHIBIT "B" LAND USE MAP OF PROPERTY

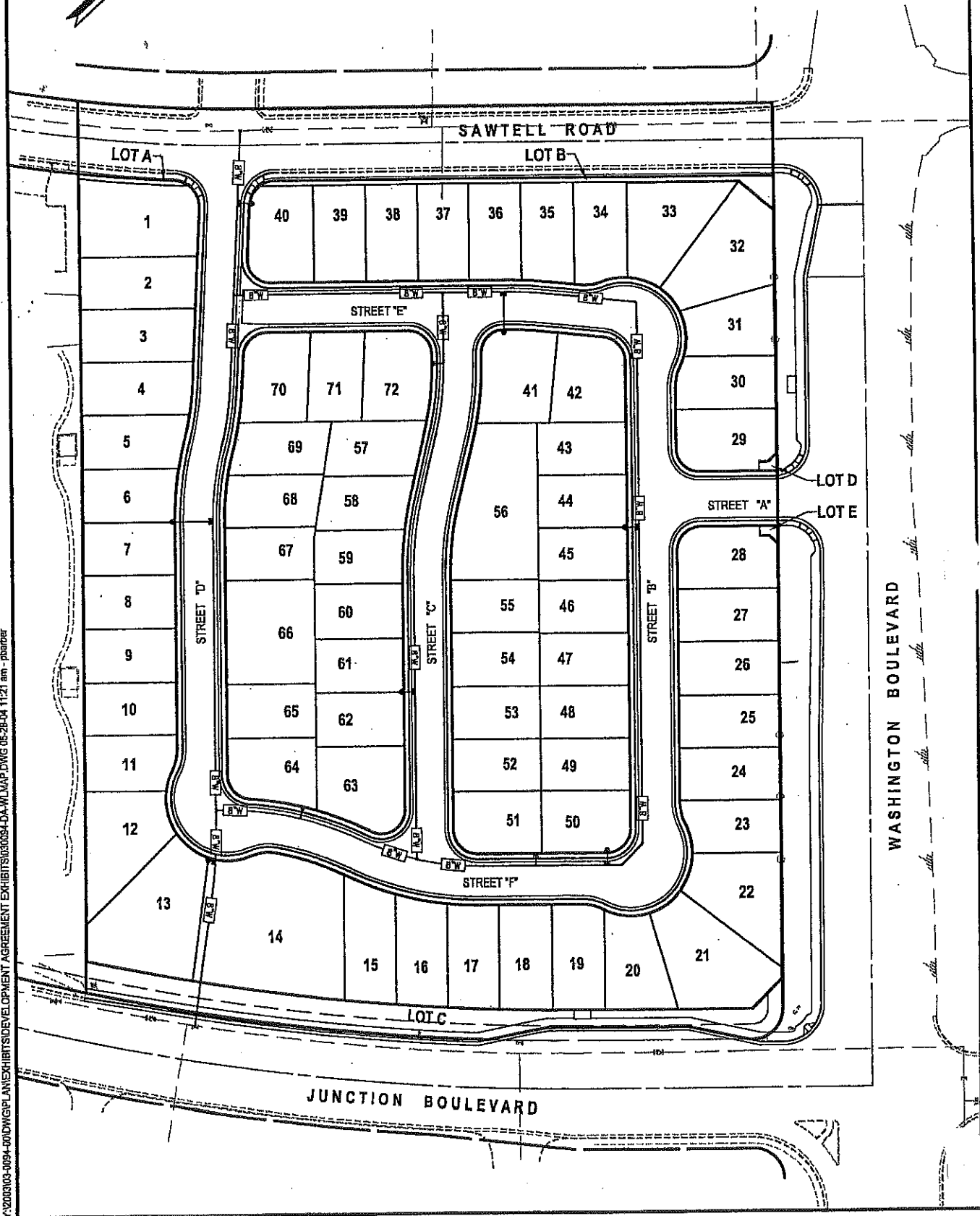
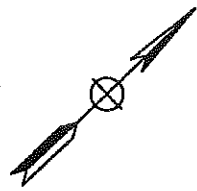


Y:\2005\05-0094-00\DWG\PLAN\EXHIBITS\DEVELOPMENT AGREEMENT EXHIBITS\03094-00-LUMAP.DWG 05-26-04 11:09 am - pbanber

WASHINGTON BOULEVARD



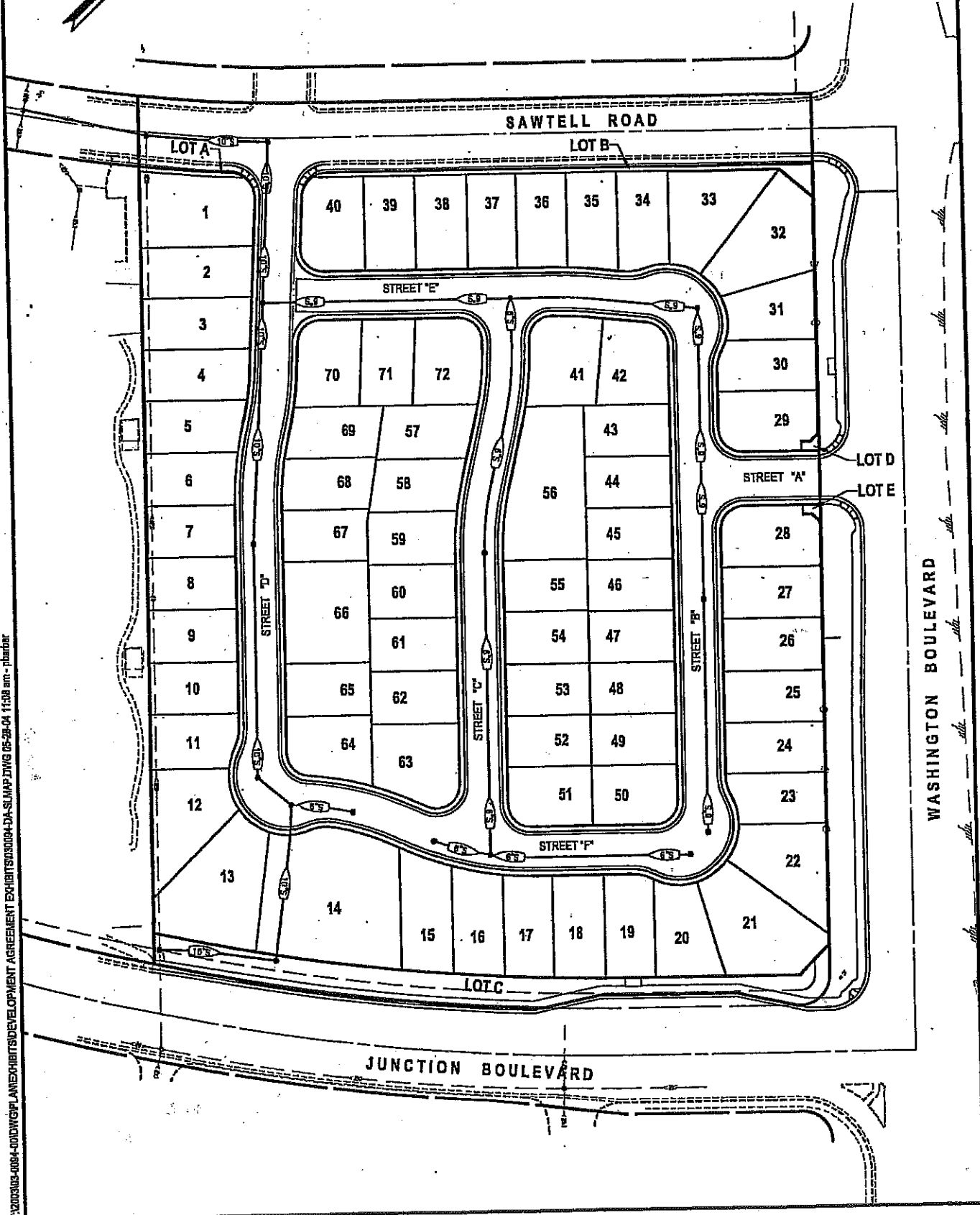
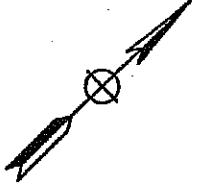
# EXHIBIT "D" WATER LINES



Y:\2003\03-0094-00\DWG\PL\AMEX\HIBTS\DEVELOPMENT AGREEMENT EXHIBITS\030094-DA-WL\MAP.DWG 06-28-04 11:21 am - plomber

WASHINGTON BOULEVARD

# EXHIBIT "E" SEWER LINES



Y:\200303-0064-000\DWG\PLAN\EXHIBITS\DEVELOPMENT AGREEMENT EXHIBITS\0004-DA-SUMAP.DWG 05-29-04 11:38 am - pharibor

WASHINGTON BOULEVARD

EXHIBIT "F"

WHEN RECORDED, RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

ASSIGNMENT AND ASSUMPTION AGREEMENT  
RELATIVE TO LEGACY

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between D.R. HORTON, INC. - SACRAMENTO, a \_\_\_\_\_ corporation (hereinafter "Developer"), and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter "Assignee").

RECITALS

A. On \_\_\_\_\_, 200\_\_\_\_, the City of Roseville and Developer entered into that certain agreement entitled "Development Agreement By and Between The City of Roseville and D.R. Horton, Inc. Relative to the Development Known As the Legacy Property (hereinafter the "Development Agreement"). Pursuant to the Development Agreement, Developer agreed to develop certain property more particularly described in the Development Agreement (hereinafter, the "Subject Property"), subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of Placer County on \_\_\_\_\_, 200\_\_\_\_, as Instrument No. 200 - \_\_\_\_\_.

B. Developer intends to convey a portion of the Subject Property to Assignee, commonly referred to as Parcel \_\_\_\_\_, and more particularly identified and described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel").

C. Developer desires to assign and Assignee desires to assume all of Developer's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Developer and Assignee hereby agree as follows:

1. Developer hereby assigns, effective as of Developer's conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Developer under the Development Agreement with respect to the Assigned Parcel.

Developer retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other property within the Subject Property owned by Developer.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Developer under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Developer under the Development Agreement with respect to the Assigned Parcel, and to be subject to all the terms and conditions thereof with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Developer as the "Developer" under the Development Agreement with respect to the Assigned Parcel.

3. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. The Notice Address described in Section 10 of the Development Agreement for the Developer with respect to the Assigned Parcel shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written. This Agreement may be signed in identical counterparts.

DEVELOPER:

D.R. HORTON, INC. – SACRAMENTO  
a \_\_\_\_\_ corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

ASSIGNEE:

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ORDINANCE OF THE COUNCIL OF THE CITY OF ROSEVILLE  
ADOPTING A DEVELOPMENT AGREEMENT REGARDING NORTHWEST ROSEVILLE  
SPECIFIC PLAN PARCEL 37 (D.R. HORTON, INC. – SACRAMENTO AND CAMERON  
STEWART),  
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 a Development Agreement with D.R. Horton, Inc. – Sacramento and Cameron Stewart.

SECTION 2. The Council of the City of Roseville has reviewed the findings of the Planning Commission recommending approval of the Development Agreement, and makes the following findings:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the City of Roseville General Plan and the Northwest Roseville Specific Plan Parcel 37;
2. The Development Agreement is consistent with the City of Roseville Zoning Ordinance and Zoning Map;
3. The Development Agreement is in conformance with the public health, safety and welfare;
4. The Development Agreement will not adversely affect the orderly development of the property or the preservation of property values; and
5. The Development Agreement will provide sufficient benefit to the City to justify entering into said Agreement;

SECTION 3. The Development Agreement by and between D.R. Horton, Inc. – Sacramento, Cameron Stewart and the City of Roseville, a copy of which is on file in the City Clerk's Department and incorporated herein by reference, 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 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 thirty (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 20th day of October, 2004, by the following vote on roll call:

AYES            COUNCILMEMBERS:    John Allard, Richard Roccucci, Jim Gray, Gina Garbolino, Rocky Rockholm

NOES            COUNCILMEMBERS:    None

ABSENT        COUNCILMEMBERS:    None

  
MAYOR

ATTEST:

  
City Clerk

