

FOR THE BENEFIT OF THE CITY OF FOLSOM  
PURSUANT TO GOVERNMENT CODE §6103

RECORDING REQUESTED BY CITY CLERK

WHEN RECORDED MAIL TO:

CITY CLERK  
CITY OF FOLSOM  
50 NATOMA STREET  
FOLSOM, CALIFORNIA 95630



Sacramento County Recorder  
Craig A. Kramer, Clerk/Recorder  
BOOK **20110803** PAGE **0422**  
Wednesday, AUG 03, 2011 9:18:08 AM  
Ttl Pd \$0.00 Nbr-0005906708  
MLB/11/1-113

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**TIER 1 DEVELOPMENT AGREEMENT**

**BY AND BETWEEN THE CITY OF FOLSOM AND**

**MICHELE M. CARR AND MELISSA A. BARRON, ANGELO K. TSAKOPOULOS, RUSSELL-PROMONTORY LLC, CARPENTER RANCH LP AND JW FOLSOM ONE, LLC, AEROJET-GENERAL CORPORATION, EASTON DEVELOPMENT COMPANY, LLC, FOLSOM HEIGHTS LLC, FOLSOM WHITE ROCK INVESTORS LLC, SACRAMENTO COUNTRY DAY SCHOOL, ELLIOTT HOMES, INC., JASON A. ZARGHAMI AND RAE D. ZARGHAMI, TRUSTEES OF THE ZARGHAMI FAMILY TRUST AND JAHANSHIR JAVANIFARD AND GAYLE JAVANIFARD, AND ARCADIAN HEIGHTS LLC RELATIVE TO THE FOLSOM SOUTH SPECIFIC PLAN**

Folsom File No. 174-21 11-050



30802

**TIER 1 DEVELOPMENT AGREEMENT**

**BY AND BETWEEN THE CITY OF FOLSOM AND**

**MICHELE M. CARR AND MELISSA A. BARRON, ANGELO K. TSAKOPOULOS, RUSSELL-PROMONTORY LLC, CARPENTER RANCH LP AND JW FOLSOM ONE, LLC, AEROJET-GENERAL CORPORATION, EASTON DEVELOPMENT COMPANY, LLC, FOLSOM HEIGHTS LLC, FOLSOM WHITE ROCK INVESTORS LLC, SACRAMENTO COUNTRY DAY SCHOOL, ELLIOTT HOMES, INC., JASON A. ZARGHAMI AND RAE D. ZARGHAMI, TRUSTEES OF THE ZARGHAMI FAMILY TRUST AND JAHANSHIR JAVANIFARD AND GAYLE JAVANIFARD, AND ARCADIAN HEIGHTS LLC RELATIVE TO THE FOLSOM SOUTH SPECIFIC PLAN**

**TIER 1 DEVELOPMENT AGREEMENT  
RELATIVE TO THE  
FOLSOM SOUTH SPECIFIC PLAN**

This Tier 1 Development Agreement is entered into this 2nd day of AUGUST, 2011, by and between the City and Landowner pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of California. All capitalized terms used herein shall mean and refer to those terms as defined in Section 1.3 hereof.

**RECITALS**

A. **Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the "Development Agreement Statute", which authorizes the City 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.

B. **Property.** The subject of this Agreement is the development of the Property. Landowner owns or has the right to acquire the Property and represents that all persons holding legal or equitable interests in the Property shall be bound by this Agreement.

C. **Specific Plan.** The City Council adopted the Specific Plan which Plan is applicable to the Property.

D. **Hearings.** On June 1, 2011, 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 this Agreement and recommended that the City Council approve this Agreement.

E. **Mitigation Measures.** Mitigation measures were recommended in the EIR and are incorporated to the extent feasible in the Specific Plan and in the terms and conditions of this Agreement, as reflected by the findings adopted by the City Council concurrently with this Agreement.

F. **Initial Entitlements.** Following consideration and certification of the aforementioned EIR and of CEQA related findings, the City Council adopted a statement of overriding considerations with respect to and approved the following initial land use entitlements for the Property, which Initial Entitlements are the subject of this Agreement:

1. The General Plan;
2. The Specific Plan;
3. The Adopting Ordinance.

Folsom File No. 174-21 11-050



30802

G. **General and Specific Plans.** Development of the Property in accordance with the Initial Entitlements and this Agreement will provide orderly growth and development of the area in accordance with the policies set forth in the General Plan and the Specific Plan.

H. **Substantial Costs to Landowner.** Landowner has incurred and will incur substantial costs in order to implement the Specific Plan and to assure development of the Property in accordance with the Initial Entitlements and the terms of this Agreement.

I. **Need for Services and Facilities.** Development of the Property will result in a need for urban services and facilities, which services and facilities will be provided by City and other public agencies to such development subject to the performance of Landowner's obligations hereunder, including but not limited to Landowner's obligation to fund such services upon development of the Property by including the Property in appropriate municipal services financing districts or mechanisms.

J. **Contribution to Costs of Facilities and Services.** Subject to the requirements of the Initial Entitlements and Subsequent Entitlements from City (as further defined in Section 2.4, below), Landowner agrees to provide for the costs of such public facilities and services as required herein and by the Subsequent Entitlements, to mitigate impacts on the City of the development of the Property, and City agrees to provide municipal services, according to the terms of this Agreement and any Subsequent Entitlements, to assure that Landowner may proceed with and complete development of the Property in accordance with the terms of this Agreement and any Subsequent Entitlements. The Landowner will provide as a part of such development a mix of housing meeting a range of housing needs for the City, public facilities, open space, recreational amenities, and other services and amenities that will be of benefit to the future residents of the City.

K. **Initial Entitlements.** The Initial Entitlements vested by this Agreement constitute a first tier of land use approvals for the Property. The Initial Entitlements also include this Agreement which is the first tier development agreement that vests the Landowner's right to develop the Property as provided herein, and sets forth the Landowner's general obligations related to the construction and financing of infrastructure for the Project, which obligations shall be set forth in Subsequent Entitlements. The Initial Entitlements may be amended from time to time as provided in Section 1.5 hereof. In order to proceed forward with any development of the Property, Landowner will need to obtain a Tier 2 Development Agreement and pursue and obtain Subsequent Entitlements from City for Landowner's Property. In order for City to act on said requested Subsequent Entitlements, subsequent environmental review may need to be conducted to analyze the specific impacts of proposed development on the Property under the requested Subsequent Entitlements. In addition, for City to consider such Subsequent Entitlements, final infrastructure master plans that address the design, financing and phasing of the project improvements will need to be prepared by Landowner and approved by City to further refine the conceptual infrastructure plans prepared with the Initial Entitlements vested hereby and in accordance with the terms of this Agreement. Thus, for purposes of this Agreement, requirements set forth herein that reference actions or obligations based on Subsequent Entitlements such as, for example, small lot residential tentative subdivision maps, shall be those requirements that are necessary in order to initiate development of the Property

pursuant to such Subsequent Entitlements and not requirements or obligations pursuant to the Initial Entitlements vested hereunder.

L. Development Agreement Ordinance No. City and Landowner have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Ordinance No. 1149 of the City.

## ARTICLE 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. Upon satisfaction of the conditions to this Agreement becoming effective and recordation of this Agreement pursuant to Section 1.4.1 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 each and every Landowner who signs this Agreement and each and every subsequent purchaser or transferee of the Property or any portion thereof from Landowner.

### 1.3 Definitions.

"Adopting Ordinance" means Ordinance No. 1149, dated July 12, 2011, approving this Tier I Development Agreement.

"Agreement" means this Tier I Development Agreement.

"Area 40" means that portion of land owned by Aerojet adjacent to Prairie City road in the Specific Plan area as delineated by the EPA or other agencies in the Superfund cleanup effort.

"Backbone Infrastructure" means the infrastructure described on Exhibit C, attached hereto and made part hereof.

"Backbone Lands" means the land areas within the Specific Plan as shown on Exhibit C.

"CEQA" means the California Environmental Quality Act, Public Resources Code Section 21000 et seq., and all regulations and guidelines promulgated thereunder.

"City" means the City of Folsom.

"City Council" means the City Council of the City of Folsom.

"City Zoning Ordinance" means the provisions of the City of Folsom Municipal Code, Title 17 et seq.

"CFD" or "Infrastructure CFD" means a Community Facilities District established pursuant to Government Code section 53311 et seq.

"Community Development Department" means the Community Development Department of the City of Folsom.

"Community Development Director" means the Community Development Director of the City of Folsom.

"Development Activity" means any development, construction and land use pursuant to or in furtherance of the Specific Plan, including without limitation ground disturbance, grading, land alteration, and construction of any improvements, including, but not limited to, structures, roadways, infrastructure, dwelling units, and non-residential buildings. Development Activity expressly does not include: (a) activities necessary to fill "waters of the United States," as defined by then applicable federal law and pursuant to a valid and unexpired Section 404 permit for the Property, or (b) any work of any nature that Aerojet, or the Boeing Company may be required or authorized to conduct by local, state or federal regulatory agencies, in connection with the McDonnell Douglas Inactive Rancho Cordova Test Site (IRCTS), including, by way of example and not by way of limitation, orders, consent decrees, waste discharge requirements, monitoring/reporting program orders and any amendments thereto that have been issued or may in the future be issued by the California Department of Toxic Substance Control (DTSC), United States EPA, United States Fish and Wildlife Service, United States Army Corps of Engineers, and/or Central Valley Regional Water Quality Control Board, pertaining to, arising out of or related to soil and groundwater remediation, endangered species mitigation, wetlands mitigation, or any other similar activity required or authorized by said local, state or federal regulatory agencies, or (c) the processing, approval and recordation of any parcel or subdivision map which creates only Large Lot Parcels. Notwithstanding the exclusion of subsection (a) above relating to 404 permits, nothing in this Agreement or this definition is intended to permit activity conducted relative to a 404 permit without all applicable permits, including any City permits.

"Day(s)" means business day(s).

"Development Agreement Statute" means Government Code section 65864 et seq.

"Development Mitigation Fees" means the fees, impact fees, and other fees as described in Section 2.7.1 hereof.

"Effective Date" means the date which is thirty (30) calendar days after the date of the Adopting Ordinance approving this Agreement.

"Existing Fee(s)" means any fees existing in the City as of the Effective Date of this Agreement.

"EIR" means the Final EIR for the Specific Plan certified as adequate and complete by the City Council by Resolution No. 8860 on June 14, 2011 (State Clearinghouse No. 2008092051).

"Entitlements" means collectively, the Initial Entitlements and the Subsequent Entitlements.

"Existing Rules" means unless otherwise expressly provided in this Agreement, City's ordinances, resolutions, city council adopted and regulations in force and effect on the Effective Date of this Agreement, including the Initial Entitlements. The Existing Rules include,

but are not limited to, the General Plan as amended, this Agreement, the Specific Plan, including the Land Use Plan, applicable to the Property, which governing documents are intended to be consistent with one another and interpreted together to form a unified whole.

"General Plan" means the Folsom General Plan, as amended by Resolution No. 8861.

"Initial Entitlements" means the entitlements described in items 1 through 3, inclusive, of Recital F herein.

"Landowner" means individual owner only; Michele M. Carr and Melissa A. Barron, Angelo K. Tsakopoulos, Russell-Promontory LLC, Carpenter Ranch LP and JW Folsom One, LLC, Aerojet-General Corporation, Easton Development Company, LLC, Folsom Heights LLC, Folsom White Rock Investors LLC, Sacramento Country Day School, Elliott Homes, Inc., Jason A. Zarghami and Rae D. Zarghami, Trustees of the Zarghami Family Trust and Jahanshir Javanifard and Gayle Javanifard, and Arcadian Heights LLC, and its heirs, successors and assigns. For purposes of any Subsequent Entitlement, including any Tier 2 Development Agreement, "Landowner" means the owner or owners of the Property, or portion thereof, which is the subject of such Subsequent Entitlement.

"Land Use Plan" means the Specific Plan Land Use Plan attached hereto as Exhibit B and made a part hereof.

"Mortgagee" means any lender or other entity that obtains a mortgage or deed of trust against the Property.

"New Rules" means any new or modified resolution, rule, adopted by the City Council, and/or ordinance adopted by the City Council after the Effective Date.

"Non-Participating Owners" means all owners of land within the Plan Area who are not Participating Owners and also identified in Exhibit D as "Non-Participating".

"Operative Date" means the date the annexation of the Property is approved as provided in Government Code Section 65865.

"Participating Owners" means the persons and entities described as "Participating" in Exhibit D attached hereto and made a part hereof.

"Permit Streamlining Act" means the provisions of Government Code section 65920 et seq.

"Plan Area" means the area shown on Exhibit B hereto.

"Planning Commission" means the Planning Commission of the City of Folsom.

"Project" means Development Activity on the Property consistent with the Initial Entitlements and/or Subsequent Entitlements, including this Agreement and/or the Tier 2 Development Agreement.

"Property" means those certain parcels of land described in Exhibit A-1 and shown on Exhibit A-2 attached hereto and made a part hereof within the Plan Area. "Landowner's Property" means the portion of the Property owned by such Landowner.

"Public Works Director" means the Public Works Director of the City of Folsom.

"Specific Plan" means the Folsom South Specific Plan adopted by the City Council by Resolution No. 8863.

"Specific Plan Landowners" means all present and future owners of land within the Plan Area.

"Subdivision Map Act" means the provisions of Government Code section 66410 et seq.

"Subsequent Entitlements" means those project specific approvals which, in addition to the Initial Entitlements, are required by the Existing Rules in order for Development Activity to occur on a Landowner's Property. Subsequent Entitlements include, but are not limited to, a Tier 2 Development Agreement, tentative and final Small-Lot Maps, use permits, design review, grading plans and building permits.

"Term" means the term of this Agreement as defined in Section 1.4.1 hereof.

"Tier 1 Development Agreement" means this Agreement.

"Tier 2 Development Agreement" means the development agreement described in Section 2.5 hereof.

#### 1.4 Term.

**1.4.1 Commencement; Expiration.** The Term shall commence upon the Effective Date. This Agreement shall be recorded against the Property within ten (10) days after City enters into this Agreement, as required by California Government Code section 65868.5. The Term shall extend for an initial period of ten (10) years after the Effective Date, 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, except for the indemnification obligation under Section 6.1 below, which shall survive termination of the Agreement.

While the parties hereto have no present agreement to extend the Term, the parties anticipate that negotiation will occur on a Tier 2 Development Agreement(s) prior to the expiration of this Tier 1 Development Agreement. The parties anticipate that the Tier 2 Development Agreement(s) will: (i) replace this Tier 1 Development Agreement or modify it and extend its term, and (ii) will set forth further agreements between the parties relating to future development of the Property or applicable portions thereof.

The City and any individual person or entity identified as a Landowner, its successors or assigns, may enter into a Tier 2 Agreement with the City irrespective of other individuals or entity Landowner being ready to do so.

Pursuant to Government Code Section 65865 this Agreement shall become operative on the Operative Date. In the event that annexation of the property to the City is not complete within two (2) years of the Effective Date of this Agreement or any extensions approved by the City Council, this Agreement shall be null and void.

**1.4.2 Tolling and Extension During Legal Challenge or Moratoria.**

In the event that this Agreement or any of the Initial Entitlements or the EIR or any Subsequent Entitlements required to implement the Initial Entitlements (including, but not limited to, any required federal permit or environmental impact statement related thereto) are subjected to legal challenge by a third party other than Landowner, and Landowner is legally unable to proceed with the Project due to an order in such litigation, the Term of this Agreement and timing for obligations imposed pursuant to this Agreement shall, upon written request of Landowner, be extended and tolled during such litigation until the entry of final order or judgment upholding this Agreement and/or Initial or Subsequent Entitlements, or the litigation is dismissed by stipulation of the parties. Similarly, if any Landowner is unable to undertake Development Activity on the Property due to the imposition by the City or other public agency of a development moratoria for imminent health or safety reasons unrelated to the performance of Landowner's obligations hereunder (including without limitation, moratoria imposed due to the unavailability of water or sewer to serve the Plan Area), then the Term of this Agreement and timing for obligations imposed pursuant to this Agreement shall, upon written request of such Landowner, be extended and tolled for the period of time that such moratoria prevents such development of the Property. In no event shall any extension of the term of the Development Agreement under this section exceed twenty four (24) months from the written request of any Landowner without further action and approval of the City Council.

Notwithstanding any extension or tolling of the term of this Agreement as provided above in this Section 1.4.2, the City may at Landowner's cost, process any preliminary plans submitted by a Landowner, including, without limitation, any applications for tentative parcel map or tentative subdivision approval, during such tolling period, provided, however, that Landowner waives the time limits set forth in the Subdivision Map Act or Permit Streamlining Act for any action by City during the tolling period to approve such tentative parcel map or tentative subdivision map or other development permit approval. In the event of a moratorium consistent with this Development Agreement affecting tentative map or development permit approval, City shall not be obligated to hold any hearings, public meetings or to approve such tentative map or development permit during the moratorium. In the event of a moratorium consistent with this Development Agreement affecting the issuance of building permits, City may process, but shall not be obligated to hold any hearings, public meetings to approve, or issue any building permits during such moratorium.

**1.5 Amendment of Agreement.** This Agreement may be amended from time to time by mutual written consent of City and any Landowner with respect to the Landowner's Property (and/or any successor owner of any portion of the Landowner's Property to which the benefit or burden of the amendment would apply), in accordance with the provisions of the Development Agreement Statute and City ordinances. If the proposed amendment affects less than the entirety of the 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.

**1.5.1 No Amendment Required for Minor Administrative Modifications.** The parties acknowledge that under the Specific Plan, the Community Development Department of the City 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 Community Development Department of any Minor Administrative Modifications (as defined in the Specific Plan) to the Initial Entitlements that are consistent with this Agreement shall not constitute nor require an amendment to this Agreement to be effective. Notwithstanding the procedure for minor amendments, nothing in the Initial Entitlements or this Agreement would preclude the Community Development Director or the City Manager from bringing such amendments to the Planning Commission and/or City Council for action if he/she believes it is in the best interests of the City to do so.

**1.5.2 Recordation Upon Amendment or Termination.** Except when this Agreement is automatically terminated due to the expiration of the Term, the City shall cause any amendment hereto and any other termination hereof to be recorded, with the County Recorder within ten (10) days after City executes such amendment or termination. Any amendment or termination of this 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.

**ARTICLE 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, land identified in the Specific Plan for public purposes and location of public utilities and public improvements and other terms and conditions of development applicable to the Property shall be those set forth in the Initial Entitlements and this Agreement.

Nothing in the preceding sentence shall be construed to give the Landowner the right to engage in Development Activity on the Property unless and until the Subsequent Entitlements and the requirements of Section 2.4 and 2.5 below have been fully satisfied.

**2.2 Vested Rights.** Subject to the prohibition on Development Activity until Subsequent Entitlements are obtained, and the requirements of Sections 2.4 and 2.5 below, City agrees that, except with respect to the issues identified in this section and other provisions of this Agreement associated with adoption of New Rules and application of Existing Rules, City is granting, and grants herewith, vested rights to develop the Property in accordance with the terms and conditions of this Agreement, the Existing Rules, and the Initial Entitlements. City acknowledges that the Initial Entitlements include the land uses and approximate acreages for the Property as shown and described in Exhibit A-1 and Exhibit B, attached hereto.

Such uses shall be developed in accordance with the Subsequent Entitlements, as such Subsequent Entitlements provide on the date of approval thereof by City.

The parties specifically agree that no vested rights exist with respect to the following issues which may be addressed in the Tier 2 Agreement:

- A. Affordable Housing – The City retains all rights and authority and does not vest any rights with respect to Affordable Housing. At the time of adoption of this Agreement, the City's Regional Housing Needs Allocation (RHNA) numbers for the Plan Area have not been provided. As such the City retains all rights to modify the land plan, rezone properties, adopt ordinances and adopt programs in its housing element to further the goals of affordable housing in any future Housing Element and to assure there is

adequately zoned land to meet the RHNA allocation for the Plan Area. Nothing in this section is intended to affect or alter vested rights that are statutorily created, for example with a vesting tentative subdivision map.

- B. Area 40 – At the time of adoption of this Agreement, the land uses in and surrounding Area 40 are identified and the parties believe that such uses are consistent with the ultimate solution to the Superfund status of a portion of this site. This Agreement grants Landowner the right to develop the uses as identified in the Specific Plan for Area 40 subject to the limitations in this paragraph. No Record of Decision or other official and binding documents have articulated when Area 40 will be released for development or any restrictions which might be placed on the property in Area 40. If land designated as Community Park West, or any portion thereof, is not available for use as park and open space as identified in the Specific Plan concurrently with surrounding development as determined by the City, the City may rezone equivalent acreage of suitable park and open space land within that area generally west of the oak woodland open space area as described in Exhibit E for development as interim or permanent park and open space to meet the need generated by surrounding development. Nothing in this Agreement is intended to provide vesting rights related to Area 40 or other lands in the Plan Area that would prevent the City from modifying the land plan, rezoning properties, and adopt ordinances in order to accomplish the purposes of this Section. Nothing in this section is intended to prevent minor modifications of the park and open space areas as may be required by final approvals from the EPA or other governing bodies. Agreements with Landowner associated with acceptance by the City and dedication of land for park uses, open space and oak tree mitigation in Area 40 will be addressed in the Tier 2 Development Agreement.
- C. The Specific Plan, Section 7 addresses circulation in the Plan Area. The City retains all rights and authority and does not vest any rights with respect to changes in the circulation element that are necessitated by an approved truck management plan (TMP) associated with the quarry projects south of the Plan Area. The City, County, quarry operators and the Landowner continue to address a TMP relating to truck traffic from quarries south of the Plan Area. The circulation elements of the plan may change based on the solution ultimately reached and the City reserves all rights to address the ultimate solution.

**2.2.1 Conflict Between Existing Rules and this Agreement.** In the event of any conflict or inconsistency between this Agreement and the Existing Rules or between this Agreement and the other Initial Entitlements, this Agreement shall prevail and control.

**2.3 Density Transfer.** Density Transfers shall be permitted as set forth in the Specific Plan.

**2.4 Subsequent Entitlements.** Each Landowner's Vested Rights to proceed with the physical development of the Landowner's Property shall be subject to a Tier 2 Development Agreement which shall be obtained in conjunction with subsequent project-specific approvals and permits as required by the Existing Rules. Following the approval of the Initial Entitlements, each Landowner shall obtain approval by the City of the Subsequent Entitlements. Nothing shall preclude the City from adopting and requiring compliance from

Landowner or Specific Plan Landowners and their successors and assigns of any New Rules adopted by the City which are not inconsistent with the Entitlements with respect to permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or any other terms of the Initial Entitlements or this Agreement.

**2.5 Future Tier 2 Development Agreement(s) Required.** Notwithstanding any other provision of this Agreement to the contrary, and as provided in Section 1.4.1, no Development Activity shall occur on the Property, or any portions thereof, until Landowner has entered into a project-specific development agreement or agreements with City in addition to, or in the place of, this Agreement, applicable to the portion of the Property. The purpose of the Tier 2 Development Agreement(s) shall be to implement the requirements of the Initial Entitlements and EIR. The Tier 2 Development Agreement(s) shall relate to the portion or phase of the Property in which a specific project development is proposed, and will direct Development Activity on such portion or phase of the Property, including, but not limited to, project-specific infrastructure requirements, new mitigation or other fees, adjustment of fee programs, specific terms of CFD's, and fee credit/reimbursement program details and New Rules adopted by the City which are not inconsistent with the Entitlements with respect to permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or any other terms of the Initial Entitlements or this Agreement.

For the Term of this Agreement, this Agreement shall continue in effect as to any portion of the Property which is subject to a Tier 2 Development Agreement except as modified by specific provisions of that Tier 2 Development Agreement.

**2.6 Ordinance, Resolution and Officially Adopted Rules**

**2.6.1 Conflicting Ordinances or Moratoria.** Except as provided in this Agreement, so long as this Agreement remains in full force and effect, no future resolution, City Council adopted rule, ordinance adopted by the City or by initiative (whether initiated by the City Council or by a voter petition, other than a referendum that specifically overturns the City's approval of the Initial Entitlements) shall directly or indirectly limit the rate, timing or sequencing of development in accordance with the Initial Entitlements and this Agreement. Provided, however, notwithstanding anything to the contrary above, Landowner shall be subject to any growth limitation ordinance, resolution or rule that is adopted by the City to eliminate placing residents of the development in a condition which is imminently dangerous to their health or safety, or both, in which case City shall treat development of the Property in a uniform, equitable and proportionate manner with all other properties that are affected by said dangerous condition.

**2.6.2 Application of New Rules.** All City Council adopted rules, resolutions and ordinances, which are not inconsistent with the permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or any other terms of the Initial Entitlements or this Agreement shall apply. It is agreed by the parties that the City is not restricted in any way by this Agreement from adopting any rules, resolutions or ordinances which are not inconsistent with the Entitlements with respect to permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or any other terms of the Initial Entitlements or this Agreement.

**2.6.3 Fees.** Consistent with the terms of this Agreement and subject to the terms of any future Tier 2 Development Agreement or amendment hereof, City

shall have the right to impose and Landowner agrees to pay such development fees, impact fees and other such fees levied or collected by City. Nothing in this Agreement precludes or is intended to preclude the City from adopting any new fees of any kind or amending any existing fee ordinance, including raising fees provided such new fees or amendments are done in accordance with applicable ordinances or statutes or agreed by Landowner or Specific Plan Landowners in the Tier 2 Development Agreement(s) or other agreement. Landowner further agrees not to challenge any Existing Fee applied to the Property.

**2.6.4 Maintenance of Open Space/Public Property.** The parties shall address the financial methods for funding the maintenance of Open Space and other public property in the Tier 2 Development Agreement and/or a financing implementation plan for the Property.

**2.6.5 Application of Changes.** Nothing in this Agreement shall preclude the application to development of the Property of changes in City laws, regulations or plans, in order to comply with mandates or requirements due to 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 may modify or suspend such provisions of the Agreement as may be necessary to comply with such state or federal laws or regulations and City and Landowner shall take such action as may be required pursuant to this Agreement to comply therewith.

**2.6.6 Authority of City.** Except as otherwise provided herein, this Agreement 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.

**2.6.6.1 Requirements for Subsequent Plans and Studies.** In addition to, and consistent with the Entitlements, prior to approval of the first tentative Small Lot Map and a Tier 2 Development Agreement for the Property, or any portion or phase thereof, plans or studies must be completed, including but not limited to, those listed below by Landowner and approved by the City for the phase of the Plan Area as identified in such studies, in which the Property is located, including how the particular phase relates to and affects the balance of the Specific Plan:

- (1) Capital Facilities Phasing Plan
- (2) Financing Implementation Plan
- (3) Public Right-of-Way and Land Acquisition Program
- (4) Implementation Monitoring Program
- (5) Design Guidelines
- (6) Subdivision Improvement Plans

It is the intent of the parties that the terms above will be incorporated into the Tier 2 Development Agreement.

**2.6.7 Uniform Codes and Standard Construction Specifications and Design and Procedures Manual and Improvement Standards.** Nothing herein shall preclude City from applying to the Property standards contained in uniform building, construction, plumbing, fire or other uniform codes and Title 24 of the California Code of Regulations, City Standard Construction Specifications and Design and Procedures Manual and Improvement Standards relating to building standards in effect at the time of approval of the appropriate permits which may include, but not be limited to, building, grading or other construction permits approvals for the Property, as the same may be adopted or amended from time to time by City, provided that the provisions of any such uniform code shall:

- (1) Apply to the Property only to the extent that such code is in effect on a City-wide basis; and
- (2) With respect to those portions of any such uniform code that have been adopted by City without amendment, be interpreted and applied in a manner consistent with the generally prevailing interpretation and application of such code in California.

In the event of a conflict between the Design and Procedures Manual and Improvement Standards and the Specific Plan, the Specific Plan shall control.

**2.6.8 LAFCO Conditions.** Landowner shall comply or cooperate with the City to assure compliance with any conditions imposed in the annexation process by the LAFCO Commission.

**2.6.9 Mather Noise Easements.** Landowner shall, prior to or concurrent with the execution of a Tier 2 Development Agreement, record a noise easement over the Property in a form acceptable to the City relating to noise caused by aircraft arriving or departing from Mather Airport.

**2.6.10 Feasible School Impact Mitigation Requirements.** Prior to or concurrent with the execution of its Tier 2 Development Agreement, Landowner shall comply with the school's provision in Measure W (Folsom Charter Provision Section 7.08D) and incorporate feasible school impact mitigation requirements as provided in LAFCO Resolution No. 1196, Section 13.

## **2.7 Application, Development and Project Implementation Fees.**

**2.7.1 Application, Processing and Other Fees and Charges.** Landowner shall pay those application, processing, inspection and plan checking fees and charges as may be required by City under the current regulations for: (1) processing applications and requests for Subsequent Entitlements, permits, approvals and other actions; (2) and for monitoring compliance for any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Landowner hereunder.

## **ARTICLE 3**

### **LANDOWNER OBLIGATIONS**

**3.1 Development, Connection and Mitigation Fees.** Except as otherwise provided in this Agreement or a Tier 2 Development Agreement or any amendment of this Tier 1

Development Agreement, 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.

**3.2 Community Facilities District – Project Infrastructure.**

A. **Formation.** At the request and with the support of the Landowner, City shall, subject to the limitation in Section 3.2.1, form one or more CFDs for the purpose of financing the acquisition of a portion or portions of the public infrastructure and facilities within the Specific Plan. The infrastructure and facilities that may be constructed and/or acquired with Infrastructure CFD funds include, without limitation, roads, water, sewer, drainage, public utilities, City facilities, parks, open space and other such public facilities of the City located within the Plan Area and/or required to serve development of the Plan Area. Formation of an Infrastructure CFD may include other properties not owned by Landowner but within the Plan Area, and shall be pursuant to and consistent with the requirements of this Agreement, applicable City policies and the Mello-Roos Community Facilities Act of 1982 (Government Code section 53311 et seq.).

**3.2.1** Nothing in this Section 3.2 shall be construed to require Landowner to form an Infrastructure CFD nor, if formed, to preclude the payment by an owner of any of the parcels within the Property to be included within the Infrastructure CFD of a cash amount equivalent to its proportionate share of costs for the CFD improvements, or any portion thereof, prior to the issuance of bonds. Nothing in this Section shall be construed to require City to form an Infrastructure CFD if City determines, in its sole discretion, formation would not be consistent with applicable city policies or with prudent public fiscal practice.

**3.2.2** Concurrent with any formation of an Infrastructure CFD, any Landowner who intends to install improvements for acquisition by the Infrastructure CFD and City shall enter into an acquisition and shortfall agreement, in form and substance acceptable to City, whereby such constructing Landowner shall covenant to construct the improvements financed by the CFD then required to be installed pursuant to the Subsequent Entitlements. To the extent permitted by and consistent with statute, including without limitation, Government Code section 53313.51, said acquisition and shortfall agreement shall include provisions to permit payments for discrete portions of improvements during construction of any CFD Improvements that have been accepted by City and are capable of serviceable use and to permit payments for discrete portions or phases of the partially completed improvement, as the costs thereof are incurred by the constructing Landowner and confirmed by City.

**3.2.3** Nothing herein shall be construed to limit Landowner's option to install any improvements through the use of traditional assessment districts or private financing.

**3.3 Disclosure to Subsequent Purchasers.** This Agreement shall constitute notice to all successors to Landowner hereunder, and to all subsequent purchasers of any lots, parcels and/or residential units within the Property, of all of the matters set forth herein. If Landowner records any covenants, conditions and restrictions on the Property, such covenants, conditions and restrictions shall include disclosure of the existence of this Agreement and a summary of the material obligations contained herein.

**3.4 EIR Mitigation Measures.** Notwithstanding any other provision in this Agreement to the contrary, as and when Landowner elects to develop the Property, or any portion or phase thereof, Landowner shall be bound by, and shall perform, all mitigation

measures contained in the EIR related to such development which are adopted by City and are identified in the mitigation monitoring plan as being a responsibility of Landowner.

**3.5 Backbone Infrastructure – Land Dedication – Landowner Obligations for Backbone Infrastructure.** The Backbone Infrastructure includes improvements that are required to provide access and public utilities to any part of the Plan Area.

As will be more particularly described in the Tier 2 Development Agreement(s), the construction obligation of each phase or sub-phase of development of the Plan Area may require construction of certain portions of Backbone Infrastructure on the property of other Specific Plan Landowner(s). This will require access for the purpose of construction on, over and across the Backbone Lands. To assure that all owners of land within the Specific Plan have confidence that they can access, construct, and offer to the City public improvements required of the phase or sub-phase of development, each Landowner hereby agrees to provide all Specific Plan Landowners, rights of way, easements, and temporary construction and access easements to those Backbone Lands on which Backbone Infrastructure is to be constructed as depicted on **Exhibit C** or as later modified for the Backbone Infrastructure in the Plan Area. Such temporary construction easements shall include the ability to access open space parcels to construct improvements required by conditions of applicable Clean Water Act Section 404 Permit(s). Subject to indemnification of the other Specific Plan Landowner(s) by the constructing Landowner, such access easement rights shall not be withheld, nor shall the constructing Landowner be required to pay any compensation to any underlying Specific Plan Landowner(s) for such access easement, during the term of this Agreement. Temporary construction easements shall automatically terminate upon acceptance of the fully-completed public improvements by City.

Rights of way and easements for all Backbone Lands will be granted to all the Specific Plan Landowners in a format acceptable to the City for purposes of access and construction of public improvements, and to the City as an irrevocable offer of dedication (IOD) for purposes of access and public utilities. As necessary, the easements shall also benefit the City. These easements and IODs will be recorded at the Sacramento County Recorder's Office and shall be for the benefit of each Specific Plan Landowner. The easement width for Backbone Lands shall be to the width of the road right-of-way plus 25' or the back of the landscape corridor, whichever is less and include a temporary construction easement of a width adequate to allow the necessary grading to construct the improvement and to facilitate construction access, including increasing the width when required by site conditions. In the case of an easement outside a road right-of-way, the width shall be consistent with the requirements of the City and include a temporary construction easement. All easements and IODs described above shall be recorded before or concurrent with the recordation of any final parcel or subdivision map, but no later than one hundred eighty (180) days after annexation of the Plan Area to City. A survey map exhibit of the easements will accompany the descriptions and plats and shall be recorded as a supplemental exhibit(s).

The easements and IOD's described in this Section 3.5 may be granted or dedicated, as the case may be, by separate legal instruments, or by reference thereto on the face of a Parcel Map for the sole purpose of right of way and utility easement dedication which shall be recorded with the Recorder's Office of the County of Sacramento. Notwithstanding anything in this Agreement to the contrary, each Landowner shall have the right to process and have approved, prior to the approval of any Tier 2 Development Agreement, one or more Parcel or Subdivision Maps which create large lot parcels, and which effect the grant or dedication of the easements and IOD's described in this Section 3.5, pursuant to the Subdivision Map Act.



City shall use its best efforts, to the greatest extent permitted by law, to impose the obligations described in this Section 3.5 upon every owner of land within the Plan Area.

**3.5.1 Adjustments to Dedications.** City acknowledges that, as each Landowner processes large lot and small lot subdivision maps for the Property, or any portion or phase thereof, minor adjustments to the boundaries of the areas dedicated pursuant to the terms of Section 3.5 above may be required based on the final engineering for such maps and Landowner may also propose to relocate certain roadways, utilities or other City facilities. City and Landowner agree to cooperate with any such proposed adjustments or relocations, provided the approval of such adjustments or relocations shall be subject to the City's sole discretion. Upon such approval, City and Landowner will cooperate to effect such adjustments or relocations, subject to Landowner offering to dedicate to the City any replacement area that may be required by such adjustment or relocation so long as any such replacement area has not then been developed by Landowner.

**3.5.2 Release of Excess Offers of Dedication/No Compensation.** In addition to adjustments to dedicated property pursuant to Section 3.5.1 above, City may determine, in its sole discretion that certain property offered for dedication may not be necessary for public purposes associated with the Specific Plan. Because the offers of dedication pursuant to this Section 3.5 are being made early in the planning process to assure the availability of the areas planned for the Backbone Infrastructure, City agrees that subsequent adjustment to or releases of areas approved by the City that were previously offered for dedication by Landowner shall not require any compensation to be paid by Landowner for the property released, notwithstanding any existing City ordinances or policies to the contrary. Landowner's early dedication hereunder, together with its covenant to dedicate any replacement area that may be required by an adjustment or relocation, provides adequate compensation to the City for any such subsequent abandonment by the City of these dedicated areas. Nothing in this section is intended to relieve Landowner from paying any applicable fees at the then existing rate associated with any actions required by the City under this section.

**3.5.3 Reimbursement of Costs for Compliance with Requirements of this Agreement.** This Agreement provides various requirements or actions by the City. Landowner agrees to pay the cost of compliance by staff or consultants retained by the City in order to comply with the requirements of this Agreement where cost of such compliance is not otherwise provided in a fee program. In the case of actions covered by a fee program, Landowner agrees to pay the then existing rate associated with such action.

#### ARTICLE 4

##### CITY OBLIGATIONS

**4.1 City Cooperation.** City agrees to work in good faith with each Landowner as it applies to City for permits that may be required by City and, to the extent applicable, other public, state and federal agencies. In the event state or federal laws or regulations enacted after this Agreement has been executed or action of any governmental jurisdiction other than the City prevents or precludes compliance with one or more provisions of this Agreement, or requires material modification of the Initial Entitlements or any Subsequent Entitlement approved by City, Landowner shall notify City in writing of the anticipated duration of any delay caused thereby, and, provided any such delay is not the fault of Landowner, the parties agree

Landowner may seek an extension of the Agreement as approved by the City Council as may be reasonably necessary to comply with such new state and federal laws or regulations or the regulations of the other governmental jurisdictions.

**4.2 Reimbursable Planning and Environmental Costs: Specific Plan Fee.** The Participating Owners have paid the costs for the preparation of the city feasibility studies, other technical studies, the Specific Plan, including design guidelines, development standards, financing plan(s), and Infrastructure plans, and the EIR. Such preparation has benefited the Non-Participating Owners.

**4.2.1 Specific Plan Reimbursement Fee.** To provide the Participating Owners with reimbursement for the planning and environmental costs described above, the parties agree that the City shall require the Non-Participating Owners to pay to City a specific plan fee, on terms and conditions acceptable to City. City shall make a good faith effort to establish the Specific Plan Reimbursement Fee ("SPRF") within one (1) year of the Operative Date. Participating and Nonparticipating Owners agree that such a fee shall be imposed. Such fee shall be proposed to the City Council pursuant to the provisions of Government Code section 65456. The costs eligible for reimbursement shall be submitted to the City by the Participating Owners for City's review and approval. Adoption of the fee is subject to the discretion of the City Council. Nothing in this section prohibits subsequent modification or repeal of any fee. Any fee to be imposed shall be addressed in the Tier 2 Development Agreement(s) or by separate agreement with Landowner and adoption of an Ordinance.

**4.2.2 Specific Plan Infrastructure Fee.** To provide for an equitable funding mechanism for various public improvements and public land dedications within the Plan Area, City and Landowner, together with other Participating Owners, agree to implement a Specific Plan Infrastructure Fee ("SPIF"). Participating and Nonparticipating Owners agree that such a fee shall be imposed. The SPIF will be collected by the City and the proceeds thereof used to fund the cost of such facilities and dedications, or as the case may be, equitably reimburse or credit the Specific Plan Landowners who constructed such facility or made such dedication. The fee shall provide the Specific Plan Landowners who install the public improvement and/or dedicate the public lands with reimbursement for public improvements and public land dedication described above or which hereafter arise. The costs eligible for reimbursement shall be submitted to the City by the constructing Specific Plan Landowner(s) for City's review and approval. Adoption of the fee is subject to the discretion of the City Council. Nothing in this section prohibits subsequent modification or repeal of any fee. Any fee to be imposed shall be addressed in the Tier 2 Development Agreement(s) or by separate agreement with Specific Plan Landowners and adoption of an Ordinance.

**4.2.3 Collection of the Specific Plan Fee.** The parties agree that if the City adopts the fee(s) specified in Sections 4.2.1 and 4.2.2 above that there will be administrative costs associated with administration of the fee program and such fee will include a percentage or other component to ensure that the City does not have any unreimbursed administrative expenses. The fee may provide an adjustment for CPI as determined by the City Council and may include any unreimbursed costs incurred by the City. In no case shall the City be subject to

any liability for failing to collect any fee specified in Sections 4.2.1 and 4.2.2 above other than paying to the Landowner any fees collected. The parties agree that the City has no obligation to pay any fees or make any reimbursement for cost incurred except to the extent those such fees have been collected. The City retains the right to cease the fee program at any time. The parties agree and acknowledge that the obligations in Article 6 of this Agreement relating to Defense, Indemnification and Hold Harmless are applicable to any challenges, claims or suits associated with the fees referenced in Sections 4.2.1 and 4.2.2 above.

Upon receipt of SPRF or SPIF, City shall, to the extent permitted by law, pay such amounts to the eligible Landowner or its assignee without regard to the status of the Project. If City attempts in good faith but is unable to collect SPRF or SPIF from a particular property owner or person seeking a governmental approval or City is legally barred from collecting such fees from any person or from paying the proceeds thereof to such Landowner, then Landowner hereby holds City harmless for such failure. In such case, City shall, upon request by Landowner and if the City is legally able to do so, assign its rights to Landowner so that it can pursue collection of the Specific Plan Reimbursement Fee and the Specific Plan Infrastructure Fee. However, City may continue to collect such fees from other persons seeking governmental approvals and if it collects, City shall, to the extent reimbursements are owed, pay such proceeds to the eligible Landowner to the extent permitted by law and to the extent such proceeds are actually received by the City.

**4.2.4 Credits/Reimbursements - Personal Property.** Any credit or reimbursement due to the Participating Owners arising under Section 4.2.1 and a constructing or dedicating Landowner arising under Section 4.2.2 above shall be the personal property of such Owners or Landowner and shall not be affixed to or run with the Property. Landowner may sell, assign, transfer or hypothecate any such credit or reimbursement at any time provided the transferring Landowner owes no monetary obligation to the City in which case the City may apply any such fee to the obligation owed by the transferring Landowner.

**4.3 Applications for Permits and Entitlements.** 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 Initial Entitlements and this Agreement, and shall exercise its best efforts to act upon such applications in an expeditious manner. Accordingly, to the extent that the applications and submittals are in conformity with the Initial Entitlements and this Agreement and adequate funding by Landowner exists therefore, City agrees to diligently and promptly accept, review and take action on all subsequent applications and submittals made to City by Landowner in furtherance of the Project. Similarly, City shall promptly and diligently review and approve improvement plans, conduct construction inspections and accept completed facilities. Nothing in this section is intended to shorten any statutory review periods. In the event City does not have adequate personnel resources or otherwise cannot meet its obligations under this Section 4.3, and Landowner enters into an agreement with City to pay all costs of City in conjunction therewith, City may utilize, consistent with City policy, outside consultants for inspection and plan review purposes at the sole expense of Landowner. Landowner acknowledges that, notwithstanding the ability to hire such outside consultants, City may need to retain adequate staff to supervise the work of the consultants, which may require additional lead time and expense in order for the City to effectively and efficiently use the consultants to assist in this work.

**4.3.1 Compliance with Government Code Section 66473.7.** A subdivision, as defined in Government Code section 66473.7, shall not be approved unless any tentative map prepared for the subdivision complies with the provisions of said Section 66473.7; this provision is included in this Agreement to comply with Section 65867.5 of the Government Code.

**4.4 Natomas Central Mutual Water Company.** Some Landowner(s) within the Plan Area have entered into an agreement with the Natomas Central Mutual Water Company ("NCMWC") wherein NCMWC agreed to sell certain surface water supplies to owners of land within the Plan Area for service to the Plan Area (the "Water Agreement"). A copy of the Water Agreement has been provided to the City. Each Landowner who is a party to the Water Agreement agrees to assign its right, title, and interest in the Water Agreement to City and City agrees to accept such assignment, subject to the terms and conditions set forth in that certain Memorandum of Understanding between City and Folsom South Area Group as approved by City Council per Resolution No. 8354 dated August 26, 2008. The parties shall enter into a formal assignment agreement relative to this water.

#### ARTICLE 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 this 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.

Notwithstanding the above, a default by an individual or entity within the definition of Landowner shall not constitute a default by other individuals or entities within definition of Landowner.

**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 with respect to Landowner's Property. A finding by City of good faith compliance by Landowner with the terms of this Agreement shall be conclusive with respect to the performance of Landowner during the period preceding the review. Each Landowner shall be responsible for the cost reasonably and directly incurred by the City to conduct such annual review of such Landowner's compliance, 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 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.

Upon written request by the Landowner(s) the City shall deposit in the mail to the requesting Landowner(s) 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. If the City has not performed an annual review, Landowner(s) may request, in writing, that it be performed. If City has not performed the annual review within sixty (60) days of the request, the Landowner(s) shall be deemed to be in substantial compliance with the terms of this Agreement.

**5.2.1 Permitted 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, and terrorist acts, 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 such delay, or longer as may be mutually agreed upon. Nothing in this section is intended to apply to an extension of the term of the Agreement, which requires City Council approval.

**5.2.2 Permitted Extensions by City.** In addition to any extensions to the time for performance of any obligation due to a delay under Section 5.2 above, the City, in its sole discretion (acting through the City Manager or designee) may extend the time for performance by any Landowner of any obligation hereunder. Any such extension shall not require an amendment to this Agreement, so long as such extension only involves the time for performance thereof and does not change the obligations to be performed by such Landowner as a condition of such extension. Nothing in this section is intended to apply to an extension of the term of the Agreement, which requires City Council approval.

**5.3 Legal Action; No Obligation to Develop; Specific Enforcement.** 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. All legal actions shall be initiated in the Superior Court of the County of Sacramento, State of California. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that the City would not have entered into this Agreement had it been exposed to liability for damages from Landowner, and that therefore, each Landowner hereby waives all claims for damages against the City for breach of this Agreement. Landowner further acknowledges that under the Development Agreement statute, land use approvals (including development agreements) must be approved by the City Council and that under law, the City Council's discretion to vote in any particular way may not be constrained by contract, except as permitted in the Development Agreement statute. Each Landowner therefore waives all claims for damages against the City in the event that this Agreement or any Project Approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions or deletions to which Landowner is opposed. Landowner further acknowledges that as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and each Landowner waives all claims for damages against the City in this regard. Nothing in this section is intended to nor does it limit Landowner rights to equitable remedies as permitted by law.

By entering this Agreement, Landowner shall not be obligated to develop the Property, and, unless Landowner seeks to develop the Property, Landowner shall not be obligated to install or pay for the costs to install any improvements or facilities, or to otherwise perform any obligation under this Agreement.

**5.4 Effect of Termination.** If this Agreement is terminated, in whole or part, following any event of default of any Landowner or for any other reason, such termination shall not affect the validity of this Agreement with respect to any other Landowner's Property or any of the Initial Entitlements, other than this Agreement, or any Subsequent Entitlements for the defaulting Landowner's Property, nor shall such termination affect any building or improvement within the defaulting Landowner's 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 with respect to a defaulting Landowner's Property shall prevent such 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.

**5.5 Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

#### ARTICLE 6

#### HOLD HARMLESS AND COOPERATION

**6.1 Hold Harmless.** 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 costs, expenses, damages, liability for damages or claims of 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 sole 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 and all lawsuits, claims, challenges, damages, expenses, costs, including attorneys fees that may be awarded by a court, or in any actions at law or in equity arising out of or related to the processing, approval, execution, adoption or implementation of the Project, the Initial Entitlements, this Agreement, or the environmental documentation and process associated with the same, exclusive of any such actions brought by Landowner, its successors-in-interests or assigns. The City shall retain the right to appear in and defend any such action or lawsuit on its own behalf regardless of any tender under this provision.

**6.2 Cooperation and Defense 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. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Entitlements, the Parties shall cooperate and appear in defending such action. Landowner shall bear its own costs of defense as a real party in interest in any such action, and Landowner shall pay the City for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceeding, provided that City reasonably cooperates with Landowner in the defense of such action. The City, in its sole discretion, may retain separate counsel and may defend, settle or compromise the action as it deems appropriate and in the best interests of the City. Prior to any settlement or other resolution of any matter covered by this paragraph, the City agrees that it will first consult with Landowner.

#### ARTICLE 7

##### GENERAL

**7.1 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 according to its terms 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.

**7.2 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 and Specific Plan.

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

**7.4 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.

**7.5 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:

Community Development Director  
City of Folsom  
50 Natoma Street  
Folsom, CA 95630

With a copy to:

City Manager  
City of Folsom  
50 Natoma Street  
Folsom, CA 95630

City Attorney  
City of Folsom  
50 Natoma Street  
Folsom, CA 95630

Notice required to be given to a Landowner shall be addressed to the respective address, see Exhibit G, with a copy to:

Ardie Zahedani  
RCH Group  
1640 Lead Hill Boulevard, Suite 220  
Roseville, CA 95661  
(916) 782-2424  
[azahedani@therchgroup.com](mailto:azahedani@therchgroup.com)

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

**7.6 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.

**7.7 Construction.** This Agreement shall be subject to and construed in accordance and harmony with the City of Folsom Municipal Code, as it may be amended, provided that such amendments do not impair the rights granted to the parties by this Agreement. All Parties have been represented by counsel in the preparation of this Agreement and no presumption or rule that ambiguity shall be construed against a drafting party shall apply to interpretation or enforcement of this Agreement. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain.

**7.8 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.

**7.9 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.

**7.10 Mortgage Protection.** The parties hereto agree that this Agreement shall not prevent or limit Landowner, in any manner, at Landowner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property, except as limited by the provisions of this Section. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Landowner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, may request to receive written notification from City of any default by Landowner in the performance of Landowner's obligations under this Agreement.

(c) If City receives a timely request from a Mortgagee requesting a copy of any notice of default given to Landowner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Landowner. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed to Landowner under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, by any means, whether pursuant to foreclosure of the mortgage deed of trust, or deed

in lieu of such foreclosure or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement. Provided, however, notwithstanding anything to the contrary above, any Mortgagee, or the successors or assigns of such Mortgagee, who becomes an owner of the Property through foreclosure shall not be obligated to pay any fees or construct or complete the construction of any improvements, unless such owner desires to continue development of the Property consistent with this Agreement and the Initial and Subsequent Entitlements, in which case the owner by foreclosure shall assume all the past and future, including delinquent obligations of Landowner hereunder in a form acceptable to the City.

**7.11 Assignment.** From and after recordation of this Agreement against the Property, Landowner, or any individual person or entity, shall have the full right to assign this Agreement, with prior notification to the City, as to the Property, or any portion thereof, in connection with any sale, transfer or conveyance thereof, and upon the express written assignment by a Landowner and assumption by the assignee of such assignment in the form attached hereto as Exhibit E, 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. No assignment shall be permitted if there are any outstanding payment obligations to the City by defaulting Landowner until such delinquency is satisfied or the parties enter into a payment agreement.

**7.12 Entire Agreement.** This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Agreement, inclusive of its Recitals and Exhibits, constitutes the entire understanding and agreement of the parties. This Agreement may be signed in identical counterparts and the signature pages and consents, together with appropriate acknowledgments, may be removed from the counterparts and attached to a single counterpart, which shall all be considered a fully-executed original for all persons and for purposes of recordation hereof.

IN WITNESS WHEREOF, the City of Folsom has authorized the execution of this Agreement in duplicate by its Mayor, and attested to by the City Clerk under the authority of Ordinance No. 1149 adopted by the City Council on the 12<sup>th</sup> day of July, 2011.

CITY OF FOLSOM

Andrew J. Morin  
Andrew J. Morin, Mayor

APPROVED AS TO FORM:

CITY ATTORNEY, CITY OF FOLSOM

Bruce C. Cline 8/2/11  
Bruce C. Cline

Attest:  
Christa Freeman  
Christa Freeman 8/2/11

[LANDOWNER SIGNATURES ON FOLLOWING PAGES]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California }  
County of Sacramento }

On August 2, 2011, before me, Lydia L. Konopka, Notary Public,  
personally appeared Andrew J. Morin

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

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



WITNESS my hand and official seal.

SIGNATURE Lydia L. Konopka

PLACE NOTARY SEAL ABOVE

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

Description of attached document

Title or type of document: Tier 1 Development Agreement

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other than Named Above: \_\_\_\_\_