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AND WHEN RECORDED RETURN TO:
City Clerk
City of Redding
777 Cypress Avenue
Redding, California 96001

Fee Exempt - Gov't Code §27383
(Space above for Recorder's Use)

**OASIS TOWNE CENTER
DEVELOPMENT AGREEMENT**

between

THE CITY OF REDDING
a California municipal corporation

and

LD&C, INC.
a California corporation

Dated as of December 1, 2015 for reference purposes only

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered by and among THE CITY OF REDDING, a California municipal corporation (“**City**”), and LD&C, INC. a California corporation (“**Developer**”), with reference to the following facts:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the “Development Agreement Statute,” Sections 65864 et seq., of the Government Code. City, a general law city, is authorized pursuant to the Development Agreement Statute to enter into development agreements with persons having legal or equitable interests in real property for the purpose of establishing predictability for both City and Developer in the development process. Developer has requested that City enter into a development agreement for the development of the Property, as defined below. City enters into this Agreement pursuant to the provisions of the California Government Code, the City’s General Plan, the City Municipal Code, and applicable City policies.

B. Developer, with legal or equitable interest of that certain real property consisting of approximately 164 acres of land located in the City of Redding, County of Shasta, State of California, more particularly described in Exhibit A attached hereto (the “**Property**”). Developer desires to develop approximately 150 acres of the Property as a commercial center (the “**Project**”) and remaining acreage for residential and other local commercial purposes. The Property is contained within the Buckeye Redevelopment Project Area, and the Shasta County Redevelopment Projects Area (collectively, the “**Redevelopment Plans**”).

C. The Parties desire to enter into this Agreement in order to set forth certain financing arrangements that would provide sufficient funding to ensure that adequate and appropriate public facilities, infrastructure and services exist in advance of or at the time of need generated by the development of the Property and that the Property will be developed in accordance with the Redevelopment Plans.

D. This Agreement constitutes a current exercise of City’s police powers to provide predictability to Developer in the development approval process by vesting the permitted uses(s), density, intensity of use, and timing and phasing of development consistent with the Redevelopment Plans in exchange for Developer’s commitment to provide significant public benefits to City. This Agreement allows City to realize significant economic, social, and public facilities benefits and services, which will advance the interests and meet the needs of the City’s residents and visitors to a greater extent than the current land use.

E. Developer desires to enter into this Agreement in order to eliminate uncertainty in planning for and secure orderly development of the Property.

1. AGREEMENT.

Based upon the foregoing recitals, which are incorporated herein by reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Developer hereby agree as follows:

1.1 Public Hearings.

1.1.1 On May 5, 2009 the City Council approved that certain Letter of Intent for Oasis Towne Center dated May 13, 2009 and recommended to the Development Agreement Negotiating Team to use its best efforts to complete the drafting of this Agreement.

1.1.2 On _____, 200_ the City's Development Review Committee held a public hearing on the application for approval of a preceding similar Agreement with LD&C, Inc., considered the recommendations of the Development Review Committee, and made the findings set forth in Section 1.2.

1.2 City Council Findings.

1.2.1 The City Council finds that this Agreement is consistent with the , Specific Plan, as well as all other applicable ordinances, plans, policies, and regulations of City in effect as of the Effective Date, as defined in Section 2.9.

1.2.2 The City Council finds that this Agreement will ensure a desirable and functional community environment, provide effective and efficient development of public facilities, infrastructure, and services appropriate for the development of the Project, assure attainment of maximum effective utilization of resources within the City, and provide other significant benefits to the City and its residents.

1.2.3 The City Council finds that this Agreement strengthens the public planning process, encourages private participation in comprehensive planning, particularly with respect to the implementation of the Redevelopment Plans, and reduces the economic costs of development and government.

1.2.4 The City Council finds that the best interests of the citizens of the City and the public health, safety and welfare will be served by entering into this Agreement.

1.3 Continuing Obligations. City acknowledges that this Agreement binds City now and in the future. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into

this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by the City staff and the City Council and have been found to be fair, just and reasonable, and City has concluded that the Project will serve the best interests of its citizens and that the public health, safety, and welfare will be best served by entering into this Agreement.

2. DEFINITIONS.

In this Agreement, unless the context otherwise requires, the following terms and phrases shall have the following meanings, whether or not capitalized herein:

- 2.1 “Agreement” shall mean this Development Agreement between the City and Developer. The term “Agreement” shall include any amendment properly approved and executed pursuant to Section 4.3 of this Agreement.
- 2.2 “City” shall mean the City of Redding, a California municipal corporation.
- 2.3 “City Council” shall mean the governing body of the City.
- 2.4 “City Municipal Code” shall mean the [Codified Ordinances of the County of Shasta, adopted by reference pursuant to City Ordinance _____ on _____ as the municipal code for City, and all ordinances adopted by the City Council amending the Codified Ordinances of the County of Shasta as of the Effective Date.
- 2.5 “Development” shall mean the Property and the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public and private facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. “Development” shall not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.
- 2.6 “Development Approvals” shall mean all permits and other entitlements for use subject to approval or issuance by City in connection with development of the Property, including, but not limited to:
 - (a) Oasis Road Specific Plan and Oasis Road Specific Plan amendments;
 - (b) General Plan and General Plan amendments;
 - (c) tentative and final subdivision and or parcel maps;

- (d) conditional use permits, public use permits and site development permits and all amendments thereto;
 - (e) zoning;
 - (f) grading and building permits;
 - (g) parcel maps and/or lot line adjustments;
 - (h) occupancy permits; and
 - (i) environmental review documents for the Project.
- 2.7 “Development Impact Fees” shall mean all fees established and imposed upon the Project pursuant to the Mitigation Fee Act as set forth in California Government Code Section 66000 et seq. “Development Impact Fees” shall not include any fees set forth in this Agreement that have not been established and imposed pursuant to the Mitigation Fee Act.
- 2.8 “Effective Date” shall mean the date this Agreement is recorded in the Official Records of Shasta County, California.
- 2.9 “Existing Land Use Regulations” means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations includes all Regulations that are a matter of public record on the Effective Date.
- 2.10 “Expedited Approval” means all lawful actions capable of being undertaken by City to process the request, approvals and/or applications of Developer in as fast a time-frame as is possible. To the extent that processing such a request, approval, or application on an expedited basis requires an additional expense beyond the customary cost and expense applicable to the general public, City shall inform Developer of such additional cost and expense, including the cost of consultants and other third-parties previously approved by Developer and City. If acceptable to Developer, Developer shall pay the additional cost and City shall use best efforts to undertake the most accelerated processing time as lawfully possible.
- 2.11 “General Plan” shall mean the City of Redding General Plan adopted by the City on _____ pursuant to Resolution No. _____.
- 2.12 “Land Use Regulations” shall mean all ordinances, resolutions, codes, rules, regulations and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction and initial occupancy standards and specifications applicable to the Project.

“Land Use Regulations” do not include any City ordinance, resolution, code, rule, regulation or official policy governing:

- 2.12.1 The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in City;
 - 2.12.2 Other than as provided in this Agreement, taxes and assessments of general application upon all residents of City, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land (e.g., excise tax) or to directly finance the acquisition or dedication of open space or any other public improvement in respect of which Developer is paying any fee or providing any improvement pursuant to this Agreement;
 - 2.12.3 The control and abatement of nuisances;
 - 2.12.4 The granting of encroachment permits and the conveyance of rights and interests which provides for the use of or the entry upon public property, as may be approved by mutual agreement between Developer and City;
 - 2.12.5 The exercise of the power of eminent domain.
- 2.13 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, lender, and their successors and assigns.
- 2.14 “Developer” means the person(s) or entity(ies) having legal or contract rights to develop the Property, [and or title to the Property or parts thereof] and includes Developer’s successors in interest.
- 2.15 “Developer’s Work” means all labor, materials, tools, equipment, machinery, utilities, facilities and services necessary for proper execution and completion of the Project in accordance with the Plans and Specifications.
- 2.16 “Plans and Specifications” means the plans and specifications for the Project to be prepared by or under the direction of Developer, including schematic design plans for the Project, as amended and supplemented from time to time. The initial approved Plans and Specifications are listed in Exhibit C hereto.
- 2.17 “Project” means the proposed Commercial Center located at the northeast and southeast quadrants of Oasis Road/Interstate 5, on Property legally and equitably owned and controlled by Developer.
- 2.18 “Project Documents” means collectively this Agreement, the Schedule of Performance, and the Plans and Specifications, as amended and supplemented from time to time upon approval of Developer, as applicable. It is the intent of Developer that the Project Documents include all items necessary for proper execution and completion of Developer’s Work.

- 2.19 “Property” means the real property described in Exhibit A attached hereto and incorporated herein. The Property consists of approximately one hundred fifty acres.
- 2.20 “Public Infrastructure” means those improvements identified as public improvements on Exhibit D.
- 2.21 “Reservation of Authority” means the rights and authority specifically excepted in this Agreement from the assurances and rights provided to the Developer under this Agreement and reserved to City, including, without implied limitation, the right to require Subsequent Development Approvals consistent with the Land Use Regulations, the Subsequent Land Use Regulations, the Specific Plan, and those other rights and authorities described in Section 5.6 of this Agreement.
- 2.22 “Subsequent Development Approvals” mean all development approvals and permits required by the Existing Land Use Regulations, the Subsequent Land Use Regulations and the Specific Plan after the Effective Date of this Agreement in connection with development of the Property, including, without limitation, all development review approvals required under the City Municipal Code, excavation, grading, building, construction, encroachment or street improvement permits, occupancy certificates, utility connection authorizations, or other permits or approvals necessary for the grading, construction, marketing, use and occupancy of the Project.
- 2.23 “Specific Plan” means the Oasis Road Specific Plan Prepared by the City of Redding Development Services Department dated September 19, 2006.
- 2.24 “Subsequent Land Use Regulations” means any Land Use Regulations adopted and effective after the Effective Date provided such Land Use Regulations are consistent with the Reservation of Authority in Section 5.6 of this Agreement.

3. EXHIBITS.

The following documents referred to in this Agreement are attached hereto and incorporated herein and are identified as follows:

| <u>Exhibit</u> | <u>Description</u> |
|----------------|--------------------------|
| “A” | Property Description |
| “B” | Services |
| “C” | Plans and Specifications |
| “D” | Phases and Phasing Map |

4. GENERAL PROVISIONS.

- 4.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement. Until released or terminated pursuant to the provisions of this Agreement or until Developer has fully performed its obligations arising out of this Agreement, no portion of the Property shall be released from this Agreement.

- 4.2 Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue for a period of fifteen (15) years following the Effective Date unless this Agreement is earlier terminated in writing by mutual agreement of both parties, or its term modified pursuant to Section 4.3 of this Agreement.

- 4.3 Amendment or Cancellation of Agreement. This Agreement may be amended from time to time or canceled only by the written consent of both City and Developer in the same manner as its adoption, as set forth in California Government Code Section 65868, and shall be in a form suitable for recording in the Official Records of Shasta County, California. City and Developer acknowledge that the provisions of this Agreement require a close degree of cooperation between them and that minor or insubstantial changes to the Project as contemplated in this Agreement may be required from time to time to accommodate design changes, engineering changes, and other refinements. Accordingly, City may approve changes to the Project, in accordance with the Specific Plan, without amending this Agreement provided such changes do not result in a change in use, a substantial increase in density or intensity of use, cause significantly new or increased environmental impacts that cannot be mitigated, or violate any applicable health and safety regulations in effect on the Effective Date.

- 4.4 Termination. This Agreement shall be deemed terminated and of no further effect upon the earlier occurrence of any of the following events:
 - (a) Expiration of the stated term of this Agreement as set forth in Section 4.2 of this Agreement, unless extended Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

 - (b) Completion of the Project in accordance with the terms of this Agreement, including issuance of all required occupancy permits and acceptance by City, or the applicable public agency, of all required dedications.

 - (c) As may be provided by other specific provisions of this Agreement.

Termination of this Agreement shall not constitute termination of any land use entitlements for the Property for which final approval has been obtained prior to the Effective Date. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation required to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement that has occurred prior to such termination or with respect to any obligations that are specifically set forth as surviving this Agreement. Upon such termination, any Development Impact Fees paid pursuant to this Agreement by Developer to City shall be refunded to Developer by City.

- 4.5 Term of Map(s) and Other Project Approvals. Pursuant to Government Code Sections 66452.6(a) and 65863.9, the term of any subdivision or parcel map that may be processed on all or any portion of the Property and the term of each Development Approval shall be extended for a period of time through the scheduled termination date of this Agreement as set forth in Section 4.2 above.
- 4.6 Relationship of City and Developer. The contractual relationship between City and Developer arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third-party beneficiary rights.
- 4.7 Notices. All notices, demands, and correspondence required or permitted by this Agreement shall be in writing and delivered in person or mailed by first class or certified mail, postage prepaid, addressed as follows:

If to City, to:

City of Redding
777 Cypress Avenue
Redding, California 96001
Fax: (530) 225-4235
Attention: Kurt Starman, City Manager

If to Developer, to:

LD&C, Inc.
1901 Avenue of the Stars, Suite 200
Los Angeles, California 90067
Fax: (310) 553-8355
Attention: Donald Levenson

With a copy to:

Susan Balistocky, Esq.
1901 Avenue of the Stars, Suite 200
Los Angeles, California 90067 (310) 461-1592

City or Developer may change its address by giving notice in writing to the other. Thereafter, notices, demands, and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery or, if mailed, two (2) business days following deposit in the United States mail.

5. DEVELOPMENT OF THE PROPERTY.

5.1 Rules, Regulations and Policies. Developer shall have the vested right, to the fullest extent allowed under California Government Code Sections 65864 et seq. and the City Municipal Code, subject to the City's Reservation of Authority and any other express restrictions set forth in this Agreement, to develop the Property in accordance with the Specific Plan, the Development Approvals, and the Existing Land Use Regulations applicable to and governing development of the Property.

5.2 If this Agreement is amended pursuant to Section 4.3 herein, the amended Agreement shall be subject to the Land Use Regulations existing as of the date of the amendment. Further, Developer and City may mutually agree in writing that the Project will be subject to Land Use Regulations governing development of the Property that are adopted after the Effective Date. To the extent that Developer and City mutually agree in writing that the Project will be subject to additional Land Use Regulations, Developer and City shall undertake to complete and execute an amendment to this Agreement that will memorialize such additional agreed upon Land Use Regulations. Such amendment shall be in accordance with Section 4.3 above.

5.3 Permitted Uses: Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings and provisions for reservation and dedication of land or public purposes shall be those set forth in the Specific Plan unless otherwise agreed to by the City and the Developer. The rights and entitlements granted to Developer pursuant to this Agreement shall be and shall constitute "vested rights" as that term is defined under California law applicable to the development of land or property and the right of a public entity to regulate or control such development of land or property, including, without limitation, vested rights in and to the issuance of building permits and certificates of occupancy that are both: (i) issued consistent with the terms of this Agreement; and (ii) reasonably relied upon by Developer in its incurring of substantial costs in reliance on such permit issuances; provided, however, that nothing contained in this Section shall be deemed to authorize City to withhold any building permit and/or certificate of occupancy based on the failure to comply with any Land Use Regulation that is not applicable to the Project pursuant to the terms of this Agreement. Subject to Developer's installation of all infrastructure required to serve the Project in accordance with the requirements of the Specific Plan and the Existing Land Use Regulations and subject to City's Reservation of Authority, City hereby acknowledges and agrees that there will be sufficient capacity in its infrastructure and services, including, without limitation, traffic circulation, storm

drainage, trash collection, and flood control to accommodate the Project to the extent that the City owns, operates, controls or provides such infrastructure and services.

5.3.1 Due to recent newly obtained traffic data, the City further agrees that the current status of the infrastructure with the I-5 Interchange loop ramp, road widening and additional signalization completed in 2012, is sufficient to accommodate the first 302,238 sq. feet of retail that is permitted as per the LD&C Phase 1 Use Permit, that no additional peak hour vehicle trip generation thresholds are exceeded and all 303,238 square feet fall under the definition of Phase 1A in the Use Permit 23-02. As a result, no additional infrastructure requirements shall be required for the first 302,238 square feet of retail. Moreover, the 302,238 square feet of retail may be placed on either the north or south sides of Oasis Road without triggering additional vehicle trip generation thresholds.

City further agrees to pay for 50% of the cost of infrastructure maps/ blueprints etc. that will be needed for Phases 2-4 of the development (construction scheduled for 2017). City approves LD&C's hiring of Quincy Engineering to perform the scope of work connected to these maps/blueprints, etc.

To the extent that City renders such services or owns such infrastructure, and Developer complies with the requirements of this Agreement, City hereby agrees that it will serve the Project and there shall be no restrictions placed upon Developer concerning hookups or service for the Project, except for reasons beyond City's control.

5.3 5.3.2 Maximum Height and Size of Structures. The maximum height and size for all structures on the Property shall be as provided in the Specific Plan or as otherwise set forth herein.

5.3.3. Permitted Uses. The permitted uses on the Property are as provided in the Specific Plan, or as modified in this agreement, otherwise set forth herein. LD&C shall be permitted to develop all four phases, 1-4 under this development agreement and permits shall be processed and issued by the City upon receipt of the applications for Phases 2-4 within four months of receipt by the developer.

5.4 Density. The density and intensity of use for all development on the Property shall be as provided in the Specific Plan or as otherwise set forth herein.

5.5 Processing fees and charges imposed by City to cover City's estimated or actual costs of reviewing and processing applications for development of the Property, providing inspections, conducting annual review, providing environmental analysis, or for monitoring compliance with this Agreement or any Development Approvals granted or issued, provided such fees and charges are in force and effect on a general basis on the date of filing such applications with City. This Section shall not be construed to limit the authority of City to charge

normal and customary application, processing, and permit fees for land use approvals, building permits and other similar permits, which fees are designed to reimburse City's expenses attributable to such application, processing and permitting and are in force and effect on a City-wide basis at such time as said approvals and permits are granted by City. However, none of the studies already completed and paid for by Developer in the past shall be required to be re-done.

5.5.1 Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

5.5.2 Regulations governing engineering and construction standards and specifications including, any and all uniform codes adopted by City, including local amendments to those codes pursuant to state law allowing for such amendments; provided that such codes are uniformly applied to all development projects within City. Such codes include, without limitation, City's adopted version of the Uniform Administrative Code, Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Fire Code.

5.4 **Regulations which may be in conflict** with the Specific Plan or this Agreement but which are reasonably necessary to protect the public health and safety; provided, however, that such regulations shall be applied and construed so as to provide Developer with the rights and assurances provided in this Agreement and the Specific Plan; and that such regulations are in furtherance of City's police power to protect the public health and safety in the event of a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services involving the Property or the immediate community. Moratoriums enacted by City to protect the public health and safety in the circumstances described in the preceding sentence, and which are imposed on the Property, shall toll the term of this Agreement and any time periods for performance by Developer and City set forth in this Agreement.

5.5 Processing of Applications and Permits. Upon satisfactory completion by Developer of all required preliminary actions and payment of appropriate processing fees, if any, City shall proceed to process and check all applications for the development of Phases 2-4 of the Project and building approvals within the time set forth in the Permit Streamlining Act (California Government Code Section 65920 et seq.), and other applicable provisions of law, as the same may be amended from time to time (not to exceed 4 months) . Except as otherwise provided under the terms of this Agreement, including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, and construction standards and specifications applicable to development of the Property shall be as set forth in the Specific Plan and the Existing Land Use Regulations. In connection with any Subsequent

Development Approval, City shall exercise its discretion in accordance with the Specific Plan, and in a manner consistent with this Agreement, including, but not limited to the Reservations of Authority. City shall accept for processing, review and action all applications for Subsequent Development Approvals, and such application shall be processed in an Expedited Approval manner.

- 5.6 Changes in Federal and State Law. The Property may be subject to subsequently enacted state or federal laws or regulations, which preempt local regulations, or mandate the adoption of local regulations that conflict with the Specific Plan and this Agreement. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this section, City or Developer shall provide the other party with written notice of the state or federal law or regulation, provide a copy of the law or regulation, and a written statement of conflicts with the provisions of this Agreement and/or the Specific Plan. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation. In such negotiations, City and Developer agree to preserve the terms of this Agreement and the rights of Developer as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Developer in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Developer. City also agrees to process, in an Expedited Approval manner, Developer's proposed changes to the Project as may be necessary to comply with such federal or state law and to process such proposed Project changes in accordance with City procedures. Any delays caused by such changes in state or federal law shall toll the term of this Agreement and the time periods for performance by Developer and City set forth in this Agreement.
- 5.7 Cooperation in Securing Other Governmental Approvals and Permits. City agrees to make its staff available, at City's cost, to assist Developer in securing permits and approvals required by other governmental agencies to assure Developer's ability to perform its obligations in a timely manner consistent with the Specific Plan and this Agreement. City does not warrant or represent that any other governmental permits or approvals will be granted. Further, City will use its best efforts to obtain all required approvals from adjacent and adjoining Property owners for Developers development of the Property and the City's construction of the Public Infrastructure.

Compliance with CEQA. The project Environmental Impact Report and the Specific Plan EIR (collectively, the "EIR") have been certified in accordance with the California Environmental Quality Act ("CEQA"; California Public Resources Code, Section 21000 et seq.).

- 5.8 Timing of Development. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal. 3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted

in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right, but not as an obligation of Developer, to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

- 5.9 Reservation of Rights. City acknowledges and agrees that Developer shall have the ability to reserve and record such restrictions, conditions, and covenants against the Property that Developer deems appropriate, in its sole and absolute discretion, that relate to the development, use and operation of the Project, provided such restrictions, conditions, and covenants do not conflict with the Specific Plan or this Agreement. Prior to recordation of such restrictions, conditions and covenants, Developer shall provide a copy of same to City for review and approval by the City Attorney. If the City Attorney fails to provide Developer with written approval of the restriction within thirty (30) days following a written request by Developer, which written request must include all necessary and appropriate details for the City Attorney to provide an informed approval, City shall be deemed to have approved such restriction and Developer may record the restriction against the Property. Such restrictions, conditions, and covenants shall run with the land and bind Developer's successors and assigns. The developer may not include or maintain in any sale of land within the development negative easements or restrictions against the land it gives up for sale, and likewise, the developer may not give up to any retailer purchasing land within the development the right to impose negative easements or restrictions against land that is not sold to that retailer.
- 5.10 Development of the Project. Developer shall pursue and obtain the Development Approvals and undertake the design, development and construction of the Project, and provide all development and development management services relating to the Project, and agrees to perform all such services as set forth on Exhibit B attached hereto and incorporated herein by this reference (the "**Services**"). Developer agrees that the Services will be performed in conformity with appropriate professional practices and standards, utilizing the best efforts, skills and judgments of Developer and will be conducted in compliance with all applicable legal requirements, including, but not limited to CEQA. Developer shall perform the Services, undertake the responsibilities and exercise the authority set forth in this Agreement in the role of developer and development manager, with the ultimate responsibility for entering into all applicable contracts and other agreements in respect of the Project and supervising and ensuring that all services and tasks are performed in a fashion consistent with this Agreement (including by all applicable counterparties to each such contract and other agreement). Developer shall cause the Project to be developed and constructed in accordance with the Project Documents and in accordance with the terms and conditions of this Agreement. Developer's

responsibilities shall include, among other things, the day-to-day supervision, management and operation of, and responsibility for, the planning, pre-development, development management, development, construction management and construction of the Project, in accordance with the approved Project Documents and this Agreement. As to the Project, the following shall govern the development of the Project:

- 5.10.1 Without limiting the generality of Section 5.12, Developer shall provide or cause to be provided and pay for design and construction services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services and other items necessary for proper execution and completion of the Developer's Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Developer's Work, as more particularly set forth on the attached Exhibit B and such other services as may be necessary in order to comply with Developer's obligations under this Agreement, all such Services to be rendered in accordance with the express provisions of this Agreement. The Developer's Work shall include all items reasonably inferable from the Plans and Specifications and Project Documents or otherwise necessary to produce the intended results.
- 5.10.2 Developer shall cause construction of the Project to occur in Phases, subject to the terms and conditions of the Project Documents. However, nothing herein shall be deemed to obligate Developer to complete the Project, or any Phase thereof, if Developer determines, in its sole discretion, that completion of the Project would not be economically viable. Exhibit D describes the physical improvements to be included in each Phase of the Project, and the Public Infrastructure and amenities associated with each Phase. If Developer undertakes a Phase, Developer shall only be required to construct those Public Infrastructure and amenities associated with such Phase. If Developer elects not to undertake construction of a Phase, Developer shall not be required to construct the Public Infrastructure and amenities associated with that Phase. Developer and City shall agree on implementation of a timeline for Public Infrastructure in accordance with critical path items and an agreed upon finish date for the ultimate improvements and at least one interim improvement date.
- 5.11 Development Approvals. City's staff will use its best efforts to assist Developer in connection with the filing of applications for Development Approvals for the Project, and will attempt to facilitate the expeditious processing and consideration thereof by coordinating the procedures therefore with all applicable City departments and/or other bodies who may have jurisdiction over such matters and affirmatively supporting such applications so long as they are consistent with the terms of this Agreement including, the processing and approval of a modification to the Use Permit

that will eliminate the required off-site dedications and require the Public Improvements to be constructed in accordance with this Agreement. The foregoing shall not constitute a commitment by City to cause any Development Approvals to be issued, and provided further that all documents submitted in connection with any applications or other submissions shall be submitted to, reviewed by and approved or rejected by the appropriate planning and building departments of City, pursuant to City's codes, ordinances, rules and regulations. City shall also cooperate in connection with the application for funds from the federal or State government and any Stimulus Funds that may be allocated to public infrastructure projects and/or the State. Each party shall work in good faith in order to apply for funds that can assist the Project. Specifically this includes City staff actively assisting Developer and Developer's consultants on applications for appropriations funding and obtaining funding through the Federal Highway Bill to be written in the summer of 2010. The assistance to be provided by Agency pursuant to this Section 5.13 shall be given with the objective of obtaining the Development Approvals on a timely basis and preserving the financial viability of the Project and compliance with the Project Documents.

- 5.12 Prohibited Payments. Developer agrees that Developer and its respective directors, officers, employees, agents, associates, representatives, shareholders, affiliates and subsidiaries have conducted and will conduct their activities in connection with the Services in a lawful manner and shall not engage in any of the following:
- 5.12.1 Payments or offers of payment, directly or indirectly, to any government official or employee in order to obtain or retain business or direct business to any party or entity involved with the Project.
 - 5.12.2 Payments or offers of payment, directly or indirectly, to any government official or employee for the purpose of inducing such government official or employee to fail to perform or to perform improperly his official functions in relation to any aspect of the Project or the Services.
 - 5.12.3 Receipt, payment or offer of anything of value, directly or indirectly, from or to any private party in the form of a commercial bribe, influence payment or kickback of purposes related in any respect to the Services or this Agreement.
 - 5.12.4 The use, directly or indirectly, of any funds or other assets for any unlawful purpose, including, without limitation, political contributions in violation of applicable law.

Independent Contractor. Developer (a) is and shall be an independent contractor and is not, and shall not, be considered to be an employee, agent, representative, joint venturer or partner of City and/or its respective direct or indirect beneficial owners, (b) except as otherwise provided herein, shall

have no right, power or authority to assume or create any obligation or liability, express or implied, on behalf or in the name of City, or to bind City, and (c) shall be responsible to City for the acts and omissions of Developer's contractors, subcontractors, architects, engineers and consultants, and their respective agents and employees, and all other persons performing any portion of Developer's obligations hereunder. Developer shall not hold itself out or permit its agents, representatives, partners, employees, independent contractors, officers and directors to hold themselves out as an agent, representative, partner, joint venturer or employee of City. Nothing contained in this Agreement shall create a contractual relationship between City and any person or entity other than Developer. 5.15 Rights of Way. Developer shall dedicate those rights-of-way shown in Exhibit E attached hereto (the "**Rights-of-Way**") for the Public Infrastructure. The City shall credit Developer an amount consistent with the credits provisions under this Agreement for Rights of Way dedication which shall be consistent with the fees paid to the North Redding Traffic District currently at \$14/square foot. . Any additional rights-of-way necessary for the development of the Phases 1 or Phase 2 or Phases 3-4 projects shall be accomplished in accordance with the timeline for such construction. Developer shall provide an easement to City for the alignment of Twin View Road for the Phase 1 Project. All credits created under this paragraph shall be paid to Developer under the relevant reimbursement provisions of this Agreement. This will facilitate construction of the NRTBD Improvements required for Phases 2-4. The **NRTBD Improvements are** eligible for credit and/or reimbursement in accordance with Chapter 16.20 of the Redding Municipal Code.

5.15.1 The NRTBD Improvements; Phase I through Phase IV Improvements. For purposes hereof, the term "NRTBD Improvements" includes all structures, facilities and improvements necessary to construct the NRTBD Improvements and all soft costs necessary to design and permit them. The NRTBD Improvements shall be designed and constructed in two or more phases and are improvements associated with the realignment of Twin View Road for Phase 1 and the construction of a 4-6 lane bridge as needed for Phases 2-4. The NRTBD related improvements include, but are not limited to, the roadway and bridge construction and widening and realignment and all overlays, pavement markings, signs, sidewalks, storm drain facilities, relocated fencing and driveways, traffic signals, street lighting, landscaping and irrigation facilities, and relocated utilities associated with all phases of the development.

- 5.13 Waterline. City, at its sole cost and expense, shall extend the water line from Fairway Estates in accordance with the City’s Master Water Plan of 2002. City shall commence construction of the water line on or prior to July 1, 2016 and shall diligently pursue the completion of the construction. In addition, in connection to water issues, the City is responsible for obtaining approvals from adjacent owners both to the north and south of the Development , unless those approvals are negated by the City waiving the requirement that approvals be obtained.
- 5.14 Gasline. City, at its sole cost and expense, shall extend the PG&C gas line to Twin View beginning at the bottom of the Phase_2 site and up to the top of the Phase 1 site.
- 5.15 Design of Off-Site Street Improvements. Developer shall design the Interchange, and the local streets in Section 5.19 below. Such design development shall be undertaken pursuant TO a new Cost Reimbursement Agreement of similar character which shall be entered into between Developer and City.
- 5.16 Off-Site Street Improvements. City, with construction financing provided by or leveraged by Developer, shall construct or cause to be constructed, the Interchange, and the local streets referred to below (the “**Roadways**”), in accordance with City standards and shall construct such Roadways as part of Developer’s construction of the Project, notwithstanding the order of priority of construction by City in the Specific Plan. The Roadways shall be dedicated as public streets pursuant to Section 6.3 and shall be maintained by City. City shall commence construction of the Roadways upon the execution of this Agreement and shall diligently pursue the completion of the construction so that the Roadways are available for public use prior to the issuance of the first temporary certificate of occupancy for the Project. Developer shall pay fees through credits and City shall reimburse Developer in full for all additional construction financing upon completion of construction of each segment

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| Road Segments | <ol style="list-style-type: none"> 1. Oasis Road – Churn Creek east to SB Ramps (including Churn Creek Br.) 2. Cascade Blvd. – New Connection to Oasis Road 3. Cascade Blvd. – Oasis Road south to Old Oasis Road 4. New Road – New Cascade Blvd. east to existing Cascade Blvd. 5. Oasis Road – NB ramps east to North Twin View Road |
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| | |
|---------|--|
| | <ol style="list-style-type: none"> 6. Oasis Road – Twin View Blvd. to North Twin View Blvd. 7. Oasis Road – North Twin View Blvd. east to Plan Boundary 8. Twin View Blvd. – Oasis Road south to Plan Boundary (not including Twin View Bridge) 9. N. Twin View Blvd. – Oasis Road north to existing Twin View Blvd. 10. Salt Creek Bridge 11. 2 Lane Road on South Edge of the Property 12. Churn Creek Road between South edge of Property and Oasis Road |
| Signals | <ol style="list-style-type: none"> 1. Oasis Road @ Cascade 2. Oasis Road @ Gold Hills 3. Oasis Road @ ramps 4. Oasis Road @ Twin View 5. Oasis Road @ North Twin View |

6. PUBLIC BENEFIT.

6.1 Intent. City and Developer acknowledge and agree that this Agreement is granted in consideration of, and is in exchange for, Developer's agreement and commitment to provide to City significant public benefits, as described in this Section 6.

6.2 Development Fees and Credits.

6.2.1 On or after the date which is five (5) years after the execution of this Agreement, deficiencies in public facilities, infrastructure or services are identified as existing and attributable to the Project, the City Council retains the authority to develop a program for resolving the deficiency with Developer, and may require the payment of reasonable additional mitigation fees, notwithstanding any other provision of this Agreement.

6.2.2 Except as otherwise expressly provided for herein, Developer shall pay only those fees uniformly applied to all development projects within the City as of the Effective Date.

- 6.2.3 Credits for Rights of Way shall be calculated as follows: At the time of dedication, the Credit shall equal the value assigned on a square foot basis in the fee program of the North Redding Traffic Benefit District for Right of Way in effect on September 1, 2009. This value may be adjusted to the current value at the time of dedication, 1015
- 6.2.4 In addition, City shall reimburse Developer for costs developer incurred from 2005 through to the date of this agreement for infrastructure and traffic analysis studies conducted in connection to the I-5 Interchange at and near Oasis Road.
- 6.3 Dedications and Conveyances of Property Interests. To the extent that Developer constructs portions of the Public Infrastructure, the provisions of this Section 6.3 shall apply, although it is the understanding of the parties that the City shall construct the Public Infrastructure at its sole cost and expense with construction financing from Developer. Developer's dedication and conveyance to City of the Public Infrastructure shall be in consideration of City's performance of its obligations set forth in this Agreement and City shall not be required to pay a fee or purchase price for such property, except as required to reimburse Developer for the Public Infrastructure in accordance with this Agreement.
- 6.3.1 Developer shall convey and City shall accept fee simple interest title to the Public Infrastructure, subject to Section 6.3.2 below, after the appropriate City agency has issued a certificate of occupancy for the improvements.
- 6.3.2 Developer shall cause the Public Infrastructure to be conveyed free and clear of all recorded and unrecorded monetary liens and all recorded and unrecorded non-monetary liens, encumbrances, easements, leases, covenants, conditions, restrictions, and other exceptions to or defects in title, excepting there from only the following: (i) non-delinquent property taxes and assessments (to be paid by Developer prior to the Closing), (ii) the lien of this Agreement, (iii) the standard printed title exceptions in the form of a CLTA title policy (or ALTA title policy, if such ALTA title policy is obtained at City's cost); (iv) those additional title exceptions as may be approved in writing by City in its reasonable discretion, and (v) those exceptions that do not interfere with the intended use thereof. Developer shall pay all costs required to place title in the condition described in this Section. A condition to City's acceptance of the Public Infrastructure shall be the irrevocable commitment of the title company to deliver to City upon the transfer of title to such property, a CLTA standard or, at City's, but not as a condition, an ALTA extended coverage Developer's policy of title insurance showing title vested in City in the condition described in this

Section with insurance coverage in the amount of the fair market value of such property as determined by City.

6.3.3 City hereby acknowledges and agrees that Developer may finance the construction of the Public Infrastructure, and any other eligible public improvements identified in this Agreement or the Specific Plan with its own construction funds or with proceeds from a sources set forth in the Owner Participation Agreement, Sales Tax Bonds, TIGER or other Federal funding, CalTrans Funds, and any other publicly available funding (collectively, "**Financing Mechanisms**"), and that in either event, City shall accept such Public Infrastructure without objection and shall execute any and all documentation necessary to transfer the Public Infrastructure to City.

6.4 Bonds/Security. Prior to construction, Developer shall post a completion bond or other security, in an amount and with a surety acceptable to City, for the purpose of ensuring that the Public Infrastructure is actually constructed.

6.5 Sales Tax Revenue Bonds. City shall use its reasonable and diligent efforts to issue sales tax revenue bonds ("**Sales Tax Bonds**") sufficient to generate not less than Eight Million Dollars (\$8,000,000) in net proceeds for the acquisition of eligible Public Infrastructure at the Project [IS THIS ENOUGH?]. If necessary, the Sales Tax Bonds may be secured by a limited subordinate pledge of site specific sales tax revenues. The assistance to be provided by City pursuant to this Section 6.6 shall be given with the objective of obtaining proceeds from Sales Tax Bonds on a timely basis and preserving the financial viability of the Project and compliance with the Project Documents. In the event that additional commercial development commences within the Specific Plan area in an amount that exceeds 25,000 square feet, any pledge will be released.

6.6 CalTrans Funds. City's staff will use reasonable efforts to assist Developer in connection with Developer's pursuit of any funds from the State Highway Operation and Protection Program (SHOPP), and/or any other program administered by CalTrans (collectively, "**CalTrans Funds**"), and will attempt to facilitate the expeditious processing and consideration thereof by coordinating the procedures therefor with all applicable bodies who may have jurisdiction over such matters and affirmatively supporting such applications so long as they are consistent with the terms of this Agreement; provided, however, that the foregoing shall not constitute a commitment by City to cause any CalTrans Funds to be obtained, and provided further that all documents submitted in connection with any applications or other submissions shall be submitted to, reviewed by and approved or rejected by the appropriate planning and building departments of City, pursuant to the City's codes, ordinances, rules and regulations. The assistance to be provided by City pursuant to this Section 6.6 shall be given with the

objective of obtaining CalTrans Funds on a timely basis and preserving the financial viability of the Project and compliance with the Project Documents.

- 6.7 Traffic Impact Fees. City shall contribute not less than Twelve Million Dollars (\$12,000,000) payable from its City Wide Traffic Impact Fee fund for the Oasis Road Area. City shall reimburse the Developer or pay for the Public Infrastructure in accordance with the reimbursement provisions set forth below.
- 6.8 Construction Financing. City acknowledges that the construction of the Public Infrastructure will need to be completed prior to the issuance of the first temporary certificate of occupancy issued for the Project. However, the City acknowledges that all of the sources of financing to complete such construction may not be available in a timely manner and as such, Developer will be required to obtain short-term construction financing from a conventional lender in order to facilitate the construction of the Public Infrastructure. Developer shall use its best efforts to procure a construction loan in an amount sufficient for City or Developer to complete the construction of the Public Infrastructure. The City and Developer will work together to implement financing options for the infrastructure requirements of the project including but not limited to the use of funds from the City's Capital Improvement Program and any other options set forth in Chapters 5 and 7 of the Oasis Specific Plan.
- 6.9 Reimbursement Provision. City is obligated to pay the Purchase Price of the Public Infrastructure or any completed portion thereof from the proceeds of the Financing Mechanism. The City makes no warranty; either express or implied, that City will be able to issue and sell, receive the Financing Mechanism or that the proceeds available for the payment of the Purchase Price of the Public Infrastructure or portion thereof will be sufficient for such purpose. In order to receive reimbursement for Services provided from proceeds of the Financing Mechanism under this Section 6, Developer shall deliver or cause to be delivered to City an invoice for the amount due. Subject to the foregoing, City shall pay the invoiced amount on or before thirty (30) days following the date of receipt of such invoice, which thirtieth (30th) day shall be referred to as the "Due Date." If the Due Date is not a business day, payment shall be due on the next following business day. Any invoiced amount not paid on or before its Due Date shall bear interest at a rate equal to one and one-half percent (1½%) per month applied for each day such payment is late (not to exceed the maximum amount permitted by Applicable Law).
- 6.9.1 All Rights of Way credits shall be paid to Developer out of the first monies paid into the North Redding Traffic Benefit District from any source.

- 6.10 Federal Funds. To the extent that City obtains a TIGER Discretionary Grant, Federal appropriations, or inclusion in the Highway Bill for the benefit of the Public Infrastructure, the amount of such award or funding shall off-set on a dollar-for-dollar basis, the amount of any dollars raised by Sales Tax Bonds, the Developer Loan, or the Agency Assistance, in the above mentioned order. The City shall also pay 50% of the fees of incurred by District of Columbia lobby/consulting group, Hannegan, Landau Poersch Advocacy beginning in January 2016 through to November 1, 2016 who will be engaged to lobby on Redding's behalf for the 2016 TIGER grant.

In the event the TIGER grant is not approved even after the lobbying efforts of Hannegan, Landau Poersch Advocacy, City agrees to pay \$12,000,000 towards the Phases 204 infrastructure requirements.

In the event the TIGER grant is not approved, even after the lobbying efforts of Hannegan, Landau Poersch Advocacy, Developer agrees to pay \$12,000,000 towards the Phase 2-4 required infrastructure requirements and Developer will also put in all the roadways required to complete Phases 2-4 of the project. However all private land dedicated for roads will be paid for by the City in the form of reimbursement credits calculated dollar for dollar at the fair market value of the land at the time the dedication occurs. If the value of the land for roads and rights of way exceeds the amount of necessary credits to be paid, the City will reimburse the balance to the developer in cash.

- 6.11 Reimbursement of Past Developer Expenses. Upon execution of this agreement, City shall reimburse Developer for

1. all invoiced amounts, plus interest from April, 2010 for the PSR costs as set out in the invoice dated April 2, 2010;

2. all invoiced or contracted amounts for efforts to obtain infrastructure funding from state and federal sources from 2009 forward, including Developer's consultants and lobbyists, in an amount not to exceed \$400,000.

- 6.12 Indemnification of Developer. Upon execution of this agreement, City agrees to indemnify Developer and/or owners of the property in the event Costco claims additional payments are owed to them by the Developer and or the property owners as a result of additional fees charged against Costco (or a successor) by the City. This provisions is irrevocable, shall apply in perpetuity and shall run with the land.

7. ANNUAL REVIEW.

- 7.1 Timing of Annual Review. Pursuant to Government Code Section 65865.1, during the term of this Agreement, at least once during every twelve (12)

month period from the Effective Date, City shall review the good faith compliance of Developer with the terms of this Agreement (“**Annual Review**”). The Annual Review shall be conducted by City Council or its designee.

- 7.2 Standards for Annual Review. During the Annual Review, Developer shall be required to demonstrate good faith compliance with the terms of this Agreement. If City Council or its designee finds and determines that Developer has not complied with any of the terms or conditions of this Agreement, then City may declare a default by Developer in accordance with Section 9 of this Agreement. City may exercise its rights and remedies relating to any such event of default only after the period for curing a default, as set forth in Section 9.1 of this Agreement, has expired without cure of the default. The costs incurred by City in connection with the Annual Review shall be paid by Developer.
- 7.3 Certificate of Compliance. Each year that the City Council or its designee finds that Developer is in compliance with this Agreement, City shall, upon written request by Developer, but not as an obligation of Developer nor at any cost to Developer, provide Developer with a written certificate of good faith compliance within thirty (30) days of City’s receipt of Developer’s request for same.

8. THIRD PARTY LITIGATION.

- 8.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan. Developer has reviewed the General Plan and concurs with City’s determination.

Neither Developer nor City shall have any liability under this Agreement or otherwise for any failure of City to perform under this Agreement, or for the inability of Developer to develop the Property as contemplated by the Specific Plan or this Agreement, if such failure or inability is the result of a judicial determination that the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

- 8.2 Third Party Litigation Concerning Agreement. Developer shall, at Developer’s expense, defend, indemnify, and hold City, its agents, officers and employees harmless from any claim, action or proceeding against City, its agents, officers or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any Development Approvals granted pursuant to this Agreement. City shall promptly notify Developer of any such claim, action or proceeding, and City shall cooperate in the defense. City may in its discretion participate in the defense of any such claim, action or proceeding.

- 8.3 Indemnity. In addition to the provisions of Sections 8.1 and 8.2, Developer shall indemnify and hold City, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or alleged upon any act or omission of Developer, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury or death (Developer's employees included) or any other element of damage of any kind or nature, relating to or arising from Developer's activities contemplated hereunder, save and except claims for damages arising through active negligence or willful misconduct of City. Developer shall defend, at Developer's expense, including attorneys' fees, City, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions of Developer. City may in its discretion participate in the defense of any such legal claim, action or proceeding.
- 8.4 Environmental Contamination. Developer shall indemnify and hold City, its officers, agents, and employees free and harmless from any liability, based or alleged, upon any act or omission of Developer, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors, resulting in any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and Developer shall defend, at its expense, including attorneys' fees, City, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such claim, action or proceeding. Notwithstanding anything to the contrary set forth in this Section, Developer shall not be responsible for clean-up and removal of groundwater contamination migrating to or from an adjacent property not owned by Developer.
- 8.5 City to Approve Counsel. With respect to Sections 8.1 through 8.4, City reserves the right to either (a) approve the attorney(s) that Developer selects, hires or otherwise engages to defend City, which approval shall not be unreasonably withheld, or (b) conduct its own defense; provided, however, that if City elects to conduct its own defense, Developer shall reimburse City for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefore.
- 8.6 Processing During Third Party Litigation. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Specific Plan, the Development Approvals or to other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project, approval of the Development Approvals, or issuance of "Ministerial Approvals" (as hereinafter defined), unless the third party obtains a court order preventing the activity. City shall not stipulate to the issuance of any such order. For purposes of this Section, the term

“**Ministerial Approvals**” shall be defined to mean approvals requiring the determination of conformance with the Land Use Regulations, including, without limitation, site plans, design review, development plans, land use plans, grading plans, improvement plans, building plans and specifications, and ministerial issuance of one or more final maps, zoning clearances, grading permits, improvement permits, wall permits, building permits, lot line adjustments, conditional and temporary use permits, certificates of use and occupancy and approvals and entitlements and related matters as may be necessary for the completion of the development of the Property.

8.7 Survival. The provisions of Sections 8.1 through 8.7 inclusive, shall survive the termination, cancellation or expiration of this Agreement.

9. DEFAULTS AND REMEDIES.

9.1 Notice and Opportunity to Cure. Before this Agreement may be terminated or action may be taken to obtain judicial relief, the party seeking relief (“**Nondefaulting Party**”) shall comply with the notice and cure provisions of this Section. A Nondefaulting Party, in its discretion, may elect to declare a default under this Agreement in accordance with procedures hereinafter set forth for any failure or breach of the other party (“**Defaulting Party**”) to perform any material duty or obligation of said Defaulting Party in accordance with the terms of this Agreement. However, the Nondefaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting party to cure such breach or failure. The Defaulting Party shall be deemed in default of its obligations set forth in this Agreement if the Defaulting Party has failed to take action and cure the default within ten (10) days after the date of such notice (for monetary defaults), within thirty (30) days after the date of such notice (for non-monetary defaults), or within such lesser time as may be specifically provided in this Agreement. Provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

9.2 Default Remedies. Subject to Sections 9.1 and 9.3, in the event of a default, the Nondefaulting Party, at its option, may institute legal action to cure, correct, or remedy such default, enjoin any threatened or attempted violation, enforce the terms of this Agreement by specific performance, or pursue any other legal or equitable remedy. Furthermore, City, in addition to or as an alternative to exercising the remedies set forth in this Section, in the event of a material default by Developer, may give notice of its intent to terminate or modify this Agreement, in which event the matter shall be scheduled for consideration and review by the City Council in the manner set forth in California Government Code 65864 et seq.

9.3 Developer's Exclusive Remedy. City and Developer acknowledge that neither City nor Developer would have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement, the Specific Plan, or any permit or approval sought by Developer in accordance therewith. Accordingly, the parties covenant on behalf of themselves and their successors and assigns, not to sue City for damages or monetary relief for any breach of this Agreement or arising out of or connected with any dispute, controversy or issue regarding the application, interpretation or effect of this Agreement, the Specific Plan, the Land Use Regulations or any permit or approval sought in connection with the development or use of the Property or any portion thereof. Developer agrees that declaratory and injunctive relief, mandate, and specific performance shall be Developer's sole and exclusive judicial remedy.

9.4 Waiver; Remedies Cumulative. Failure by City or Developer to insist upon the strict performance of any of the provisions of this Agreement, irrespective of the length of time for which such failure continues, shall not constitute a waiver of the right to demand strict compliance with this Agreement in the future. No waiver by City or Developer of a default or breach of any other party shall be effective or binding upon it unless made in writing, and no such waiver shall be implied from any omission by City or Developer to take any action with respect to such default or breach. No express written waiver of any defaults or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified in such express waiver. One or more written waivers of a default or breach under any provision of this Agreement shall not be a waiver of any subsequent default or breach, and the performance of the same or any other term or provision contained in this Agreement. Subject to notice of default and opportunity to cure under this Section 9, all of the remedies permitted or available under this Agreement, at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

10. ENCUMBRANCES, ASSIGNMENTS, AND RELEASES.

10.1 Discretion to Encumber. This Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage, deed of trust, or other security device securing financing with respect to the Property or any improvements thereon.

10.2 Mortgagee Protection. The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer'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; provided, however, that nothing

prohibits Developer from conveying the Public Infrastructure to City or the 501(c)(3) in accordance with Section 6.3.2 above. City acknowledges that the lender(s) providing financing with respect to the Property may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Developer and representatives of such lender(s) 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 of the Property shall be entitled to the following rights and privileges:

- 10.2.1 Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.
- 10.2.2 If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed Developer under Section 9 of this Agreement.
- 10.2.3 Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement and shall have no right to develop the Property under this Agreement unless such development is in substantial conformance with the terms of this Agreement.

Notwithstanding the foregoing, Mortgagee shall not be liable for any defaults or monetary obligations of Developer arising prior to acquisition of title to the Property by such Mortgagee, except that any such Mortgagee or its successors or assigns shall not be entitled to any approvals or permits for the Property until all delinquent and current fees and other monetary obligations due under this Agreement for the Property, or portion thereof, acquired by such Mortgagee have been paid to City.

- 10.3 Transfer or Assignment. Subject to City's consent pursuant to Section 10.3.2, Developer shall have the right to assign its rights and obligations under this Agreement in connection with a transfer of Developer's interest in the Property. In the event of such assignment, the assignee shall be liable for the performance of all obligations of Developer with respect to the portion of the Property so transferred. No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or part of the Property.

- 10.3.1 Assignee Subject to Terms of Agreement. Following an assignment or transfer of any of the rights and interest of Developer set forth in this Agreement in accordance with Section 10.3 of this Agreement, the assignee's exercise, use and enjoyment of the Property shall be subject to the terms of this Agreement to the same extent as if the assignee or transferee were the Developer. Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, Developer shall notify City, in writing, of such sale, transfer or assignment and shall provide City with an executed agreement, in a form reasonably acceptable to City, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of Developer under this Agreement.
- 10.3.2 Release Upon Transfer. Upon the written consent of City to the partial or complete assignment of this Agreement, which consent shall not be unreasonably withheld, and the execution and delivery to City of the agreement required by Section 10.3.1 of this Agreement, Developer shall be relieved of its legal duty to perform the obligations assigned to Developer under this Agreement, except to the extent Developer is in default hereunder prior to said transfer.

11. MISCELLANEOUS PROVISIONS.

- 11.1 Rules of Construction. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.
- 11.2 Entire Agreement, Waivers, and Recorded Statement. This Agreement constitutes the entire understanding and agreement of City and Developer with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between City and Developer respecting the subject matter of this Agreement including, without limitation, the Master Development Agreement. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City and Developer. Upon the completion of performance of this Agreement or its cancellation or termination, a statement evidencing completion, cancellation, or termination signed by the appropriate agents of City, shall be recorded in the Official Records of Shasta County, California.
- 11.3 Project as a Private Undertaking. It is specifically understood by City and Developer that (i) the Project is a private development; (ii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property unless City accepts the improvements pursuant to the provisions of this Agreement or in connection with subdivision map approvals; and (iii) Developer shall have the full power and exclusive control

of the Property subject to the obligations of Developer set forth in this Agreement.

- 11.4 Incorporation of Recitals. The recitals set forth at the beginning of this Agreement are part of this Agreement.
- 11.5 Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any of the provisions of this Agreement.
- 11.6 Consent. Where the consent or approval of City or Developer is required in or necessary under this Agreement, the consent or approval shall not be unreasonably withheld, delayed, or conditioned.
- 11.7 Covenant of Cooperation. City and Developer shall cooperate and deal with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- 11.8 Recording. The City Clerk shall cause a copy of this Agreement to be recorded with the Office of the County Recorder of Shasta County, California, within [ten (10) days following second reading of Ordinance No. _____, the ordinance adopting this Agreement.]
- 11.9 Delay; Extension of Time for Performance. In addition to any specific provision of this Agreement, performance by either City or Developer of its obligations hereunder shall be excused, and the term of this Agreement and the Specific Plan extended, during any period of delay caused at any time by reason of any event beyond the control of City or Developer which prevents or delays performance by City or Developer of obligations under this Agreement, including, but not limited to, acts of God, enactment of new conflicting Federal or State laws or regulations (for example, listing of a species as threatened or endangered), judicial actions such as the issuance of restraining orders and injunctions, delay in the issuance of bonds or formation of any community facilities or assessment districts, riots, strikes, or damage to work in process by reason of fire, floods, earthquake, or other such casualties. If City or Developer seeks excuse from performance, it shall provide written notice of such delay to the other within thirty (30) days of the commencement of such delay. If the delay or default is beyond the control of City or Developer and is excused, 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.
- 11.10 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

- 11.11 Operating Memorandum. The provisions of this Agreement require a close degree of cooperation between City and Developer and the refinements and further development of the Project may demonstrate that clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing, the City Attorney and City Manager shall be authorized to make the determination whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 4.3. The City Manager may execute any operating memoranda hereunder without City Council action.
- 11.12 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.
- 11.13 Estoppel Certificate. Within ten (10) business days following a written request by any of the parties, the other parties to this Agreement shall execute and deliver to the requesting party a statement certifying that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications; (ii) there are no known current uncured defaults under this Agreement or specifying the dates and nature of any such default; and (iii) any other reasonable information requested. The failure to deliver such a statement within such time shall constitute a conclusive presumption against the party which fails to deliver such statement that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party.
- 11.14 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective, successors and assigns.

11.15 Future Litigation Expenses.

11.15.1 Payment to Prevailing Party. If City or Developer brings an action or proceeding (including, without limitation, any motion, order to show cause, cross-complaint, counterclaim, or third-party claim) by reason of defaults, breaches, tortious acts, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit including, but not limited to, reasonable attorneys' fees and expert witness fees.

11.15.2 Scope of Fees. Attorneys' fees under this Section shall include attorneys' fees on any appeal and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger, termination or cancellation of this Agreement into any judgment on this Agreement.

11.16 Limitation of Liability. City hereby acknowledges and agrees that Developer's obligations under this Agreement are solely those of Developer and in no event shall any present, past or future officer, director, shareholder, employee, partner, affiliate, manager, representative or agent of Developer ("**Related Parties**") have any personal liability, directly or indirectly, under this Agreement and recourse shall not be available against Developer or any Related Party in connection with this Agreement or any other document or instrument heretofore or hereafter executed in connection with this Agreement. The limitations of liability provided in this Section are in addition to, and not in limitation of, any limitation on liability applicable to Developer or any Related Party provided by law or in any other contract, agreement or instrument.

[Signature pages to follow]

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the date first hereinabove written.

CITY

DEVELOPER

CITY OF REDDING, a California
municipal corporation

LD&C, INC., a California corporation

By: _____
Name: _____
Its: Mayor

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Its: City Attorney

ALL-PURPOSE ACKNOWLEDGEMENT

State of California

ss.

County of

On _____ before me, personally appeared _____ personally known to me OR proved to me on the basis of satisfactory evidence to be the person 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 executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(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.

Notary Signature

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgement to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL) DESCRIPTION OF ATTACHED DOCUMENT

INDIVIDUAL

TITLE OR TYPE OF DOCUMENT

CORPORATE OFFICER

TITLE(S)

PARTNER(S)

NUMBER OF PAGES

ATTORNEY-IN-FACT

DATE OF DOCUMENT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER

OTHER: _____

RIGHT THUMBPRINT
OF
SIGNER



SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

VALLEY-SIERRA 800-362-3369

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA,
COUNTY OF SHASTA, AND IS DESCRIBED AS FOLLOWS:

[Insert legal description]

EXHIBIT B

DEVELOPER'S SERVICES

EXHIBIT C

PLANS AND SPECIFICATIONS

EXHIBIT D

PHASES AND PHASING MAP

EXHIBIT E

RIGHTS-OF-WAY