



**CITY OF HUGHSON
CITY COUNCIL MEETING
CITY HALL COUNCIL CHAMBERS
7018 Pine Street, Hughson, CA**

**AGENDA
TUESDAY, MAY 26, 2015 – 7:00 P.M.
(ADJOURNED TO JUNE 8, 2015 – 7:00 P.M.
PURSUANT TO GOVERNMENT CODE SECTION
54955, REGARDING ITEM 5.2)**

CALL TO ORDER: Mayor Matt Beekman

ROLL CALL: Mayor Matt Beekman
Mayor Pro Tem Jeramy Young
Councilmember Jill Silva
Councilmember George Carr
Councilmember Harold Hill

FLAG SALUTE: Mayor Matt Beekman

INVOCATION: Hughson Ministerial Association

5. PUBLIC HEARING TO CONSIDER THE FOLLOWING:

- 5.2:** Introduce and Waive the First Reading of Ordinance No. 2015-04, amending the Development Agreement by and between the City of Hughson and Feathers Glen, LLC, EF Communities, Inc., and Adeline Feathers relating to the development known as Feathers Glen.

ADJOURNMENT:

WAIVER WARNING

If you challenge a decision/direction of the City Council in court, you may be limited to raising only those issues you or someone else raised at a public hearing(s) described in this Agenda, or in written correspondence delivered to the City of Hughson at or prior to, the public hearing(s).

AFFIDAVIT OF POSTING

DATE: May 22, 2015/ June 4, 2015 **TIME:** 5:00pm
NAME: Marilyn Castaneda **TITLE:** Management Analyst

**AMERICANS WITH DISABILITIES ACT/CALIFORNIA BROWN ACT
NOTIFICATION FOR THE CITY OF HUGHSON**

This Agenda shall be made available upon request in alternative formats to persons with a disability; as required by the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132) and the Ralph M. Brown Act (California Government Code Section 54954.2).

Disabled or Special needs Accommodation: In compliance with the Americans with Disabilities Act, persons requesting a disability related modification or accommodation in order to participate in the meeting and/or if you need assistance to attend or participate in a City Council meeting, please contact the City Clerk's office at (209) 883-4054. Notification at least 48-hours prior to the meeting will assist the City Clerk in assuring that reasonable accommodations are made to provide accessibility to the meeting.

Notice Regarding Non-English Speakers:

Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Hughson City Council shall be in English and anyone wishing to address the Council is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.

General Information: The Hughson City Council meets in the Council Chambers on the second and fourth Mondays of each month at 7:00 p.m., unless otherwise noticed.

Council Agendas: The City Council agenda is now available for public review at the City's website at www.hughson.org and City Clerk's Office, 7018 Pine Street, Hughson, California on the Friday, prior to the scheduled meeting. Copies and/or subscriptions can be purchased for a nominal fee through the City Clerk's Office.

Questions: Contact the City Clerk at (209) 883-4054

Any documents produced by the City and distributed to a majority of the City Council regarding any item on this Agenda will be made available at the City Clerk's counter at City Hall located at 7018 Pine Street, Hughson, CA.



CITY COUNCIL AGENDA ITEM NO. 5.2

SECTION 5: PUBLIC HEARING

Meeting Date: June 8, 2015
Subject: Consideration to Adopt Ordinance 2015-04, Amending the Feathers Glen Development Agreement
Enclosures: Ordinance No. 2015-04
Feathers Glen Development Agreement
Presented By: Jaylen French, Community Development Director
Approved By: _____

Staff Recommendation:

Introduce and Waive the First Reading of Ordinance 2015-04, an Ordinance of the City Council of the City of Hughson, amending the Development Agreement by and between the City of Hughson and Feathers Glen, LLC, EF Communities, Inc., and Adeline Feathers relating to the development known as Feathers Glen.

Background and Overview:

On June 12, 2006, the Hughson City Council adopted Ordinance No. 06-05 approving a Development Agreement between the City and Feathers Glen, LLC, EF Communities, Inc., and Adeline Feathers relating to development known as Feathers Glen.

Subsequently, on October 27, 2008, the Hughson City Council adopted Ordinance 08-07 amending the Development Agreement as requested by Pacific Union Homes, Inc., acting on behalf of Feathers Glen, LLC. The amendment was specific to Part II, Section 3.G., pertaining to when Inclusionary Housing In-Lieu fees are paid. The amendment allows said fees to be paid at building permit issuance as opposed to four (4) years from the effect date of the Development Agreement.

Discussion:

Pacific Union Land Company, formerly Pacific Union Homes, has requested a second amendment to the Development Agreement specific to Part II, Section 1.D., pertaining to the term of the Development Agreement. Current language states that the Development Agreement shall extend until the tenth (10th) anniversary of the effective date, i.e. July 26, 2016, or until one (1) year after the project buildout, whichever is earlier.

Due to the housing bust and economic downturn, Pacific Union Land Company does not believe that completing the project is feasible in the current timeframe, when the market has not supported development of residential units in recent years.

Pacific Union Land Company has reached agreement with a home builder, Florsheim Homes, to develop the remainder of the project and is seeking a 12-month extension to the term of the Development Agreement until July 26, 2017. This amendment also again adjusts the timeframe in which Inclusionary Housing In-Lieu fees are paid, moving it from July 5, 2015—as outlined in the first amendment to the Development Agreement—to concurrent with issuance of building permit for the remaining 39 undeveloped lots, which will expire with the expiration of the Development Agreement.

Planning Commission Action

On May 19, 2015, the Hughson Planning Commission recommended that the City Council adopt Ordinance 2015-04 amending the Feathers Glen Development Agreement by a vote of 3-0 (Minyard: Abstain and Patel: Absent).

Fiscal Impact:

There is no direct fiscal impact to this action. This project has been in the development stage for many years; this extension to the Development Agreement will help to ensure that the subdivision is completed.

**CITY OF HUGHSON
CITY COUNCIL
ORDINANCE NO. 2015-04**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUGHSON
AMENDING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY
OF HUGHSON AND FEATHERS GLEN, LLC, EF COMMUNITIES, INC., AND
ADELINE FEATHERS RELATING TO THE DEVELOPMENT KNOWN AS
FEATHERS GLEN**

WHEREAS, pursuant to Hughson Ordinance No. 90-59, the City of Hughson (“City”) may enter into, or amend a Development Agreement with the owner and/or developer of real property within the City; and

WHEREAS, on June 12, 2006 the Hughson City Council adopted Ordinance No. 06-05 approving a Development Agreement (hereinafter called “Development Agreement”) between the City and Feathers Glen, LLC, EF Communities, Inc., and Adeline Feathers for the development of certain real property within the City; and

WHEREAS, on October 27, 2008, the Hughson City Council adopted Ordinance No. 08-07 amending the Development Agreement as requested by Pacific Union Homes, Inc., acting on behalf of Feather Glen, LLC. The amendment was specific to Part II, Section 3.G. pertaining to when Inclusionary Housing In-Lieu fees are paid; and

WHEREAS, Pacific Union Land Company has requested another amendment to the Development Agreement specific to Part II, Section 1.D. pertaining to the term of the Development Agreement. Current language states that the Development Agreement shall extend until the tenth (10th) anniversary of the Effective Date—July 26, 2016—or until one (1) year after project buildout, whichever is earlier, unless the term is otherwise modified by mutual consent; and

WHEREAS, Pacific Union Land Company claims an undue hardship in completing the project when the market has not supported development of residential units for sale; and

WHEREAS, Pacific Union Land Company has reached agreement with a home builder to develop the remainder of the project and seeks a 12-month extension to the term of the Development Agreement until July 26, 2017; and

WHEREAS, Pacific Union Land Company has requested further amendment to the Development Agreement specific to Part II, Section 3.G. pertaining to when Inclusionary Housing In-Lieu fees are paid. Current language states that any amount of the total sum of unpaid in-lieu fees which has not been paid by July 5, 2015 shall be immediately due and payable to the City within ten (10) days from that date; and

WHEREAS, Pacific Union Land Company claims an undue hardship in paying the Inclusionary Housing In-Lieu fee when the market has not supported development of residential units for sale and has asked that the payment of said fee be collected concurrently with the issuance of building permits for the remaining 39 undeveloped lots within the subdivision, which will expire with the expiration of the Development Agreement, per this amendment.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF HUGHSON DOES ORDAIN AS FOLLOWS:

Section 1. Part II, Section 1.D. is hereby amended to read as follows:

“D. Term. The term of this Agreement shall commence upon the Effective Date and shall extend until July 26, 2017 or until one (1) year after the “Project Buildout” as hereinafter defined, whichever is earlier, unless said term is otherwise modified by circumstances set forth in this Agreement or by the mutual consent of the parties hereto. For purposes of this Agreement, “Project Buildout” shall mean the date on which a Certificate of Occupancy (or comparable instrument) is issued for the last project improvement or residential home or other structure to be constructed in the Project. Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect, except as may be specified otherwise herein.

Section 2. Part II, Section 3.G. is hereby amended to read in full as follows:

“G. Inclusionary Housing In-Lieu. In accordance with California Development Law requiring 15% of all housing built within a Redevelopment Project Area to be eligible for Low-Income Households, Developer agrees to pay, at the time of issuance of each building permit, In-Lieu Fees in the amount of \$7,738.83 per residential unit and in accordance with “In-Lieu Fees” identified on Fee Attachment Exhibit “E-2”, provided that:

- i. Notwithstanding the above, any amount of the total sum of unpaid in-lieu fees which has not been paid by July 26, 2017 shall be immediately due and payable to the City within ten (10) days from that date.

Section 3. All other terms and conditions of the Development Agreement, as amended, are unmodified and remain in full force and effect.

Section 4. This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the city or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5. If any provision of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The city council hereby declares that it would have adopted this ordinance irrespective of the validity of any particular portion thereof.

Section 6. This ordinance shall become effective thirty (30) days after its final passage.

Section 7. Within fifteen (15) days after its final passage, the City Clerk shall cause this ordinance to be posted in full accordance with Section 36933 of the Government Code.

The foregoing ordinance was introduced and the title thereof read at the regular meeting of the City Council of the City of Hughson held on _____, and by a unanimous vote of the council members present, further reading was waived.

On motion of councilperson _____, seconded by councilperson _____, the second reading of the foregoing ordinance was waived and this ordinance was duly passed by the City Council of the Hughson City Council at a regular meeting thereof held on _____, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

MATT BEEKMAN, Mayor

ATTEST:

DOMINIQUE SPINALE, City Clerk

RECORDING REQUESTED BY:

CITY MANAGER
CITY OF HUGHSON

AND WHEN RECORDED MAIL TO:

CITY MANAGER
CITY OF HUGHSON
P. O. BOX 9
HUGHSON, CA 95326

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF HUGHSON AND FEATHERS GLEN, LLC,
E F COMMUNITIES, INC., AND ADELINE FEATHERS
RELATING TO THE DEVELOPMENT KNOWN AS
FEATHERS GLEN**

TABLE OF CONTENTS

I. RECITALS1

II. AGREEMENT3

 Section 1. General Provisions.3

 Section 2. Definitions.3

 Section 3. Obligations of Developer.4

 Section 4. Performance of Work.7

 Section 5. Development of Project and Project Site.10

 Section 6. Amendment.12

 Section 7. Cooperation-Implementation.13

 Section 8. Cooperation in the Event of Legal Challenge.14

 Section 9. Default; Remedies; Termination.14

 Section 10. Hold Harmless Agreement.16

 Section 11. Insurance.17

 Section 12. No Agency, Joint Venture or Partnership.17

 Section 13. Miscellaneous Provisions.18

 Section 14. Notices.19

 Section 15. Assignment, Transfer and Notice.20

 Section 16. Estoppel Certificate.20

 Section 17. Entire Agreement; Counterparts and Exhibits.21

 Section 18. Recordation of Development Agreement.21

 Section 19. Time of Essence.21

 Section 20. Exercise of Discretion.21

 Section 21. Waiver of Claim.22

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF HUGHSON AND FEATHERS GLEN, LLC,
E F COMMUNITIES, INC., AND ADELINE FEATHERS
RELATING TO THE DEVELOPMENT KNOWN AS
FEATHERS GLEN**

THIS DEVELOPMENT AGREEMENT (hereinafter this "Agreement") is entered into this ___ day of _____, 2006, by and between the CITY OF HUGHSON, a municipal corporation organized and existing under the laws of the State of California (hereinafter the "City"), FEATHERS GLEN, LLC, a California Limited Liability Company, E F COMMUNITIES, INC., a California corporation, and ADELINE FEATHERS, an individual, who are hereinafter collectively called the "Developer". This Agreement is made pursuant to the authority of Section 65864 et seq. of the Government Code of the State of California. Developer and City are, from time to time, hereinafter referred to individually as a "party" and collectively as the "parties."

**I.
RECITALS**

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California adopted Section 65864 et seq. of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person/entity having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

B. Pursuant to Government Code Section 65865(c), the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements and this Development Agreement has been processed, considered and executed in accordance with those City rules and regulations.

C. Adeline Feathers is an individual, and holds fee title to the Project Site.

D. Feathers Glen, LLC holds an option to purchase that certain parcel of land, consisting of approximately 11.55 acres located in the City as diagrammed in Exhibit "A" attached hereto, and more particularly described in Exhibit "B" attached hereto and incorporated herein (the "Project Site"). Developer represents that it has an equitable or a legal interest in the Project Site and that all other persons holding legal or equitable interests in the Project Site are to be bound by the Agreement.

E. It is the intent of Developer to develop the Project Site, in accordance with a Final Subdivision Map ("Final Map"), prepared in substantial conformance with that certain Vesting Tentative Subdivision Map ("Vesting Tentative Map") approved by the City on October 24, 2005, attached hereto as Exhibit "C-1"; and with the Conditions of Approval for the Vesting Tentative Map, attached hereto as Exhibit "C-2", and the terms

and conditions of this Agreement. Such development of the Project Site is hereinafter called the "Project".

F. The Project Site is designated in the City's General Plan as Medium Density Residential and is zoned R-1 (Single Family Residential).

G. The Developer has applied for, and the City has approved, various land use approvals, entitlements and allocations relating to the development of the Project and Project Site that will allow Developer to build the Project without need to obtain further discretionary approvals, except for the design review process pursuant to Hughson Municipal Code Chapter 17.104. These actions are collectively referred to as "Project Approvals" and include, without limitation, the following: Approval of the Vesting Tentative Map, and the Conditions of Approval thereto, and current zoning of the Project Site, and the current General Plan designation of the Project Site.

H. The Project Approvals and this Agreement have all been properly reviewed and assessed by the City pursuant to the California Environmental Quality Act, California Public Resources Code section 21000 et seq. ("CEQA"), and the "CEQA Guidelines," 14 California Administrative Code section 15000 et seq., promulgated thereunder.

I. Development of the Project Site in accordance with the Project Approvals will provide for orderly growth consistent with the goals, policies, and other provisions of the City's General Plan.

J. On _____, 2006, following a duly noticed public hearing and following appropriate environmental review and compliance with CEQA, the Planning Commission recommended that the City Council approve this Agreement.

K. On _____, 2006, following a duly noticed public hearing and following appropriate environmental review and compliance with CEQA, the City Council introduced Ordinance No. 06-__, approving this Agreement. On _____, 2006, the City Council adopted Ordinance No. 06-__, approving this Agreement, made appropriate findings that the provisions of this Agreement are consistent with the City's General Plan as well as all other applicable plans, policies and regulations of the City and authorized execution of this Agreement. In adopting Ordinance No. 06-__, the City Council also determined that the environmental documentation for the Project adequately addressed the environmental review of each of the Project Approvals and of this Agreement. A copy of the City Council's Ordinance No. 06-__ is attached hereto as Exhibit "D".

L. For the reasons recited herein, Developer and the City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will eliminate uncertainty in planning and provide for the orderly development of the Project Site; ensure funding for, and progressive installation of, necessary public improvements; provide funding for traffic improvements, and community facilities, and efforts to combat homelessness; provide for public services appropriate to the development of the Project; ensure attainment of the maximum effective utilization of

resources within the City at the least economic cost to its citizens; and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

M. In exchange for these benefits to the City, together with the public benefits that will result from the development of the Project and Project Site pursuant to this Agreement and the Project Approvals, Developer desires to receive the assurance that it may proceed with the Project in accordance with the Project Approvals, this Agreement and the ordinances, resolutions, policies and regulations of the City in effect on the Effective Date of this Agreement, pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the parties hereto agree as follows:

II. AGREEMENT

Section 1. General Provisions.

A. Incorporation of Recitals. The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

B. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project Site and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Project and Project Site, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto, as further set forth in Section 16 of this Agreement.

C. Effective Date. This Agreement shall become effective upon the thirtieth (30th) day following the adoption by the City Council of Ordinance No. 06-__ approving this Agreement, or the date upon which this Agreement is executed by Developer and by the City, whichever is later (the "Effective Date").

D. Term. The term of this Agreement shall commence upon the Effective Date and shall extend until the tenth (10th) anniversary of the Effective Date or until one (1) year after the "Project Buildout" as hereinafter defined, whichever is earlier, unless said term is otherwise modified by circumstances set forth in this Agreement or by the mutual consent of the parties hereto. For purposes of this Agreement, "Project Buildout" shall mean the date on which a Certificate of Occupancy (or comparable instrument) is issued for the last Project improvement or residential home or other structure to be constructed in the Project. Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect, except as may be specified otherwise herein. The term of the Vesting Tentative Map shall be no less than the term of the Agreement as described in this Section.

Section 2. Definitions.

In this Agreement, unless the context otherwise requires: "City" shall have that meaning set forth in the introductory paragraph preceding the Recitals.

A. "Development Agreement Statute" shall have that meaning set forth in Recital paragraph A of this Agreement.

B. "Effective Date" shall have that meaning set forth in Section 1.C. of this Agreement.

C. "Project" shall have that meaning set forth in Recital paragraph E of this Agreement.

D. "Project Site" shall have that meaning set forth in Recital paragraph D of this Agreement.

E. "Developer" shall have that meaning set forth in the introductory paragraph preceding the Recitals and in Recital paragraph C of this Agreement and includes the Developer's successors-in-interest.

F. "Project Approvals" shall have that meaning set forth in Recital paragraph G of this Agreement.

Section 3. Obligations of Developer.

A. In General. In consideration of City entering into this Agreement, Developer agrees that it will comply with this Agreement and with all Project Approvals, and with the Improvement Plans submitted as required herein, or in the Conditions of Approval. The parties acknowledge that the execution of this Agreement by City is a material consideration for both Developer's acceptance of, and agreement to comply with, the terms and conditions of this Agreement and the Project Approvals, and with the Improvement Plans submitted as required herein, or in the Conditions of Approval as specifically set forth herein, and Developer's waiver of any legal or equitable rights or remedies it might allege to have in a lawsuit challenging the terms and conditions of this Agreement and/or the Project Approvals. Developer shall pay those fees, make those dedications and otherwise be subject to those conditions/exactions expressly prescribed in this Agreement and in the Project Approvals; and in the Improvement Plans submitted as required herein, or in the Conditions of Approval.

B. Conditions of Approval. Developer hereby agrees to complete and comply with the Conditions of Approval, attached here to as Exhibit "C-2" which are a part of the Project Approvals.

C. City Approval. It is understood and agreed that whenever approval of the City Engineer is required in the Project Approvals, Improvement Plans, Conditions of Approval, or this Agreement, the approval of the City Public Works Director shall also be required. Such approvals shall not be unreasonably withheld.

D. Maintenance District. Developer agrees, at Developer's expense, and at City's discretion, to form, or cooperate with the City in forming, a lighting and landscaping

assessment district, or any similar district, or to annex to an existing district, for the purpose of providing for the maintenance of landscaping and lighting, irrigation systems, and other authorized facilities required to be installed for the Project. Such district is to be formed prior to the first issuance of a building permit for construction in the Project. In City's sole discretion, annexation to an existing such district may occur in lieu of formation of a new district. All costs associated with the formation of such District shall be borne by Developer.

E. Fees. Fees to be paid by Developer, and credit for partial duplication of fees, and credit for Public Improvements constructed by Developer and land dedicated by Developer which would otherwise entitle Developer to reimbursement are, and shall be, as specified in Exhibit E attached hereto and incorporated herein. Exhibit E comprises Exhibits E-1 and E-2. Developer shall also pay fees expressly specified in this Agreement or the Project Approval, such as, but not limited to, those specified in Section 5.C.iii, or 3.F., of this Agreement. No reimbursements other than those specified in Exhibit E, if any, are or shall be due Developer. Such fees shall be collected at the time of building permit issuance. Notwithstanding the preceding portion of this Section II.3.E., the parties agree as follows:

- (i) That fees shown on Exhibit E as Plans Fees shall be paid within ten (10) days of the recordation of this Agreement; and
- (ii) The fees shown on Exhibit E may be increased at three (3%) percent per year, or by the percentage increase in the Engineering News Record Construction Cost Index, at the discretion of the City Manager of City, for the period of time from recordation of this Agreement, to the time of payment of such fees; and
- (iii) City is in the process of preparing an update to its Developer Impact Fees; to the extent the Developer Impact Fees shown on Exhibit E (all fees except Water Connection Fee, Sewer Connection Fee, Plans Fees and Park Fee) are increased or decreased in the document finally adopted by the City Council of City updating the Developer Impact Fees, from those listed in Exhibit E, Developer shall pay the difference (in the event of an increase), and City shall reimburse Developer the difference (in the event of a decrease); provided that this subsection 3.E.(iii) shall be effective only for the period commencing on the Effective Date and extending for eighteen calendar months thereafter; and
- (iv) In the event City shall adopt a Plans Fee resolution superseding the extant Resolution 06-23 prior to payment by Developer of the Plans Fees, Developer shall pay the Fee established by such Plans Fee resolution, in lieu of the fees established by Resolution 06-23, within ten (10) days of the recordation of this Agreement.
- (v) Community Enhancement. Developer shall pay, at the time of issuance of building permits per lot for each lot for which a building permit is issued, \$ 1000.00 for community enhancement.

Such funds shall be used by City for any project which will, in City's sole discretion, enhance the quality of life for residents of the City, and/or ameliorate the negative effect on older areas of the City caused by the economic pressure generated by new development, including but not limited to, public art, maintenance, repair or upgrading of public facilities, recreation, parks, or historical preservation. City and Developer, its successors and assigns, agree that notwithstanding any other provision of law, the imposition and accounting for these funds shall not be subject to the requirements of the Mitigation Fee Act (Government Code Sections 66000-66025).

F. Staff and Attorney Reimbursement. Developer shall pay to City, within thirty (30) days of submission of an invoice, detailing all the work done and costs charged to the City, costs incurred by City for services performed by City Attorney in drafting, negotiating and administering this Agreement, and by the City Engineer and the City's building inspector and public works inspector for any services performed in connection with this Agreement, all at the rates actually charged by them to City, or, if the City Engineer, building inspector and/or public works inspector are employees of City, a pro rata share of the total cost to the City of such employee(s). Developer agrees that, if Developer shall desire more, or more frequent, inspections than the City can provide with the staff and contractors it has as of the date of recordation of this Agreement, City may either hire additional contract inspectors, in which case Developer shall reimburse City, on a monthly basis in arrears, for the cost of such hire, plus ten percent (10%) for administrative costs, or City may hire a full or part time employee, in which case Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the term of this Agreement.

G. Inclusionary Housing In-Lieu. In accordance with California Development Law requiring 15% of all housing built within a Redevelopment Project Area to be eligible for Low-Income Households, Developer agrees to pay In-Lieu Fees in accordance with "In-Lieu Fees" identified on Fee Attachment Exhibit "E-2", provided that:

- i. The total fee, calculated by the fee shown on Exhibit E-2 as a fee per house times 42 homes, shall be paid upon close of escrow of the last 21 houses, pro rata. For example, the close of escrow for the 22nd house sold will cause a payment of twice the per house fee shown on Exhibit E-2; the close of escrow for the 23rd house sold shall cause another payment of twice the per hour fee shown on Exhibit E-2, and so forth.
- (ii) There shall be no administrative burden on City in accomplishing such payments from escrow as specified in Section 3.G.(i) above; to that end, Developer shall prepare escrow instructions to accomplish such payment, in a form to be approved by the City Attorney.

- (iii) Notwithstanding Section 3.G.(i) and 3.G.(ii) above, the City may, upon ten (10) days written notice to Developer, revoke Sections 3.G.(i) and 3.G.(ii.) above, and Developer shall, within ten (10) days after receipt of such notice, pay the in-lieu fee for each house for which a building permit has then been already issued, and pay the fee at the time of issuance of a building permit for all subsequently building permits.
- (iv) Notwithstanding Sections 3G.(i), (ii) and, (iii) above, any amount of the total sum due on Exhibit E-2 which has not been paid within four (4) years from the effective date of this Agreement shall then be immediately due and payable and the entire amount shall be paid to City by Developer within ten (10) days of that four (4) year period, whether or not building permits have been issued.

H. Privacy Wall. Developer agrees to erect a Block or Masonry Wall at the Terminus of Mulberry Way separating Mulberry Way from the South of Project Site. Dimensions and location for said wall to be approved by the Director of Planning and Building, Director of Public Works, City Engineer and City Manager, with Plans and Engineering Specifications to be approved via City of Hughson Permit Approval Process.

I. Fences. Developer shall, before allowing occupancy of any lot, install a fence, of at least six feet in height, and constructed to City Standard Specifications, along the property line of any lot adjoining an existing occupied property outside the Project.

Section 4. Performance of Work.

A. Performance of Work. To the extent that the Conditions of Approval or this Agreement require the construction of public improvements for the Project (“Public Improvements”) the Developer shall construct all of the Public Improvements in the Project in accordance with City of Hughson Standard Drawings and Standard Specifications on file in the office of the City Public Works Director of said City as of the Effective Date of this Agreement, and as shown on the improvement plans submitted by Developer, and reviewed and signed by the City Engineer.

B. Improvements. Time Limit. Developer agrees to cause all Public Improvements to be made and to fully comply with the requirements of the Hughson Municipal Code, and pay for any materials, provisions, provender or other supplies used in, upon, for or about the performance of said work, or for any work or labor done thereon of any kind, or for any amounts due under the Unemployment Insurance Act with respect to such work or labor. Developer agrees to complete the Public Improvements associated with the Project as follows: Public Improvements associated with and necessary for, each phase of the Project, as determined by the City Engineer, shall be completed prior to acceptance of a Final Map for such phase, or shall be secured pursuant to the provisions of this Agreement. All Public Improvements are to be completed by Project Buildout, or ten (10) years from the Effective Date of this Agreement, whichever is earlier. In the event that Developer shall fail to complete such Public Improvements within said time, City may complete the same and recover the full cost and

expense thereof from Developer, and Developer agrees to reimburse City for such full cost and expense. Nothing in this Agreement shall prevent Developer from making said Public Improvements prior to posting improvement securities as herein provided, and posting of improvement securities shall be required only if a final map is requested prior to completion of such Public Improvements, and such improvement securities shall be required only for the uncompleted Public Improvements.

C. Inspections. The City Engineer shall inspect all of the Public Improvements made to see that they comply with City subdivision regulations. The Developer hereby grants access to the Project and Project Site for inspection purposes and agrees to provide timely notice to the City Engineer in advance of required inspection, pursuant to City Improvement Standards and applicable City ordinances. Developer shall pay to City the cost to City for all inspection, and other services furnished by City in connection with the Project by paying Plan Check and Inspection fees, and shall also reimburse City for the actual cost charged to City by City Engineer for all services performed in accordance with this Agreement, such charges to be at the normal rate charged the City by the City Engineer. However, all costs in soil testing, concrete testing and compaction testing will be the responsibility of the developer. Plan check and inspection fees will be based on the approved engineer's estimate.

D. Improvement Security. The Developer agrees to post a security with the City which shall be in an amount deemed sufficient by the City Engineer to cover one hundred percent (100%) of the cost of uncompleted Public Improvements, engineering, and incidental expenses, guaranteeing faithful performance of the agreement. The cost of the uncompleted Public Improvements, engineering, and incidentals will be established by the City Engineer based upon approval of the improvement plans. In addition to the above, a second security in the sum of one hundred percent (100%) of the aforementioned costs guaranteeing payment to the contractor, his subcontractor and to persons renting equipment or furnishing labor or materials to them, is required to be posted by the Developer. Securities required in this paragraph may be in the amount required for each phase of the Project. Securities required in this paragraph are collectively called "Improvement Securities".

The required improvement securities shall be approved by the City Attorney and shall be posted and in effect prior to the approval of the Final Map of the Project, or each Phase of the Project, by the City. The improvement securities shall be:

- i. A cash deposit or deposits made with the City; or
- ii. A bond or bonds by one or more duly authorized corporation sureties;

or

- iii. An instrument or instruments of credit from one or more financial institutions subject to regulation by the state or federal government pledging that the funds necessary to meet the performance are on deposit and guaranteed by the instrument shall become trust funds for the purposes set forth in the instrument.

- (a). If the improvement security is other than a cash bond or deposit, the improvement security amounts specified in this Section 4.D. shall be increased two (2%) for the purposed

of covering the cost and reasonable expenses and fees, including reasonable attorneys' fees, which may be incurred by the City and successfully enforcing the obligation secured.

(b). Upon final acceptance by the City of the Public Improvement, and after the lapse of thirty-five (35) days from the filing of a Notice of Completion, and except as may be required to handle any claims made against the Developer, the City, and/or the contractor which are secured by the Improvement Securities, the Improvement Securities may be released upon the filing of a warranty bond and monumentation security (if necessary) in accordance with sections 4.F and 4.G of this Agreement.

E. Changes or Alterations. Developer shall perform any changes or alterations in the construction and installation of such Public Improvements required by City, provided that all such changes or alterations do not exceed 10 percent of the original total estimated cost of such Public Improvements.

F. Warranty. The Developer shall furnish City with a warranty bond in the amount of 10% of the improvement costs to guarantee such Public Improvements for a period of one year following the completion by Developer and filing of Notice of Completion by City against any defective work or labor done, or defective materials furnished, or adverse effect to any portion of adjacent properties in the construction of the Public Improvements. Developer agrees to remedy any defects in the improvements arising from faulty or defective construction of said improvements within one (1) year of acceptance thereof.

G. Monumentation and Monumentation Security. Developer shall replace, or have replaced, or repair or have repaired, as the case may be, all pipes and monuments shown on the Final Map which have been destroyed or damaged, and Developer shall replace or have replaced, repair, or have repaired, as the case may be, or pay to the owner, the entire cost of replacement by reason of any work done hereunder, whether such property be owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or by any public or private corporation, or by any person whomsoever, or by any combination of such owners. Any such repair or replacement shall be to the satisfaction and subject to the approval of the City Engineer. Developer shall provide such monumentation as may be required by City Engineer, in accordance with accepted standards.

The Developer shall post security guaranteeing the payment of the cost of setting the monuments. The cost of setting the monuments will be determined by the City Engineer upon approval of the improvement plans. The Developer shall pay the engineer or surveyor for the cost of setting the monuments within three (3) months from date of notification by the engineer or surveyor that the monuments have been set. If the Developer does not pay the engineer or surveyor within the three (3) months from date of notification, the City shall pay the engineer or surveyor for the security and refund the difference, if any, to the Developer.

H. Deviation from Standards. If the Developer deviates from the approved improvement drawings, specifications or standards, or shall construct any Public Improvements in such a manner so as to, in the opinion of the City Engineer, endanger the public safety, the City may cause the necessary corrections to be made without notice. In the event such deviations do not, in the opinion of the City Engineer, endanger the public safety, the City

Engineer may give the Developer written notice of such deviations, and the Developer shall correct the deviation in the time prescribed by the City Engineer. In the event of the failure of the Developer to make corrections of deviations, whether or not the public safety is affected, the City may cause the necessary corrections to be made and shall be reimbursed by the Developer at cost plus 25%. Said amount shall be deducted from the reimbursement by the City to the Developer or shall be paid for by the Developer prior to the acceptance of the improvements, or shall be obtained from the improvement securities.

I. Nonperformance and Cost. If Developer fails to complete the Public Improvements within the time specified in this Agreement or extensions granted, City may proceed to complete them by contract, or otherwise, and Developer shall pay the cost and charges therefor immediately upon demand. If City sues to compel performance of this Agreement or recover the cost of completing the work, Developer shall pay all reasonable attorney's fees, costs of suit, and all other expenses of litigation incurred by City in connection thereof.

J. No Waiver by City. Inspection of the work and/or materials, or approval of work and/or materials inspected, or statements by any officer, agent, or employee of the City indicating the work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments there for, or any combination or all of these acts, shall not relieve the Developer of his obligation to fulfill this contract as prescribed; nor shall the City thereby be estopped from bringing any actions for damages arising from the failure to comply with any of the terms and conditions hereof.

K. Non-Release of Surety. Any extension of time hereunder shall not operate to release the surety on the bond filed pursuant to this Agreement. In this connection any instrument of security shall provide that the surety waives the provisions of Section 2819 of the Civil Code of the State of California.

Section 5. Development of Project and Project Site.

A. General Permitted Uses and Subsequent Approvals. The permitted uses of the Project Site; the density and intensity of use; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and location of public improvements; location of public utilities; and other terms and conditions of development applicable to the Project and Project Site, shall be those set forth in this Agreement, the Project Approvals and amendments thereto.

B. Development Criteria. The following specific conditions govern the Project and use of the Project Site:

i. Permitted Uses. Permitted uses of the Project Site are limited to those uses allowed by the Project Approvals.

ii. Maximum Density or Intensity of Use. The maximum density/intensity of use is that shown in the Project Approvals.

iii. Site Development Standards. The site development standards [for example, building setbacks, lot coverage limitations, parking standards, etc.] for the Project shall be in accordance with City and State codes now in effect and with the Project Approvals.

iv. Reservation or Dedication of Land. The Developer shall provide for the reservation or dedication of land for public purposes as set forth in the Project Approvals.

v. Vested Right to Develop. The Developer shall have the vested right to develop the Project and Project Site in accordance with this Agreement. This Agreement shall act as a subdivision improvement agreement, in that, after the Effective Date, and upon posting of required securities (and compliance with any other specific provisions of this Agreement which are applicable), Developer may request approval of the Final Map, or appropriate phases thereof.

C. Rules, Regulations and Official Policies.

i. Effective Standards. The rules, regulations, standards, official policies and conditions governing the permitted uses of the Project and/or Project Site, including those addressing the density and intensity of use, design, improvement, construction and building standards, occupancy and specifications applicable to the Project and/or Project Site and all on-site and off-site improvements and appurtenances in connection therewith, shall be those in force upon the Effective Date of this Agreement, except as otherwise provided by this Agreement.

ii. Application of Subsequently Enacted Rules, Regulations, Policies. The City may apply such later enacted or modified rules, regulations, standards, official policies and conditions which are not in conflict with those in effect on the Effective Date of this Agreement and application of which would not prevent development of the Project and/or Project Site in accordance with Sections 5.A and 5.B. of this Agreement. However, this section shall not preclude the application to the Project and/or Project Site of changes in City laws, regulations, plans or policies which are specifically allowed for in the rules, regulations, laws, plans or policies in place on the Effective Date of this Agreement, or which are specifically mandated and required by changes in State or Federal laws or regulations. In the event that such changes in State or Federal laws or regulations do occur, the provisions of Section 5.E. of this Agreement are applicable.

iii. Application of Subsequently Revised Fees. Ministerial fees, including without limitation, application, processing and inspection fees, whether or not revised during the term of this Agreement shall apply to the Project pursuant to this Agreement provided that: (1) such fees apply to all public works within the City; (2) their application to the Project Site is prospective only as to applications for building and other development permits or approvals not yet accepted for processing; and (3) their application would not prevent development in accordance with Sections 5.A. and 5.B.

Notwithstanding any Project Approvals to the contrary, and except as may be otherwise provided in this Agreement, the City may charge, and Developer shall pay all ministerial fees (for example, processing and inspection fees), collected at the building permit stage or other approval stage for subsequent site specific approvals, building permits and other similar permits

which are in force and effect on a City-wide basis at the time application is submitted for such permits. Such ministerial fees do not include impact fees or other discretionary fees collected at the building permit stage or other approval stage. Such ministerial fees and charges shall be no more than the estimated reasonable cost to the City for performing the work for which the particular fee or charge is paid pursuant to Government Code Sections 66014 et seq.

D. Police Power and Taxing Power. The City, through the exercise of either its police power or its taxing power, shall not establish, enact or impose any additional conditions, dedications, fees, general taxes, special taxes and other exactions, policies, standards, laws or regulations which directly relate to the development of the Project and/or Project Site except as provided in the Project Approvals and/or this Agreement. However, the conditions, dedications, fees, general taxes, special taxes and exactions, policies, standards, laws and regulations applicable to the Project and/or Project Site as provided in this Agreement and in the Project Approvals shall be subject to modification or re-negotiation by City as a result of any amendment to the Project Approvals or this Agreement. Subsequent discretionary Project approvals, discretionary actions or other discretionary entitlements, if needed, are not subject to the vesting protections provided by this Agreement and are subject to all applicable City rules, regulations, standards, official policies and conditions in existence at the time such subsequent approval, action or other entitlement is granted by the City.

E. Changes in State, Federal and Local Laws. As provided in Government Code Section 65869.5, and notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application to the Project and/or Project Site of changes in City laws, regulations, plans or policies, to the extent that such changes are (1) specifically mandated and required by changes in state or Federal laws or regulations; or (2) in compliance with Government Code §§ 66498.1 et seq. In the event such changes in Federal, State or local laws prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such Federal, State or local laws and City and Developer shall take such action as may be required pursuant to Section 9.D (Enforced Delay; Extension of Time of Performance) and Section 7 (Cooperation-Implementation) of this Agreement.

F. Timing of Project Construction & Completion. Developer shall make reports of the progress of construction of Public Improvements in such detail and at such time as the City Manager or his designee reasonably requests, but in no event less than monthly. Developer shall submit to the City Manager or his designee copies of Project construction contracts.

Section 6. Amendment.

A. Amendment of Agreement. This Agreement may be amended from time to time in whole or in part by mutual consent of the original parties or their successors in interest, in accordance with the provisions of Government Code Sections 65867, 65867.5 and 65868, provided that:

i. Due Process Exemptions. Any amendment to this Agreement which does not relate to the term, permitted uses, provisions for reservation and dedication of land, or conditions, terms, restrictions and requirements relating to subsequent discretionary actions,

monetary contributions by Developer or any conditions or covenants relating to the Project or use of the Project Site shall not require notice or public hearing before the parties may execute an amendment hereto; and

ii. Amendment Exemptions. Any administrative amendment of the Project Approvals, or other related approvals or entitlements pursuant to Section 5.B.1. of this Agreement by either the Developer, or the City, the City Manager or his designee, whichever is applicable, shall not require an amendment to this Agreement.

B. Amendment of Project Approvals. The Project Approvals and any other related approvals, grants, entitlements or agreements may, from time to time, be amended or modified in the following manner:

i. Administrative Amendments. Upon the written request of Developer for a minor amendment or modification to the Project Approvals or other related approvals or entitlements, the City Manager or his designee shall determine (1) whether the requested amendment or modification is minor, and (2) whether the requested amendment or modification is consistent with this Agreement and the City's General Plan, and applicable provisions of the City's zoning and subdivision regulations and other regulations, policies, and standards in effect as of the Effective Date of this Agreement. If the City Manager or his designee finds that the proposed amendment is both minor and consistent with this Agreement, the General Plan, and the applicable provisions of the City zoning and subdivision regulations and other regulations, the City Manager or his designee may approve the proposed amendment without notice and public hearing. Such minor amendments or modifications approved pursuant to this Section shall not constitute subsequent discretionary approvals subject to further CEQA review.

ii. Non-Administrative Amendments. Any request of a Developer for an amendment or modification to the Project Approvals or other related approvals or entitlements which are determined not to be minor by the City Manager or his designee shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved. Any such approved amendment or modification shall be reflected in an amendment to this Agreement and/or its pertinent exhibits.

Section 7. Cooperation-Implementation.

A. Processing. The City shall cooperate with Developer in securing for Developer all permits which may be required by the City or any other governmental agency. If necessary or required, upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, City shall promptly commence and diligently proceed to complete all steps required or necessary for the implementation of this Agreement and the development by Developer of the Project and Project Site in accordance with this Agreement and the Project Approvals provided Developer submits required information and applications in accordance with City rules and regulations.

Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and cause Developer's planners, engineers, and all other consultants to submit, in a timely manner, all required materials and documents therefor. It is the express intent of Developer and City to cooperate and diligently work to implement any General Plan and Specific Plan amendments, zoning, preliminary and final development plans, tentative maps, parcel maps, final maps including phased final maps, re-subdivisions, amendments to maps, subdivision improvement agreements, lot line adjustments, encroachments, grading and building permits, and other land use approvals or entitlements which are necessary or desirable in connection with the development of the Project and Project Site in conformity with this Agreement and the Project Approvals as it may be amended from time to time pursuant to the terms of this Agreement and the Project Approvals.

No future modification of the Municipal Code or any ordinance or regulation, by initiative or otherwise, which limits or regulates the rate, timing, or sequence of development over time shall be applicable to the Project or Project Site, except as otherwise provided in this Agreement, and City agrees that the development of the Project and Project Site shall be exempt from growth control measures, development moratoria, allocation methods and/or such other measures which affect the rate, timing, or sequence of development, whether enacted by the City or by vote of the electorate of the City, which would stop or delay the development of the Project or Project Site, except as otherwise provided in this Agreement. Notwithstanding the previous sentence, any moratorium, or moratoria, which is, or are, enacted to preserve the public health, safety, or welfare, shall apply to the Project and Project Site.

B. Other Governmental Permits. In addition, Developer shall apply in a timely manner for such other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the Project and/or Project Site in connection with the development of, or provision of services to, the Project and/or Project Site. City shall cooperate with Developer in its efforts to obtain such permits and approvals.

Section 8. Cooperation in the Event of Legal Challenge.

In the event of any legal or equitable act, action or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action or proceeding. In the event City and Developer are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel, although the Developer shall be responsible for all City costs incurred in relation to defending against such an action or proceeding, as further provided for in Section 10 of this Agreement.

Section 9. Default; Remedies; Termination.

A. General Provisions. Failure or unreasonable delay by Developer to perform any term, provision or condition of this Agreement for a period of thirty (30) days after written notice thereof from the City shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. The time of notice shall be measured from the date of certified mailing. Said notice shall specify the nature of the alleged default and, where

appropriate, the manner and period of time in which said default may be satisfactorily cured. 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.

During any period of curing, the Developer shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default shall exist and the noticing party shall take no further action.

Subject to the foregoing, after notice and expiration of the 30-day period without cure, the City, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868 and the City Council Resolution No. 90-59. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council in the manner set forth in Government Code Sections 65865, 65867 and 65868 and City Council Resolution No. 90-59.

Following consideration of the evidence presented in said review before the City Council, and a determination by the City Council based thereon, the City, at its option, may give written notice of termination of this Agreement to the Developer by certified mail. Written notice of termination of this Agreement shall be effective immediately upon certified mailing to the defaulting party.

Evidence of Developer's default may also arise in the course of the regularly scheduled annual review of this Agreement as described in Section 9.B. below.

Failure or delay by City in giving notice of default pursuant to this Section shall not constitute a waiver of any default. Except as otherwise provided in this Agreement, any failure or delay by the City in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

B. Annual Review. The City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every 12 months from the date this Agreement is entered into, at which time the Developer, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of this Agreement. Such review shall be performed pursuant to Article 5 of the City's "Procedures and Requirements for Consideration of Development Agreements."

C. Default by City. In the event City defaults under the terms of this Agreement, Developer shall have all rights and remedies provided herein or under applicable law, including, without limitation, specific performance.

D. Enforced Delay; Extension of Time 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 defaults are due to war, insurrection, terrorism, strikes, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or

mandated by other governmental entities, enactment of conflicting State or Federal laws or regulations, new or supplemental environmental regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project and/or Project Site pursuant to this Agreement shall be deemed to create an excusable delay as to Developer. Upon the request of either party hereto, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

E. Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof; to recover damages for any default; enforce by specific performance the obligations and rights of the parties hereto; or to obtain any remedies consistent with the purpose of this Agreement. Such legal actions shall be initiated in the Superior Court of the County of Stanislaus, State of California or in the appropriate Federal District Court.

F. Applicable Law/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such actions, taking depositions and discovery, and all other necessary costs incurred in the litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such actions is prosecuted to a final judgment. If a legal action is brought by a third party, Sections II.7 and II.9 of this Agreement shall apply.

Section 10. Hold Harmless Agreement.

Developer hereby agrees to defend and hold the City and its elected and appointed officers, agents, employees and representatives harmless from claims, costs and liabilities for any personal injury, death or property damage which arises, directly or indirectly, as a result of the construction of the Project, Project Site or operations performed under this Agreement by Developer or by Developer's contractors, subcontractors, agents or employees, whether such operations were performed by Developer or any of Developer's contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors, except to the extent such claims, costs or liabilities arise from the willful misconduct or grossly negligent acts of the City, its elected or appointed representatives, officers, agents, or employees.

In addition, Developer shall defend City and its elected and appointed representatives, officers, agents and employees against actions arising out of such personal injury, death, or property damage which is caused, or alleged to have been caused, by reason of Developer's activities in connection with the Project or Project Site. Developer further agrees to defend and save and hold City harmless from any and all claims, costs and liabilities arising as a result of

any legal action or proceeding brought against the City which challenges the validity of this Agreement, any of the terms and conditions herein, the Project Approvals, or the sufficiency of environmental review pursuant to CEQA.

This hold harmless agreement applies to all damages or claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this section regardless of whether or not City prepared, supplied or approved plans or specifications, or both, for the Project and/or Project Site.

Section 11. Insurance.

Before commencing work pursuant to any City-approved permit or other entitlement relating to the Project, Developer shall obtain the insurance required under this Section and receive the approval of the City Manager or his designee as to form, amount and carrier. Developer shall maintain the insurance during the term of this Agreement. The insurance shall name the City as an additional insured and extend to the City, its elective and appointive boards, commissions, officers, agents, employees and representatives and to the Developer and each contractor and subcontractor performing work on the Project.

A. Compensation Insurance. Developer shall maintain workers' compensation insurance for all persons employed at Project Site. Developer shall require each contractor and subcontractor similarly to provide workers' compensation insurance for their respective employees. Developer agrees to indemnify the City for damage resulting from Developer's failure to take out and maintain such insurance.

B. Public Liability and Property Damage Insurance. Developer shall maintain public liability insurance in an amount not less than \$1,000,000.00 for injuries (including death) to any one person and subject to the same limit of any one occurrence.

C. Evidence of Insurance. Developer shall furnish City, concurrently with the execution of this Agreement, satisfactory evidence of the insurance required. Developer shall also provide evidence that the carrier is required to give the City at least ten (10) days' prior written notice of the cancellation or reduction in coverage of a policy.

Section 12. No Agency, Joint Venture or Partnership.

It is specifically understood and agreed to by and between the parties hereto that: (1) the subject development is a private development; (2) the City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that the City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals; (3) Developer shall have full power over and exclusive control of the Project and Project Site herein described, subject only to the limitations and obligations of Developer under the Project Approvals and this Agreement; and (4) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 13. Miscellaneous Provisions.

A. Non-Conflicting Regulations. The City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable General Plan, Specific Plan, zoning ordinance, subdivision ordinance or any other land use ordinances or building ordinances, resolutions or other rules, regulations or policies adopted by the City which changes, alters or amends the rules, regulations and policies governing permitted uses of the Project Site or density of design of the Project or Project Site applicable to the development of the Project and/or Project Site at the Effective Date of this Agreement. This Agreement shall not prevent the City in subsequent actions applicable to the Project and/or Project Site, from applying new rules, regulations and policies which do not conflict with those rules, regulations, and policies applicable to the Project and/or Project Site as set forth in this Agreement.

B. Waiver of Challenges to Project Approvals. In executing and accepting the benefits of this Agreement, Developer, its successor in interest, etc. expressly waives any legal or equitable right to challenge any project approvals, conditions of approval or other act, entitlement, approval, covered under this Agreement including acts of protest pursuant to California Government Code sections 66008 and 66009.

C. Consistency with General Plan. City hereby finds and determines that execution of this Agreement furthers the public health, safety, and general welfare of the community and that the provisions of this Agreement are consistent with the General Plan.

D. Severability. If any term, provision, covenant or condition of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

E. 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.

F. Construction. Each reference in this Agreement to this Agreement, the Project Approvals, the Vesting Tentative Map shall be deemed to refer to the named document or plan as such document or plan may be amended from time to time, whether or not the particular reference refers to such possible amendment.

G. No Presumption. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

H. Other Miscellaneous Terms. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signatory of this Agreement, the signatory obligations are joint and several.

Section 14. Notices.

Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given an received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days' written notice to the other party hereto in the manner described in this Section, designate any other address in substitution of the address to which such notice or communication shall be given. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address. Such notices or communications shall be given to the parties at their addresses set forth below:

IF TO CITY, TO:

CITY MANAGER
CITY OF HUGHSON
P.O. BOX 9
HUGHSON, CA 95326

IF TO DEVELOPER, TO:

FEATHERS GLEN LLC
2406 MERCED STREET
SAN LEANDRO, CA 94577
ATTN: PAUL STARN

WITH COPIES TO:

JOHN STOVALL, ESQ.
NEUMILLER & BEARDSLEE
P.O. BOX 20
STOCKTON, CA 95201-3020

PLANNING DIRECTOR
CITY OF HUGHSON
P.O. BOX 9
HUGHSON, CA 95326

Section 15. Assignment, Transfer and Notice.

Upon City's written consent, Developer shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement and the Project Approvals to third parties acquiring an interest or estate in the Project and/or Project Site, or any portion thereof including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels, or any lots, homes or facilities located within the Project Site. Developer shall give at least thirty (30) days' prior written notice to the City of its intention to assign or transfer any of its interests, rights or obligations under this Agreement. If all or any portion of the Project or Project Site is transferred by Developer to any person or entity, the transferee shall succeed to all of the Developer's rights and obligations under this Agreement as they affect the right to proceed with the development of that transferred portion of the Project or Project Site and the transferee shall automatically assume all obligations of Developer, past, present and future, hereunder which relates to the transferred Property. Unless Developer is released in writing by City, a transfer of all or any part of the Project Site to any other person or entity shall not release Developer from any obligation under this Agreement.

Section 16. Estoppel Certificate.

Within ten (10) days following any written request which either party may make from time to time, the other party to this Agreement shall execute and deliver to the requesting party a statement certifying that:

A. 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 modification;

B. There are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and

C. 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 parties.

Section 17. Entire Agreement; Counterparts and Exhibits.

This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of _____ (_____) pages, including _____ (_____) exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. Any waiver of any of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the city and the Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit "A"	Project Site
Exhibit "B"	Legal Description of the Project Site
Exhibit "C-1"	Vesting Tentative Map
Exhibit "C-2"	Original Conditions of Approval
Exhibit "D"	City Council Ordinance No. 06-___ Approving Development Agreement
Exhibit "E"	Fees and Credits (Note: Exhibit E consists of E-1 and E-2).
Exhibit "F"	Description of Land to be Dedicated (if any)

Section 18. Recordation of Development Agreement.

No later than ten (10) days after the City enters into this Agreement, the City Clerk shall at Developer's expense record an executed copy of this Agreement in the Official Records of the County of Stanislaus.

Section 19. Time of Essence.

Time is of the essence of this Agreement.

Section 20. Exercise of Discretion.

Where the terms of this Agreement require approval, consent, written consent, determinations, or the exercise of discretion by the parties (together “discretion”), such discretion shall be exercised reasonably and shall not be unreasonably withheld.

Section 21. Waiver of Claim.

For the purposes of this Section 21, “party” includes the representatives, heirs, successors, assignees, officers, agents, employees and independent contractors of the party. Each party, with respect to the other party, in consideration of the entering into of this Agreement, and the mutual promises, conditions and covenants herein, hereby completely releases and forever discharges the other party from all claims, rights, demands, actions, obligations, and causes of action of any and all kind, nature, and character, known or unknown, which the releasing party may now have or may have had against the other party prior to the Effective Date, arising from, or related to, any claims of lack of nexus, or claims of failing to comply with the requirements of California Government Code § § 66000-66025, or the negotiation of this Agreement.

Each party understands the word “claims” to include all actions, claims, and grievances whether actual or potential, known or unknown. All such claims are forever barred by this Agreement without regard to whether those claims are based on any alleged breach of a duty arising in contract or tort.

Each party has read and understands the following language of Section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Having reviewed this provision, each party nevertheless voluntarily releases the other party from all liability, as set forth in this Section 21.

Initial: _____
CITY

Initial: _____
ADELINE FEATHERS

Initial: _____
FEATHERS GLEN, LLC

Initial: _____
E F COMMUNITIES, INC.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

CITY:

CITY OF HUGHSON

By: _____

THOMAS E. CROWDER
Title: Mayor, City of Hughson

DEVELOPER:

ADELINE FEATHERS,
as an individual

FEATHERS GLEN, LLC

By: _____

Title: _____

E F COMMUNITIES, INC.

By: _____

Title: _____

ATTEST:

Jane Cantrell, CMC
City Clerk, City of Hughson

APPROVED AS TO FORM:

John W. Stovall, City Attorney
City of Hughson

STATE OF CALIFORNIA)
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(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.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)

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(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.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
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(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.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

**[HERE WILL GO A MAP OF THE PARCEL
ON WHICH THE PROJECT IS LOCATED]**

EXHIBIT "B"

**[HERE WILL GO A LEGAL DESCRIPTION
OF THE LAND SHOWN ON THE
MAP IN EXHIBIT "A"]**

EXHIBIT "C-1"

[HERE WILL GO THE VESTING TENTATIVE MAP],

EXHIBIT "C-2"

[HERE WILL GO THE CONDITIONS OF APPROVAL]

EXHIBIT "D"

**[HERE WILL GO THE CITY'S ORDINANCE
ADOPTING THE DEVELOPMENT AGREEMENT]**

EXHIBIT "E-I"

NAME		Feathers Glen		Attachment "E-1"		Fee Due Per Unit at Permit Issuance	Fee Credit For Reimbursement
This is a draft of fees we are placing in current Development Agreements. They will be modified as needed with new AB 1600							
FEE SCHEDULE	Per Unit	Units	Total	Fee Credits	Adjusted Total		
Public Facility Fee	\$ 3,882.00	41	\$ 159,162.00	\$ -	\$ 159,162.00	\$ 3,882.00	
Storm Drain Fee	\$ 1,233.00	41	\$ 50,553.00	\$ -	\$ 50,553.00	\$ 1,233.00	
Sewer Fee	\$ 2,357.00	41	\$ 96,637.00	\$ -	\$ 96,637.00	\$ 2,357.00	
Water Fee	\$ 1,902.00	41	\$ 77,982.00		\$ 77,982.00	\$ 1,902.00	
Street Fee	\$ 3,191.00	41	\$ 130,831.00	\$ -	\$ 130,831.00	\$ 3,191.00	
Water Connection Fee	\$ 1,000.00	41	\$ 41,000.00	\$ -	\$ 41,000.00	\$ 1,000.00	
Sewer Connection Fee	\$ 1,200.00	41	\$ 49,200.00	\$ -	\$ 49,200.00	\$ 1,200.00	
Park Development Fee	\$ 3,000.00	41	\$ 123,000.00		\$ 123,000.00	\$ 3,000.00	
Park Fee	\$ 1,267.00	41	\$ 51,947.00	\$ -	\$ 51,947.00	\$ 1,267.00	
Community Enhancement	\$ 1,000.00	41	\$ 41,000.00		\$ 41,000.00	\$ 1,000.00	
Plans Fee per unit * See Below	\$ 68.17	41	\$ 2,794.97		\$ 2,794.97	\$ 68.17	
TOTAL PER UNIT FEE	\$ 20,100.17					\$ 20,100.17	\$ -
		TOTAL FEE	\$ 824,106.97				
		TOTAL FEE CREDIT	\$ -				
		TOTAL FEE OWED	\$ 824,106.97				
Plans Fee per acre*	\$ 242.00	11.55	\$ 2,795.10		\$ 2,795.10	\$ 68.17	

EXHIBIT "E-2"

Draft

Feathers Glen Inclusionary Housing In-lieu Fees				
Three Bedroom Units	43	Four Bedroom Units	21	
* 15%	\$ 6.45	* 15%	\$ 3.15	
Very Low *40%	\$ 2.58	Very Low *40%	\$ 1.26	
Low *60%	\$ 3.87	Low *60%	\$ 1.89	
Very Low *82,008	\$211,580.64	Very Low *82,008	\$ 90,208.80	\$113,663.09
Low * 31,315	\$121,189.05	Low * 31,315	\$ 34,446.50	\$ 65,103.89
Total	\$332,769.69	Sub Total		\$178,766.97
		Three Bedroom Units	22	
		* 15%	\$ 3.30	
		Very Low *40%	\$ 1.32	
		Low *60%	\$ 1.98	
		Very Low *82,008	\$108,250.56	
		Low * 31,315	\$ 62,003.70	
		Sub Total	\$170,254.26	
		Total	\$349,021.23	

EXHIBIT “F”

**[HERE WILL GO A DESCRIPTION OF THE
LAND TO BE DEDICATED, IF ANY WHICH
IS NOT SHOWN ON THE FINAL MAP]**