THE ATTACHED AGREEMENT HAS BEEN REVIEWED AND APPROVED AS TO FORM BY THE CITY ATTORNEY'S OFFICE AND WILL BE FORMALLY SIGNED UPON APPROVAL BY THE CITY COUNCIL

Glen R. Googins
City Attorney

Dated: 6/11/15

DEVELOPMENT AGREEMENT AMONG THE CITY OF CHULA VISTA AND VILLAGE II TOWN CENTER, LLC & SUNRANCH CAPITAL PARTNERS, LLC

RECORDED AT REQUEST OF AND WHEN RECORDED RETURN TO: City of Chula Vista 276 Fourth Avenue Chula Vista, California 91910 Attn: City Clerk	Fee Exempt – Gov't Code §6103

(Space above for Recorder's Use)

DEVELOPMENT AGREEMENT

among

THE CITY OF CHULA VISTA,
a California charter city and municipal corporation

and

VILLAGE II TOWN CENTER, LLC & SUNRANCH CAPITAL PARTNERS, LLC

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into as of the Effective Date (as defined below) by and among THE CITY OF CHULA VISTA, a California charter city and municipal corporation ("City"), VILLAGE II TOWN CENTER, LLC, a California limited liability company ("Village II") and SUNRANCH CAPITAL PARTNERS, LLC, a Delaware limited liability company ("Sunranch"). Village II and Sunranch are collectively referred to in this Agreement as the "Owner". The City or the Owner are sometimes individually referred to in this Agreement as a "Party" and are collectively referred to as the "Parties". The Parties enter into this Agreement with reference to the following recited facts (each a "Recital"):

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and to reduce the economic risk of development, the State of California has enacted the Development Agreement Statute, found at Sections 65864 et seq., of the California Government Code.

B. The City is authorized by the Development Agreement Statute and by its City Charter to enter into development agreements with persons and entities having legal or equitable interests in real property for the purpose of establishing predictability for both the City and the property owner in the development process and in the provision of public infrastructure and public benefits.

C. Owner has a legal or equitable interest in that certain real property consisting of approximately 36.3 acres of land located in the City of Chula Vista, County of San Diego, State of California, more particularly described and depicted in Exhibit "A" to this Agreement (the "Property").

D. The Property is located in the Otay Ranch Freeway Commercial Sectional Planning Area Plan ("SPA Plan"). It is currently partially developed having previously been entitled by the City for development as contemplated by the SPA Plan.

E. Owner desires to amend the land use designations for the FC-2 area of the SPA Plan to allow for up to 600 residential units, 2 acres of enhanced parkland, 15,000 square feet of retail provided in a mixed use format (with an additional 15,000 square feet constructed to commercial standards, as defined in this Agreement), and two hotels of approximately 150 guestrooms each, to enhance the Property as a unified, walkable and mixed-use development which offers potential residents additional housing options (the "Project"). A general description and depiction of key elements of the Project is contained in Exhibit "B" to this Agreement.

F. Owner has requested that the City enter into a development agreement for the development of the Project, and the City desires to enter into this Agreement pursuant to the provisions of the California Government Code, the City Charter, the General Plan, the City Municipal Code, and applicable City policies.

G. This Agreement assures that development of the Project will occur in accordance with the General Plan, the Otay Ranch General Development Plan ("Otay Ranch GDP"), the SPA Plan, as amended by the Project Approvals, and all of the implementing regulations for those various Plans.

H. This Agreement constitutes a current exercise of the City's police powers to provide predictability to the Owner in the development approval process by vesting the permitted uses, density, intensity of use, and timing and phasing of the Project in exchange for the Owner's commitment to provide significant public benefits to the City.

I. This Agreement is also intended to ensure that the Owner has provided funding sufficient to provide the adequate and appropriate infrastructure and public facilities required by the development of the Project, and that this infrastructure and public facilities will be available no later than when required to serve the Project's demand.

J. The commitments of the Owner made in this Agreement allow the City to realize significant economic, recreational, park, open space, social, public facilities or other public benefits. These public benefits will advance the interests and meet the needs of Chula Vista's residents and visitors to a significantly greater extent than would development of the Project under the current entitlements and absent this Agreement.

K. In return for the Owner's commitment to provide these public benefits, the City is willing to exercise its authority to enter into this Agreement and to make a commitment of predictability for the development process for the Project.

AGREEMENT

For good and valuable consideration, the City and Owner agree as follows:

1. DEFINITIONS. In this Agreement, unless the context otherwise requires, the following terms and phrases shall have the following meanings:

1.1 "Agreement" means this Development Agreement between the City and the Owner. The term "Agreement" shall include any amendment to the Agreement properly approved and executed pursuant to the terms of this Agreement.

1.2 "Approval Date" means the date on which the City Council conducted the first reading of the Enabling Ordinance as part of the Project Approvals.

1.3 "City" means the City of Chula Vista, a California charter city and municipal corporation.

1.4 "City Charter" means the City of Chula Vista's City Charter.

1.5 "City Council" means the governing body of the City.

1.6 "City Manager" means the City Manager of the City or the City Manager's designee.

1.7 "City Municipal Code" means the Chula Vista Municipal Code.

1.8 "Day" means a calendar day unless specifically stated as a "business day."

1.9 "Effective Date" means the date on which the Enabling Ordinance becomes effective and the Parties have each signed this Agreement.

1.10 "Enabling Ordinance" means City Ordinance No. _____ by which this Agreement was approved.

1.11 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Approval Date, including the General Plan, Otay Ranch GDP and other Project Approvals but excluding any amendment or modification of the Land Use Regulations adopted, approved or imposed after the Approval Date that impairs or restricts Owner's Vested Right, as defined in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or agreed to by Owner in writing. Owner has consented to the General Plan, Otay Ranch GDP and other Project Approvals, in effect on the Approval Date, which shall all be considered part of the Existing Land Use Regulations.

1.12 "General Plan" means the General Plan of the City of Chula Vista.

1.13 "General Plan Amendment" means the amendments to the General Plan that are enacted as part of the Project Approvals.

1.14 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of the 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, the City's public improvement engineering ordinances, policies, rules, regulations and standards, and the design, improvement, 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:

1.14.1 The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in the City;

1.14.2 Taxes and assessments of general application upon all residents of the City.

1.14.3 The control and abatement of nuisances.

1.15 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, a lender, and their successors and assigns.

1.16 "Owner" means, jointly and severally, Village II and Sunranch, and Owner's successors and assigns as set forth in the Agreement. Village II and Sunranch are each jointly and severally responsible for all obligations of the Owner set forth in this Agreement.

1.17 "Owner's Vested Right" shall have the meaning set forth in Section 4.1.

1.18 "Otay Ranch GDP" means the Otay Ranch General Development Plan.

1.19 "Otay Ranch GDP Amendments" means the amendments to the Otay Ranch GDP that are enacted as part of the Project Approvals.

1.20 "Parties" means the City on the one hand, and Village II and Sunranch on the other hand (with Village II and Sunranch being jointly and severally defined as "Owner"). A "Party" means either the City or the Owner.

1.21 "Project" means the development of the Property, including all related on-site and off-site improvements, as set forth in the Project Approvals and Subsequent Project Approvals.

1.22 "Project Approvals" means all permits and other entitlements approved or issued by the City for the use of, construction upon, and/or development of the Project on the Property. A listing of the Project Approvals is contained in Exhibit "C" to this Agreement.

1.23 "Property" means the real property described and depicted in Exhibit "A".

1.24 "Reservation of Authority" or "Reserved Authority" means the rights and authority specifically reserved to the City which limits the assurances and rights provided to the Owner and the Owner's Vested Right under this Agreement.

1.25 "Section" means a numbered section of this Agreement, unless specifically stated to refer to another document or matter.

1.26 "SPA Plan" means the Otay Ranch Freeway Commercial Sectional Planning Area Plan.

1.27 "SPA Plan Amendments" means the amendments to the SPA Plan that are enacted as part of the Subsequent Project Approvals.

1.28 "Subsequent Project Approvals" means all Project Approvals approved, granted, or issued after the Approval Date which are required or permitted by the Project Approvals, Existing Land Use Regulations, any applicable Subsequent Land Use Regulations and this Agreement. Subsequent Project Approvals includes, but is not limited to, the SPA Plan Amendments. A listing of the anticipated Subsequent Project Approvals is contained in Exhibit "D" to this Agreement.

1.29 "Subsequent Land Use Regulations" means those Land Use Regulations which are both adopted and effective after the Approval Date and which are not included within the definition of Existing Land Use Regulations. "Subsequent Land Use Regulations" include any Land Use Regulations adopted by moratorium, initiative, City action, or otherwise.

1.30 "Term" means the term of this Agreement as set forth in Section 6.1 of this Agreement.

2. INTEREST OF OWNER. Owner represents that it has a legal or equitable interest in the Property and is authorized to enter into this Agreement.

3. PUBLIC HEARINGS. On April 22, 2015 the Planning Commission and on May 12, 2015 and May 26, 2015 the City Council, after providing notice as required by law, held public hearings on this Agreement wherein the City Council made the legally required findings as set forth in the Enabling Ordinance.

4. DEVELOPMENT OF THE PROJECT.

4.1 Owner's Vested Right. Owner shall have the vested right to complete the Project during the Term in accordance with the Project Approvals, the Subsequent Project Approvals, the Existing Land Use Regulations, any applicable Subsequent Land Use Regulations, the City's Reservation of Authority and this Agreement ("Owner's Vested Right").

4.2 Governing Land Use Regulations. Except as otherwise provided in this Agreement, the Land Use Regulations applicable to the development of the Project shall be those contained in the Project Approvals, the Subsequent Project Approvals and the Existing Land Use Regulations. Subsequent Land Use Regulations shall not apply to the development of the Project, unless expressly authorized by this Agreement or agreed to by Owner in writing.

4.3 Permitted Uses. Except as otherwise provided within this Agreement, the permitted uses shall be as provided in the Project Approvals, the Subsequent Project Approvals and the Existing Land Use Regulations.

4.4 Density and Intensity; Requirement for Reservation and Dedication of Land. Except as otherwise provided in this Agreement, the density and intensity of use for the development of the Project, and the requirements for reservation and dedication of land, shall be as provided in the Project Approvals, the Subsequent Project Approvals and the Existing Land Use Regulations.

4.5 Reservation of Authority. The following Land Use Regulations, Subsequent Land Use Regulations or other requirements shall apply to the Property and the Project:

4.5.1 Processing fees and charges imposed by the City to cover the City's estimated or actual costs of reviewing and processing applications for

the Project, providing inspections, conducting annual reviews, providing environmental analysis, or for monitoring compliance with this Agreement or any Project or Subsequent Project 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 the City. This Section shall not be construed to limit the authority of City to charge its then-current, normal and customary application, processing, and permit fees for Project or Subsequent Project 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 on the date of filing such applications with City, notwithstanding the fact that such fees may have been increased by City subsequent to the Approval Date.

4.5.2 Development impact fees, monetary exactions or other mitigation requirements imposed by the City as a condition precedent to the issuance of any permit or approval to cover the impacts associated with the development of the Project ("Development Impact Fees"), as required by the Project Approvals or Subsequent Project Approvals, provided such fees or other mitigation requirements are in force and effect on a general basis on the date of filing for such permit or approval with the City. However, this Agreement vests Owner the right, at its sole option, to defer the payment of the following Development Impact Fees, as applicable to the Project, and the Property, at the then-current amount, until the request for final inspection of a building permit: Sewer Capacity Fee; Public Facility Development Impact Fee; Eastern Transportation Development Impact Fee; Western Transportation Development Impact Fee; Telegraph Canyon Drainage Fee; Poggi Canyon Sewer Development Impact Fee; Salt Creek Sewer Development Impact Fee; Otay Ranch Village 1 and 5 Pedestrian Bridge Development Impact Fee; Otay Ranch Village 11 Pedestrian Bridge Development Impact Fee; and any successor or replacement fees for the fees named above. This Section shall not be construed to limit the authority of the City to charge its then-current, normal and customary impact fees or other mitigation requirements in place at the time of the application for the permit or approval, notwithstanding the fact that such fees may have been increased by the City subsequent to the Approval Date.

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

4.5.4 The following, provided that they are uniformly applied to all development projects within the City:

4.5.4.1 Uniform codes governing engineering and construction standards and specifications adopted by the City pursuant to state law. Such codes include, without limitation, the City's adopted version of the Uniform Administrative Code, California Building Code, California Plumbing Code, California Mechanical Code, California Electrical Code, and California Fire Code.

4.5.4.2 Local amendments to those uniform codes which are adopted by the City pursuant to state law, provided they pertain exclusively to the preservation of life and safety.

4.5.4.3 The City's standards and procedures regarding the granting of encroachment permits and the conveyance of rights and interests which provides for the use of or the entry upon public property.

4.5.4.4 The City's public improvement engineering ordinances, policies, rules, regulations and standards in effect when construction drawings for those improvements are submitted to City. City will reasonably consider requests for exceptions to and deviations from these public improvement engineering ordinances, policies, rules, regulations and standards necessary or desirable for implementation of the Project or the Project Approvals.

4.5.5 Regulations which may be in conflict with this Agreement, but which are objectively required to protect the public health and safety.

4.5.6 State or federal laws or regulations which preempt local regulations or mandate local regulations or conditions that conflict with the development of the Project. This expressly includes mandates imposed through the Clean Water Act or the Porter-Cologne Water Quality Control Act.

4.5.7 Prior to exercising the Reservation of Authority provided in Sections 4.5.5 and 4.5.6, the City shall provide Owner with written notice of the state or federal law or regulation, or the regulation required to protect the public health and safety that conflicts with this Agreement, and a written explanation of the conflict created. Within ten (10) days of the City's written notice, City and Owner shall meet and confer in good faith in a reasonable attempt to apply the state or federal law, or the regulation required to protect the public health and safety, in a manner that is most consistent with this Agreement, best preserves the terms of this Agreement and that protects rights of Owner as derived from this Agreement, to the extent reasonably possible, while still following the applicable law or regulation. Failure of the City to provide this notice

shall not relieve Owner of its obligation to comply with such law or regulation.

4.5.8 Owner shall be issued building permits for the Project after permit applications are reviewed and approved by City in the City's customary fashion for such review and approval.

4.5.9 The exercise of the power of eminent domain.

4.6 Vested Rights Upon Termination. Owner acknowledges that following termination of this Agreement, except as to any Project Approval or Subsequent Project Approval that has vested under state law without reliance on this Agreement, City may amend the General Plan, Otay Ranch GDP, SPA Plan or Land Use Regulations as they relate to the Project.

4.7 Compliance with CEQA. The City Council has found that the environmental impacts of the Project have been addressed in the Final Environmental Impact Report for the Otay Ranch Freeway Commercial Sectional Planning Area (SPA) Plan-Planning Area 12 ("FEIR 02-04") (SCH # 1989010154), including addenda to FEIR 02-04. Where the California Environmental Quality Act requires that an additional environmental analysis be performed in connection with a Subsequent Project Approval or other future discretionary approval granted by the City for the Project, the Owner shall pay all of the City's reasonable costs to perform that additional analysis.

4.8 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 in that case 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 specific intent of the Parties to provide for the timing of the Project in this Agreement. To do so, the Parties acknowledge and provide that, subject to express terms of this Agreement including, without limitation, Sections 4.5.5 and 4.5.6, Owner shall have the right, but not the obligation, to complete the Project in such order, at such rate, at such times, and in as many development phases and sub-phases as Owner deems appropriate in its sole subjective business judgment.

4.9 Delay of TDIF and PFDIF Obligations. Notwithstanding Section 4.5.2 above or any other provision in this Agreement, each of the two hotels described in Section 5.1 below shall not be required to pay Transportation Development Impact Fees ("TDIF") or Public Facility Development Impact Fees ("PFDIF") until 18 months after issuance of the Certificate of Occupancy for each hotel. The total amount of the TDIF and PFDIF payment delayed for this 18 month period shall be secured through a promissory note and security agreement between the City and Owner, the terms of which documents shall be subject to approval of the City Attorney and the City Manager. At a minimum, however, the agreements shall require that: (1) payment of the outstanding balance shall be secured through a promissory

note and a recorded lien, deed of trust or other security instrument acceptable to the City in real property of at least equivalent value as the outstanding balance owned by Owner; (2) the outstanding balance shall accrue interest from the date the fees would otherwise have been due and payable at the fair market rate of Two Percent (2%) per annum; and (3) the outstanding balance shall become immediately due and payable if Owner transfers the hotel property to any other party without the reasonable advance approval of the City and the acceptance by the other party of the obligation to pay the outstanding balance of the deferred fees as provided herein, including, without limitation, the provision of appropriate security acceptable to the City.

5. OWNER'S OBLIGATIONS AND PROVISION OF PUBLIC BENEFITS.

5.1 Construction of Hotels. As set forth in more detail in the Project Approvals, the Owner shall construct or cause to be constructed two hotels of quality not less than AAA Three Diamond rating, or reasonable equivalent as approved by the Director of Development Services, on the Property at the general locations depicted in Exhibit "B," containing a minimum of 300 hotel rooms (approximately 150 rooms each). The City acknowledges that the hotel proposed in Owner's current design review and building permit applications meets this standard.

5.1.1 Owner shall obtain building permits for and shall commence construction of the foundation of one hotel containing a minimum of 148 hotel rooms prior to the City's issuance of any building permits for any residential components of the Project. Owner agrees and acknowledges that City would not have enacted the amendments to the General Plan, Otay Ranch GDP and the SPA Plan included in the Project Approvals but for Owner's agreement to obtain permits for and commence substantial construction of one hotel containing a minimum of 148 hotel rooms prior to obtaining any building permits for any residential components of the Project. Owner further agrees and acknowledges that its failure to satisfy the provisions of this Section shall constitute a default of its obligations under the Agreement and that upon any such default the City may pursue any of the remedies provided in this Agreement.

5.1.2 Owner shall commence substantial construction of the second hotel containing 150 hotel rooms (or the number of rooms needed to bring the total hotel room count of the two hotels to a total of 300 rooms) (the "Second Hotel") prior to issuance of the 451st residential building permit for the Project. In the event that Owner has not pulled building permits and, in the reasonable determination of the Director of Development Services, commenced substantial construction of the Second Hotel prior to the issuance of the 451st residential building permit for the Project, Owner shall pay to the City the amount of $629,860 per year (the "In Lieu Hotel Payment") as provided herein.

Owner shall make the first In Lieu Hotel Payment to the City prior to the final inspection for the 451st residential building permit for the Project. Owner shall, thereafter, make the In Lieu Hotel Payment annually on the anniversary date of the issuance of the 451st residential building permit for the Project. Owner's obligation to make the In Lieu Hotel Payment shall continue until the earlier to occur of (a) the beginning of substantial construction, in the reasonable determination of the Director of Development Services, of the Second Hotel, or (b) the twentieth (20th) anniversary of the Effective Date of the Agreement. Owner's obligation to make the In Lieu Hotel Payment shall be secured by a security interest in the Property or, at the Owner's request, by another security interest reasonably acceptable to the City Manager and City Attorney. Owner shall, at the City's request, enter into a separate promissory note and deed of trust to secure the obligation to make the In Lieu Hotel Payment at the time of issuance of the 451st residential building permit. Failure to make the In Lieu Hotel Payment when due shall be a material breach of this Agreement and shall, in addition to other available remedies, entitle the City to foreclose on its security interest. Notwithstanding the foregoing, Owner's obligation to make the In Lieu Hotel Payment hereunder shall terminate in the event that the City issues final approval or enters into a contract for the provision of direct or indirect financial incentives to another hotel development within the Otay Ranch community, without first meeting and conferring with Owner in good faith regarding the provision of substantially equivalent financial incentives, and, if Owner's hotel qualifies for such incentives, tendering to the City Council for its consideration approval of such incentives. City Council shall reserve the right to approve or disapprove such incentives in its sole discretion.

5.1.3 Notwithstanding section 5.1.2, if Owner has not obtained building permits and commenced substantial construction of the Second Hotel prior to the full build-out of and issuance of final occupancy permits for the final components of the residential portion of the Project, Owner's obligation to build the Second Hotel shall convert automatically into a use restriction on the Property that restricts the use of the portion of the Property designated for the Second Hotel to hotel uses only. Without approval by the City Council allowing a different use, the portion of the Property designated for the Second Hotel shall only be used for a hotel and for no other use. Prior to the full build-out of and issuance of final occupancy permits for the final components of the residential portion of the Project, Owner shall record an express covenant, to the satisfaction of the Director of Development Services, reflecting this use restriction. Owner's failure to record such an express covenant shall be a breach of this Agreement, but shall not negate in any way the use restriction as reflect in this paragraph.

5.2 Construction of Commercial/Mixed Use. Owner agrees and acknowledges that the SPA Plan originally contemplated only commercial development on the Property. Although the City has agreed to amend the SPA Plan to allow residential development on the Property, commercial development is still an important use for the site. Therefore, Owner agrees to obtain building permits for and commence substantial construction of 15,000 square feet of commercial development on the Property in accordance with the Project Approvals prior to or concurrently with obtaining building permits and commencing construction of the residential development located east of Town Center Drive. In addition to and concurrently with the construction of the 15,000 square feet of commercial development, Owner shall construct an additional 15,000 square feet of the development to construction standards that qualify for commercial occupancy ("B" or "M" occupancy), but may allow the use of this portion of the development for non-commercial purposes, including residential uses.

5.3 Public Facilities and Services.

5.3.1 Park and Park Site. Based on City standards in effect as of January, 2015, Owner's park obligations (land and improvements) related to the Project would require the dedication and the improvement to City standards of up to a 4.69 acre park on the Property. Owner's actual baseline park obligations shall be calculated at the time park obligations become due for the Project in accordance with City standards, including, but not limited to, Chapter 17.10 of the Chula Vista Municipal Code. Owner shall satisfy its actual park obligations as follows:

5.3.1.1 Granting of Park Site and Development of the Park. Owner shall grant two (2) acres of the Property (the "Park Site") to the City in a permanent easement for public usage, shall develop a highly amenitized, "turnkey" park (the "Park") on the Park Site, as described in this Agreement, to the satisfaction of the Director of Development Services. The Park shall generally be located as depicted in Exhibit "B", with the final location subject to City approval. In order to create an extraordinary public space, the Park shall generally consist of the elements described in Exhibit "E" to this Agreement. Owner shall invest substantially more to the development and granting of the Park than would be typical for a City standard park, up to and including the value equivalent to the dedication and improvement required to achieve the Owner's full park obligations, as calculated at the time park obligations for the Project become due. Owner shall commence construction of the Park prior to the issuance of the three hundredth (300th) residential building permit and substantially complete the Park within fifteen (15) months of commencement of construction.

5.3.1.2 Audit and Payment of Excess Park Obligations. Owner shall, within sixty (60) days of the date on which the Director of Development Services reasonably determines, in writing, that the Park has been completed, exclusive of the warranty period, provide the City, for its review and approval, all documentation the City reasonably requires, to determine the cost (land and improvement) of the Owner's construction of the Park on the Park Site. The City shall use this information to prepare an audit of the actual costs of the development of the Park on the Park Site. The audit shall also compare the actual costs of the development of the Park on the Park Site (including the actual costs incurred during the warranty period) with the value of the Owner's actual baseline park obligations, calculated at the time the park obligations become due for the Project in accordance with City standards, including, but not limited to, Chapter 17.10 of the Chula Vista Municipal Code. Based on this audit, Owner shall satisfy its remaining park obligations, if any, by paying the excess park obligations to the City's PAD fee account for the development of other parks in Otay Ranch. Such excess park obligations shall be calculated through the audit and shall be paid as either a pro rata permit fees collected in connection with any remaining residential permits or, if no residential permits remain, in a lump sum payment to the City made within sixty (60) days of the audit, or such later date as is approved by the Director of Development Services.

5.3.1.3 Park Maintenance. Owner shall be solely responsible for the cost of maintaining the Park. Prior to the approval of the first final map for the Project, Owner shall have caused the creation of a maintenance Community Facilities District ("CFD"), or other funding mechanism, to the satisfaction of the Director of Development Services, for the perpetual maintenance of the Park. The perpetual funding mechanism, which may include related agreements with the City, shall have provisions for the inflation of maintenance costs and a restriction on the Owner's ability to unilaterally amend the funding mechanism or its provisions. The City shall be solely responsible for all life cycle and replacement costs for the Park but replacement decisions are at the sole discretion of the City.

5.3.1.4 Park Programming. The City shall control programming of the Park, and leasing and concessions within the Park, subject to the City's customary permitting process. In order to encourage a sense of community for the PA 12 residents and businesses, Owner, or its Homeowner's Association ("HOA"), may program up to twelve (12) events per year, or more if approved

by the Director of Development Services, subject to reasonable insurance, public health and safety requirements and in accordance with both Chula Vista Policy No. 102-06 and applicable zoning requirements. Any proposed event shall not exclude attendance by any member of the public; provided, however, that with the approval of the Director of Development Services, Owner, or its HOA, may program up to six (6) events in addition to the above referenced twelve (12) events for events where portions of the Park (but not the entire Park) may be closed to the general public for HOA specific events funded solely by HOA fees.

5.3.2 Community Purpose Facilities. Owner shall provide a total of two and one-third (2.3) acres of net usable land for Community Purpose Facilities ("CPF"). Owner may satisfy this CPF requirement in any manner consistent with Chula Vista Municipal Code Section 19.48.025, which may include the provision of the CPF land offsite or adjustments to the percentage limitations on the types of facilities, including recreational facilities, that may count toward satisfying the CPF requirement, all in the discretion of the Director of Development Services.

5.3.3 Dedication for the Bus Rapid Transit Line. Owner shall dedicate the right-of-way for the bus rapid transit line consistent with the Project Approvals.

6. TERMS AND TERMINATION.

6.1 Term of Agreement. The Term shall commence on the Effective Date. The Term shall continue for a period of twenty (20) years from the Effective Date, subject to the following:

6.1.1 The Term shall be extended for periods equal to the time during which:

6.1.1.1 Litigation is pending which challenges any matter, including compliance with CEQA or any other local, state, or federal law, related in any way to the approval or implementation of all or any part of the Project Approvals. Any such extension shall be equal to the time between the filing of litigation, on the one hand, and the entry of final judgment or dismissal, on the other.

6.1.1.2 Any other delay occurs which is beyond the control of the Parties, as described in Section 11.6.

6.1.2 During the Term, certain portions of the Property may be released from this Agreement as provided elsewhere in this Agreement.

6.1.3 As provided in Section 6.2 and elsewhere within this Agreement, the Term may end earlier than the end of the Term as specified in this Agreement.

6.2 Termination. This Agreement shall be deemed terminated and of no further effect upon the earlier occurrence of any of the following events:

6.2.1 Expiration of the Term as set forth in Section 6.1;

6.2.2 Entry of a final judgment setting aside, voiding, or annulling the adoption of the Enabling Ordinance;

6.2.3 The adoption of a referendum measure overriding or repealing the Enabling Ordinance;

6.2.4 Completion of the Project in accordance with the terms of this Agreement, including issuance of all required occupancy permits and acceptance, as required by state law, by City, or the applicable public agency, of all required dedications and the satisfaction of all of Owner's obligations under this Agreement; and

6.2.5 As may be provided by other specific provisions of this Agreement.

6.3 Effect of Termination. Subject to Section 6.4, upon any termination of this Agreement, the only rights or obligations under this Agreement which either Party shall have are:

6.3.1 The completion of obligations which were to have been performed prior to termination, other than those which are separately addressed by this Agreement;

6.3.2 The performance and cure rights set forth in Section 9.3; and

6.3.3 Those obligations that are specifically set forth as surviving this Agreement, such as those described in Sections 8.1 through 8.4 and 11.20.

6.4 Release of Obligations With Respect to Individual Lots Upon Certification of Occupancy. Notwithstanding any other provision of this Agreement:

6.4.1 When any individual lot has been finally subdivided and sold, leased, or made available for lease to a member of the public or any other ultimate user, and a certificate of occupancy has been obtained for the building(s) on the lot, that lot and its owner shall have no further obligations under and shall be released from this Agreement.

6.4.2 Upon the conveyance of any lot, parcel, or other property, whether residential, commercial, or open space, to a homeowners' association,

property owners' association, or public or quasi-public entity, that lot, parcel, or property and its owner shall have no further obligations under and shall be released from this Agreement.

No formal action by the City is required to effect this release, but, upon Owner's request, City shall sign an estoppel certificate or other document to evidence the release.

6.5 Term of Map(s) and Other Project Approvals.

6.5.1 Subdivision Maps. Pursuant to Government Code Section 66452.6, the term of all subdivision or parcel maps that are approved for all or any portion of the Project on the Property shall be automatically extended to a date coincident with the Term and, where not prohibited by State law, with any extension of the Term.

6.5.2 Other Project Approvals. Pursuant to Government Code section 65863.9, the Project Approvals shall automatically be extended for a term ending concurrently with the applicable subdivision maps for the Project.

7. ANNUAL REVIEW.

7.1 Timing of Annual Review. Pursuant to Government Code Section 65865.1, at least once during every twelve (12) month period of the Term, City shall review the good faith compliance of Owner with the terms of this Agreement ("Annual Review").

7.2 Standards for Annual Review. During the Annual Review, Owner shall be required to demonstrate good faith compliance with the terms of this Agreement. "Good faith compliance" shall be established if Owner is in compliance with the terms and conditions of this Agreement. If the City Council or its designee finds and determines that Owner is not in good faith compliance, then City may proceed in accordance with Section 9.3 pertaining to the potential default of Owner and the opportunities for cure. Owner shall pay the City's reasonable fees and costs incurred in connection with the Annual Review.

7.3 Procedures for Annual Review. The Annual Review shall be conducted by the City Council or its designee. Owner shall be given a minimum of sixty (60) days' notice of any date scheduled for an Annual Review.

7.4 Certificate of Compliance. At any time during any year that the City Council or its designee finds that Owner is not in default under this Agreement, City shall, upon written request by Owner, provide Owner with a written certificate of good faith compliance within fifteen (15) days of City's receipt of that request.

8. THIRD PARTY LITIGATION.

8.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, the Otay Ranch GDP and the SPA Plan. Owner has reviewed the General Plan, the Otay Ranch GDP and the SPA Plan and concurs with City's determination. City shall not have any liability, whether through equitable or legal arguments, under this Agreement or the associated approvals or documents (e.g., General Plan Amendment, SPA Plan, tentative maps), for any failure of City to perform under this Agreement, or for the inability of Owner to develop the Property as contemplated by the Project Approvals or this Agreement, if such failure or inability is the result of a judicial determination that part or all of the General Plan, Otay Ranch GDP or SPA Plan is invalid, inadequate, or not in compliance with law.

8.2 Third Party Litigation Concerning Project or Agreement. Owner shall, at Owner's expense, defend, indemnify, and hold City, its officers, employees and independent contractors engaged in Project planning, approval or implementation, harmless from any third-party claim, action or proceeding against City, its agents, officers or employees to attack, set aside, void, or annul the Project Approvals, Subsequent Project Approvals or this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall reasonably cooperate in the defense. City may in its discretion participate in the defense of any such claim, action or proceeding. If the City uses its discretion to participate in the defense of any such claim, action or proceeding, the City shall pay the City's attorneys' fees and litigation costs incurred in that defense.

8.3 Indemnity. In addition to the provisions of Section 8.2, Owner shall indemnify, defend and hold City, its officers, agents, employees and independent contractors, engaged in Project planning or implementation, free and harmless from any third-party liability or claims based or alleged upon any act or omission of Owner, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury or death (Owner's employees included) or any other element of damage of any kind or nature, relating to or arising from development of the Project, except for claims for damages arising through active negligence or willful misconduct of City, its officers, agents, employees and independent contractors. Owner shall defend, at Owner'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 Owner. City may in its discretion participate in the defense of any such legal claim, action, or proceeding. If the City uses its discretion to participate in the defense of any such claim, action or proceeding, the City shall pay the City's attorneys' fees and litigation costs incurred in that defense.

8.4 Environmental Contamination. Owner 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 Owner, 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 Owner 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. If the City uses its discretion to participate in the defense of any such claim, action or proceeding, the City shall pay the City's participatory attorneys' fees and litigation costs incurred in that defense. The City's payment of participatory attorneys' fees and litigation costs does not relieve that Developer of is obligations under this Section 8.4

8.5 City to Approve Counsel; Conduct of Litigation. With respect to Sections 8.1 through 8.4, City reserves the right either (a) to approve the attorney(s) that Owner selects, hires, or otherwise engages to defend City, which approval shall not be unreasonably withheld or delayed, or (b) in the City's sole discretion, conduct its own defense, with the understanding that Owner's attorneys shall generally serve as lead counsel. If City elects to conduct its own defense, the City shall pay the City's attorneys' fees and litigation costs incurred for such defense.

8.6 Survival. The provisions of Sections 8.1 through 8.4, inclusive, shall survive the termination, cancellation, or expiration of this Agreement.

9. DEFAULTS AND REMEDIES.

9.1 Default by Owner. Owner shall be in default of this Agreement if it does any or any combination of the following:

9.1.1 Willfully violates any order, ruling or decision of any administrative or judicial body having jurisdiction over the Property or the Project. Owner may contest any such order, ruling or decision by appropriate proceedings conducted in good faith, in which event no default of this Agreement shall be deemed to have occurred until there is a final, non-appealable judicial decision that Owner willfully violated such obligation.

9.1.2 Fails to cure a material breach of this Agreement within the time set forth in a written notice of default from the City.

9.2 Default by City. The City shall be in default of this Agreement only if it fails to cure a material breach of this Agreement within the time set forth in a written notice of default from the Owner to the City.

9.3 Notice and Termination. A Party alleging a default by any other Party shall serve written notice thereof. Each such notice shall state with specificity all of the following:

9.3.1 The nature of the alleged default, with reference to the specific Sections of the Agreement that are alleged to have been breached and the specific facts supporting those allegations;

9.3.2 The manner in which the alleged default may be satisfactorily cured.

9.3.3 A period of time in which the default may be cured. The notice of default shall allow at least sixty (60) days to cure the default. If the default is of such a nature as not to be susceptible of cure within sixty (60) days using diligent efforts, then the defaulting Party shall only be deemed to have failed to cure the default if it fails diligently to commence such cure within sixty (60) days or if it fails diligently to prosecute such cure to its conclusion.

9.4 Default Remedies. A Party who complies with the notice of default and opportunity to cure requirements of Section 9.3 may, at its option, institute legal action to cure, correct, or remedy the alleged default as provided in this Agreement.

9.5 Owner's Remedy. The Owner acknowledges that the City would not have entered into this Agreement if it were to be liable in damages under or with respect to all or any part of the development of the Project on the Property. Accordingly, Owner shall not sue the City for damages or monetary relief for any matter related to the development of the Project on the Property. Owner's litigation remedies shall be limited to declaratory and injunctive relief, mandate, and specific performance.

9.6 City's Remedy. In the event of an uncured default by Owner, the City may pursue any and all available legal or equity remedies for the default.

9.7 Waiver; Remedies Cumulative. All waivers of performance must be in a writing signed by the Party granting the waiver. There are no implied waivers. Failure by City or Owner to insist upon the strict performance of any provision 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.

A written waiver affects only the specific matter waived and defines the performance waived and the duration of the waiver. Unless expressly stated in a written waiver, future performance of the same or any other condition is not waived.

A Party who complies with the notice of default and opportunity to cure requirements of Section 9.3, where applicable, and elects to pursue a legal or equitable remedy available under this Agreement does not waive its right to pursue any other remedy available under this Agreement, unless prohibited by statute, court rules, or judicial precedent.

Delays, tolling, and other actions arising under Section 11.16 shall not be considered waivers subject to this Section 9.7.

9.8 Alternative Dispute Resolution. Any dispute between the Parties may, upon the mutual agreement of the Parties, be submitted to mediation, binding arbitration, or any other mutually agreeable form of alternative dispute resolution. While an alternative dispute process is pending, the statute of limitation shall be tolled for any claim or cause of action which either of the Parties may have against the other.

10. ENCUMBRANCES, ASSIGNMENTS, AND RELEASES.

10.1 Discretion to Encumber. This Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering some or all of the Property or any improvement on the Property by any mortgage, deed of trust, or other security device to secure financing related to the Property or the Project. Notwithstanding the foregoing, any project or property shall be free and clear of all liens and encumbrances other than those previously approved in writing by the City prior to transfer to the City.

10.2 Mortgagee Protection. City acknowledges that the lender(s) providing financing secured by the Property and/or its improvements may require certain Agreement interpretations and modifications. City shall, at any time requested by Owner or the lender, meet with Owner and representatives of such lender(s) to negotiate in good faith any such interpretation or modification. City will not unreasonably withhold or delay its consent to any 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 Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed Owner under Section 9.3 of this Agreement.

10.2.3 Except as otherwise provided within this Agreement, any Mortgagee who comes into possession of some or all of the Property pursuant to foreclosure of a mortgage or deed of trust, or deed in lieu of such foreclosure or otherwise, shall:

10.2.3.1 Take that property subject to the terms of this Agreement and as Owner's successor;

10.2.3.2 Have the rights and obligations of an Assignee as set forth in Sections 10.5.1 and 10.5.3;

10.2.3.3 Have the right to rely on the provisions of Section 4 of this Agreement, provided that any development proposed by the Mortgagee is in substantial conformance with the terms of this Agreement; and

10.2.3.4 Not be liable for any defaults, whether material or immaterial, or monetary obligations of Owner arising prior to acquisition of title to the Property by the Mortgagee, except that the Mortgagee may not pursue development pursuant to this Agreement until all delinquent and current fees and other monetary obligations due under this Agreement for the portions of the Property acquired by the Mortgagee have been paid to City.

10.3 Estoppel Certificate. Within ten (10) business days following a written request by either of the Parties, the other Party shall execute and deliver to the requesting Party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding Party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption 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. Owner shall pay to City all reasonable administrative costs incurred by City in connection with the issuance of estoppel certificates under this Section prior to City's issuance of such certificates.

10.4 Transfer or Assignment. Subject to Section 10.5 and 10.6, each individual entity comprising Owner shall have the right to sell, transfer, or assign its rights and obligations under this Agreement (collectively, an "Assignment") in connection with a transfer of Owner's interest in all, any portion of, or any interest in the Property (the "Transferred Property"). No Assignment shall be made unless made together with the sale, transfer, or assignment of all or any portion of Owner's interest in the Property.

At least fifteen (15) business days prior to the effective date of any Assignment, Owner shall notify City in writing of the proposed Assignment and provide City with an Assignment and Assumption Agreement, in a form substantially similar to

Exhibit "F", executed by the purchaser, transferee, or assignee (collectively, the "Assignee") to expressly and unconditionally assume all duties and obligations of Owner under this Agreement remaining to be performed at the time of the Assignment.

10.5 Effect of Assignment. Subject to Section 10.6 and unless otherwise stated within the Assignment, upon an Assignment:

10.5.1 The Assignee shall be liable for the performance of all obligations of Owner with respect to Transferred Property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

10.5.2 The owner of the Retained Property shall be liable for the performance of all obligations of Owner with respect to Retained Property, but shall have no further obligations with respect to the Transferred Property.

10.5.3 The Assignee's exercise, use, and enjoyment of the Transferred Property shall be subject to the terms of this Agreement and the Assignee shall have all of the rights under this Agreement to the same extent as if the Assignee were the Owner.

10.6 City's Consent. An Owner shall not be released from its obligations with respect to the Transferred Property until it has obtained the City's reasonable consent to the transfer or assignment of all or a portion of this Agreement, which consent shall not be unreasonably withheld, conditioned or delayed.

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 Binding Effect of Agreement. This Agreement shall be recorded against the Property and shall run with the land. Until released or terminated pursuant to the provisions of this Agreement or until Owner has fully performed its obligations arising out of this Agreement, no portion of the Property shall be released from this Agreement.

11.3 Entire Agreement. This Agreement constitutes the entire understanding and agreement of City and Owner with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between City and Owner respecting the subject matter of this Agreement.

11.4 Recorded Statement Upon Termination. 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 San Diego County, California.

11.5 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 Owner in the same manner as its adoption, as set forth in California Government Code Section 65868. Any amendment or cancellation shall be in a form suitable for recording in the Official Records of San Diego County, California. An amendment or other modification of this Agreement will continue to relate back to the Effective Date of this Agreement (as opposed to the effective date of the amendment or modification), unless the amendment or modification expressly states otherwise.

11.6 Minor Changes/Operating Memorandum. The provisions of this Agreement require a close degree of cooperation between the Parties. It is anticipated that minor changes to the Project may be required from time to time to accommodate design changes, engineering changes, and other refinements related to the details of the Parties' performance. Minor changes are those changes to the Project that are otherwise consistent with the Project Approvals, and which do not result in a change in the type of use, an increase in density or intensity of use, significant new or increased environmental impacts that cannot be mitigated, or violations of any applicable health and safety regulations in effect on the Approval Date. Accordingly, the Parties may mutually consent to adopting minor changes through their signing of an operating memorandum reflecting the minor changes. Neither the minor changes nor any operating memorandum shall require public notice or hearing. The City Attorney and City Manager shall be authorized to determine whether proposed modifications and refinements are minor changes subject to this Section or more significant changes requiring amendment of this Agreement. The City Manager may execute any operating memorandum for minor changes without City Council action. Minor changes would include, without limitation, minor boundary or lot line adjustments necessary to properly reflect the applicability of this Agreement in the chain of title.

11.7 Project as a Private Undertaking. It is specifically understood by City and Owner 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) Owner shall have the full power and exclusive control of the Property, subject to the obligations of Owner set forth in this Agreement.

11.8 Incorporation of Recitals. Each of the Recitals set forth at the beginning of this Agreement are part of this Agreement.

11.9 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.

11.10 Consent. Where the consent or approval of City or Owner is needed to implement Development under this Agreement, the consent or approval shall not be unreasonably withheld, delayed, or conditioned.

11.11 Covenant of Cooperation. City and Owner shall cooperate and deal with each other in good faith and assist each other in the performance of the provisions of this Agreement.

11.12 Execution and Recording. The City Clerk shall cause a copy of this Agreement to be signed by the appropriate representatives of the City and recorded with the Office of the County Recorder of San Diego County, California, within ten (10) days following the Effective Date. The failure of the City to sign and/or record this Agreement or notice thereof shall not affect the validity of and binding obligations set forth within this Agreement.

11.13 Relationship of City and Owner. The contractual relationship between City and Owner arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third-party beneficiary rights.

11.14 Notices. All notices, demands, and correspondence required or permitted by this Agreement shall be in writing and delivered in person, sent by electronic mail, or mailed by first class or certified mail, postage prepaid, addressed as follows:

If to City, to:
City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attn: City Manager

With a copy to:
City Attorney
City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910

If to Owner, to:
Village II Town Center, LLC
610 West Ash Street, #1500
San Diego, California 92101
Attn: Mr. Nick Lee

AND

Sunranch Capital Partners, LLC
610 West Ash Street, #1500
San Diego, California 92101
Attn: Mr. Nick Lee

With a copy to:
Law Offices of R. Martin Bohl
501 West Broadway, Suite 520
San Diego, California 92101
Attn: R. Martin Bohl

City or Owner may change its address by giving notice in writing to each of the other names and addresses listed above. Thereafter, notices, demands, and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery, the date of actual receipt or, if mailed, not later than two (2) business days following deposit in the United States mail.

11.15 Waiver of Right to Protest. Execution of this Agreement is made by Owner without protest. Owner knowingly and willingly waives any rights it may have under Government Code section 66020 or any other provision of law to protest the imposition of any fees, dedications, reservations, or other exactions imposed on the Project as authorized by this Agreement, the Project Approvals or the Subsequent Project Approvals.

11.16 Delay for Events Beyond the Parties' Control. Delay of performance by either Party of its obligations under this Agreement shall not be deemed a breach of the Agreement and the Term shall be extended, for periods equal to the time during which (1) litigation is pending which challenges any matter, including compliance with CEQA or any other local, state, or federal law, related in any way to the approval or implementation of all or any part of the Project Approvals or Subsequent Project Approvals. Any such extension shall be equal to the time between the filing of litigation, on the one hand, and the entry of final judgment or dismissal, on the other. All such extensions shall be cumulative; (2) a delay is caused by reason of any event that cannot reasonably be anticipated or controlled by the City or Owner which prevents or delays performance by City or Owner of obligations under this Agreement. Such events shall include, by way of example and not limitation, acts of nature, riots, strikes, or damage to work in process by reason of fire, mud, rain, floods, earthquake, or other such casualties. Such an event does not include a market or business downturn, recession or other change in the business cycle.

If City or Owner seeks excuse from performance for the period of a delay, 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, whether material or immaterial, is due to an event that cannot be reasonably anticipated or controlled by City or Owner it shall be excused, and 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. In the event of a disagreement between the Parties with respect to whether this Section applies to a particular delay, a Party may file an action for judicial review of the matter, including requests for declaratory and/or injunctive relief. The right to seek judicial review shall not limit any other remedies, whether legal or equitable, to which the Party may be entitled.

11.17 Interpretation and Governing Law. In any dispute regarding this Agreement, the Agreement shall be governed and interpreted in accordance with the laws of the State of California. Venue for any litigation concerning this Agreement shall be in San Diego County, California.

11.18 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.19 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

11.20 Future Litigation Expenses.

11.20.1 Payment to Prevailing Party. If either Party brings a legal or equitable proceeding against the other Party which arises in any way out of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and all other reasonable costs and expenses incurred in that proceeding.

11.20.2 Scope of Fees. Attorneys' fees under this Section shall include attorneys' fees on any appeal and in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the termination of this Agreement.

12. EXHIBITS. All exhibits attached to this Agreement are incorporated as a part of this Agreement. Those exhibits are:

Exhibit	Description
"A"	Legal Description and Depiction of the Property
"B"	General Description and Depiction of the Project
"C"	Listing of Project Approvals
"D"	Listing of Anticipated Subsequent Project Approvals
"E"	Description of Park Improvements
"F"	Assignment and Assumption Agreement

[Signtures on following page]

Owner and City have executed this Agreement on the dates set forth below.

CITY

CITY OF CHULA VISTA, a California charter city and municipal corporation

By:_____
Mary Casillas Salas, Mayor

Date:_____

ATTEST:

By:_____
Donna Norris, City Clerk

APPROVED AS TO FORM:

By:_____
Glen R. Googins, City Attorney

OWNER

VILLAGE II TOWN CENTER, LLC, a California limited liability company*

By:_____
Name: NICK LEE
Title: VICE PRESIDENT

By:_____
Name:
Title:

Date: 5/22/15

SUNRANCH CAPITAL PARTNERS, LLC, a Delaware limited liability company*

By:_____
Name: NICK LEE
Title: VICE PRESIDENT

By:_____
Name:
Title:

Date:_____

* Company signature authorization must be provided upon document execution.

EXHIBIT A

LEGAL DESCRIPTION AND DEPICITION OF THE PROPERTY

PARCEL "A":
THAT PORTION OF PARCEL 2 OF PARCEL MAP NO. 18789 FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON SEPTEMBER 19, 2001 TOGETHER WITH THAT PORTION OF FRACTIONAL SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, ALL IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF SAID PARCEL 2; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 2 SOUTH 71°57'23" WEST, 706.08 FEET TO THE SOUTHWESTERLY CORNER OF TOWN CENTER DRIVE AS OFFERED AND ACCEPTED FOR DEDICATION TO THE CITY OF CHULA VISTA PER DOCUMENTS RECORDED IN SAID OFFICE OF THE COUNTY RECORDER ON SEPTEMBER 16, 2005 AS DOCUMENT NO. 2005-0801099 AND JANUARY 23, 2009 AS DOCUMENT NO. 2009-0031758, RESPECTIVELY, AND THE **TRUE POINT OF BEGINNING**; SAID POINT BEING THE BEGINNING OF A 1155.00 FOOT RADIUS CURVE CONCAVE EASTERLY; A RADIAL LINE TO SAID POINT BEARS SOUTH 83°42'16" WEST; THENCE LEAVING SAID SOUTHERLY LINE NORTHERLY ALONG THE WESTERLY SIDELINE OF SAID TOWN CENTER DRIVE AND THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 30°15'46" A DISTANCE OF 610.11 FEET; THENCE LEAVING SAID WESTERLY SIDELINE NORTH 66°01'52" WEST, 824.80 FEET TO A POINT ON THE EASTERLY LINE OF THAT LAND OFFERED FOR DEDICATION TO THE CITY OF CHULA VISTA ON MAY 22, 2003 AS DOCUMENT NO. 2003-0604609 OF OFFICIAL RECORDS; THENCE ALONG SAID EASTERLY LINE NORTH 19°23'44" EAST, 87.32 FEET; THENCE NORTH 24°09'46" EAST, 100.00 FEET; THENCE NORTH 28°55'48" EAST, 100.00 FEET; THENCE NORTH 37°26'51" EAST, 100.00 FEET; THENCE NORTH 41°29'56" EAST, 100.00 FEET; THENCE NORTH 43°17'18" EAST, 100.00 FEET; THENCE NORTH 48°06'10" EAST, 100.00 FEET TO THE MOST WESTERLY CORNER OF PARCEL 33170-1 OF FREEWAY CONVEYANCE AS GRANTED TO THE STATE OF CALIFORNIA PER DOCUMENT RECORDED IN SAID OFFICE OF THE COUNTY RECORDER ON NOVEMBER 16, 2007 AS DOCUMENT NO. 2007-0723396; THENCE ALONG THE SOUTHWESTERLY AND SOUTHEASTERLY LINE OF SAID PARCEL 33170-1 SOUTH 46°33'57" EAST, 85.74 FEET; THENCE NORTH 55°42'37" EAST, 38.09 FEET TO A POINT ON THE SOUTHERLY SIDELINE OF OLYMPIC PARKWAY AS DEDICATED TO THE CITY OF CHULA VISTA PER DOCUMENT RECORDED IN SAID OFFICE OF THE COUNTY RECORDER ON DECEMBER 17, 2002 AS DOCUMENT NO. 2002-1153497; THENCE LEAVING SAID SOUTHEASTERLY LINE ALONG SAID SOUTHERLY SIDELINE OF OLYMPIC PARKWAY SOUTH 34°17'05" EAST, 221.05 FEET TO THE BEGINNING OF A 1680.00 FOOT RADIUS CURVE CONCAVE

NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 39°18'02" A DISTANCE OF 1152.35 FEET; THENCE SOUTH 73°35'08" EAST, 289.84 FEET; THENCE SOUTH 36°59'17" EAST, 21.46 FEET; THENCE NORTH 89°36'33" EAST, 12.00 FEET; THENCE SOUTH 71°10'26" EAST, 127.08 FEET; THENCE NORTH 89°36'33" EAST, 12.00 FEET; THENCE NORTH 53°00'43" EAST, 28.90 FEET; THENCE SOUTH 73°35'08" EAST, 82.39 FEET; THENCE LEAVING SAID SOUTHERLY SIDELINE SOUTH 71°57'23" WEST, 1468.49 FEET TO THE **TRUE POINT OF BEGINNING.**

EXCEPTING THEREFROM THAT PORTION OF EASTLAKE PARKWAY AS DEDICATED TO THE CITY OF CHULA VISTA PER DOCUMENT RECORDED IN SAID OFFICE OF THE COUNTY RECORDER ON MARCH 13, 2003 AS DOCUMENT NO. 2003-0283321.

ALSO EXCEPTING THEREFROM TOWN CENTER DRIVE AS OFFERED AND ACCEPTED FOR DEDICATION TO THE CITY OF CHULA VISTA PER DOCUMENTS RECORDED IN SAID OFFICE OF THE COUNTY RECORDER ON SEPTEMBER 16, 2005 AS DOCUMENT NO. 2005-0801099 AND JANUARY 23, 2009 AS DOCUMENT NO. 2009-0031758, RESPECTIVELY.

THE HEREINABOVE PARCEL OF LAND CONTAINS 20.473 ACRES MORE OR LESS.

SAID PARCEL BEING DESCRIBED AS PARCEL "A" OF CERTIFICATE OF COMPLIANCE RECORDED MARCH 16, 2009 AS DOC # 2009-0128393 OF OFFICIAL RECORDS.

PARCEL "B":
THAT PORTION OF PARCEL 2 OF PARCEL MAP NO. 18789 FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON SEPTEMBER 19, 2001 TOGETHER WITH THAT PORTION OF FRACTIONAL SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, ALL IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF PARCEL 2 OF PARCEL MAP NO. 18789 FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON SEPTEMBER 19, 2001; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 2 SOUTH 71°57'23" WEST, 706.08 FEET TO THE SOUTHWESTERLY CORNER OF TOWN CENTER DRIVE AS OFFERED AND ACCEPTED FOR DEDICATION TO THE CITY OF CHULA VISTA PER DOCUMENTS RECORDED IN SAID OFFICE OF THE COUNTY RECORDER ON SEPTEMBER 16, 2005 AS DOCUMENT NO. 2005-0801099 AND

JANUARY 23, 2009 AS DOCUMENT NO. 2009-0031758, RESPECTIVELY, AND THE **TRUE POINT OF BEGINNING**; SAID POINT BEING THE BEGINNING OF A 1155.00 FOOT RADIUS CURVE CONCAVE EASTERLY; A RADIAL LINE TO SAID POINT BEARS SOUTH 83°42'16" WEST; THENCE LEAVING SAID SOUTHERLY LINE NORTHERLY ALONG THE WESTERLY SIDELINE OF SAID TOWN CENTER DRIVE AND THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 30°15'46" A DISTANCE OF 610.11 FEET; THENCE LEAVING SAID WESTERLY SIDELINE NORTH 66°01'52" WEST, 824.80 FEET TO A POINT ON THE EASTERLY LINE OF THAT LAND OFFERED FOR DEDICATION TO THE CITY OF CHULA VISTA ON MAY 22, 2003 AS DOCUMENT NO. 2003-0604609 OF OFFICIAL RECORDS; THENCE ALONG SAID EASTERLY LINE SOUTH 19°23'44" WEST, 12.68 FEET; THENCE SOUTH 14°37'42" WEST, 100.00 FEET; THENCE SOUTH 09°51'40" WEST, 100.00 FEET; THENCE SOUTH 12°12'10" WEST, 49.32 FEET; THENCE SOUTH 10°55'23" WEST, 67.82 FEET; THENCE SOUTH 05°12'45" WEST, 227.55 FEET; THENCE SOUTH 00°20'00" WEST, 301.34 FEET; THENCE SOUTH 00°55'20" WEST, 328.14 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 2; THENCE ALONG SAID SOUTHERLY LINE NORTH 71°57'23" EAST, 797.84 FEET TO THE **TRUE POINT OF BEGINNING**.

THE HEREINABOVE PARCEL OF LAND CONTAINS 15.845 ACRES MORE OR LESS.

SAID PARCEL BEING DESCRIBED AS PARCEL "B" OF CERTIFICATE OF COMPLIANCE RECORDED MARCH 16, 2009 AS DOC # 2009-0128395 OF OFFICIAL RECORDS.

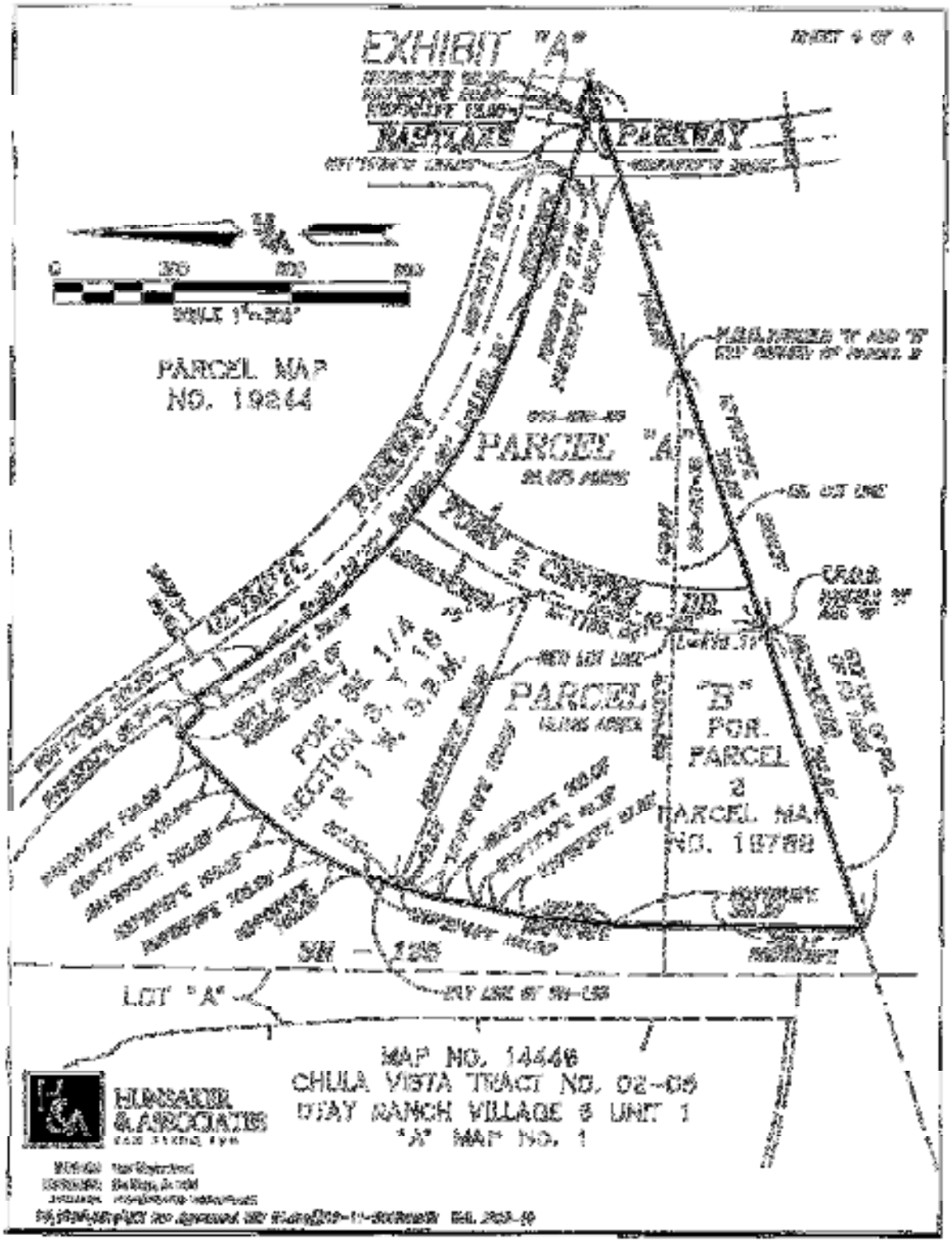
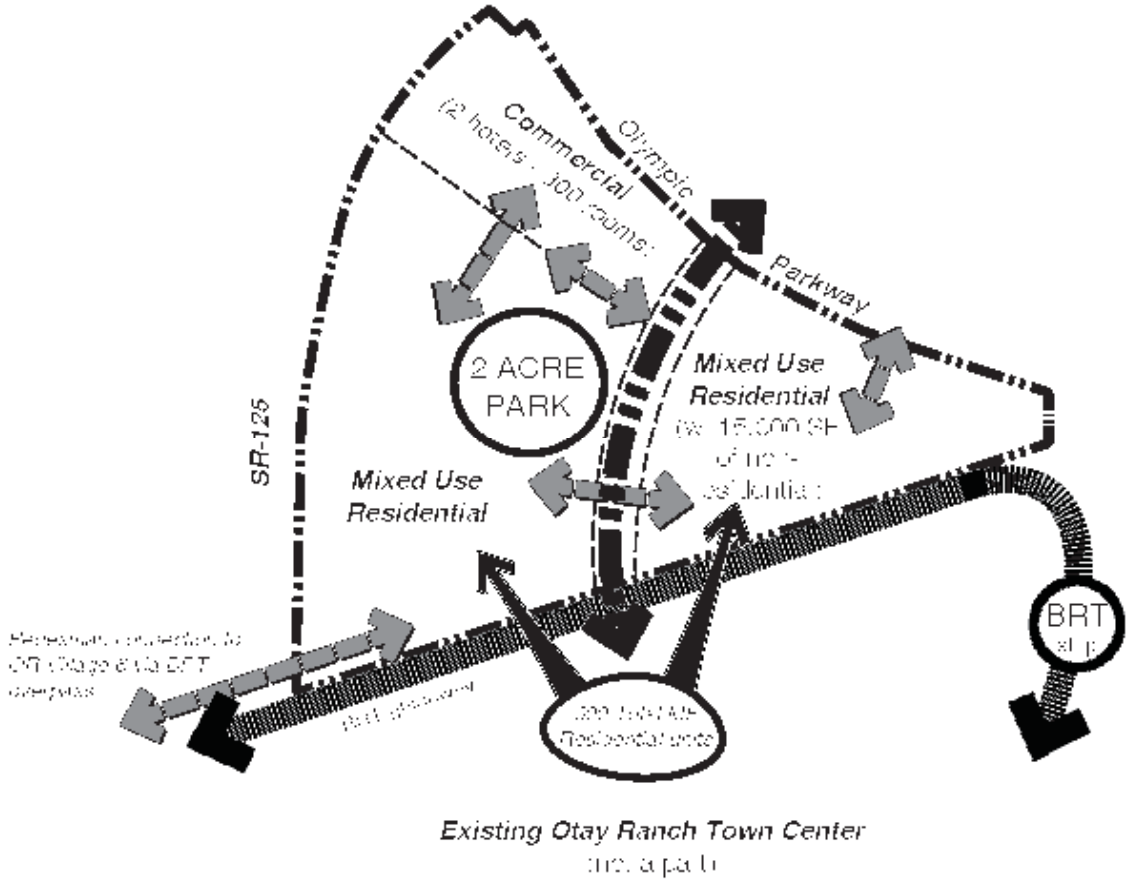


EXHIBIT "A"
PARCEL MAP
NO. 19264
PARCEL "A"
PARCEL "B"
FOR
PARCEL
2
PARCEL MAP
NO. 19762
LOT "A"
MAP NO. 14446
CHULA VISTA TRACT NO. 02-05
OTAY RANCH VILLAGE 5 UNIT 1
"A" MAP NO. 1
HUNSAKER
& ASSOCIATES

EXHIBIT A-4

EXHIBIT B

GENERAL DESCRIPTION AND DEPICTION OF THE PROJECT



Project Features:

- 600 total multi-family residential units
- 15,000 square feet of non-residential in a mixed use format
- 2 hotels with a total of 300 rooms
- **2 acre public park enhanced with equivalency value of 2.7 acres**

EXHIBIT C

LISTING OF PROJECT APPROVALS

- Final Environmental Impact Report for the Otay Ranch Freeway Commercial Sectional Planning Area (SPA) Plan-Planning Area 12 ("FEIR 0204") (SCH #1989010154)
- FEIR 02-04 Addendum
- Development Agreement
- City of Chula Vista General Plan, as amended
- Otay Ranch General Development Plan, as amended.

EXHIBIT D

LISTING OF ANTICIPATED SUBSEQUENT PROJECT APPROVALS

- Freeway Commercial SPA Plan Amendment
- Planning Area 12, FC-2 Master Precise Plan
- Planning Area 12, FC-2 Tentative Map
- Various final maps

Other subsequent approvals are anticipated including Design Review approvals and grading, improvement and building permits issued pursuant to the Project Approvals

EXHIBIT E

DESCRIPTION OF PARK IMPROVEMENTS

Anticipated park features include:

- Open lawn/flexible event space
- Shaded picnic grove/gathering
- Amphitheater seating
- Tables and benches
- Flexible use plaza with enhanced paving
- Restroom and storage building
- Concrete and/or stabilized decomposed granite trails
- Seating and gathering areas including picnic areas with shade structures
- Play features incorporated into landscape
- Low water use plant palette on non-turf areas
- Park lighting

Additional park features may include:

- Water feature(s)
- Space for mobile/temporary food vendors or other concessions
- Vendor kiosk with shade structure
- Sculptural land forms
- Rockscape / informal boulder fields/play area(s)
- Urban “botanical” garden
- Enhanced lighting
- Public art
- Hillside seating/informal staircase
- Informal / hillside slide
- Video projection screen/shade structure
- Knoll top vantage point
- Privacy berms
- Adult fitness spaces / stations
- Small play equipment

Areas for on-site storm water treatment

EXHIBIT F

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT AMONG CITY OF CHULA VISTA AND

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT ("Assignment") is made as of the ___ day of _____, 20__ (**"Effective Date"**), by and among the _____ ("Owner") and _____ _____("**Assignee**") with reference to the following facts:

RECITALS

A. Owner has entered into that certain Development Agreement, dated _____, ____ by and between the City of Chula Vista ("**City**"), on the one hand, and the Village II & Sons and Sunranch Capital Partners on the other hand ("**Agreement"**) for certain real property consisting of approximately _____ acres of land located in the City, more particularly described in Exhibit "A" ("**Property**").

B. Owner desires to assign and delegate, and Assignee desires to accept and assume, all of Owner's rights and obligations under the Agreement in accordance with the terms and conditions set forth herein.

C. By signing this Assignment, the City approves the Assignment in accordance with the terms and conditions set forth herein and in the Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Assignee do hereby agree as follows:

1. Assignment and Assumption. Effective as of the Effective Date, Owner hereby assigns, transfers, and conveys to Assignee all of Owner's rights, interest, duties, liabilities, and obligations in, to, and under the Agreement, and Assignee hereby accepts and assumes all such rights, interests, duties, liabilities, and obligations under the Agreement from Owner for [the Property or a portion of the Property] ("Assigned Property") [, except to the extent Owner has retained a portion of the Property (the "Retained Property")].

2. City Consent to Assignment. Effective as of the Effective Date, City hereby consents to the Assignment and hereby fully releases and forever discharges Owner from any and all obligations to City under the Agreement for the Assigned Property, [except Owner's obligations with respect to the Retained Property].

3. Entire Agreement. This Agreement represents the final and entire agreement between the parties in connection with the subject matter hereof, and may not be modified except by a written agreement signed by both Owner and Assignee.

3. Governing Law. This Agreement has been prepared, negotiated, and executed in, and shall be construed in accordance with, the laws of the State of California, without regard to conflict of law rules.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Owner:

By:_____

Assignee:

_____

_____

By:_____

Name:_____

Its:_____

City:

City of Chula Vista,
a California Municipal Corporation

By:_____

Name:_____

Its:_____