

**AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF TRACY  
AND  
SURLAND COMMUNITIES, LLC**

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**AMENDED AND RESTATED  
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BY AND BETWEEN  
THE CITY OF TRACY  
AND  
SURLAND COMMUNITIES, LLC**

This "**Agreement**," dated this \_\_\_\_ day of \_\_\_\_, 2013 ("Effective Date"), is entered into by and between the CITY OF TRACY, a municipal corporation ("**City**"), and SURLAND COMMUNITIES, LLC, a California limited liability company ("**Owner**"), pursuant to Government Code sections 65864 *et seq.* ("**Development Agreement Statute**"), City Resolution No. 2004-368 (establishing rules, regulations, procedures and requirements, including fees, for the processing and approval of a development agreement ("**Enabling Resolution**")), and Article XI, section 7 of the California Constitution ("**Police Powers**"). From time to time, City and Owner are individually referred to in this Agreement as a "**Party**," and are collectively referred to as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

**RECITALS**

**A.** The preceding Preamble, and the following Recitals, are true and correct, are a part of this Agreement, and the terms defined in both are used throughout this Agreement.

**B.** To strengthen the public planning process, to encourage private participation in the provision, dedication and funding of community benefits and amenities that could not otherwise be required under controlling law (such as the below-described swim center), to set forth the procedures and processes to be employed in the processing of subsequent development requests, to ensure compliance with all state and federal procedural and substantive laws prior to action on such development requests, and to ensure compliance with all City laws, including without limitation the City's Growth Management Ordinance (except as provided to the contrary herein), City and Owner enter into this Agreement. This Agreement has been drafted and processed pursuant to the Development Agreement Statute, Enabling Resolution and the City's Police Powers.

**C.** The establishment of a family-oriented swim center is one of the City's priorities, has been contemplated for years, and is overwhelmingly supported by the Tracy community. Yet City funding for such an effort is lacking. Owner, a local developer with a long track record of award-winning development in the City, made a proposal to City whereby Owner would offer to dedicate to City (at no cost to City) 16 acres of land, would conceptually design, would assist City with project oversight, and would fund \$10 million toward the construction of a swim center, as described in this Agreement, for the Tracy community; and provide certain other benefits to the City, in return for being eligible for a set number of "**Residential Growth Allotments**" (also referred to in this Agreement as "**RGAs**") This Owner proposal has secured

remarkable community support. All of these swim center-related Owner commitments are specifically described in this Agreement and its exhibits and are collectively referred to in this Agreement as the "**Swim Center Obligations.**"

**D.** Owner first filed land use applications in 2007 to entitle the Ellis Project. Those applications included applications for the Ellis Specific Plan, General Plan Amendment and an annexation and rezoning of the Ellis Property. In addition, Owner filed an application for negotiation and approval of the original Development Agreement by and between the City of Tracy and Surland Communities LLC (the "**Original Development Agreement**"). The City processed the various applications and commissioned the preparation of an environmental impact report for the Original Development Agreement and the 2007 land use applications (the "**Original EIR**"). On December 16, 2008, the City certified the Original EIR and approved the various applications for the entitlements for the Ellis Project, including the 2008 Ellis Specific Plan, 2008 General Plan amendment, approval of rezoning and annexation, and the Original Development Agreement (collectively the "**Original Ellis Entitlements**"). Following the approval of the Original Ellis Entitlements, opponents to the Ellis Project filed litigation challenging the sufficiency of the Original EIR and the legality of the Original Ellis Entitlements in a mandamus action filed in San Joaquin County Superior Court, *Tracy Regional Alliance for a Quality Community v. City of Tracy, et al.* On October 31, 2011, the trial court issued its Statement of Decision and Judgment finding the Original EIR and the Original Ellis Entitlements to be inadequate and ordering that they be set aside. The Statement of Decision and Judgment specifically found certain defects in the Original Development Agreement that the trial court believed needed to be amended and modified in order to comply with the law. In November 2011, the Original Owner and the City each filed appeals from the trial court's judgment; as a result of which appeals, the trial court's judgment ordering that the certification of the Original EIR and adoption of the Original Development Agreement be set aside is stayed pending the outcome of the appeals.

**E.** In February, 2011 the Tracy City Council approved and adopted an updated General Plan (the "**2011 General Plan**"). The General Plan now acknowledges the Ellis Specific Plan area and establishes a land use category of Traditional Residential-Ellis (TR-Ellis) which, on page 2-20, is designated as the majority of former Urban Reserve 10. In order for development of the property designated as TR-Ellis to go forward, the General Plan requires the adoption of a specific plan implementing certain designated criteria.

**F.** In December, 2011, Owner filed applications with the City for an amendment and restatement of the Original Development Agreement as well as amendments and modifications to the other Original Ellis Entitlements (collectively, the "**Revised Ellis Entitlements**"). The City has commissioned a revised Environmental Impact Report for the project proposed by the December 2011 applications (the "**Revised EIR**") which was prepared in response to the trial court's Statement of Decision and Judgment, addressing and remedying those things that the trial court found insufficient. This Agreement has been negotiated and shall be implemented so as to address, revise and remedy those portions of the Original Development Agreement found by the trial court's Statement of Decision and Judgment to be legally deficient by amending and restating the Original Development Agreement, while at the same time the parties continue to pursue their judicial remedies by prosecution of their appeals of the trial court's Judgment.

**G.** The 2011 General Plan envisions that development within TR-Ellis shall be done by Specific Plan. The revised Ellis Specific Plan (“**2013 Ellis Specific Plan**”) which is a part of the Revised Ellis Entitlements, contemplates a unique community of distinct character, with well-planned homes, small-scale businesses, major public amenities, including a proposed swim center, and an integrated, multi-use village center that promotes businesses that are small, local, and neighborhood-serving. The swim center is proposed to be located adjacent to the village center. The character of development within the 2013 Ellis Specific Plan evokes the wonderful historic neighborhoods of Tracy. Traditional planning techniques and architecture true to the local vernacular capture the essence of Tracy and are intended to create timeless neighborhoods that fit seamlessly into the City. All these planning goals and ideals have been considered and acted upon by City (in its sole and exclusive discretion) after a lengthy public process.

**H.** Over time, the City has completed environmental review of the potential direct and indirect environmental impacts of development in the area subject to the 2013 Ellis Specific Plan and this Agreement pursuant to the California Environmental Quality Act and its implementing regulations, known as the CEQA Guidelines (collectively, “**CEQA**”) as follows:

(1) As a part of its General Plan efforts, and prior to adopting the General Plan, City undertook environmental review of the potential direct and indirect environmental impacts of the General Plan pursuant to CEQA, certified the Final Environmental Impact Report for the General Plan, State Clearinghouse #2008092006 (“**General Plan EIR**”), and adopted findings, mitigation measures and a statement of overriding considerations in connection therewith. As set forth in greater detail herein, this Agreement is consistent with the General Plan EIR.

(2) As a part of the original South Schulte Specific Plan efforts, City prepared and certified an EIR (“**South Schulte EIR**”). The South Schulte EIR was challenged in court and a settlement was arrived at (“**South Schulte EIR Settlement**”) that required City to conduct additional studies and analysis. Initially, the City began to process a Supplemental EIR to address the South Schulte EIR Settlement. However, with the General Plan Update and its new approach to the area formerly known as the South Schulte Community Area, and with the City desire to conduct a thorough analysis of the new Urban Reserve 10, City decided to cause to be prepared an entirely new Environmental Impact Report.

(3) As part of the General Plan Amendment of 2011, the City Council certified as adequate a Final Supplemental Environmental Impact Report to address and mitigate the impacts of the General Plan, including without limitation the creation of the TR-Ellis land use designation.

(4) As part of its review of Owner’s December 2011 development applications, City caused to be prepared the Revised EIR, analyzing both the 2013 Ellis Specific Plan (including a swim center) and this Agreement. This Agreement does not impede, impair or otherwise seek to truncate or limit future CEQA review. Future CEQA review shall take place as required by applicable law.

I. As of the execution of this Agreement by the Parties, various land use regulations, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the 2013 Ellis Specific Plan, including, without limitation, all of the following:

- (1) Revised EIR (City Council Resol. No. \_\_\_\_\_)
- (2) 2013 Ellis General Plan Amendment (City Council Resol. No. \_\_\_\_\_)
- (3) 2013 Ellis Specific Plan (with Prezoning and Zoning) (City Ordinance No. \_\_\_\_\_)
- (4) This Agreement (City Ordinance No. \_\_\_\_\_)

The above-listed approvals are collectively referred to herein as the “**Ellis Project Approvals**” and are more particularly described in the Revised EIR and the resolutions adopting those approvals. The development of the Property described in and permitted by the Revised EIR, the 2013 Ellis Specific Plan, the 2013 General Plan Amendment and this Agreement, is referred to herein as the “**Ellis Project.**” Except as provided to the contrary herein, the 2011 General Plan as amended by the 2013 Ellis General Plan Amendment (hereafter, the “**General Plan**”, and the 2013 Ellis Specific Plan are hereby incorporated by reference in to this Agreement.

J. Given the community character and quality of the 2013 Ellis Specific Plan, its compliance with CEQA and applicable planning and zoning laws, and its approval by the City, and given Owner's significant land dedication, financial obligations and personnel commitment to a swim center (as set forth in this Agreement), the City wishes to allow Owner to be eligible to apply for and potentially receive up to 2,250 RGAs and Building Permits, as more specifically provided in this Agreement. Owner shall record this Agreement against the property comprising and subject to the 2013 Ellis Specific Plan (the “**Property**”) (shown on *Exhibit A* to this Agreement).

K. City's issuance of RGAs under this Agreement complies with City's Growth Management Ordinance and the City's Growth Management Ordinance Guidelines (collectively, “**GMO**”) except as specifically provided herein, and the maximums they set for annual RGA and building permit issuance for development agreements (referred to in this Agreement as the “**GMO Maximums**” and further defined below in this Agreement).

L. Owner represents and warrants to the City that Owner either owns, or holds legally enforceable contracts to purchase, all of the Property (as defined in Exhibit A). In preparing this Development Agreement, the City and Owner are guided by and follow the legal authority of *National Parks and Conservation Association v. County of Riverside* (1996) 42 Cal. App.4<sup>th</sup> 1505, 1520-1523. Further, Owner represents and warrants to City that Owner has a legal or equitable interest in the Property for the development contemplated by the Ellis Project Approvals sufficient to satisfy the requirements of the Development Agreement Statute.

M. The Property that is the subject of this Agreement is all of the property comprising and subject to the Ellis Specific Plan, which is depicted and legally described on

*Exhibit A* to this Agreement (the “**Property**”). The covenants and/or servitudes contained in this Development Agreement are intended to run with the land.

**N.** It is in this unique setting - - a strong community desire to construct a swim center and Owner's willingness to provide such an extraordinary commitment in return for future eligibility to apply for RGAs - - that the Parties have drafted this Agreement, ensuring that all of the requirements of controlling law are satisfied. This Agreement meets all of the requirements of law: it meets the contents requirements of the Development Agreement Statute and applicable law, and it establishes a protocol for the processing of future approvals. City and Owner are entering into this Agreement now in this fashion because of the unique community interest in a swim center and the benefits it will bring to Tracy and the unique opportunity the City presently has with the Owner's willingness to make substantial land dedication, design creation and financial contribution commitments to make a swim center a reality. The consideration by City of a swim center, the offer by Owner and this Agreement have been underway for more than ten years. In 2001, a survey of the Tracy community and public workshops were held that identified the need for community aquatic facilities. In 2003, NTD Architects completed the Tracy Aquatic Center Feasibility Study. In July 2005, the City Council directed Tracy Tomorrow and Beyond to make recommendations for a swim center. In the summer of 2005, Tracy Tomorrow and Beyond conducted additional public workshops. In October of that year, the City Council received the recommendations of Tracy Tomorrow and Beyond. Also in October 2005, Owner proposed Ellis as a location to be considered for a swim center. Between October 2005 and January 2006, the City studied a number of possible sites for a swim center including the existing Tracy ballpark. In January 2006, the City Council selected the Ellis Specific Plan as a potential site for a swim center. In April 2006, the City Council authorized City Staff to begin negotiations with Owner for a Development Agreement with provisions for the granting of funds and land by Owner for a swim center. In August 2006, the City Council, Planning Commission, and Parks Commission approved a conceptual design for a swim center at Ellis. In May 2007, the City Council directed City Staff to prioritize the Original Development Agreement for Ellis, including a swim center. In January 2008, a joint Planning Commission/City Council workshop was held to discuss the Original Development Agreement, the 2008 Ellis Specific Plan, and the swim center. Between April and December of 2008, the Planning Commission held a series of public meetings to discuss the Original EIR, the 2008 General Plan Amendment, the 2008 Ellis Specific Plan and the Original Development Agreement. The City Council and the Planning Commission provided direction and the public provided comment throughout this process.

**O.** For all of the reasons stated above, this Agreement is consistent with the General Plan and the 2013 Ellis Specific Plan. For example, as required by the General Plan, this Agreement envisions proper environmental analysis and a proper planning process in compliance with controlling law before any approval allowing development can take place. No additionally required Owner Approvals, as defined herein, are granted through, nor guaranteed by, this Agreement, and this Agreement ensures that the City's future consideration and decision on such approvals shall be in the sole and exclusive discretion of the City. (General Plan Goal LU-1 and Objective LU-1.1 (and its Policy P1); Objective LU-1.2 (and its Policy P3); Goal LU-6; and Goal LU-7.) Further, this Agreement requires that any distribution of RGAs under this Agreement comply with all applicable City regulations, including the General Plan (Objective LU-1.4, Policies P1-P5 and Action A1). While this Agreement preserves the City's full and unfettered discretion with respect to whether or not it will approve the development of a swim

center, it is nonetheless intended to help bring to fruition a swim center as envisioned by the General Plan (Objective OSC-4.1, Policy P3), should the City exercise its discretion accordingly. In fact, the General Plan recognizes this Agreement as a potential vehicle by which the City and Owner could reach agreement relative to such a swim center in a manner that City could not otherwise require Owner to do, that Owner may receive RGAs only if and after all requirements of controlling law have been satisfied, and that such risk shall be placed on Owner alone. Finally, this Agreement is not contrary to nor contradictory of any General Plan text or diagrams.

P. On December \_\_, 2012, following duly noticed and conducted public hearings, the Planning Commission, a hearing body for purposes of the Development Agreement Statute, took appropriate action under CEQA, the Planning and Zoning Law, and the Tracy Municipal Code, and made recommendations regarding this Agreement to the City Council. On \_\_\_\_\_, 2013, following duly noticed and conducted public hearings, the City Council certified the Revised EIR, took appropriate action under the Planning and Zoning Law, and introduced and conducted the first reading of Ordinance No. \_\_\_\_\_, an ordinance approving this Agreement, and directing this Agreement's execution by City ("**Approving Ordinance**"). On \_\_\_\_\_, 2013, the City Council conducted the second reading and adopted the Approving Ordinance.

## **ARTICLE 1**

### **APPLICABLE DEVELOPMENT TERMS**

#### **1.01 The Swim Center Obligations.**

(a) Owner hereby commits to make two non-refundable payments totaling ten million dollars (\$10,000,000.00) ("**Owner Swim Center Contribution**") to the City, as set forth in this Section 1.01(a), to fund the design, construction, operation and maintenance of a swim center. Owner shall deposit into a segregated and interest-bearing City account the Owner Swim Center Contribution, for use by the City for the construction and operation of a swim center as provided herein. Upon completion of the Owner Swim Center Contribution, Owner shall be deemed to have satisfied any and all fees applicable to the Property or the Ellis Project for a swim center or pool.

(1) Not later than sixty (60) days after the "**Annexation Effective Date**", as defined herein, Owner shall deposit into a segregated and interest-bearing account designated by the City (the "**Swim Center Funds Account**") two million dollars (\$2,000,000.00) ("**Owner's First Swim Center Payment**") for use by the City in the development, construction, operation and maintenance of a swim center.

(2) Not later than three (3) years following the date of Owner's First Swim Center Payment, Owner shall deposit into the Swim Center Funds Account eight million dollars (\$8,000,000.00) for use by the City in the development, construction, operation and maintenance of a swim center.

(3) Owner's obligations under this section are separate and independent of Owner's obligations under Subsection (b), and are binding upon Owner



regardless of whether or not City accepts Owner's Dedication Offer as provided in Subsection (b).

(4) In addition to any other remedies available to the City under this Agreement, and any and all other provisions of this Agreement or the City's Growth Management Ordinance and Guidelines to the contrary notwithstanding, if Owner fails to make either or both of the two non-refundable payments as required by Sections 1.01(a)(1) and (2) above, then the City may, in its sole and exclusive discretion, withhold from Owner such Residential Growth Allotments or building permits as Owner would otherwise be entitled to receive under this Agreement or the City's Growth Management Ordinance or Guidelines, and may continue to withhold the issuance of such Residential Growth Allotments or building permits until all such overdue payment or payments due under this Agreement have been made in full.

(b) Owner shall offer to dedicate to the City approximately sixteen (16) acres of land as described generally in the Revised EIR and the Ellis Specific Plan as the location of the "Potential Swim Center" (the "**Ellis Swim Center Site**"), subject to the following:

(1) Within thirty (30) days of the Annexation Effective Date, Owner shall offer to dedicate to the City, at no cost to the City, the Ellis Swim Center Site ("**Land Dedication Offer**"). City shall have one (1) year from the Annexation Effective Date to accept the Land Dedication Offer ("**Dedication Acceptance Period**"), subject to such extensions as may be mutually agreed by the Parties. If City does not accept the Land Dedication Offer within the Dedication Acceptance Period, then one day after the conclusion of the Dedication Acceptance Period, the Land Dedication Offer shall be considered rejected by the City and shall expire without any further action of the Parties. Thereafter, the Ellis Swim Center Site shall be available for development by Owner pursuant to the 2013 Ellis Specific Plan. Additionally, at any time prior to the end of the Dedication Acceptance Period, City may, by resolution of the City Council, reject the Land Dedication Offer and upon such City rejection, the Ellis Swim Center Site shall be available to Owner for development pursuant to the 2013 Ellis Specific Plan.

(2) The minimum on-site park requirements of the Ellis Specific Plan are addressed in Section 1.17 of this Agreement. If the City accepts the Land Dedication Offer, the swim center constructed on the Ellis Swim Center Site shall be considered a City "Community Park", as defined in the General Plan and other City laws. Upon City acceptance of the Land Dedication Offer, Owner shall be deemed to have satisfied its applicable community park obligation for the 2013 Ellis Specific Plan maximum entitlement of up to 2,250 residential units.

(c) If the City elects to construct a publicly-operated swim center anywhere in the City, City shall contribute toward the swim center that amount of money (plus interest earned) that City has already collected (and will continue to collect) from the Plan C FIP designated for an aquatic center ("**City Swim Center Contribution**"). The Owner Swim Center Contribution and the City Swim Center Contribution are collectively referred to in this Agreement as the "**Swim Center Funds**." Additionally, City shall consider establishing and imposing against new development a fee, charge, assessment or other financial obligation to be used toward the costs of the design, construction, operation and maintenance of a swim center

("New Development Swim Center Contribution"). Any and all New Development Swim Center Contributions collected by City prior to the construction of a swim center should be added to the Swim Center Funds.

(d) Owner already has provided a design team to City, and Owner has already conducted an outreach program that led to the completion of the "**Conceptual Design**" of a swim center. The Conceptual Design provides detail for a swim center project description contemplated by this Agreement. Owner has also funded various studies and analyses relating to the required infrastructure for, and potential environmental impacts from, a swim center on the Ellis Swim Center Site, including but not limited to the Revised EIR for the 2013 Ellis Specific Plan. Owner hereby agrees that all costs associated with conducting the outreach program and developing the Conceptual Design, all costs associated with preparation of the Revised EIR and the various infrastructure studies, and all other costs incurred by Owner and paid to City in connection with City's consideration of Owner's proposal to develop a swim center at the Ellis Swim Center Site, shall constitute an additional contribution by Owner to the City's development of a swim center, which contribution is independent of and in addition to the Swim Center Payments and Swim Center Land Dedication described in Sections 1.01(a) and (b) above, and Owner shall not seek credit for or reimbursement of any such costs.

(e) If the City elects to construct a publicly-operated swim center using the Owner Swim Center Contribution anywhere in the City, the swim center shall be named the "Serpa Swim Center." After acceptance of such publicly-operated swim center by the City, but prior to the opening of such swim center to the public, City shall allow Owner to use and occupy such swim center for one (1) day without charge. Owner shall provide adequate insurance coverage for such use and occupancy.

(f) The amenities included in the Conceptual Design for a publicly-operated swim center have been selected through a public outreach program, are subject to the constraints of the City's swim center budget and compliance with controlling law, and may include the following:

- (1) 50 Meter (approximately) Competition Pool
- (2) Recreation Pool (separate from Competition Pool)
- (3) Spray ground
- (4) Water Slide
- (5) Wet Play Structure
- (6) Lazy River
- (7) Flow Rider
- (8) Showers and Locker Rooms
- (9) Ticket Facilities

(10) Pool Equipment Room and Storage

(11) On Site Development (parking, ancillary structures, landscaping, etc.).

(g) If a funding shortfall should exist, the work for each phase of the swim center may be prioritized for that particular phase at the time that City seeks bids for the particular phase, so that work receiving a higher priority could be completed first so as to ensure its completion. As a result, if work cannot be completed due to a budget shortfall, that work receiving a lower priority could potentially be deferred.

(h) This Agreement provides a framework for City and Owner to work cooperatively to develop a swim center, as described herein. However, all provisions and language herein to the contrary notwithstanding, including but not limited to Sections 1.01 and 1.02, nothing in this Agreement is intended to or shall be construed to require City to construct a swim center on the Ellis Swim Center Site or anywhere else.

(i) If a publicly-operated swim center is approved and constructed on the Ellis Swim Center Site, then during the design and construction phases, Owner representatives shall be invited to participate and provide input to City regarding the design and construction processes for such swim center, which participation may include attending design and construction meetings with City's design consultants, construction managers and contractors; provided, however, that the Parties hereby acknowledge and agree that Owner's input on such swim center project shall be provided to City and City staff, Owner shall not be entitled or permitted to direct City's consultants, construction managers, contractors or other employees or agents, and City retains its full discretion to accept or not to accept Owner's input regarding the design and construction of such swim center.

(j) Monies withdrawn from the Swim Center Funds Accounts shall be for the sole purpose of funding the design, construction, operation, and/or maintenance costs of a swim center. City shall make withdrawals from the Swim Center Fund Account in the amounts and at the times it deems necessary in order to pay those costs authorized hereunder.

## **1.02 Other Processing.**

(a) Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, nor to limit the discretion of City or any of its officers or officials with regard to those "**Owner Approvals**" (defined below) that require the exercise of discretion by City, provided that such discretion shall be exercised consistent with the laws contained within the Applicable Law.

(b) At its approval and execution, this Agreement does not provide Owner with any right to develop or construct any project or to secure any Owner Approval; instead, it simply provides certain rights and responsibilities regarding approvals already given for the Ellis Specific Plan, provides certain vested rights to laws and approvals already in place, provides a protocol by which later Owner Approvals may be processed by Owner and later included into this Agreement, if and only if such Owner Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), have

secured approval of the Parties, and are adopted/approved by the City (who shall retain all discretion in this regard) – and provides the process by which this Agreement will be recorded against the Property. The public review process envisioned by this Agreement is ongoing, and following City's adoption of this Agreement, that public review process shall continue.

(c) City shall inform Owner, upon request, of the necessary submission requirements for a complete application for each Owner Approval. Owner Approval shall include, without limitation, a City resolution of application to the San Joaquin County Local Agency Formation Commission (“LAFCO”) seeking all LAFCO approvals relative to the annexation of the Property into the City. Provided Owner has paid all appropriate Processing Fees, City shall accept, process, review and act upon all applications for Owner Approvals pursuant to this Agreement and the Applicable Law it describes with "**Good Faith and Fair and Expeditious Dealing.**" Likewise, City shall commence, continue and diligently process any and all initial studies, assessments, EIRs and other relevant CEQA compliance documents regarding the Owner Approvals with Good Faith and Fair and Expeditious Dealing. For the purposes of this Agreement, "Good Faith and Fair and Expeditious Dealing" shall mean that that the Parties shall act toward each other and the tasks necessary or desirous to the processing contemplated by this Agreement pursuant to the Applicable Law and in a fair, diligent, expeditious and reasonable manner (except in those cases where a Party is given sole discretion under this Agreement), and that no Party or Parties shall take any action that will prohibit, impair or impede any other Party's or Parties' exercise or enjoyment of its rights and obligations secured through this Agreement.

(d) If Owner requests, City shall meet with Owner prior to Owner's submission of applications for Owner Approvals for the purpose of ensuring all requested information is understood by Owner so that Owner's applications, when submitted, will be accurate and complete. Upon submission by Owner of an application for an Owner Approval, together with appropriate Processing Fees, City shall process such application for Owner Approval with Good Faith and Fair and Expeditious Dealing. If City is unable to so process any such application, or upon request by Owner, City shall engage mutually acceptable outside consultants to aid in such processing. Owner shall be required to pay all of City's actual costs related to such outside consultants. Owner, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder, and Owner shall cause the Owner's planners, engineers and all other consultants to submit in a timely manner all required materials and documents. If City denies an application for an Owner Approval, City shall specify in detail the modifications, changes, or improvements that are required to obtain approval. City and Owner shall cooperate, with the goal being to obtain and issue Owner Approvals that are consistent with the modifications, changes, or improvements that are required by City. City shall with Good Faith and Fair and Expeditious Dealing consider any subsequently submitted Owner Approval application that complies with the City-specified modifications.

### **1.03 Applicable Law.**

(a) As used in this Agreement, "**Applicable Law**" shall exclusively mean all of the following:

(1) As relates to the development of any or all of the Property, the terms and conditions of this Agreement.

(2) The Revised EIR, the General Plan, the Ellis Specific Plan and its zoning regulations, Finance Implementation Plan adopted for the Ellis Project (the “**Ellis FIP**”) and all other land use regulations, entitlements, grants, permits, plans and other approvals (collectively, the “**Owner Approvals**”) that City has already or will in the future specifically approve, adopt, issue, and/or grant relative to Owner requests relating to the use and development of the Property, provided such Owner Approvals are:

(A) Compliant with all controlling California law (*e.g.*, Planning and Zoning Law, CEQA, etc.);

(B) Mutually agreed to by the Parties;

(C) Adopted by the City; and

(D) Take “**Legal Effect.**”

(3) As relates to the development of any or all of the Property, the City rules, regulations, ordinances, policies, standards, specifications, practices and standard operating procedures of City (whether adopted by the City Council, the Planning Commission, the City staff or the voters of the City) in force and effect on the Effective Date (“**Existing City Laws**”), including, without limitation the GMO and GMO Guidelines.

(4) As relates to the development of any or all of the Property, the City “**Processing Fees**” for land use approvals, including without limitation, fees for processing zoning, subdivision maps, building permits and other similar permits and entitlements which are charged for processing applications and which are in force and effect on a Citywide basis at the time the application for the Owner Approval is presented to the City.

(5) As relates to the development of any or all of the Property, the California Building Code (as modified by City), and those other State-adopted construction, fire and other codes, including “**Green Codes**” (as all may be modified by City) applicable to improvements, structures and development, and the applicable version or revision of said codes by local City action (collectively referred to as “**Construction Codes**”) in place at that time (date) that building plans subject to such Construction Codes are submitted by Owner to City for an Owner Approval, provided that such Construction Codes have been adopted by City and are in effect on a Citywide basis.

(6) As relates to the development of any or all of the Property, the “**Mandated New City Law(s)**,” pursuant to Section 1.05(e) of this Agreement.

(7) As relates to the development of any or all of the Property, the “**New City Law(s)**” that Owner elects to be subject to pursuant to Section 1.05(d).

(b) This Agreement complies with laws regarding the Development Agreement Statute (including without limitation section 65865.2), which require this Agreement

to specify the duration (Term) of the Agreement, the permitted uses of the Real Property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The duration of this Agreement is set forth in Section 1.06 of this Agreement, and this Agreement sets forth provisions for the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes in the Applicable Law provisions of this Agreement, either by its terms or through its incorporation of the General Plan and the 2013 Ellis Specific Plan. For example, the 2013 Ellis Specific Plan is part of the Applicable Law for the Property, and the 2013 Ellis Specific Plan sets forth the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes for the Property.

(c) The Parties acknowledge that Owner Approvals likely will be processed in stages and, therefore, one or more Owner Approvals may take Legal Effect before other Owner Approvals. Provided Owner submits applications as provided herein, the City shall process such applications and applications for other entitlements as are necessary to allow development of 2,250 residential units as part of the 2013 Ellis Specific Plan in implementation of the TR Ellis land use designation in the General Plan.

#### **1.04 Vested Right to Applicable Law.**

(a) By this Agreement, the Property shall have a vested right to the Applicable Law.

(b) During the Term of this Agreement, any development of the Property and any discretion exercised by City on an Owner Approval shall occur pursuant to only the law that comprises the Applicable Law. During the Term of this Agreement, City regulation of the development of the Property shall occur pursuant to only the Applicable Law.

#### **1.05 New City Law(s).**

(a) Any City ordinance, resolution, minute order, rule, motion, policy, standard, specification, or a practice adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not part of the Applicable Law and that takes effect on or after the Agreement Effective Date is hereby referred to as a "**New City Law(s).**" The parties recognize the City may, from time to time, modify its GMO Ordinance and Guidelines and none of these modifications shall apply to the development of the Property, which shall be governed by the GMO Ordinance and Guidelines in effect on the Effective Date, except as otherwise provided herein. Except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Ellis Project would accomplish any of the following results, either by specific reference to the Ellis Project or as part of a general enactment which affects or applies to the Ellis Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Property or any part thereof, or otherwise require any reduction in the total number of residential dwelling units,

square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Property and/or Owner Approvals in any manner, or take any action or refrain from taking any action that results in Owner's having to substantially delay construction on the Property or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Property in a manner that is inconsistent with or more restrictive than the limitations in the Ellis Approvals and Applicable Law;

(5) Limit the processing of Owner Approvals.

(6) Except for uniform adjustments formulated according to an inflation or cost of construction index, City changes in development, infrastructure or building standards, policies or ordinances that increase the cost of or impose new costs to develop and construct the project according to the Ellis Project Approvals.

(b) City shall not apply any New City Law(s) to the Property that is in conflict with this Agreement or that is excessive under controlling law (collectively, "in conflict with" or "inconsistent with"). If City believes that it has the right under this Agreement to impose/apply a New City Law on the Property/project, it shall send written notice to Owner of that City position ("**Notice of New Law(s)**"). Upon receipt of the Notice of New City Law, if Owner believes that such New City Law is in conflict with this Agreement, Owner may send written notice to City within thirty (30) days of Owner's receipt of City's Notice of New Law ("**Objection to New City Law(s)**"). Owner's notice to City of its Objection to New City Law(s) shall set forth the factual and legal reasons why Owner believes City cannot apply the New City Law(s) to the Property. City shall respond to Owner's Objection to New City Law(s) ("**City Response**") within thirty (30) days of receipt of said Owner Objection to New City Law(s). Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Owner's receipt of the City Response and shall continue to meet over the next sixty (60) days ("**Meet and Confer Period**") with the objective of arriving at a mutually acceptable solution to this disagreement. The New City Law(s) shall not be applied to the Property until the dispute over the applicability of the New City Law(s) is resolved. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Owner of that City determination. If City determines to impose/apply the New City Law(s) to the Property in question, then Owner shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Owner's right to judicial review of the New City Law(s) shall commence upon the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law(s) (at the highest judicial level sought and granted), the reviewing court determines that Owner is not subject to the New City Law(s), such New City

Law(s) shall cease to be a part of the Applicable Law, and City shall return Owner to the position Owner was in prior to City's application of such New City Law(s) (e.g., City return fees, return dedications, etc.). Notwithstanding any of the preceding language in this Section 1.05(b) to the contrary, upon the City's issuance to Owner of a Notice of New Law(s), any Party may opt out of the subsequent objection and resolution process described in this Section 1.05(b) provided that the opting out Party notifies the other Party(ies) that the opting out Party agrees to meet and confer regarding any disputes over New City Laws.

(c) The above-described procedure shall not be construed to interfere with City's right to adopt or apply any New City Law(s) with regard to all other areas of City (excluding the Property and Owner Approvals).

(d) Owner, in its sole and absolute discretion, may elect to be subject to a New City Law(s) that is/are not otherwise a part of the Applicable Law. In the event Owner so elects, Owner shall provide notice to City of that election and thereafter such New City Law(s) shall be part of the Applicable Law.

(e) City shall not be precluded from applying any New City Law(s) to the extent that such New City Law(s) are specifically mandated to be applied to developments such as the development of the Property by changes in State or Federal laws or regulations (and implemented through the Federal, State, regional and/or local level) ("**Mandated New City Law(s)**"). In the event such Mandated New City Law(s) prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by City for the Property, this Agreement shall be modified, extended or suspended as may be necessary to comply with such Mandated New City Law(s). Immediately after enactment of any such Mandated New City Law(s) that will materially affect the terms and conditions of this Agreement, the Parties shall meet and confer in good faith to determine the feasibility of any such modification, extension or suspension based on the effect such modification, extension or suspension would have on the purposes and intent of this Agreement. In the event that an administrative challenge and/or legal challenge (as appropriate) to such Mandated New City Law(s) preventing compliance with this Agreement is brought and is successful in having such Mandated New City Law(s) determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

## **1.06 Term.**

(a) The term of this Agreement shall commence thirty (30) days after the adoption of the Approving Ordinance ("**Agreement Effective Date**"), and shall continue twenty five (25) years plus one day ("**Term**"), unless said Term is otherwise terminated, modified or extended as provided in this Agreement or any amendment thereto.

(b) If any administrative, legal and/or equitable action and/or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, the Ellis Project, the Ellis Project Approvals, the Owner Approvals and their respective projects, or the sufficiency of any environmental review under CEQA ("**Third Party Challenge**") is filed, then the Term of this Agreement shall be tolled for the period of time from the date of the filing of such Third Party Challenge until the conclusion



of such litigation by dismissal or entry of a final judgment, provided such tolling period does not exceed five (5) years. The filing of any such Third Party Challenge(s) against City and/or Owner shall not delay or stop the development, processing or construction of the Ellis Project or issuance of any Owner Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

(c) Notwithstanding any other part of this Section 1.06, as it relates to a residential unit, this Agreement shall terminate and be of no further force and effect for each individual residential unit on the Property on that date a "**Certificate of Occupancy**" is issued by City for such residential unit if such residential unit is transferred and conveyed to a third party intending to use the unit for residential purposes.

(d) Pursuant to Government Code section 66452.6(a) (or its successor section in substantially the same form) and this Agreement, and subject to the provisions of subdivision (f) of this Section 1.06, the term of any tentative map, vesting tentative map, parcel map, vesting parcel map or final map, or any re-subdivision or any amendment to any such map (collectively referred to as "**Subdivision Document**") relating to the Property shall automatically be extended to and until the later of the following: (1) the end of the term of this Agreement; or (2) the end of the term or life of any such Subdivision Document otherwise given pursuant to the Subdivision Map Act or local regulation not in conflict with the Subdivision Map Act. Any improvement agreement entered into pursuant to the Subdivision Map Act or other State or local regulation shall have a term no shorter than 365 days from execution of the improvement agreement and no longer than that term decided by City.

(e) If this Agreement terminates for any reason prior to the expiration of vested rights otherwise given under the Subdivision Map Act to any vesting tentative map, vesting parcel map, vesting final map or any other type of vesting map on the Property (or any portion of the Property) (collectively, "**Vesting Map**"), such termination of this Agreement shall not affect Owner's right to proceed with development under such Vesting Map in accordance with the ordinances, policies and standards so vested under the Vesting Map. Notwithstanding the foregoing or any other provision of this Agreement or the Applicable Law it describes, no Vesting Map shall extend the Applicable Law beyond the stated Term of this Agreement (and the rules, regulations and official policies of City applicable to that portion of the Property covered by such Vesting Map shall become those in effect as of the expiration of such Term), except as otherwise agreed to by City and Owner; provided, however, that City and Owner may agree to an extension of the Term of this Agreement with respect to the area covered by any such Vesting Map.

(f) The term of any Owner Approvals, including without limitation, all development plans, development permits, design review approvals, or other permit, grant, agreement, approval or entitlement for the general development of all or any part of their respective projects and properties, shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement; or (2) the end of the term or life of the Owner Approval otherwise given pursuant to controlling law.

(g) The Parties hereby agree that, as of the Effective Date, this Agreement supersedes the effectiveness of the Original Development Agreement and all of the Parties' respective rights and obligations thereunder while this Agreement remains in effect; provided, however, that if the validity of this Agreement is overturned or set aside by a decision of a court of competent jurisdiction, then the suspension of the Original Development Agreement and superseding effect of this Agreement set out in this section shall, likewise, be overturned and of no further force and effect, and the Original Development Agreement and all of the parties' respective rights and obligations thereunder shall be restored.

### **1.07 Residential Growth Allotments.**

(a) City shall reserve, and Owner shall be eligible for, the allocation of up to 2,250 Residential Growth Allotments ("RGAs") for residential development on the Property, as provided in this Agreement. City and Owner agree that the RGAs allocated under this Agreement apply only to the Property and may not be applied or transferred to any other property.

(b) In no event shall Owner be eligible for more than 2,250 RGAs over the Term of this Agreement ("**Overall RGA Maximum**"). Further, each year Owner shall be eligible for RGAs as provided in the GMO and the GMO Guidelines in effect on the Effective Date, but in no event more than 225 RGAs per year ("**Annual RGA Eligibility**").

(c) Owner shall make application to City for RGAs ("**RGA Application(s)**") according to the requirements of the GMO Guidelines in effect on the Effective Date using the RGA Application form attached hereto as Exhibit B or the form then stipulated in the GMO Guidelines then in effect, at the option of the Owner.

(d) Owner shall provide a separate RGA Application for each calendar year in which Owner seeks RGAs. The total RGAs sought by Owner in any calendar year shall not exceed the total Annual RGA Eligibility for that calendar year set by this Agreement.

(e) Owner shall be eligible for building permits according to the requirements of the GMO and the GMO Guidelines in effect on the Agreement Effective Date.

### **1.08 Significant Actions by Third Parties.**

(a) Owner shall be responsible for the acquisition of permits, approvals, easements and services required to serve the Property from all non-City providers of utilities at Owner's cost. Owner shall also be responsible for coordinating with any non-City providers of utilities to ensure the proper installation and construction of non-City utilities in accordance with the Applicable Law. The provision of all such services shall be subject to City approval, which City approval shall be subject to Good Faith and Fair and Expeditious Dealing.

(b) At Owner's sole discretion and in accordance with Owner's construction schedule, Owner shall apply for such other permits and approvals as may be required by other private and public and quasi-public entities in connection with the development of, or the provision of services to, the Property. City shall cooperate with Owner in Good Faith and Fair and Expeditious Dealing, at no cost to City, in Owner's efforts to obtain such permits and

approvals and City shall, from time to time (at the request of Owner), use its Good Faith and Fair and Expeditious Dealing to enter into binding agreements with any such other entity as may be necessary to ensure the timely availability of such permits and approvals to Owner, provided such permits and approvals are mutually determined by City and Owner to be reasonably necessary or desirable and are consistent with Applicable Law. In the event that any such permit or approval as set forth above is not obtained within three (3) months from the date application is deemed complete by the appropriate entity, and such circumstance materially deprives Owner of the ability to proceed with development of the Property or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of Owner, Owner and City shall meet and confer with the objective of attempting to mutually agree on alternatives, Owner Approvals, and/or an amendment to this Agreement to allow the development of the Property to proceed with each Party substantially realizing its bargained-for benefit there from.

(c) City and Owner acknowledge and agree that City may from time to time enter into (with Good Faith and Fair and Expeditious Dealing) joint exercise of power agreements or memoranda of understanding with other governmental agencies consistent with and to further the purposes of this Agreement.

**1.09 Amendment of this Agreement; Inclusion of Owner Approvals into this Agreement.**

(a) This Agreement may be amended from time to time in accordance with California Government Code section 65868 and the Enabling Resolution, and upon the mutual written consent of City and Owner, with City costs payable by the Owner. Owner may seek City interpretation regarding one or more of the terms and conditions of this Agreement to determine whether or not an amendment is needed.

(b) This Agreement anticipates and provides the process and rules governing subsequent Owner Approvals. No amendment of this Agreement shall be required in connection with City processing and/or approval of any such Owner Approval for the Property. Any such Owner Approval that is approved by City and becomes part of the Applicable Law pursuant to the requirements of this Agreement shall be vested into by Owner and City, and shall become a part of this Agreement as if set forth herein in full. City shall not process or approve any Owner Approval unless Owner requests such process and approval.

**1.10 Annexation.**

(a) Within ninety (90) days after the Effective Date, or as soon thereafter as a “Plan for the Provision of Services” (as that phrase is defined by the law controlling the San Joaquin County Local Agency Formation Commission (“LAFCO”) and all other materials required by controlling law and/or requested by LAFCO can be prepared and completed relating to the Property, City shall consider a “Resolution of Application” to LAFCO requesting annexation of the Property. City shall submit such Resolution of Application, Plan for the Provision of Services and other material required by controlling law and/or requested by LAFCO. City may process any such annexation of the Property concurrently with other Owner Approvals.

(1) City shall use Good Faith and Fair and Expeditious Dealing to cause the completion of such annexation of the Property subject to all applicable requirements of law. If such annexation of the Property cannot be accomplished without conditions that are unacceptable to Owner then, at Owner's request, City shall terminate or request termination of the proceedings, as appropriate.

(2) Owner shall pay City's reasonable costs relating to all City actions taken pursuant to this Section 1.11, including reasonable consultant costs, and including such LAFCO fees, costs and charges relating to such annexation(s) that LAFCO charges to City.

(3) If City's first Resolution of Application to LAFCO requesting annexation of the Property is denied by LAFCO, then the Parties shall continue to work together to secure such annexation in such a manner as they may mutually agree, including annexing only portions of the Property at different times until such time as all of the Property is annexed to City. To the extent that the law requires a date to be set forth within this Agreement by which annexation of Annexation Property must be accomplished, that date shall be two (2) days prior to the termination of the Term of this Agreement.

(b) Owner shall be responsible for the City's processing costs regarding actions taken by City pursuant to this Section.

#### **1.11 Adequate Water Supply.**

(a) Pursuant to the water supply assessment ("WSA") by City relating to the potential development this Agreement addresses, adequate water supplies are known and will be available during the Term of this Agreement for the potential maximum development that may occur pursuant to this Agreement. Therefore, City shall make such water supplies available to Owner for such potential development during the Term of this Agreement. Except as provided herein, there shall be no cost to Owner for such water supply. Neither City nor Owner shall take any actions, including without limitation, approval by City of any new development after the Effective Date, that would impair or impede the City's ability to make such water supplies available to Owner during the Term of this Agreement for the potential maximum development that may occur pursuant to this Agreement. Water supply verifications shall take place at the subdivision map approval stage for all development of the Property as required by such law. If for any reason, despite the City's best efforts, such water supplies are not available from surface water supplies for Owner's use on such development when needed, then the following shall apply:

(1) City shall pursue interim measures to satisfy such water supply requirements, including without limitation, City's use of groundwater.

(2) If for any reason, despite City's best efforts, such interim measures are either not available, or are available but not in quantities necessary to fully satisfy such water supply requirements, then Owner may, at Owner's sole and exclusive discretion, advance to City such funds as are necessary to design, construct, operate and maintain one (1) ground water well, and such ancillary facilities as are necessary to provide potable water service to the Property until such time as City-provided permanent surface water supplies are available. Such

ground water well and ancillary facilities, including without limitation water treatment facilities, as are necessary, as determined by City, to provide potable water service to the Property, shall collectively be referred to herein as the “**Additional Well.**” Such Additional Well shall not be implemented unless and until Owner, in Owner’s sole and exclusive discretion, elects to advance to City all costs associated with its design, construction, operation and maintenance, and Owner's development will not be served from the Additional Well until construction of the Additional Well is completed and accepted by the City. After sufficient City-provided, permanent surface water supplies are made available to serve the Property, such that the Additional Well is no longer necessary, as determined by City, to serve the Property, City may use the Additional Well for emergency water supply purposes in accordance with the City’s water Master plan, provided City reimburses Owner for all costs to Owner of the design, construction, operation and maintenance of the Additional Well that exceed Owner’s fair share of such costs. Such reimbursement to Owner shall be made from appropriate development impact fees subsequently collected by City from other properties determined by City to benefit from the Additional Well, in the normal course of development of such properties. If any ancillary improvements to the Additional Well are required for the benefit of Ellis Project or are the part of the Ellis FIP, the cost of such facilities will not qualify for reimbursements from other developments.

The costs related to the transmission of the water supplies provided to the Property shall be paid by those impact fees that are established in the Ellis FIP .

#### **1.12 Recycled Water Program.**

All other provisions in this Agreement to the contrary notwithstanding, Owner hereby agrees that the Property and the Ellis Project shall be subject to such City recycled water fee requirements as may be set forth in the Ellis FIP . In addition to complying with such requirements, Owner hereby agrees that, as a condition of approval for any subdivision map for the Property or the Ellis Project, the subdivider shall design and construct, in conformance with applicable City standards, such recycled water infrastructure and facilities on collector streets as are sufficient to provide recycled water for irrigation of Ellis parks, and as are sufficient to provide recycled water for irrigation of such other landscaped public spaces on the Property and within the Ellis Specific Plan area as are mutually agreed on by the Parties.

#### **1.13 Wastewater Treatment and Conveyance Capacity.**

##### **(a) Wastewater Treatment Capacity.**

(1) Upon the Effective Date, City shall make available capacity from the existing City wastewater treatment plant sufficient to provide the Ellis Project with adequate wastewater treatment capacity for eight hundred (800) single-family detached residential units, a swim center and Storage Uses (“**Ellis Initial Capacity**”). There shall be no cost to Owner for the Ellis Initial Capacity

(2) Beyond the Ellis Initial Capacity referenced above, the Ellis Project shall receive that wastewater treatment capacity (“**Additional Capacity**”) needed to adequately service the Property, with said Additional Capacity coming from the City’s existing capacity at the existing wastewater treatment plant or “**Expansion**” of the existing wastewater

treatment plant. For the purposes of this Agreement, “Expansion” shall mean that expansion of the existing treatment capacity of the existing wastewater treatment plant, which Expansion will increase the treatment capacity of the plant from the existing approximately 9.0 million gallons per day of treatment capacity to approximately 20 million gallons per day of treatment capacity. Such Expansion may be done in incremental phases. Owner shall pay in accordance with the Ellis FIP, the costs of the Expansion (taking into account all users that will use the Expansion) through a form of municipal financing or other mechanism acceptable and agreeable to the Parties. City shall take such measures as needed to ensure that other public and private development projects proposing to utilize the Expansion shall pay their fair share of the funding needed to construct, maintain and operate the Expansion. Owner’s above-described funding obligations shall be coordinated with the other public and private development projects to ensure that such monies are collected from Owner and other public and private development projects at approximately the same time. If the required funding from other users or development projects is not available for the phase of Expansion needed to provide the Additional Capacity Owner needs when Owner needs it, or if some funding from others is available but is not adequate to fund the phase of Expansion needed to provide said Additional Capacity Owner needs when Owner needs it, then, at Owner’s sole and exclusive discretion, Owner may pay the balance of the cost of such phase of Expansion needed to provide such Additional Capacity (“**Owner Funded Phase**”). In such a case, Owner shall be reimbursed for that portion of the Owner Funded Phase that exceeds Owner’s Additional Capacity needs. Except for responsibilities provided for in applicable FIPs, CIPs and/or other developments to pay their fair share, City shall not be obligated to advance funds for Additional Capacity Expansion.

(b) Conveyance Capacity.

(1) Initial Capacity in Corral Hollow System: Owner is afforded the right to use 330 residential units of existing capacity in the Corral Hollow Sewer Conveyance System on a permanent basis. There shall be no cost to Owner for transmission for up to 550 units. Conveyance capacity shall be increased in accordance with any City-adopted Wastewater Master Plan and the Ellis FIP.

(2) Additional Capacity in Corral Hollow System: In addition to the 330 units of capacity mentioned above, there is an additional two hundred twenty (220) units of permanent sewer conveyance capacity in the existing Corral Hollow conveyance system. Commencing on January 31, 2016, Owner may secure for its use such additional existing capacity as has not been reserved and secured by other developers or land owners by paying or otherwise securing payment to the City of their “fair share” portion (as determined by the City) of the Corral Hollow Sewer Conveyance System expansion cost by paying or otherwise securing payment of its “fair share” portion of said cost. Provided that Owner has complied with all of its obligations under this Agreement and is not otherwise in default under this Agreement, then between January 31, 2016 and April 30, 2016, City shall reserve exclusively for Owner all such remaining additional capacity in the existing Corral Hollow conveyance system, which Owner may secure by paying or otherwise securing payment to the City of Owner’s “fair share” portion (as determined by the City) of the Corral Hollow Sewer Conveyance System expansion cost. Commencing on May 1, 2016, to the extent that Owner has not secured such remaining additional capacity in the existing Corral Hollow Conveyance System as provided in this Section 1.13(b)(2), the City’s obligation to reserve such remaining additional capacity for Owner shall terminate.

(3) Interim Capacity in Eastside Sewer Conveyance System: In addition to the permanent sewer conveyance capacity mentioned above, the Property shall be allocated an additional two hundred fifty (250) units of sewer conveyance capacity currently existing in the Eastside Sewer Conveyance System on an interim basis until phase one of the Corral Hollow Sewer Conveyance System upgrade is completed. There shall be no charge to Owner for said interim capacity.

(4) City shall take such measures as needed to ensure that other public or private development projects proposing to use the Conveyance Expansion shall pay their fair share (proportional) of the costs of such Conveyance Expansion. If additional funding from such other development projects is not available prior to Owner's need for the Conveyance Expansion, Owner, in its sole and exclusive discretion, may request City to construct all or a portion of the Conveyance Expansion using funds to be provided by Owner. On the date that the City determines that the Conveyance Expansion funded by Owner becomes available, Owner shall be entitled to such capacity as is necessary to meet Owner's needs, which needs shall be equal to the conveyance capacity for which owner has funded. To the extent that such Owner-funded capacity exceeds Owner's needs, such excess capacity shall be available on a first-come, first-served basis to property owners within the service area of the capacity, and Owner shall be entitled to reimbursement for funding provided by Owner in excess of Owner's fair share of the costs of the Owner-funded Conveyance Expansion, and such reimbursement shall occur prior to use by other property owners. All wastewater conveyance connections will be available to Owner only after the required improvements are completed and accepted by City. Wastewater conveyance capacity expansion to serve the Project shall be provided from the Corral Hollow sewer line and other western sewer lines as set forth in the Ellis FIP for the maximum development authorized by this Agreement. Except for responsibilities provided for in applicable CIPs and/or other developments to pay their fair share, City shall not be obligated to advance funds for conveyance improvements.

#### **1.14 Schools.**

(a) Owner has entered into Memorandums of Understanding with the Tracy Unified School District and with the Jefferson School District.

(b) Prior to the first residential building permit issuance, Owner shall execute a school facilities mitigation agreement with the Jefferson School District to mitigate the impact of the Ellis Specific Plan on Jefferson School District facilities.

#### **1.15 Ellis Specific Plan Parks.**

(a) Owner shall provide and dedicate to City neighborhood and community parks pursuant to the four (4) acres per thousand formula required by the Ellis Specific Plan and Applicable Law ("**Park Requirements**"). Owner shall construct all improvements for neighborhood parks, consistent with the description of such parks in the Ellis Specific Plan, prior to dedication to City. Owner's compliance with community park obligations shall be subject to and consistent with Section 1.01 of this Agreement. No additional park dedications, in lieu fees or other park-related requirements shall be imposed by City on Owner or the Property beyond the Park Requirements of this Agreement.

(b) The timing of the dedication to City of Ellis Specific Plan parks and the construction of Ellis Specific Plan park improvements shall be determined by City at the time of City approval of subdivision maps for the Property.

**1.16 Future Impact Fees; Nexus.**

(a) During the Term of this Agreement, only those impact fees that are included in the Ellis FIP shall apply to the development of the Property.

(b) Except as provided in this Agreement, this Agreement is not intended to change or affect either Parties' rights or obligations regarding the over-sizing of improvements, services and/or facilities beyond the impacts of the Property.

**ARTICLE 2**  
**ASSIGNMENT, DEFAULT, ANNUAL REVIEW,**  
**TERMINATION, LEGAL ACTIONS**

**2.01 Covenants Run With The Land.**

(a) This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants, obligations, benefits and burdens shall be binding upon and inure to the Parties and their respective heirs, successors (by merger, consolidation, or otherwise), assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Property, or any part thereof, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns (collectively, "**Assignee**").

(b) Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Owner's rights and interests under this Agreement, Owner shall be released from its obligations with respect to the Property, or any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the date of such assignment. A default by any Assignee shall only affect that portion of the Property owned by such Assignee and shall not cancel or diminish in any way Owner's rights hereunder with respect to the assigned portion of the Property not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property owned by such Assignee. Any and all provisions of this Agreement to the contrary notwithstanding, Owner shall not be released from any of its obligations under this Agreement, whether by assignment, conveyance, or any other means, unless and until Owner has fully satisfied its obligations under Section 1.01 of this Agreement

**2.02 Defaults.**

(a) Any failure by City or Owner to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days following written notice of such failure from the other Party (unless such period is extended by written mutual consent), shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the



manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default.

(c) During any cure period specified under this Section and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or formal termination of the Agreement as provided herein.

(d) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to a development proposal on the Property with respect to which there is an alleged default hereunder.

(e) In the event either Party is in default under the terms of this Agreement, the non-defaulting Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies, and/or (iii) pursue judicial remedies. In no event shall City modify this Agreement as a result of a default by Owner except in accordance with the provisions of Section 1.14 above.

(f) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by the other Party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder or to seek specific performance. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement shall be deemed a final agency action.

(g) The Parties hereby acknowledge that the City would not have entered into this Agreement if doing so would subject it to the risk of incurring liability in money damages, either for breach of this Agreement, anticipatory breach, repudiation of the Agreement, or for any actions with respect to its negotiation, preparation, implementation or application. The Parties further acknowledge that money damages and remedies at law generally are inadequate, and specific performance is the most appropriate remedy for the enforcement of this Agreement and should be available to all Parties for the following reasons:

(1) Money damages are excluded as provided above;

(2) Due to the size, nature, and scope of the Project, it may not be practical or possible to restore the Property to its original condition once implementation of this Agreement has begun. After such implementation, Owner may be foreclosed from other choices it may have had to utilize the Property or portions thereof. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the

terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate Owner for such efforts.

Therefore, the Parties hereby acknowledge and agree that it is a material part of Owner's consideration to City that City shall not be at any risk whatsoever to liability for money damages relating to or arising from this Agreement, and except for non-damages remedies, including the remedy of specific performance, Owner, on the one hand, and the City, on the other hand, for themselves, their successors and assignees, hereby release one another's officers, trustees, directors, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth and Fourteenth Amendments of the United States Constitution, or any other law or ordinance which seeks to impose any money damages, whatsoever, upon the Parties because the Parties entered into this Agreement, because of the terms of this Agreement, or because of the manner of implementation or performance of this Agreement.

### **2.03 Annual Review.**

(a) The Enabling Resolution provides for annual review of Owner's good faith compliance with the terms of this Agreement. Each year during the term of this Agreement, City shall initiate the annual review by written notice to Owner. Upon receipt of such written notice, Owner shall comply with such requirements of the Enabling Resolution and shall furnish to City a report demonstrating good faith compliance by Owner with the terms of this Agreement.

(b) Following any such annual review, if Owner is determined to be in good faith compliance with the terms of this Agreement, City shall furnish Owner, upon Owner's request, a certification of compliance in recordable form.

(c) Following any such annual review, if Owner is determined to not be in good faith compliance with the terms of this Agreement, City shall furnish to Owner a notice of noncompliance, which shall be deemed a notice of default and shall commence the cure period set forth in Section 2.02 above.

(d) In addition to the annual review provided for in this Section, City may investigate or evaluate from time to time during the course of any given year, and regardless of whether such investigation or evaluation takes place as part of the annual review, any subject matter that is properly the subject of an annual review.

### **2.04 Force Majeure Delay, Extension of Times of Performance.**

(a) 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, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities other than City, its departments, agencies, boards and commissions, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this

Agreement whether instituted by Owner, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Either Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, either Party may take action as permitted under this Agreement.

### **2.05 Third Party Legal Actions.**

(a) If there are any third party administrative, legal or equitable actions challenging any of the Project Approvals or the Subsequent Approvals, including without limitation this Agreement and all CEQA processes and actions by City relating to the Project, Owner shall defend and indemnify the City against any and all fees and costs arising out of the defense of such actions, including the fees and costs of City's own in-house or special counsel retained to protect the City's interests. Each Party is entitled to legal counsel of its choice, at Owner's expense. The Parties and their respective counsel shall cooperate with each other in the defense of any such actions, including in any settlement negotiations. If a court in any such action awards any form of money damages to such third party, or any attorneys' fees and costs to such third party, Owner shall bear full and complete responsibility to comply with the requirements of such award, and hereby agrees to timely pay all fees and costs on behalf of the City.

(b) If any part of this Agreement, any Project Approval or Subsequent Approval, is held by a court of competent jurisdiction to be invalid, the Parties shall cooperate to use their best efforts, to the extent permitted by law, to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement.

## **ARTICLE 3 GENERAL PROVISIONS**

### **3.01 Definitions.**

(a) To the extent that any capitalized terms contained in this Agreement or its Exhibits are not defined below, then such terms shall have the meaning otherwise ascribed to them in this Agreement and its Exhibits and/or the Applicable Law.

(b) As used in this Agreement and its Exhibits, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) "**Agreement**" shall mean this Amended and Restated Development Agreement between City and Owner.

(2) **“Agreement Effective Date”** shall have the meaning set forth in Section 1.06(a) of this Agreement.

(3) **"Annexation Effective Date"** shall mean that date upon which all of the following have occurred: the Ellis Project Approvals have been approved by the City and the annexation of the Property has been approved by LAFCO, the Ellis Project Approvals and LAFCO's annexation approvals have taken effect under controlling law, the applicable statute of limitations has run on the Ellis Project Approvals and LAFCO annexation approvals without a lawsuit being filed within that statutory limitations period, or if a lawsuit has been filed within that statutory limitations period, that the defendant and real party have prevailed in the lawsuit, or the Ellis Project Approvals and LAFCO annexation approvals are otherwise determined legal and effective.

(4) **"Annual RGA Eligibility"** shall have the meaning set forth in Section 1.07(b) of this Agreement.

(5) **"Applicable Law"** shall have that meaning set forth in Section 1.03 of this Agreement.

(6) **"Approving Ordinance"** shall have the meaning set forth in Recital paragraph P of this Agreement.

(7) **"Assignee"** shall have the meaning set forth in Section 2.01(a) of this Agreement.

(8) **"CEQA"** shall have that meaning set forth in Recital paragraph H of this Agreement.

(9) **"Certificate of Occupancy"** shall mean a certificate issued or final inspection approved by the City authorizing occupancy of a residential unit.

(10) **"City"** shall have that meaning set forth in the preamble of this Agreement.

(11) **"City Swim Center Contribution"** shall have the meaning set forth in Section 1.01(c) of this Agreement.

(12) **"Claims"** shall have the meaning set forth in Section 3.04 of this Agreement.

(13) **"Conceptual Design"** shall have the meaning set forth in Section 1.01(d) of this Agreement.

(14) **"Construction Codes"** shall have the meaning set forth in Section 1.03(a) (5) of this Agreement.

(15) **"Development Agreement Statute"** shall have the meaning set forth in the preamble of this Agreement.

(16) "Ellis FIP" shall have the meaning set forth in Section 1.03(a)(2) of this Agreement.

(17) "Ellis Initial Capacity" shall have the meaning set forth in Section 1.14(a) (1) of this Agreement.

(18) "Ellis Project" shall have the meaning set forth in Recital paragraph I of this Agreement.

(19) "Ellis Project Approvals" shall have the meaning set forth in Recital paragraph I of this Agreement.

(20) "Ellis Swim Center Site" shall have the meaning set forth in Section 1.01(b) of this Agreement.

(21) "Enabling Resolution" shall have the meaning set forth in the preamble of this Agreement.

(22) "Existing City Laws" shall have the meaning set forth in Section 1.03(a) (3) of this Agreement.

(23) "Force Majeure Event" shall have the meaning set forth in Section 2.04(a) of this Agreement.

(24) "General Plan" shall mean the City of Tracy General Plan as amended by the City Council on \_\_\_\_\_, 2013, by Resolution No. \_\_\_\_\_, as described in Recital paragraph I of this Agreement.

(25) "GMO" shall mean the City of Tracy Residential Growth Management Plan set forth in Chapter 10.12 of Title 10 of the City of Tracy Code of Ordinances, as may be amended from time to time.

(26) "GMO Guidelines" shall mean the GMO Guidelines adopted by the City Council of the City of Tracy pursuant to Title 10, Chapter 10.12, Section 10.12.050 of the City of Tracy Code of Ordinances, that are in effect on the Agreement Effective Date.

(27) "Good Faith and Fair and Expeditious Dealing" shall have the meaning set forth in Section 1.02(c) of this Agreement.

(28) "LAFCO" shall have the meaning set forth in Section 1.02(c) of this Agreement.

(29) "Land Dedication Offer" shall have the meaning set forth in Section 1.01(b) (1) of this Agreement.

(30) "Legal Effect" shall mean that the ordinance, resolution, permit, license or other grant of approval (collectively, "permit") in question, has been adopted by City and that all applicable administrative appeal periods and statutes of limitations have run and that

the permit has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction or other tribunal with final and binding decision authority.

(31) "**Mandated New City Law(s)**" shall have the meaning set forth in Section 1.05(e) of this Agreement.

(32) "**New City Law(s)**" shall have the meaning set forth in Section 1.05(a) of the Agreement.

(33) "**Notice of New Law(s)**" shall have the meaning set forth in Section 1.05(b) of this Agreement.

(34) "**Original Development Agreement**" shall mean that development agreement by and between the City of Tracy and Surland Communities, LLC, approved by the City of Tracy on December 16, 2008, executed by the City of Tracy and Surland Communities, LLC, between January 28, 2009 and February 5, 2009, and recorded in the San Joaquin County Recorder's office on February 5, 2009 as Document Number 2009-022386.

(35) "**Original EIR**" shall have the meaning set forth in Recital paragraph D of this Agreement.

(36) "**Overall RGA Maximum**" shall have the meaning set forth in Section 1.07(b) of this Agreement.

(37) "**Owner**" shall have that meaning set forth in the preamble of this Agreement.

(38) "**Owner Approvals**" shall have the meaning set forth in Section 1.03(a)(2) of this Agreement.

(39) "**Owner Funded Phase**" shall have that meaning set forth in Section 1.13(a)(2) of this Agreement.

(40) "**Owner Swim Center Contribution**" shall have the meaning set forth in Section 1.01(a) of this Agreement.

(41) "**Park Requirements**" shall have the meaning set forth in Section 1.15(a) of this Agreement.

(42) "**Party**" and "**Parties**" shall have the meaning set forth in the preamble of this Agreement.

(43) "**Police Powers**" shall have the meaning set forth in the preamble of this Agreement.

(44) "**Processing Fees**" shall mean fees charged by the City which represent the costs to City for City staff (including consultants) time and resources spent

reviewing and processing applications for Owner Approvals, as governed by Government Code section 66014.

(45) "**Property**" shall have the meaning set forth in Recital paragraph M of this Agreement.

(46) "**Residential Growth Allotments**" or "**RGAs**" shall have the meaning set forth in the GMO.

(47) "**Revised EIR**" shall have the meaning set forth in Recital paragraph F of this Agreement.

(48) "**Subdivision Document**" shall have the meaning set forth in Section 1.06(d) of this Agreement.

(49) "**Swim Center Funds**" shall have the meaning set forth in Section 1.01(c) of this Agreement.

(50) "**Swim Center Funds Account**" shall have the meaning set forth in Section 1.01(a) (1) of this Agreement.

(51) "**Term**" shall have the meaning set forth in Section 1.06(a) of this Agreement.

(52) "**Third Party Challenge**" shall have the meaning set forth in Section 1.06(b) of this Agreement.

(53) "**Vesting Map**" shall have the meaning set forth in Section 1.06(e) of this Agreement.

(54) "**WSA**" shall have the meaning set forth in Section 1.11(a) of this Agreement.

**3.02 Requirements of Development Agreement Statute.**

(a) The permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to any development and construction on the Property shall be those set forth in the General Plan and the Ellis Specific Plan, as incorporated by reference herein, and all other provisions of the Applicable Law, as provided for and consistent with the provisions of Section 1.03(b) above.

(b) During the Term of this Agreement, and pursuant to Government Code section 65866, the rules, regulations, official policies and all other controlling criteria shall be the Applicable Law, which Applicable Law may expand pursuant to this Agreement to include New City Law(s), Owner Approvals, and other subsequent actions that this Agreement includes in the Applicable Law.

(c) As stated above, this Agreement complies with laws regarding Development Agreement Statute (including without limitation Government Code section 65865.2), which requires this Agreement to specify the duration (Term) of the Agreement, the permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The duration of this Agreement is set forth herein, and this Agreement sets forth provisions for the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes in the Applicable Law provisions of this Agreement.

### **3.03 Development Timing.**

The Parties acknowledge that the timing, sequencing, and phasing of any later-approved development is solely the responsibility of Owner. In particular, the Parties desire to avoid the result of the California Supreme Court's holding in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), where the failure of the parties therein to consider and expressly provide for the timing of the development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement.

### **3.04 Hold Harmless and Indemnification.**

Owner shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) (collectively, "**Claims**") resulting from or arising out of the development contemplated by this Agreement, other than a liability or claim based upon City's gross negligence or willful misconduct. The indemnity obligations of this Agreement shall not extend to Claims arising from activities associated with the maintenance or repair by the City or any other public agency of improvements that have been accepted for dedication by the City or such other public agency.

### **3.05 Miscellaneous.**

(a) Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Owner acknowledges and agrees that City has approved and entered into this Agreement in the sole exercise of its legislative discretion and the standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(b) Development Is a Private Undertaking. The development contemplated by this Agreement is a separately undertaken private development. No partnership, joint venture, or other association of any kind between the Owner, on the one hand, and City on the other, is formed by this Agreement. The only relationship between City and Owner is that of a governmental entity regulating the development of private property and the owners of such private property.



(c) Construction. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(d) Notices.

(1) All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

If to the City:

City Manager  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376  
Telephone: (209) 831-6000  
Facsimile: (209) 831-6120

With a copy to:

City Attorney  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376  
Telephone: (209) 831-6130  
Facsimile: (209) 831-6137

If to Owner:

Les Serpa  
Chris Long  
Surland Communities, LLC  
1024 Central Avenue  
Tracy, CA 95376  
Telephone: (209) 832-7000  
Facsimile: (209) 833-9700

With a copy to:

Wilson F. Wendt  
Miller Starr Regalia  
1331 N. California Boulevard  
Walnut Creek, CA 94596  
Telephone: (925) 935-9400  
Facsimile: (925) 933-4126

(2) Either Party may change the address stated herein by giving notice in writing to the other Party, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to Owner as required by this Agreement shall also be given to all other signatory Parties hereto and any lender which requests that such notice be provided. Any signatory Party or lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(e) Recordation. No later than ten (10) days after the Effective Date, the Clerk of the City shall record a copy of this Agreement in the Official Records of the Recorder's Office of San Joaquin County. Owner shall be responsible for any recordation fees.

(f) Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

(g) Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

(h) Execution/Entire Agreement. This Agreement may be executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement, including these pages and all the exhibits inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(i) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Owner and City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

(j) Severability. Should any part, term or provision of this Agreement or any document required herein to be executed or delivered be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

(k) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

*Exhibit A      Property Legal Description*

*Exhibit B      RGA Transmittal and Application Form*

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties do hereby agree to the full performance of the terms set forth herein.

**"City"**  
**CITY OF TRACY**, a municipal corporation

**"Owner"**  
**SURLAND COMMUNITIES, LLC**, a California limited liability company

\_\_\_\_\_  
By: Brent Ives  
Title: Mayor  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
By: \_\_\_\_\_  
Les Serpa  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
By:  
Title: CITY CLERK  
Date: \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
By: Daniel Sodergren  
Title: City Attorney  
Date: \_\_\_\_\_

*Exhibit A*  
Property Description

*Exhibit B*  
RGA Application

# RGA Transmittal Form

## **SURLAND DEVELOPMENT AGREEMENT RESIDENTIAL GROWTH ALLOTMENT APPLICATION**

This is a Residential Growth Allotment (RGA) application as provided for in the Development Agreement between THE CITY OF TRACY and SURLAND COMMUNITIES, LLC dated \_\_\_\_\_ ("Agreement").

Submitted by: \_\_\_\_\_  
Date: \_\_\_\_\_

Received by: \_\_\_\_\_  
Date: \_\_\_\_\_

APPLICATION FOR RESIDENTIAL GROWTH ALLOTMENTS

**Purpose Of Application**

RGA's: \_\_\_\_\_ Exception (For Affordable Housing Units): \_\_\_\_\_

**Applicant's Information**

Name: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

Company: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

**Property Owner's Information**

Name: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

Company: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

(if necessary, please attach a sheet listing additional property owner information)

**Project Information**

Recorded Subdivision Name: \_\_\_\_\_

Tract No.: \_\_\_\_\_ Total No. of Lots: \_\_\_\_\_ Total Acreage: \_\_\_\_\_

Specify Planning Area (ex: Ellis, etc.): \_\_\_\_\_

**Project (Ownership) Area for which RGA's are applied**

Project Area name (if different from above): \_\_\_\_\_

Project Area ownership: \_\_\_\_\_

Project Area acreage: \_\_\_\_\_ Total number of Project Area lots: \_\_\_\_\_

Assessor's Parcel No(s): \_\_\_\_\_

**Project (Ownership) Area for which RGA's are applied (continued)**

Total number of RGA's previously awarded to Project Area: \_\_\_\_\_

Total number of building permits issued: \_\_\_\_\_

Total number of unused RGA's (RGA's previously awarded less the total number of RGA's used for building permit issuance): \_\_\_\_\_

Total number of RGA's requested in this application: \_\_\_\_\_

Identify the relevant plan approval(s) that have been obtained for the Project

Area: \_\_\_\_\_  
\_\_\_\_\_

**Applicant's Signature**

I, the undersigned, have complied with all the requirements of the Agreement relevant to this application:

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date



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