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County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder

Recorded at request of)
 Clerk, City Council)
 City of Desert Hot Springs)



When recorded return to)
 City Clerk)
 City of Desert Hot Springs)
 65950 Pierson Blvd.)
 Desert Hot Springs, CA 92240)

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DEVELOPMENT AGREEMENT NO. 01-04



A DEVELOPMENT AGREEMENT BETWEEN

CITY OF DESERT HOT SPRINGS

and

FIRST WEST—DHS ASSOCIATES, LLC

Stoneridge Specific Plan

This Development Agreement ("Agreement") is entered into effective on the date it is recorded with the Riverside County Recorder ("Effective Date") by and among the City of Desert Hot Springs, a California municipal corporation ("City"), and First West—DHS Associates, LLC, a California limited liability company ("Owner"):

RECITALS

WHEREAS, City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, Owner has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of City; and

WHEREAS, by electing to enter into this Agreement, City shall bind future City Councils of City by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of City; and

WHEREAS, the best interests of the citizens of the City and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, prior to or concurrent with the approval of this Agreement, all of the procedures of the California Environmental Quality Act will have been met with respect to the Project and the Agreement through the adoption of a statement of overriding considerations, the adoption of environmental findings and a mitigation monitoring and reporting program, and the certification of an environmental impact report ("EIR"); and

WHEREAS, this Agreement and the Project are consistent with the City's Comprehensive General Plan and the Stoneridge Specific Plan ("Specific Plan") applicable thereto; and

WHEREAS, all actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, development of the Property in accordance with this Agreement will provide substantial benefits to City and will further important policies and goals of City; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864, et seq. of the Government Code are intended; and

WHEREAS, Owner has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

WHEREAS, Owner has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "City" means the City of Desert Hot Springs, a political subdivision of the State of California.

1.1.3 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.4 "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with development of the Property including, but not limited to:

- (a) general plan, specific plans and general plan and specific plan amendments;
- (b) tentative and final subdivision and parcel maps, including vesting maps;
- (c) conditional use permits, development permits, public use permits and plot plans;
- (d) zoning;
- (e) grading and building permits.

1.1.5 "Development Exaction" means any requirement of City in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to

lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.6 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.7 "Effective Date" means the date this Agreement is recorded with the County Recorder.

1.1.8 "Existing Development Approvals" means all Development Approvals approved or issued prior to the Effective Date, including any and all conditions of approval and the mitigation monitoring plan adopted at the time of the approvals. Existing Development Approvals includes the Approvals incorporated herein as Exhibit "C" and all other Approvals that are a matter of public record on the Effective Date.

1.1.9 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations include the Regulations incorporated herein as Exhibit "D" and all other Regulations that are a matter of public record on the Effective Date.

1.1.10 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the property. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of rights and interests that provide for the use of or the entry upon public property;
- (e) the exercise of the power of eminent domain;
- (f) any other matters unrelated to uses of land, density, design, improvement, and construction standards and specifications.

1.1.11 "Owner" means the persons and entities listed as Owner on page 1 of this Agreement and, subject to the provisions of Section 2.4, their successors in interest to all or any part of the Property.

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

1.1.13 “Project” means the development of the Property contemplated by the Development Plan as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.14 “Property” means the real property described on Exhibit “A” and shown on Exhibit “B” to this Agreement.

1.1.15 “Reservations of Authority” means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 3.6 of this Agreement.

1.1.16 “Subsequent Development Approvals” means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

1.1.17 “Subsequent Land Use Regulations” means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit “A” — Legal Description of the Property.

Exhibit “B” — Map showing Property and its location.

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Performance Schedule.

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. Owner represents and covenants that it is the owner of the fee simple title to the Property. As a condition precedent to the City’s obligations hereunder, Owner shall provide to City a copy of the Operating Agreement for First West—DHS Associates, LLC, and all other documents required to establish the authority of the representatives signing below to bind the entity to the obligations of this Agreement.

2.3 Term. The term of this Agreement shall commence on the Effective Date and, provided Owner has obtained a building permit and begun construction on the first 100 residential units within three (3) years from the Effective Date and is not in default

hereunder, shall continue for a period of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. So long as Owner is found by the City Council, during the Periodic Review conducted during the tenth (10th) year of the Term of this Agreement, to be in substantial compliance with this Agreement, including the Performance Schedule as set out in Exhibit "E" and all other phasing requirements set out in the Existing Development Approvals, this Agreement shall be automatically renewed by the City Council for an additional ten (10) years upon the same terms and conditions as contained herein.

2.4 Assignment.

2.4.1 Right to Assign. Owner shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.) to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, Owner shall notify City, in writing, of such sale, transfer or assignment and shall provide City with an executed agreement, in a form reasonably acceptable to City, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of Owner under this Agreement.

(c) The purchaser, transferee or assignee has established, to the satisfaction of City, that security equivalent to any security previously provided by Owner to secure performance of its obligations hereunder continues to secure such performance by the purchaser, transferee or assignee.

Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a non-curable, material breach of this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed and the City thereafter provides written waiver of the breach arising out of the sale, transfer or assignment prior to compliance with the provisions of this Section 2.4.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring Owner shall continue to be obligated under this Agreement unless

such transferring Owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring Owner of the following conditions:

(a) Owner no longer has a legal or equitable interest in all or any part of the Property.

(b) Owner is not then in default under this Agreement.

(c) Owner has provided City with the notice and executed agreement required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides City with security equivalent to any security previously provided by Owner to secure performance of its obligations hereunder.

2.4.3 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.4 Partial Release of Purchaser, Transferee or Assignee of Industrial or Commercial Lot. A purchaser, transferee or assignee of a lot, which has been finally subdivided as provided for in the Development Plan and for which a commercial or industrial plot plan for development of the lot has been finally approved pursuant to the Development Plan, may submit a request, in writing, to City to release said lot from the obligations under this Agreement relating to all other portions of the property. Within thirty (30) days of such request, City shall review, and if the above conditions are satisfied shall approve the request for release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.4 shall cause, or otherwise affect, a release of Owner from its duties and obligations under this Agreement.

2.4.5 Individual Lots Sold to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot that has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

(b) A Certificate of occupancy has been issued for a building on the lot.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only by written consent of all parties in the manner provided for in Government Code Section 65868. This provision shall not limit any remedy of City or Owner as provided by this Agreement.

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

(a) Expiration or termination of the stated term of this Agreement as set forth in Section 2.3.

(b) Subject to the notice and hearing rights set out herein, a termination of the Agreement pursuant to a material breach of the terms of this Agreement.

(c) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(d) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

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

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement that has occurred prior to such termination or with respect to any obligations that are specifically set forth as surviving this Agreement. The vested rights of Owner under this Agreement as to any parcel(s) for which it has not obtained a building permit shall expire upon the termination or expiration of this Agreement.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below. All notices shall be addressed as follows:

If to City:

City Manager
City of Desert Hot Springs
65950 Pierson Blvd.
Desert Hot Springs, CA 92240

If to Owner:

First West-DHS Associates, LLC
1105 Quail St.
Newport Beach, CA 92660
Attention: Vic Mahony

With a Copy to:

Jeffrey S. Ballinger
Best, Best & Krieger
3750 University Avenue
Riverside, CA 92501

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, the land use and density standards set out in the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property and the maximum height and size of proposed buildings applicable to development of the Property shall be the Existing Land Use Regulations.

3.3 Timing of Development. The parties acknowledge that Owner cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors that are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment, subject only to the timing and phasing requirements as shown in Exhibit "E" and as otherwise set forth in the Development Plan or the Phasing Plan set forth in Section 3.4.

3.4 Phasing Plan. Development of the Property shall be subject to all timing and phasing requirements as shown in Exhibit "E" and as otherwise established by the Development Plan, including the Specific Plan. Once it has obtained a building permit and begun construction of a phase of the Project, Owner shall diligently proceed to completion of such phase.

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event Owner finds that a change in the Existing Development Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property as a whole; or,
- (b) Increase the density or intensity of use of the Property as a whole; or,
- (c) Increase the maximum height and size of permitted buildings; or,
- (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,
- (e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Property.

- (a) Processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued.
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.
- (c) Regulations governing construction standards and specifications including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code.

(d) Regulations imposing Development Exactions; provided, however, no such subsequently adopted Development Exaction shall be applicable to development of the Property unless such Development Exaction is applied uniformly to development, either throughout the City or within a defined area of benefit that includes the Property. No such subsequently adopted Development Exaction shall apply if its application to the Property would physically prevent development of the Property for the uses and to the density or intensity of development set forth in the Development Plan. In the event any such subsequently adopted Development Exaction fulfills the same purposes, in whole or in part, as the fees set forth in Section 4 of this Agreement, City shall allow a credit against such subsequently adopted Development Exaction for the fees paid under Section 4 of this Agreement to the extent such fees fulfill the same purposes.

(e) Regulations that may be in conflict with the Development Plan but that are reasonably necessary to protect the public health and safety. To the extent possible, any such regulations shall be applied and construed so as to provide Owner with the rights and assurances provided under this Agreement.

(f) Regulations that are not in conflict with the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Property.

(g) Regulations that are in conflict with the Development Plan provided Owner has given written consent to the application of such regulations to development of the Property.

(h) Regulations applying new or increased fees that are determined by agencies which are not within the exclusive control of the City.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that are unrelated to the permitted uses of the Property, the density and intensity of use, and the maximum height and size of proposed buildings, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the use and density standards set out in the Development Plan.

3.6.3 Notwithstanding any other provision herein, City expressly retains its authority and remedies to enforce applicable non-land use statutes and codes, including without limitation, tax, criminal, and health/safety statutes and codes.

3.7 Tentative Tract Map Extension. Pursuant to the provisions of Section 66452.6, subdivision (a) of the Subdivision Map Act, the Master Tract Map and any subsequent vesting or tentative maps approved in connection with Development of the Property or Project, shall be extended for the Term of this Agreement.

3.8 The duration of each of the building permits to be issued for the Project is not modified by this Agreement and will be as set forth in the applicable building and safety codes.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that, absent Owner's consent hereunder, will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on Owner that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project. Owner expressly acknowledges its acceptance of the mitigation monitoring plan and the conditions of approval that are incorporated in the Development Plan, including without limitation the obligations imposed with respect to the construction of a Fire Station, public park and all other Development Exactions identified in the Development Plan.

4.1.1 Pierson Blvd. Improvements. Owner to make contribution to the City in the sum of \$600,000, without any credit against impact fees or right of reimbursement whatsoever, toward the total cost of currently proposed improvements required on Pierson Boulevard east of the Project in order to meet the increased traffic demand identified in the EIR as being generated by the Project. Said contribution shall be in lieu of any other mitigation suggested or proposed in the EIR specific to the Project's impact on Pierson Boulevard east of the Project. The contribution is to be made in three installments of \$200,000 each as follows: Owner to pay the first installment on or before the second anniversary of the recording of this Agreement or upon the issuance of the Certificate of Occupancy for the 100th unit, whichever occurs first; the second installment on the fourth anniversary or upon the issuance of the Certificate of Occupancy for the 300th unit, whichever occurs first; the third installment on the sixth anniversary or upon the issuance of the Certificate of Occupancy for the 500th unit, whichever occurs first.

4.1.2 Fire Station. Owner shall construct, or cause to be constructed, a Fire Station, at Owner's sole cost and expense, and without any credit against impact fees or right of reimbursement whatsoever, as follows:

(a) **Permanent Fire Station.** Owner shall contribute the 2-acre site identified in the conditions of approval incorporated in the Development Plan, or an alternate site at the discretion of the City, and improve said site with a Permanent Fire Station pursuant to the specifications to be provided by the City (the "Permanent Fire Station"). Construction of said Permanent Fire Station shall begin no later than 24 months from the date that the necessary right-of-way rights have been acquired. Construction shall be completed within 12 months of issuance of the building permit for the Permanent Fire Station. Construction of the Permanent Fire Station shall not include furniture or equipment, but shall otherwise include all elements necessary to place the Permanent Fire Station in operation.

(b) **Temporary Fire Station.** In no event shall a Certificate of Occupancy for the first residential unit be issued until and unless either (a) the Permanent Fire Station shall have been completed or (b) construction of a Temporary Fire Station shall have been completed at a site and to standards acceptable to the Riverside County Fire Department.

4.1.3 Park Improvements. As agreed by Owner, and in full satisfaction of the City's Quimby requirements, Owner shall provide the following park facilities at Owner's sole cost and expense, and without any further right of reimbursement whatsoever, as follows:

(a) Karen Street Park. Owner shall contribute the 5-acre site identified in the conditions of approval incorporated in the Development Plan, and improve said site in the manner also described in the conditions of approval incorporated in the Development Plan or as otherwise approved by the City Manager at a total cost not to exceed \$1,200,000, not including land value. Owner shall complete construction on Karen Street Park before date that Certificate of Occupancy for the first residential unit is issued.

(b) Parks Within Development. Owner shall develop the park and open areas described in the Development Plan in a manner acceptable to the City. Any and all parks identified within a Village shall be completed on or before the issuance of the first Certificate of Occupancy for a residential unit in that Village. Provided all park areas are developed concurrent with the build-out of each Village, Owner shall be entitled to credit against Quimby fees equal to the improved park acreage deemed by the City to be park area. Before the first transfer of ownership to any property within the Project, Owner shall create a perpetual easement, or other form of title restriction acceptable to the City Attorney, to ensure that the park areas shall be owned, used and maintained by the Homeowner's Association as park areas in perpetuity.

4.1.4 Financing of Public Improvements. A Community Facilities District (CFD) or other funding mechanism, as determined by the City Council, may, within the sole discretion of the City, be formed to finance the cost of construction and/or operation and maintenance of infrastructure and public facilities which serve the Project and surrounding areas. Owner shall cooperate in the formation. If formed, all costs related to the formation and studies related thereto shall be paid by Owner, with subsequent reimbursement to Owner by District (or other entity) after it is formed. The CFD (or other entity) may finance that portion that is permitted by law.

4.2 Development Impact Fees.

4.2.1 Amount and Components of Fee. The Owner shall pay all existing or future adopted service, permit, impact and other applicable fees required by the City of Desert Hot Springs as same shall exist at the time that a building permit is applied for. There is no entitlement to fees existing at time of this Agreement.

4.2.2 Time of Payment. The fees required pursuant to Subsection 4.2.1 shall be paid to City prior to the issuance of building permits for each residential unit. No fees shall be payable for building permits issued prior to the Effective Date of this Agreement, but the fees required pursuant to Subsection 4.2.1 shall be paid prior to the re-issuance or extension of any building permit for a residential unit for which such fees have not previously been paid.

4.2.3 Credits. Performance by Owner of all obligations set out in Subsection 4.1.3 shall be deemed full satisfaction by Owner of the City's Quimby requirements for the dedication of parkland as defined in the Existing Land Use Regulations. In the event that Owner

fails to improve the park areas as required above, however, credits shall then be applied only in the proportion that the acreage of completed park area found acceptable by the City bears to the standards set out in the City's Quimby Ordinance. Except as to Quimby requirements, Owner shall not be entitled to any other credit(s) against fees for the performance of any other obligations set out herein or in the conditions of approval of the Project.

5. REIMBURSEMENT AGREEMENT.

Owner and City shall enter into a reimbursement agreement whereby Owner shall be reimbursed expenses related to infrastructure improvements required as a condition of approval, which improvements are on right-of-ways not adjacent to the Property. Reimbursement shall be provided to Owner (a) where Owner made required infrastructure improvements on right-of-ways that are adjacent to parcels not owned, or subsequently acquired, by Owner, (b) as fair share contributions are collected by the City from owners who subsequently develop the parcels that are adjacent to the right-of-ways upon which owner has made infrastructure improvements.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic Review. The Planning Manager shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by Owner with the terms of the Agreement. Owner shall submit an Annual Monitoring Report, in a form acceptable to the Planning Manager, within 30 days after written notice from the Planning Manager. The Annual Monitoring Report shall be accompanied by an annual review and administration fee sufficient to defray the estimated costs of review and administration of the Agreement during the succeeding year. The amount of the annual review and administration fee shall be set annually by resolution of the City Council.

6.2 Special Review. The City Council may order a special review of compliance with this Agreement at any time. The Planning Manager shall conduct such special reviews.

6.3 Procedure.

(a) During either a periodic review or a special review, Owner shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on Owner.

(b) Upon completion of a periodic review or a special review, the Planning Manager shall submit a report to the City Council setting forth the evidence concerning good faith compliance by Owner with the terms of this Agreement and his or her recommended finding on that issue.

(c) If the City Council finds on the basis of substantial evidence that Owner has complied in good faith with the terms and conditions of this Agreement, the review shall be concluded.

(d) If the City Council makes a preliminary finding that Owner has not complied in good faith with the terms and conditions of this Agreement, the Council may modify or terminate this Agreement as provided in Section 6.4 and Section 6.5. Notice of default as

provided under Section 8.3 of this Agreement shall be given to Owner prior to or concurrent with, proceedings under Section 6.4 and Section 6.5.

6.4 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.3, City determines to proceed with modification or termination of this Agreement, City shall give written notice to Owner of its intention so to do. The notice shall be given at least ten calendar days prior to the scheduled hearing and shall contain:

- (a) The time and place of the hearing;
- (b) A statement as to whether or not City proposes to terminate or to modify the Agreement; and,
- (c) Such other information as is reasonably necessary to inform Owner of the nature of the proceeding.

6.5 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, Owner shall be given an opportunity to be heard. Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on Owner. If the City Council finds, based upon substantial evidence, that Owner has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement. Alternatively the City may, but is not obligated to, modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.6 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, Owner is found to be in compliance with this Agreement, City shall, upon request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Manager and City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder.

Whether or not the Certificate is relied upon by assignees or other transferees or Owner, City shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Manager or City Council.

6.7 Failure of Periodic Review. The City's failure to review at least annually compliance by Owner with the terms and conditions of this Agreement shall not constitute or be asserted by any party hereto as a breach of this Agreement, nor shall it constitute a basis for challenge by any third party.

7. INDEMNIFICATION.

At its sole cost and expense, Owner shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents and volunteers, from and against any and all liability, loss, cost, expense, damage, claim, action, proceeding and attorneys fees resulting from or arising out of the action or inaction of Owner, its agents, officers and employees, and from any claim, action or proceeding against the City, its agents, officers, employees, volunteers, seeking to attack, set aside, void or annul any actions taken by the City in connection with the Project or Property, including but not limited to, approval of this Agreement and compliance with the California Environmental Quality Act. The rights and obligations of this Section 7 shall survive the termination and/or expiration of this Agreement.

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that City would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that City shall not be liable in damages to Owner, or to any successor in interest of Owner, or to any other person, and Owner covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action that arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement or the conditions of approval or other Existing Development Approvals incorporated herein; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement, or the conditions of approval or other Existing Development Approvals incorporated herein.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against City as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural 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 that would adequately compensate Owner for such efforts.

8.3 Termination or Modification of Agreement for Default of Owner. Subject to the provisions contained in Subsection 6.5 herein, City may terminate or modify this Agreement for any failure of Owner to perform any material duty or obligation of Owner under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, City may terminate or modify this Agreement pursuant to this Section only after providing written notice to Owner of default setting forth the nature of the default and the actions, if any, required by Owner to cure such default and, where the default can be cured, Owner has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.4 Termination of Agreement for Default of City. Owner may terminate this Agreement only in the event of a default by City in the performance of a material term of this Agreement and only after providing written notice to City of default setting forth the nature of the default and the actions, if any, required by City to cure such default and, where the default can be cured, City has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

9. [RESERVED]

10. MORTGAGEE PROTECTION.

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

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

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the City in the manner

specified herein for giving notices, shall be entitled to receive written notification from City of any default by Owner in the performance of Owner's obligations under this Agreement.

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

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall succeed to the rights and obligations of the Owner under this Agreement as to the Property or portion thereof so acquired; provided, however, in no event shall Mortgagee be liable for any defaults or monetary obligations of the Owner arising prior to acquisition of title to the Property by such Mortgagee, except that any such Mortgagee shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary obligations due under this Agreement have been paid to the City. Any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements that are not contained or expressly referred to herein.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. If at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one Owner, all obligations of such Owners under this Agreement shall be joint and several, and the default of any such Owner shall be the default of all such Owners. Notwithstanding the foregoing, no Owner of a single lot that has been finally subdivided and sold to such Owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element. Owner expressly acknowledges that the timing of development as required by the Performance Schedule set out in Exhibit "E" is a material term of this Agreement, a breach of which cannot be cured.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

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

11.11 Force Majeure.

11.11.1 Providing the resulting delay cannot be avoided by the commercially reasonable efforts of, and was not caused by, the affected party, neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), changes in government regulations adopted after the Effective Date that prohibit Owner from complying with a material provision of this Agreement, court actions (such as restraining orders or injunctions), or other causes beyond the party's control.

11.11.2 The parties hereto expressly acknowledge and agree that significantly adverse changes in general economic conditions that, as demonstrated by Owner to the satisfaction of the City Council, prevent Owner from obtaining a commercially reasonable profit shall constitute a force majeure event.

11.11.3 If any such event of force majeure shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

11.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Riverside, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

11.17 Authority to Execute. The person or persons executing this Agreement on behalf of Owner warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind Owner to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

[INTENTIONALLY LEFT BLANK]

CITY

City of Desert Hot Springs
a California municipal corporation

By: 

Matt Weyuker, Mayor

ATTEST:

By: 

Rossie Stobbs, City Clerk

APPROVED AS TO FORM AND
CONTENT:

By: 

Jerry Hanson, City Manager

APPROVED AS TO FORM:

By: 

Patricia A. Larson, City Attorney

OWNER

First West-DHS Associates, LLC, a California
limited liability company

By: 

Title: PARTNER

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION

Real property in the City of Desert Hot Springs, County of Riverside, State of California, described as follows:

PARCEL NO. 1

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, OF SAID SECTION; THENCE WESTERLY, ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER 980.5 FEET, TO THE EAST LINE OF THAT CERTAIN 60 FOOT ROAD KNOWN AS 29 PALMS HIGHWAY; THENCE NORTH 23 DEGREES 01' 13" EAST ON THE NORTH LINE OF SAID SECTION 390.71 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE SOUTH 0 DEGREES 09' 30" EAST, ON THE EAST LINE OF THE SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, 1380.18 FEET, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ONE-HALF ON ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES UNDERLYING SAID LAND AND ONE-HALF OF ALL OTHER MINERALS, AS RESERVED IN DEED FROM JOSEPH R. TROTTER, HUSBAND AND WIFE FILED FOR RECORD MARCH 30, 1955.

SAID PROPERTY IS ALSO SHOWN AS PARCEL 2, 3 AND 4 ON RECORD OF SURVEY ON FILE IN BOOK 27 PAGE 65 OF RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL NO. 2

THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

PARCEL NO. 3

THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

PARCEL NO. 4

THE NORTH HALF OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

PARCEL NO. 5

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28,

TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

BEGINNING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE WEST ON THE SOUTH LINE OF SAID SOUTHEAST QUARTER 836 FEET; THENCE NORTH, PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER 209 FEET; THENCE EAST PARALLEL WITH SOUTH LINE OF SAID SOUTHEAST QUARTER TO EASTERLY LINE THEREOF; THENCE SOUTH OF THE EAST LINE OF SAID SOUTHEAST QUARTER 209 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 6

PARCEL 1 OF THE WEST ONE-HALF OF SOUTHEAST QUARTER OF SECTION 28, IN TOWNSHIP 2 SOUTH OF RANGE 4 EAST OF THE SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF OF THE SURVEY OF THE SAID LAND, RETURNED TO THE GENERAL LAND OFFICE BY THE SURVEYOR GENERAL, SAID PARCEL BEING DETERMINABLE FROM THE RECORD OF SURVEY RECORDED THE 14TH DAY OF JULY 1961 IN BOOK 34 PAGE 34 RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL NO. 7

THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THE EAST HALF OF THE SOUTHWEST QUARTER.

ALSO EXCEPTING THEREFROM THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION.

ALSO EXCEPTING THEREFROM THE SOUTHERLY 40 FEET CONVEYED TO THE COUNTY OF RIVERSIDE BY DEED FILED FOR RECORD JULY 26, 1949 AS INSTRUMENT NO. 3081 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL NO. 8

THE EAST HALF OF THE SOUTHWEST QUARTER, AND THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THE SOUTHERLY 40 FEET AS CONVEYED TO THE COUNTY OF RIVERSIDE, BY DEED RECORDED JULY 26, 1949 AS INSTRUMENT NO. 3081 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL NO. 9

PARCEL 3 AND 4 OF THE WEST ONE-HALF OF SOUTHEAST QUARTER OF SECTION 28, IN TOWNSHIP 2 SOUTH OF RANGE 4 EAST OF THE SAN BERNARDINO BASE AND MERIDIAN, CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF THE SAID LAND, RETURNED TO THE GENERAL LAND OFFICE BY THE SURVEYOR GENERAL, SAID PARCEL BEING DETERMINABLE FROM THE RECORD OF SURVEY RECORDED THE 14TH DAY OF JULY 1961, IN

BOOK 34 PAGE 48 OF RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL NO 10

PARCEL 2 OF THE WEST ONE-HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST OF THE SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF SAID LAND, RETURNED TO THE GENERAL LAND OFFICE BY THE SURVEYOR GENERAL, SAID PARCEL BEING DETERMINABLE FROM THE RECORD OF SURVEY RECORDED THE 14TH DAY OF JULY, 1961 IN BOOK 34 PAGE 48 RECORDS OF SURVEYS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL NO. 11

THAT PORTION OF THE EAST HALF OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 3 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 29; THENCE NORTHERLY ALONG THE EASTERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 1483 FEET TO THE TRUE POINT OF BEGINNING; THENCE WESTERLY AND PARALLEL WITH THE SOUTHERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 528 FEET; THENCE NORTHERLY AND PARALLEL WITH THE EASTERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 577 FEET; THENCE EASTERLY AND PARALLEL WITH THE SOUTHERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 528 FEET TO THE EASTERLY BOUNDARY OF SAID SECTION 29; THENCE SOUTHERLY ALONG THE EASTERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 577 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 12

THAT PORTION OF THE EAST HALF OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 29; THENCE NORTHERLY ALONG THE EASTERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 906 FEET TO THE TRUE POINT OF BEGINNING; THENCE WESTERLY AND PARALLEL THE SOUTHERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 528 FEET THENCE NORTHERLY AND PARALLEL WITH THE EASTERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 577 FEET; THENCE EASTERLY AND PARALLEL WITH THE SOUTHERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 528 FEET TO THE EASTERLY BOUNDARY OF SAID SECTION 29; THENCE SOUTHERLY ALONG THE EASTERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 577 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 13

THE NORTH 165 FEET OF THE REAL PROPERTY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE EAST ONE-HALF OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 29; THENCE NORTHERLY ALONG THE EASTERLY BOUNDARY OF SAID SECTION, A DISTANCE OF 329.0 FEET TO THE

TRUE POINT OF BEGINNING; THENCE WESTERLY AND PARALLEL WITH THE SOUTH BOUNDARY OF SAID SECTION, A DISTANCE OF 528.0 FEET; THENCE NORTHERLY AND PARALLEL WITH THE EASTERLY BOUNDARY OF SAID SECTION, A DISTANCE OF 577.0 FEET; THENCE EASTERLY AND PARALLEL WITH THE SOUTH BOUNDARY OF SAID SECTION A DISTANCE OF 528.0 FEET; THENCE SOUTHERLY ALONG THE EASTERLY BOUNDARY OF SAID SECTION, A DISTANCE OF 577.0 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO 14

THAT PORTION OF THE EAST HALF OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 29; THENCE NORTHERLY ALONG THE EASTERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 329 FEET TO THE TRUE POINT OF BEGINNING; THENCE WESTERLY AND PARALLEL WITH SOUTHERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 528 FEET; THENCE NORTHERLY AND PARALLEL WITH THE EASTERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 577 FEET; THENCE EASTERLY AND PARALLEL WITH THE SOUTHERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 528 FEET; THENCE SOUTHERLY AND ALONG THE EASTERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 577 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE NORTH 165 FEET THEREOF.

PARCEL NO. 15

THAT PORTION OF THE EAST HALF OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 29; THENCE WESTERLY ALONG THE SOUTHERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 528 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING WESTERLY ALONG THE SAID SOUTHERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 528 FEET; THENCE NORTHERLY AND PARALLEL WITH THE EASTERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 2640 FEET; THENCE EASTERLY AND PARALLEL WITH THE SOUTHERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 528 FEET; THENCE SOUTHERLY AND PARALLEL WITH THE EASTERLY BOUNDARY OF SAID SECTION 29, A DISTANCE OF 2640 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 16

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF; AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

PARCEL NO. 17

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

PARCEL NO. 18

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THE SOUTHERLY 55 FEET THEREOF, AS GRANTED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED JULY 26, 1949 AS FILE NO 3084 AND BY DEED RECORDED SEPTEMBER 19, 1962 AS FILE NO. 87713 BOTH OF OFFICIAL RECORDS OF RIVERSIDE COUNTY.

APN: 667-080-004 and 667-080-005 and 667-080-006 and 667-090-004 and 667-090-028 and 667-100-002 and 667-100-003 and 667-100-004 and 667-100-005 and 667-100-006 and 667-100-007 and 667-100-008 and 667-100-010 and 667-100-011 and 667-120-016 and 667-120-024 and 667-120-025 and 667-120-026 and 667-120-027 and 667-080-002-3 and 667-080-003-4

EXHIBIT "B"

MAP OF PROPERTY

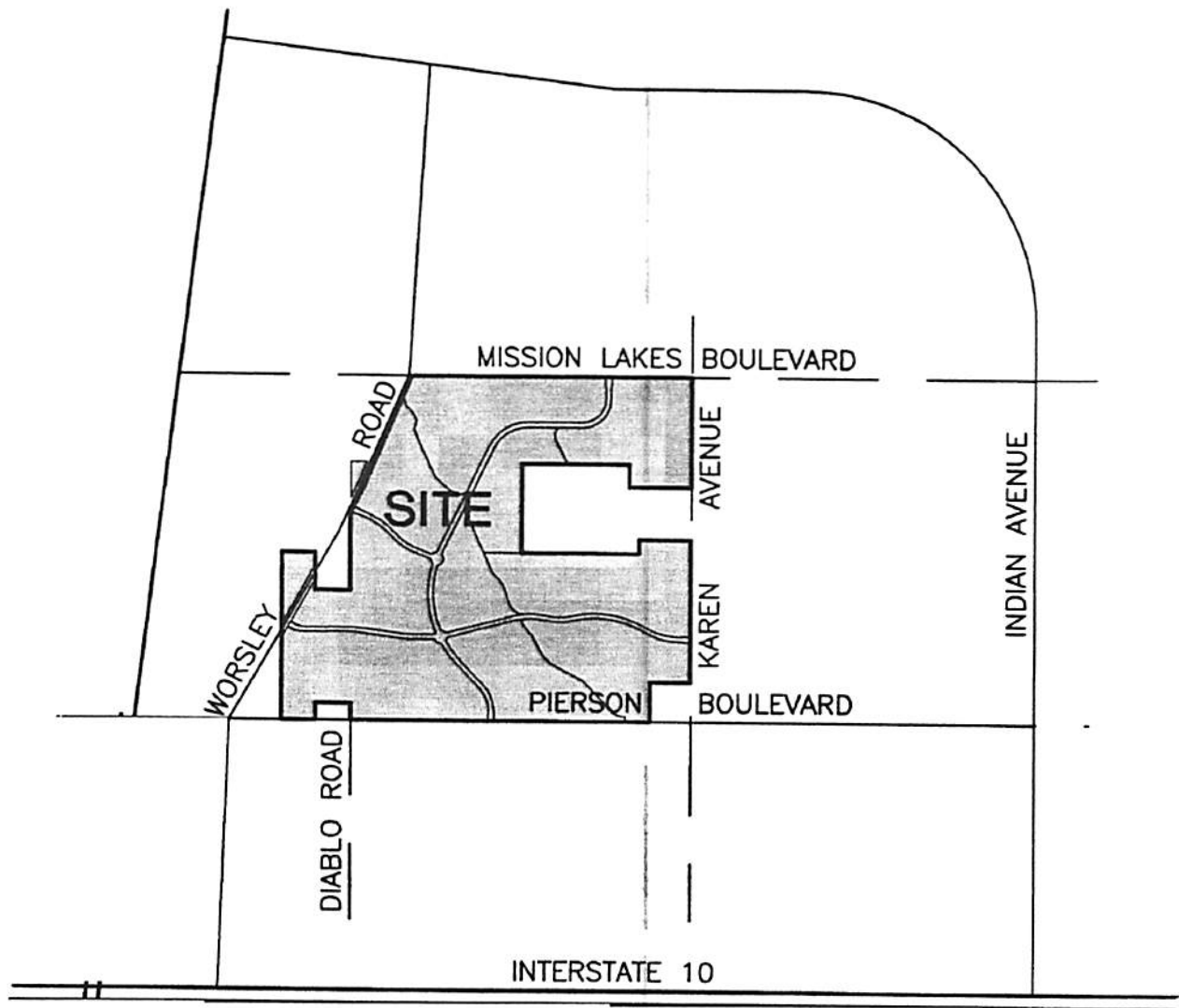


EXHIBIT "C"

EXISTING DEVELOPMENT APPROVALS

Final Environmental Impact Report (SCH# 2004061026), including Environmental Assessment No. 01-04 and associated CEQA Findings, Statements of Overriding Consideration, the Comments and Response Document, and Mitigation, Monitoring Program for the StoneRidge Specific Plan

General Plan Amendment No. 02-04

Zoning Map Amendment No. 02-04

Specific Plan No. 01-04, "The StoneRidge Specific Plan"

Vesting Tentative Map No. 32030

Tentative Map No. 32029

Development Agreement No. 01-04

EXHIBIT "D"

EXISTING LAND USE REGULATIONS

City of Desert Hot Springs Comprehensive General Plan, including all amendments up to and including General Plan Amendment No. 02-04

City of Desert Hot Springs Zoning Ordinance, Design Guidelines and Subdivision Ordinance, including all amendments up to and including Zoning Map Amendment No. 02-04

Specific Plan No. 01-04, "The StoneRidge Specific Plan"

EXHIBIT "E"

PERFORMANCE SCHEDULE

**Date Performance Due Measured by
Anniversary Date
of Recordation of
Development Agreement**

Description of Cumulative Performance

3d Anniversary	Owner to have obtained building permits and begun construction on at least 100 homes; certificate of occupancy to be issued on each such home within one year of issuance of building permit therefor
5 th Anniversary	Owner to have obtained building permits and begun construction on at least 300 homes; certificate of occupancy to be issued on each such home within one year of issuance of building permit therefor
7 th Anniversary	Owner to have obtained building permits and begun construction on at least 500 homes; certificate of occupancy to be issued on each such home within one year of issuance of building permit therefor
9 th Anniversary	Owner to have obtained building permits and begun construction on at least 700 homes; certificate of occupancy to be issued on each such home within one year of issuance of building permit therefor
11 th Anniversary	Owner to have obtained building permits and begun construction on at least 900 homes; certificate of occupancy to be issued on each such home within one year of issuance of building permit therefor
13 ^h Anniversary	Owner to have obtained building permits and begun construction on at least 1100 homes; certificate of occupancy to be issued on each such home within one year of issuance of building permit therefor
15 th Anniversary	Owner to have obtained building permits and begun construction on at least 1300 homes; certificate of occupancy to be issued on each such home within one year of issuance of building permit therefor

17th Anniversary

Owner to have obtained building permits and begun construction on at least 1500 homes; certificate of occupancy to be issued on each such home within one year of issuance of building permit therefor

19th Anniversary

Owner to have obtained building permits and begun construction on at least 1700 homes; certificate of occupancy to be issued on each such home within one year of issuance of building permit therefor

20th Anniversary

Owner to have obtained building permits and begun construction on at least 2120 homes; certificate of occupancy to be issued on each such home within one year of issuance of building permit therefor

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange } SS.

On April 28, 2005 before me, Angeline P. Webb

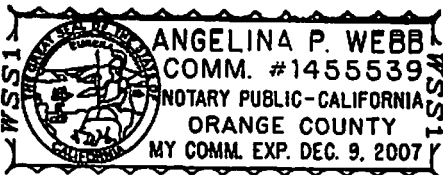
Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared J.C. Gianulis

Name(s) of Signer(s)

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.

Angeline P. Webb
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here