

Recorded at request of:)
City Clerk)
City of Desert Hot Springs)
)
When recorded return to:)
City of Desert Hot Springs)
65-950 Pierson Boulevard)
Desert Hot Springs, CA 92240)
Attention: City Clerk)
)

Exempt from filing fees pursuant to Government Code § 6103.

DEVELOPMENT AGREEMENT NO. ____

A DEVELOPMENT AGREEMENT BETWEEN

**The CITY OF DESERT HOT SPRINGS,
a California Municipal Corporation**

and

**EDY P. ADKISON AND JUDITH ELIZABETH ADKISON,
TRUSTEES OF THE ADKISON FAMILY REVOCABLE LIVING TRUST, AND
MARTHA RUIZ-SNELL (A.K.A., MARTHA MARTELL)**

**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF DESERT HOT SPRINGS AND
EDY P. ADKISON AND JUDITH ELIZABETH ADKISON, TRUSTEES OF THE ADKISON FAMILY
REVOCABLE LIVING TRUST, AND MARTHA RUIZ-SNELL (A.K.A., MARTHA MARTELL)**

This Development Agreement (hereinafter “Agreement”) is entered into as of this ____ day of _____, _____ by and between the City of Desert Hot Springs, a California municipal corporation (“City”), and Edy P. Adkison and Judith Elizabeth Adkison, trustees of the Adkison Family Revocable Living Trust, and Martha Ruiz-Snell (a.k.a., Martha Martell) (collectively, “Owner”), pursuant to the authority of Sections 65864 *et seq.* of the California Government Code and Chapter 1784 of the Desert Hot Springs Municipal Code. The City and Owner may, from time to time, be referred to herein individually as a “Party” or together as the “Parties”.

RECITALS

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement:

A. Owner owns that certain 481-acre parcel of real property (APN 667-050-001), located generally West of State Route 62 near Mission Creek Road, in the City of Desert Hot Springs, County of Riverside, State of California (the “Property”). The Property is more specifically described and depicted in Exhibit “A,” Legal Description of Property.

B. Owner desires to develop the Property with a mix of single-family dwellings, multi-family dwellings, commercial uses, open space, and other uses in a manner consistent with Exhibit “C,” Development Plan (“Project”).

C. Pursuant to California Government Code, Sections 65864 *et seq.*, The 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.

D. The Owner and City desire to enter into this Agreement as a development agreement to 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 California Government Code, Sections 65864 *et seq.* was intended purposes for which development agreement’s under Sections 65864 *et seq.* are intended.

AGREEMENT

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 adequacy of which are 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 California municipal corporation.

1.1.3. “City Council” means the duly elected city council of the City of Desert Hot Springs.

1.1.4. “Commencement Date” means the date the Term of this Agreement commences.

1.1.5. “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.

1.1.6. “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: general plan amendments; specific plans and specific plan amendments; parcel maps, tentative maps, tentative vesting maps, and final subdivision maps; conditional use permits and other use permits; and site plans and plot plans; zoning; and grading permits and building permits.

1.1.7. “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.

1.1.8. “Development Impact Fee” means a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include park “in lieu” fees specified in California Government Code section 66477, fees for processing applications for governmental regulatory actions or approvals, or fees collected under development agreements adopted pursuant to California Government Code chapter 4, article 2.5 (commencing with section 65864).

1.1.9. “Development Plan” means the plan for development of the Property as set forth in Exhibit “C”.

1.1.10. “Effective Date” means the date the ordinance approving and authorizing this Agreement becomes effective.

1.1.11. “Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of the City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, 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: the conduct of businesses, professions, and occupations; taxes (special or general) and assessments; the control and abatement of nuisances; the granting of encroachment permits and the conveyance of rights and interests that provide for the use of or the entry upon public property; and the exercise of the power of eminent domain.

1.1.12. “Owner” means the persons and entities listed as Owner on page 1 of this Agreement and their successors in interest to all or any part of the Property.

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

1.1.14. "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.

1.1.15. "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.16. "Public Benefit" refers to those benefits provided to the City and the community by Owner pursuant to Section 5 below.

1.1.17. "Reservation of Rights" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 4.4 of this Agreement.

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

1.2.1. Exhibit "A" – Legal Description of the Property.

1.2.2. Exhibit "B" – Map showing Property and its location.

1.2.3. Exhibit "C" – Development Plan.

1.2.4. Exhibit "D" – Development Impact Fees.

2. Findings and Property.

2.1. Recitals. The foregoing recitals are hereby acknowledged and affirmed by the Parties and are incorporated herein as a substantive term of this Agreement.

2.2. 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 in accordance with the terms of the Development Plan and this Agreement.

2.3. Ownership of Property. Owner represents and covenants that it is the owner of the fee simple title to, or has an equitable interest in, the Property or a portion thereof.

2.4. Mandatory Contents. This Agreement includes the mandatory contents for a development agreement required by section 17.84.040(A): Section 3, Term, specifies the duration of the Agreement; Section 4.2, Rights to Develop, and Exhibit "C," the Development Plan, set forth the uses of the property, density and intensity of uses, and maximum height and size of proposed structures; Section 5.2, Public Benefits, and Exhibit "C" set forth provisions for the reservation or dedication of land for public purposes; Section 5.3.4, Future Development Impact Fees and Increases, does not allow protection from fee increases; Section 12, Changes, provides for a tiered review procedure for small changes, large changes, and major amendments; and Section 4.4.1.1 provides an exception for new land use regulations to apply for a compelling public necessity.

2.5. City Council Findings. The City Council finds that:

2.5.1. This Agreement is consistent with the City's General Plan and the Rancho Royale Specific Plan.

2.5.2. This Agreement satisfies the requirements for development agreements under Desert Hot Springs Municipal Code chapter 17.84.

2.5.3. This Agreement ensures a desirable and functional community environment, provides effective and efficient development of public facilities, infrastructure, and services appropriate for the development of the Project, and enhances effective utilization of resources within the City.

2.5.4. This Agreement provides public benefits beyond those which are necessary to mitigate the development of the Project.

2.5.5. This Agreement strengthens the public planning process, encourages private participation in comprehensive planning and reduces costs of development and government.

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

3. Term.

3.1. Agreement. The term of this Agreement shall commence on the date (the “Commencement Date”) that is the Effective Date, and shall continue for a period of twenty (20) years thereafter, unless this term is modified or extended pursuant to the provisions of this Agreement (“Term”). The term of this Agreement shall commence on the date (the “Commencement Date”) that is the Effective Date, and shall continue for a period of twenty (20) years thereafter, unless this term is modified or extended pursuant to the provisions of this Agreement (“Term”). The Term shall be subject to the limitations set forth in sections 3.1.1 through 3.1.3 of this Agreement.

3.1.1. Amended Tentative Maps. Owner shall processes and the City shall consider Amended Tentative Tract Maps 35009 and 35448 within the five years after the Commencement Date.

3.1.2. Final Map Phasing. Owner and the City expect that multiple final maps will be recorded on the Amended Tentative Maps and that the final maps will be recorded in phases.

3.1.3. Recordation of Phase 1 Final Map. Owner shall record a final map on phase 1 of the Amended Tentative Tract Maps within 10 years after the Commencement Date.

3.1.4. Recordation of Final Maps for Remaining Phases. If Owner timely records a final map on phase 1, the Agreement shall be automatically extended for another 10 year period within which Owner shall record final maps on the remaining phases of the Amended Tentative Tract Maps.

3.2. Development Approvals. As provided by California Government Code sections 66452.6 and 65863.9, the term of any tentative map, vesting tentative map, or parcel map hereafter approved with respect to the Project and the term of any Development Approval shall remain effective and valid during the Term of this Agreement.

4. Development of the Property.

4.1. Rights to Develop. Subject to the terms of this Agreement, including the Reservation of Rights, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, this Agreement. Except as expressly provided otherwise herein, the Project shall remain subject to all Land Use Regulations and Development Approvals, in effect on the Effective Date, that are required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, and notwithstanding the authority of the City to further revise the Land Use Regulations pursuant to Government Code section 65866, 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 Land Use Regulations and Development Approvals, whether in effect on the Effective Date or subsequently adopted or amended. Furthermore, any amended tentative tract map that is prepared for the subdivision contemplated in the Development Plan shall comply with Government Code section 66473.7 relating to the availability of water supply. (Gov’t Code § 65867.5(c).) Owner shall comply with all mitigation measures required to be undertaken pursuant to any document prepared in compliance with the California Environmental Quality Act (“CEQA”) with respect to the Project.

4.2. Land Use Regulations and Development Approvals. Except as otherwise provided under the terms of this Agreement, including the Reservation of Rights, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of

proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Land Use Regulations and Development Approvals, in effect on the Effective Date. In connection with any subsequently imposed Development Approvals and except as specifically provided otherwise herein, City may exercise its discretion in accordance with the Land Use Regulations then in effect, as provided by this Agreement, including, but not limited to, the Reservation of Rights.

4.3. Approval Processing.

4.3.1. Timely Review. City shall accept for timely processing, review and action all applications for subsequent development approvals, and such applications shall be processed in the same manner and the City shall exercise its discretion, when required or authorized to do so, to the same extent it would otherwise be entitled in the absence of this Agreement.

4.3.2. Additional Staffing. If standard City staffing is unable to process permits or approvals as promptly as reasonably required for timely development of the Project by Owner, then the City agrees, upon request of Owner, to reasonably cooperate with Owner in hiring additional staff or consultants, as City determines appropriate, to process required Development Approvals. The Owner shall reimburse the City for all direct and indirect costs of such staff or consultants, and any required training thereof, within thirty (30) days after Owner receives an invoice identifying such reimbursable expenses; provided, the Owner shall have the right to audit such costs, at its expense, upon request.

4.4. Reservation of Rights.

4.4.1. Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following regulations shall apply to the development of the Property:

4.4.1.1. Regulations adopted after the Effective Date that, if consistent with State and Constitutional law regarding vesting and property rights and with due process of law, are a compelling public necessity to protect health and safety.

4.4.1.2. 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. Notwithstanding anything else herein to the contrary, the actual costs and fees for all services provided by the City and its consultants, including legal counsel, for review, preparation and processing of this Agreement and the Development Approvals shall be paid by Owner. All such processing costs shall not be obligations of the City or any of its departments, and the City shall not be liable for any such costs from its general fund or any other fund. In addition, to the extent that City, on behalf of Owner, attempts to enter into binding agreements with other entities in order to assure the availability of certain permits and approvals or services necessary for development of the Project as described in this Agreement, Owner shall reimburse City for all costs and expenses incurred in connection with seeking and entering into any such agreements provided that the City gives Owner at least 5 business days' advanced notice of any such agreement. Any fees, assessments or other amounts payable by City pursuant to any such agreements described herein shall be borne by Owner except where Owner has notified City in writing, prior to City entering into any such agreement, that it does not desire for City to execute said agreements.

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

4.4.1.4. Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including, without limitation, all uniform codes adopted by the City and any local amendments to those codes adopted by the City, including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Grading Ordinance.

4.4.1.5. Regulations imposing Development Exactions; provided, however, that 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 which 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.

4.4.1.6. Regulations that may be in material conflict with this Agreement, but that are reasonably necessary to protect the residents of the Project or the immediate community from a condition perilous to their health or 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.

4.4.1.7. Regulations that are not in material conflict with this Agreement or 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 materially conflict with the Development Plan and shall therefore not be applicable to the development of the Property.

4.4.1.8. Regulations that are in material conflict with the Development Plan, provided Owner has given written consent to the application of such regulations to development of that Property in which the Owner has a legal or equitable interest.

4.4.1.9. Regulations that impose, levy, alter or amend fees, charges, or Land Use Regulations relating to consumers or end users, including, without limitation, trash can placement, service charges and limitations on vehicle parking.

4.4.1.10. Regulations of other public agencies, including Development Impact Fees adopted or imposed by such other public agencies, although collected by City.

4.4.2. Modification or Suspension by State or Federal Law. In the event that State, County or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

4.4.3. Intent. The parties acknowledge and agree that the City is restricted in its authority to limit certain aspects of its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to the City all of its police powers that cannot be or are not expressly so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority that cannot be or is not by this Agreement's express terms so restricted.

4.5. Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies.

4.6. Timing of Development. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal. 3d 465 (1984), that the failure of the parties in that case to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the specific intent of the Parties to provide for the timing of the Project in this Agreement. To do so, the Parties acknowledge and provide that Owner shall have the right, but not the obligation, to complete the Project in such order, at such rate, at such times, and in as many development phases and sub-phases as Owner deems appropriate in its sole subjective business judgment.

4.7. Conditions, Covenants, and Restrictions.

4.7.1. Ability to Record. Owner shall have the ability to reserve and record such covenants, conditions, and restrictions (“CC&Rs”) against the Property as Owner deems appropriate, in its sole and absolute discretion. Such CC&Rs may not conflict with this Agreement or the General Plan.

4.7.2. Review. Before recording any CC&Rs, Owner shall provide a copy of the CC&Rs to the City for review and approval by the City Attorney. The City Attorney’s review shall be limited to determining if the CC&Rs substantially comply with this Agreement and any conditions of approval imposed on the Project through the Development Approvals (“Conditions”). Within thirty (30) days after receiving a copy of the proposed CC&Rs from Owner, the City Attorney shall provide Owner with either (1) a statement that the CC&Rs comply with this Agreement and the Conditions (“CC&R Approval”) or (2) written comments identifying each aspect of the CC&Rs which the City Attorney believes not to be in compliance with this Agreement or the Conditions (a “Statement of Non-Compliance”).

4.7.2.1. Deemed Approved. If the City Attorney fails to provide Owner with either CC&R Approval or a Statement of Non-Compliance within thirty (30) days following a written request by Owner, City shall be deemed to have approved the CC&Rs and Owner may record the CC&Rs against the Property.

4.7.2.2. Non-Compliance. If the City Attorney provides a Statement of Non-Compliance, Owner shall have thirty (30) days in which to respond to the Statement of Non-Compliance. Upon submittal of Owner’s response, the procedure described above for the initial submittal and City Attorney review of proposed CC&Rs shall again be followed. This procedure shall be followed until Owner either (1) receives CC&R Approval, (2) submits the compliance issues to binding arbitration pursuant to the rules of the American Arbitration Association, (3) files an action for declaratory relief in Riverside County Superior Court seeking a judicial determination of the compliance of the proposed CC&Rs, or (4) agreement is otherwise reached between the Parties allowing for the recording of the CC&Rs.

4.7.3. Run with the Land. The CC&Rs shall run with the land and bind Owner’s successors and assigns. Except as provided above, any dispute between the Parties regarding the City’s approval or rejection of the CC&Rs shall be subject to immediate and binding arbitration pursuant to the rules of the American Arbitration Association.

5. Public Benefits.

5.1. Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that 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.

5.2. Public Benefits. In addition to complying with the Project conditions of approval which are designed to mitigate the significant environmental impacts of the Project, Owner has committed by this Agreement to contribute to the acquisition, construction and maintenance of certain “Public Benefits.”

5.3. Development Impact Fees.

5.3.1. Amount of Fee. The Development Impact Fees set forth in Exhibit “D” shall be charged to the Project.

5.3.2. Time of Payment. The fees required pursuant to section 5.3.1 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 section 5.3.1 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.

5.3.3. Future Development Impact Fees and Increases. The Parties hereby agree that, in addition to the Development Impact Fees included in Exhibit “D”, the Project shall be subject to the imposition of any Development Impact Fee that becomes effective after the Effective Date. In addition, the Project shall be subject to any increase, amendment or alteration of any Development Impact Fee that becomes effective after the Effective Date.

5.3.4. Prepayment. In no event shall the prepayment of any Development Impact Fees required hereunder establish a vested right on the part of Owner or any other owner of the Property or any person or entity with an interest therein to develop the Project or the Property following the expiration, cancellation or termination of the Term of this Agreement. Following the expiration, cancellation or termination of this Agreement, all Development Impact Fees then in effect shall be applicable to the Project and Property notwithstanding any provision of this Agreement and notwithstanding the prepayment of the Development Impact Fees set forth in Exhibit “D”, any increase or amendment of any Development Impact Fee, or any combination thereof. Nothing contained in this section 5.3.5 shall be construed as limiting the right of Owner to a credit against any Development Impact Fees as set forth in section 5.3.3 hereof.

5.4. Dedication of On-Site Easements and Rights of Way. Owner shall dedicate to City all on-site rights of way and easements deemed necessary for public improvements, in City’s sole discretion, within thirty (30) days of receipt of written demand from City.

5.5. Timing of Construction of Off-Site Infrastructure. Approval of any building permits on the Property shall be conditioned upon City’s determination, in its sole discretion, that sufficient progress is being made on construction of off-site infrastructure serving development of Owner’s Property.

5.6. Financing of Public Improvements. Owner may propose, and if requested by City shall cooperate in, the formation of any special assessment district, community facilities district or alternate financing mechanism to pay for the construction and/or maintenance and operation of public infrastructure facilities required as part of the Development Plan. To the extent any such district or other financing entity is formed and sells bonds in order to finance such reimbursements, Owner may be reimbursed to the extent that Owner spends funds or dedicates land for the establishment of public facilities. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring City or the City Council to form any such district or to issue and sell bonds.

6. Review for Compliance.

6.1. Annual Reviews. The City Council shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the compliance by Owner with the terms of the Agreement. Owner shall submit an Annual Monitoring Report, in a form acceptable to the City Manager, within thirty (30) days after written notice from the City 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. Upon receipt of the Annual Monitoring Report, the City Manager shall agendize the item as a receive and file item on the consent calendar of the next available City Council agenda. The amount of the annual review and administration fee shall not exceed the City’s actual cost of processing the Annual Monitoring Report.

6.2. Procedures for Review.

6.2.1. Good Faith Compliance. During a 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.

6.2.2. Report to Planning Commission. Upon completion of a review, the City Manager, or his or her designee, shall submit a report to the Planning Commission 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.

6.2.3. If Compliance. If the Planning Commission finds and determines 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.

6.2.4. If No Compliance. If the Planning Commission finds and determines on the basis of substantial evidence that Owner has not complied in good faith with the terms and conditions of this Agreement, the Commission may recommend to the City Council modification or termination of this Agreement. Owner may appeal a Planning Commission determination pursuant to this section 6.2.4 pursuant to City's rules for consideration of appeals in zoning matters then in effect. Notice of default as provided under section 9.1 of this Agreement shall be given to Owner prior to or concurrent with proceedings under section 6.3.

6.2.5. Failure to Conduct Review. The City's failure to conduct an annual review of this Agreement shall not constitute a breach of this Agreement. However, it shall be presumed that Owner is in full compliance with the terms and provisions of this Agreement in respect of any given year for which the City has not reviewed Owner's compliance with the terms and conditions of this Agreement, unless and until the City shall determine that Owner is not in compliance with the terms and provisions of this Agreement for any such given year.

6.3. Modification or Termination.

6.3.1. Notice. If, upon a finding under section 6.2, 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 (10) calendar days prior to the scheduled hearing and shall contain: (1) the time and place of the hearing, (2) a statement as to whether or not City proposes to terminate or to modify the Agreement; and (3) such other information that the City considers necessary to inform Owner of the nature of the proceeding.

6.3.2. Hearing.

6.3.2.1. 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.

6.3.2.2. 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 or 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.

6.4. Certificate of Agreement Compliance.

6.4.1. Contents. If, at the conclusion of a 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 City Manager and City Council that: (1) this Agreement remains in effect, and (2) Owner is not in default.

6.4.2. Recordation. 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 review and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder.

6.4.3. Reliance. 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 review, but was concealed from or otherwise not known to the City Manager or City Council.

7. Assignment and Transfer.

7.1. 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:

7.1.1. 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.

7.1.2. Concurrent with any such sale, transfer or assignment, Owner shall notify City, in writing, of such sale, transfer or assignment and shall provide City with an executed agreement (“Assignment and Assumption 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, obligations, agreements, covenants, waivers of Owner under this Agreement.

7.2. Non-Compliance. Any sale, transfer or assignment not made in strict compliance with the foregoing conditions in section 7.1 of this Agreement shall constitute a default by Owner under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by section 7.1.2, 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.

7.3. Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring Owner shall continue to be obligated under this Agreement with respect to the transferred Property or any transferred portion thereof, 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:

7.3.1. Owner no longer has a legal or equitable interest in all or any part of the Property subject to the transfer.

7.3.2. Owner is not then in default under this Agreement.

7.3.3. Owner has provided City with the notice and executed agreement required under section 7.1.2 above.

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

7.4. 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 7.

7.5. Individual Sale to Public.

7.5.1. Applicability of Assignment Requirements. The provisions of section 7.1 shall not apply to the sale or lease 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.

7.5.2. Termination of 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:

7.5.2.1. The lot has been finally subdivided and individually (and not in “bulk”) sold or leased to a member of the public or other ultimate user; and

7.5.2.2. A certificate of occupancy has been issued for a building on the lot, and the fees for such lot set forth in this Agreement have been paid.

8. Termination.

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

8.1.1. Expiration. Expiration of the stated Term of this Agreement, as provided in section 3.

8.1.2. Judgment. Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

8.1.3. Measure. The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

8.1.4. Completion. 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.

8.1.5. Individual Sale to Public. The sale of an individual lot to the public, as provided in section 7.5.

8.1.6. Default. For reason of default, as provided in section 9.

8.2. Effect.

8.2.1. Entitlements. Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property.

8.2.2. Rights and Obligations. 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.

8.2.3. Refund of Fees. Upon such termination, any Development Impact Fees paid by Owner to City for residential units on which construction has not yet begun shall be refunded to Owner by City.

9. Default.

9.1. Termination or Modification of Agreement for Default of Owner. 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, or if a warranty, representation, or statement made or furnished by Owner expressly in this Agreement to the City is false or proves to have been false in any material respect when it was made (hereinafter referred to as "default"); provided, however, City may terminate or modify this Agreement pursuant to this section 9.1 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 sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such sixty (60) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such sixty (60) day period and to diligently proceed to complete such actions and cure such default.

9.2. 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 sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such sixty (60) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such sixty (60) day period and to diligently proceed to complete such actions and cure such default.

10. Litigation and Indemnification.

Owner shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless City, its agents, officers and employees from any claim, action or proceeding against City, its agents, officers, or employees in connection with any challenge to the legality, validity or adequacy of any of the following: (a) this Agreement and the concurrent and subsequent permits and entitlements approved for the Project; (b) the documentation prepared for the Project in accordance with the California Environmental Quality Act; ; and (c) any claim, action or proceeding against City, its agents, officers, or employees which may arise, directly or indirectly, from operations performed under or pursuant to this Agreement by Owner, Owner's contractors, subcontractors or any of their agents or employees. City shall promptly notify Owner of any claim, action, proceeding or determination included within this section 10, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action, proceeding or determination, or if City fails to cooperate in the defense, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless City. City may in its discretion participate in the defense of any such claim, action, proceeding or determination.

11. Mortgagee Protection.

11.1. Right to Mortgage. 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.

11.2. Mortgagee Rights. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

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

11.2.2. 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.

11.2.3. 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.

11.2.4. Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part

thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer, or assignment by any Mortgagee in possession shall be subject to the provisions of section 7 of this Agreement.

12. Amendments and Changes.

12.1. Amendments and Cancellation. This Agreement may be amended or canceled in whole or in part only by written consent of all parties in the manner provided for in Sections 65867 and 65868 of the Government Code and the City's adopted procedures and requirements for the consideration of development agreements. This provision shall not limit any remedy of City or Owner as provided by this Agreement.

12.2. Small and Large Changes.

12.2.1. Cooperation and Operating Memorandum. The provisions of this Agreement require a close degree of cooperation between the Parties, and minor changes to the Project may be required from time to time to accommodate design changes, engineering changes, and other refinements related to the details of the Parties' performance. Accordingly, the Parties may mutually consent to adopting Small Changes or Large Changes through their signing of an Operating Memorandum reflecting the Small Changes or Large Changes.

12.2.2. Small Changes, City Manager Approval. "Small Changes" mean changes to the Project that are otherwise consistent with the Development Plan, and which do not result in a change in the type of use, an increase in density or intensity of use, significant new or increased environmental impacts that cannot be mitigated, or violations of any applicable health and safety regulations in effect on the Effective Date. The Parties may mutually consent to adopting Small Changes through their signing of an Operating Memorandum reflecting the Small Changes. The City Manager may execute any Operating Memorandum without public notice, a hearing, Planning Commission action or City Council action.

12.2.3. Large Changes, Planning Commission Approval. "Large Changes" mean changes to the Project that are otherwise consistent with the Development Plan, but which do result in a change in the type of use, an increase in density or intensity of use, significant new or increased environmental impacts that cannot be mitigated, or violations of any applicable health and safety regulations in effect on the Effective Date. The Parties may mutually consent to adopting Large Changes through their signing of an Operating Memorandum reflecting the Large Changes. The City Council must review and approve any Operating Memorandum.

12.2.4. Determination. The City Attorney and City Manager shall be authorized to determine whether proposed modifications and refinements are Small Changes, Large Changes, or more significant changes requiring amendment of this Agreement.

13. Notices.

13.1. Notices. 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.

13.2. Form and Receipt. All notices shall be in writing and shall be considered given either: (1) When delivered in person to the recipient named below; or (2) 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 (3) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below.

13.3. Contacts. All notices shall be addressed as follows:

If to City: Charles Maynard, City Manager
City of Desert Hot Springs
11-999 Palm Drive
Desert Hot Springs, California 92240

With Copy To: Jennifer Mizrahi
Quintanilla & Associates
P.O. Box 176
Rancho Mirage, CA 92270

If to Owner: Edy P. Adkison and Judith Elizabeth Adkison as trustees of the Adkison
Family Revocable Living Trust, and Martha Ruiz-Snell
c/o Ed Adkison
6879 Airport Drive
Riverside, California 92504

With Copy To: Michelle Ouellette
BEST BEST & KRIEGER LLP
3390 University Avenue, 5th Floor
Riverside, CA 92502

13.4. Change of Address. 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.

14. Miscellaneous Provisions.

14.1. Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the Riverside County Recorder by the Clerk of the City Council within ten (10) days after the City enters into the Agreement, in accordance with section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement, or if the City terminates or modifies this Agreement as provided herein for failure of the Owner to comply in good faith with the terms and conditions of this Agreement, the City Clerk shall have notice of such action recorded with the Riverside County Recorder.

14.2. 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. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

14.3. 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.

14.4. 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.

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

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

14.7. 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 owners shall be the default of all such owners. Notwithstanding the foregoing, no owners of a single lot that has been finally subdivided and sold to such owners as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as expressly provided for herein.

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

14.9. 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.

14.10. 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.

14.11. Force Majeure. 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), government regulations, lawsuits or court actions on this Development Agreement, its approval, or its environmental review (such as, but not limited to, restraining orders or injunctions), or other causes beyond the party's control. If any such events occur, the Term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended for the period of time that such events prevented such a party's performance, and such extension of time shall be acknowledged and memorialized by the parties in writing. The City Manager shall have authority to sign any written acknowledgements required by this Section 4.11; however, any such written acknowledgments signed by the City Manager shall be presented to the City Council as receive and file items..

14.12. 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.

14.13. 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: (1) is for the benefit of and is a burden upon every portion of the Property; (2) runs with the Property and each portion thereof; and (3) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

14.14. 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.

14.15. 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.

14.16. Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

14.17. 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 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.

14.18. Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

14.19. 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.

14.20. Legal Action; Attorneys' Fees. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy a default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto. The prevailing party in any such action shall be entitled to its reasonable attorneys' fees and costs to be paid by the losing party.

14.21. Civil Code, section 1542 Waiver. Owner hereby waives any and all rights that it or its successors and assigns may have under Article XIII C or Article XIII D of the California Constitution and any and all rights it or its successors and assigns may have under any other applicable law to contest the fees, exactions and assessments and/or their amounts payable to the City under this Agreement as are in effect as of the Effective Date, as follows:

In furtherance of the intentions of the parties to this Agreement, Owner with and under advice of counsel, hereby expressly waives any and all right and benefit conferred upon Owner by the provisions of Civil Code Section 1542, which provides as follows:

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

Owner Initials

14.22 No Damages Relief Against City. Notwithstanding anything else in this Agreement to the contrary, Owner acknowledges that the City would not have entered into this Agreement had it been exposed to damage claims from Owner for any breach hereof. As such, the parties agree that in no event shall Owner be entitled to recover damages of any kind whatsoever against City for breach of this Agreement.

**SIGNATURE PAGE TO
DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF DESERT HOT SPRINGS AND
EDY P. ADKISON AND JUDITH ELIZABETH ADKISON, TRUSTEES OF THE ADKISON FAMILY
REVOCABLE LIVING TRUST, AND MARTHA RUIZ-SNELL (A.K.A, MARTHA MARTELL)**

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

CITY

**City of Desert Hot Springs,
a California municipal corporation**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

OWNER

**Edy P. Adkison and Judith Elizabeth Adkison,
trustees of the Adkison Family Revocable Living
Trust**

By: _____

By: _____

Martha Ruiz-Snell (a.k.a, Martha Martell)

By: _____

draft

EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

Parcel 1 of Parcel Map 35008 as recorded in Parcel Map Book 225, pages 36 through 39, inclusive, records of Riverside County, State of California. Assessor Parcel Number 667-050-011.

draft

EXHIBIT “B”
MAP OF THE PROPERTY

Inserted Behind this Page.

Draft

**EXHIBIT “C”
DEVELOPMENT PLAN**

For Amended Tentative Tract Maps Nos. 35009 and 35448

Project

1. **Density.** The Project shall not exceed a total density of 1,998 dwelling units.
2. **Limited Multifamily Units.** The Project shall include a maximum of 950 multifamily dwelling units, and the multifamily dwelling units shall be located—to the extent feasible—in the southwestern portion of the Property as shown on Tentative Tract Map 35009.
3. **Public Park.** Amended Tract Map 35009 shall eliminate Lots 540 through 569. In their place and in addition to the existing park shown on Tentative Tract Map 35009, the amended Tract Map 35009 shall include an active park with recreational center as described herein. The recreation center shall consist of a 5.9 acre site, with 5.2 usable acres of space. The active park shall be 9.64 acres, with 6.7 acres of usable space. The combined park and recreational center shall be 15.54 acres total, with 11.9 acres of usable park space.

The park would be bisected by the existing natural channel that runs through the Project site. However, connectivity between the eastern and western portions of the park will be maintained by way of a pedestrian trail connection at the northern boundary of the park site. The public park shall include a baseball and soccer field; meandering walkways and trails throughout the park; a pedestrian trail connection and bridge at the northern boundary of the park site; a recreational center with parking area on the eastern side of the existing channel; a turf area with group picnic areas, on the eastern side of the existing channel; a tot lot and child play areas with shade structures on the eastern side of the existing channel; bulk refuse control; and a parking lot to support the facilities. The public park shall be constructed and installed no later than the issuance 500th certificate of occupancy.

4. **Sand to Snow Entry Monument.** The Property is in close proximity to the Sand to Snow National Monument. Owner shall dedicate land for construction of entry monumentation related to the Sand to Snow National Monument. The entry monumentation shall be designed to fit its natural surroundings. To the maximum extent feasible, the monumentation should be natural in appearance. For example, the façade of the monument could be constructed of stone veneer with boulders and xeriscape planting surrounding the monument. The actual sign font on the monument should be Arial type font, easy to read and clean looking. The sign should be trapezoidal in shape to match other U.S. Department of Interior, Bureau of Land Management and United States Forest Service signage used at other monuments throughout the country and state.

5. **Other Improvements to Mission Creek Boulevard.** Owner shall design the Mission Creek Median and Street to accommodate the entry way to the Sand to Snow National Monument. At a minimum, that design shall include the following elements: (a) decorative block-wall split face and precision with groupings of boulders; (b) boulder, cobble rock and xeriscape on parkways and in the right-of-way; (c) a 10 foot wide multi-purpose trail within the Mission Creek right-of-way that will provide connectivity to the Mission Creek trail providing trail access north of the Project. The multi-purpose trail shall be dedicated to the City for public use; (d) curvilinear dry stream medians improved with boulders, cobble rock, Joshua Trees and large succulents; (e) tree plantings along the parkway and right-of-way, placed randomly to create a “natural” environment.
6. **Bulk Refuse Control.**
 - a. **Roll-Off Bulk Trash Containers.** The Owner shall provide bulk trash container(s) to be located within the community to be used by homeowners for bulk trash disposal. The bulk trash container pick-ups shall be managed by the Homeowner’s Association for the Project. The bulk trash container(s) shall be screened from view.
 - b. **Other Trash Collection Service.** The Owner will contract with Desert Valley Disposal to provide additional trash collection and additional services for bulk pick-up, on an as needed basis.
7. **Roadside Fencing.** In areas where the Project boundary is not required to have a masonry block wall or other type of perimeter fencing, the Project shall include roadside fencing, such as post-and-cable fencing, along all of the open areas on the property line to discourage the use of illegal off-road vehicles and refuse dumping on the Property, subject to approval by the Community Development Director.
8. **Buffers Adjacent to Sand to Snow Monument.** Where the Sand to Snow Monument adjoins the Project, the Project shall include a 500 foot buffer between the Sand to Snow Monument and the residential developed portion of the Property. The 500 foot buffer area, with the exception of any publicly-owned infrastructure or facilities, shall be designated as open space. Slight encroachment, meaning an encroachment of up to 20 feet, into the 500 foot buffer area may be necessary to maintain slope stability for the residential tract. The slopes and parkway areas immediately adjacent to the buffer zone, and marked as Lot “FC” on TTM 35009, shall be sporadically planted with native trees to add natural interest to this area.
9. **Visitor Center.** Owner shall donate up to 1 acre of land within the bounds of Lots 2002 or 2003¹ of TTM 35009, and adjacent to Mission Creek Road, to the Wildlands

¹ The Parties acknowledge that the Lot numbers listed here refer to the Lot numbers as reflected in the approved TTM 35009, which was approved in 2007. The Parties anticipate that the Lot numbering in the amended maps will change. To avoid renumbering the entire amended map tentative map (1000+ lots), lot numbers in the amended TTM 35009 shall be identical to those in the approved TTM 35009 for any unchanged portion of the amended map. Any modified or reconfigured lots in the amended TTM 35009 shall be labeled as intentionally removed. Any

Conservancy or another non-profit organization, as approved by the City, for a Sand to Snow National Monument Visitor Center. The precise location of the acreage to be donated shall be determined during the development plan process for amended TTM 35009, subject to approval by the Community Development Director. Owner shall make a total monetary contribution of \$30,000 toward the construction of the visitor center. The \$30,000 shall be deposited into an account maintained by the City for purposes of the visitor center. The deposits shall be made in three equal installments, with the first \$10,000 deposited upon issuance of the 300th certificate of occupancy, the second \$10,000 deposited upon issuance of the 600th certificate of occupancy, and the third \$10,000 deposited upon issuance of the 900th certificate of occupancy.

Processing

1. **Expedited Processing.** The City shall expedite the processing of tentative tract maps, the final maps, and any amendments.
2. **Additional Staffing.** Should additional staffing be necessary to expedite processing, the City shall cooperate with the Owner to hire additional staff, as provided in section for of the Agreement.
3. **Fees Waiver.** The City shall waive any and all application and processing fees for the tentative tract maps, the final maps, and any amendments.

EXHIBIT “D”
DEVELOPMENT IMPACT FEES

To be included.

Draft

draft