

ORDINANCE CC 16-

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHASTA LAKE APPROVING A
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SHASTA LAKE AND
MOUNTAIN GATE MEADOWS, LLC, FOR THE
MOUNTAIN GATE AT SHASTA AREA PLAN PROJECT**

WHEREAS, this Ordinance is adopted under the authority of Government Code Section 65864 *et seq.*, which establishes procedures and requirements for consideration of development agreements and authorizes the City of Shasta Lake to enter into development agreements with persons having legal or equitable interests in real property for the development of such property; and,

WHEREAS, this Ordinance incorporates by reference as though fully set forth herein the Development Agreement by and between the City of Shasta Lake and Mountain Gate Meadows, LLC, relative to the development known as the Mountain Gate at Shasta Area Plan (Project), attached hereto as **Exhibit A** (hereinafter "Development Agreement"); and,

WHEREAS, the subject property is identified as Assessor's Parcel Numbers 007-400-037, -052, -053, -054; 307-210-028, -031, -032, -033, -034, -035, -036, -037; 307-220-001, -002, -003, -004; 307-240-001; 307-380-001, -002, -003, located generally in the northeast section of the City of Shasta Lake, generally south of the Mountain Gate/I-5 interchange and north of the Shasta Dam Boulevard/I-5 interchange on the west side of I-5; and

WHEREAS, pursuant to Government Code Section 65867, on October 15, 2015, the Planning Commission conducted a duly noticed public hearing to obtain public testimony regarding the proposed Development Agreement, determined the Development Agreement is consistent with the Shasta Lake General Plan, and recommended City Council approve the proposed Development Agreement; and

WHEREAS, on December 15, 2015, City Council conducted a duly noticed public hearing, considered the Planning Commission's recommendation and adopted Resolution CC 15-____ 1) certifying that the Environmental Impact Report (EIR) (SCH 2012-042010) for the Project was completed in compliance with the California Environmental Quality Act (CEQA) (Public Resources Code, State of California, §§21000 *et seq.*) and the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, §15000 *et seq.*); 2) adopting the Mitigation Monitoring and Reporting Program; and 3) adopting Findings of Fact and a Statement of Overriding Considerations for the Project; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHASTA LAKE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: FINDINGS:

1. Finds and determines the above recitals are true and correct and have served as the basis, in part, for the actions set forth herein; and
2. Finds and Determines the Development Agreement is consistent with the goals, objectives, policies and land uses designated by the Shasta Lake General Plan and Zoning Code, including General Plan Amendment CC 11-01 (land use map designation change; adoption of the Mountain Gate at Shasta Area Plan and Design Guidelines; and adoption of a Plan Line Amendment for the southerly extension of Wonderland Boulevard); and Rezone Z 11-02 (Zone Map amendment and adoption of Zoning Code Chapter 17.63, Mountain Gate at Shasta Planned Development).

3. The provisions of the Development Agreement are in the public interest and will allow build-out of the property as envisioned by the Mountain Gate at Shasta Area Plan, which will provide substantial public benefits and help attain certain public objectives, including without limitation: (a) the further development and provision of residential housing within the City at varying densities available to a wide range of income levels; (b) providing the City directly with additional revenue in the form of increased real property taxes; (c) providing increased economic opportunities through job creation throughout the City; (d) incorporating features that promote social well-being and a high quality of life; (e) developing a community park, neighborhood park, and an extensive trail system throughout the project area; (f) contributing toward the mitigation of impacts by the construction and/or payment of fees toward the construction of off-site roads, and water and sewer infrastructure as detailed in Exhibit C of the Development Agreement; and (g) dedication of two acres for a future fire station and two acres for a future electric substation.
4. The Development Agreement will not be detrimental to or cause adverse effects to adjacent property owners, residents, or the general public because the project will be constructed in accordance with the approved Mountain Gate at Shasta Area Plan, and is subject to mitigation measures as detailed in the Mitigation Monitoring and Reporting Program.

SECTION 2: ENVIRONMENTAL DETERMINATION

Because City Council approved Resolution CC 15-_____ certifying the Environmental Impact Report (EIR) (SCH 2012-042010), adopting a Mitigation Monitoring and Reporting Program and adopting Findings of Fact and a Statement of Overriding Considerations, which analyzed the approvals contemplated by this Ordinance, the approval of actions included in this Ordinance complies with the California Environmental Quality Act (CEQA) (Public Resources Code §§21000 *et seq.*) and the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, §15000 *et seq.*).

SECTION 3: ADOPTION OF DEVELOPMENT AGREEMENT

The City Council hereby adopts the Development Agreement by and between the City of Shasta Lake and Mountain Gate Meadows, LLC., relative to the development known as the Mountain Gate at Shasta Area Plan project, attached hereto and incorporated herein as **Exhibit A**.

SECTION 4: SEVERABILITY

If any provision of this ordinance or the applications thereof to any person or circumstances is held invalid, the remainder of the ordinance and the applications of such provision will remain in effect to the extent permitted by law.

SECTION 5: EFFECTIVE DATE

This ordinance shall be effective thirty (30) days following its second reading and posting as provided for by City Code.

SECTION 6: RECORDING

Pursuant to Government Code Section 65868.5, no later than ten (10) days after the City enters into the Development Agreement, the City Clerk shall record with the County Recorder a copy of the Agreement. From and after the time of recordation, the Agreement shall impart such notice thereof to all persons as is afforded by the recording laws of the state.

I HEREBY CERTIFY that the foregoing Ordinance was introduced and read at a regular meeting of the City Council of the City of Shasta Lake held on the 15th day of December 2015 and was passed upon second reading at a regular meeting of the City Council of the City of Shasta Lake held on the 5th day of January 2016.

PASSED, APPROVED, AND ADOPTED this 5th day of January 2016 by the following vote:

AYES:

NOES:

ABSENT:

LORI CHAPMAN-SIFERS, Mayor

ATTEST:

TONI M. COATES, CMC, City Clerk

EXHIBIT A
Resolution Adopting
Development
Agreement

OFFICIAL BUSINESS
Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Shasta Lake
1650 Stanton Drive
Shasta Lake, CA 96019
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

City Council
December 15, 2015

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SHASTA LAKE
AND
MOUNTAIN GATE MEADOWS, LLC

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made and entered into between the CITY OF SHASTA LAKE, a municipal corporation ("City"), and MOUNTAIN GATE MEADOWS, LLC, a California limited liability company, ("Landowner"). City and Landowner are hereinafter collectively referred to as the "Parties" and each singularly as "Party."

R E C I T A L S

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

B. Landowner has a legal interest in certain real property consisting of approximately 590 acres located in the City, as more particularly described in **Exhibit A** attached hereto (the "Property").

C. Landowner has submitted applications to the City to permit the development of a 590 acre master planned community consisting of commercial, residential, park, open space, fire station, right-of-way and utility uses, as more particularly described in the Project Approvals.

D. City has determined that the Project is a development for which this Agreement is appropriate, and desires to enter into this Agreement. This Agreement, among other things, will eliminate uncertainty in long-term planning and provide for orderly development of the Project.

E. In exchange for the benefits described herein the Parties desire to enter into this Agreement to ensure that certain public benefits will result from this development and that the Project may proceed in accordance with Applicable Law.

F. On or about July 3, 1997, the City entered into that certain Settlement Agreement and Mutual Release by and between F.E. Peri Inc., a California corporation ("Peri") and the City (the "Peri Agreement"). Landowner succeeded to the rights of Peri under the Peri Agreement, which include certain development rights related to City services and infrastructure as provided therein. The Parties intend for this Agreement to supersede the Peri Agreement.

G. On November 19, 2015, the City Planning Commission, serving as the City's planning agency for purposes of development agreement review pursuant to Government Code section 65867, considered the Project and this Agreement and recommended approval of the Project and this Agreement to the City Council.

H. On [INSERT DATE], 2015, the City Council certified as adequate and complete, the Environmental Impact Report ("EIR") for the Project in Resolution _____. The City Council approved the Project Approvals on [INSERT DATE], 2015.

I. Development of the Project will result in a need for municipal services and facilities, some of which will be provided by the City, subject to the performance of Landowner's obligations hereunder.

J. Development of the Project will result in significant public benefits, as more fully described hereinafter, including, without limitation:

1. Developing residential, commercial and open space uses consistent with the City's vision for build out of its General Plan;

2. Providing the City directly with additional revenue in the form of increased real property and sales taxes;

3. Contributing toward the mitigation of development related impacts as stated in the Project Approvals.

K. In exchange for the benefits to the City outlined herein, together with the other public benefits that will result from the development of the Project, Landowner will receive by this Agreement assurance that it may proceed with the Project in accordance with the Collective Standards and the other benefits herein, and therefore desires to enter into this Agreement.

L. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, in City Ordinance No____, the City found that this Agreement satisfies the Government Code section 65867.5 requirement of General Plan consistency.

A G R E E M E N T

NOW, THEREFORE, in consideration of the above Recitals, which are hereby incorporated into this Agreement as if set forth herein in full, and mutual promises, conditions and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS.

1.1 "Adopting Ordinance" means Ordinance Number _____, adopted by the City Council on [ENTER DATE], 2015, which approved this Agreement in accordance with the Development Agreement Law.

1.2 "Agreement" means this Development Agreement, inclusive of all Exhibits attached hereto.

1.3 "City" means the City of Shasta Lake, including its agents, officers, employees, representatives and elected and appointed officials.

1.4 "City Manager" means the City Manager of the City of Shasta Lake, or his or her designee.

1.5 "Collective Standards" means: (i) Project Approvals, (ii) Subsequent Approvals, (iii) Existing Land Use Regulations, (iv) Existing Building Code Regulations, and (v) Existing Construction Standards.

1.6 “Developed Property” means a parcel of Property for which a small lot final map has been recorded or for which a building permit has been issued.

1.7 “Development Agreement Law” means Government Code section 65864 through 65869.5.

1.8 “Development Parcel” means one of the twenty-one (21) parcels lettered A thru U as shown on the Land Plan Exhibit of the Area Plan, as may be amended from time to time.

1.9 “Effective Date” means that date defined in Section 2.2 of this Agreement.

1.10 “Existing Land Use Regulations” means all ordinances, resolutions, rules, minute orders, regulations, official policies and the General Plan of the City in effect on the Effective Date, including those applicable to the development, use or occupancy of the Property, as amended by the Project Approvals and this Agreement.

1.11 “General Plan” means the General Plan of the City including the text and maps, as approved by the City in 1999, plus any General Plan amendments approved by the City on or before the Effective Date.

1.12 “Impact Fee” means a fee, cost or exaction imposed to mitigate an impact of development on the City, such as a fee governed by the Mitigation Fee Act (Government Code § 66000 *et seq.*), which may include annual cost-of-construction fee adjustments thereto authorized by the resolution or ordinance establishing such fee, cost or exaction. “Impact Fee” does not include a service charge, assessment or regular or special tax.

1.13 “Infrastructure” means the facilities needed for Public Improvements.

1.14 “Landowner” means Mountain Gate Meadows, LLC, a California limited liability company, together with any Successor.

1.15 “Law” means the case law, ordinances, statutes, rules, regulations, or any order, decree or directive of any court or any local, regional, state or federal government agency, unless the context suggests a different meaning.

1.16 “Mitigation Measure” means a mitigation measure specified in the Mitigation Monitoring and Reporting Plan (MMRP) adopted in connection with the EIR.

1.17 “Net Developable Acre” means a portion of the Property which is not identified for an open space, park or right-of-way use on the Land Use Exhibit for the Area Plan, as may be amended from time to time.

1.18 “Non-Project Specific” means applied by the City on a City-wide basis and not applied exclusively to the Project or any portion of the Property.

1.19 “Planning Commission” means the City of Shasta Lake Planning Commission.

1.20 “Project” means the physical development of the Property pursuant to the Project Approvals, as supplemented by the provisions of this Agreement.

1.21 “Project Approvals” means the entitlements that are the subject of this Agreement, consisting of the following land use approvals:

1.21.1 On [*INSERT DATE*], 2015, an amendment of the 1999 General Plan designation of a portion of the Property from Urban Residential High (URH) and Suburban Residential (SR) to Mixed Use (MU), and a Plan Line Amendment for the extension of Wonderland Boulevard to Cascade Boulevard, by Resolution No. _____ (the “General Plan Amendment”);

1.21.2 On [*INSERT DATE*], 2015, the rezoning of the Property from Planned-Development-Specific Plan (PD-SP) and Multiple-Family Residential-Office (R-4) to Planned Development (PD) by Ordinance No. _____ (the “Rezone”);

1.21.3 On [*INSERT DATE*], 2015, the adoption of the Mountain Gate at Shasta Area Plan by Resolution No. _____ (the “Area Plan”); and

1.21.4 On [*INSERT DATE*], 2015, the approval of Tentative Subdivision Map No. _____ and its conditions (the “Tentative Map”).

1.22 “Project Fair Share” means the amount which the Parties have determined fairly represents the Project’s contribution to certain Public Improvements.

1.23 “Property” means that certain real property consisting of approximately 590 acres located in the City, as more particularly described in **Exhibit A**.

1.24 “Public Improvement” means any on-site or off-site conveyance, grant or dedication of property or property rights, non-monetary exaction, construction and/or installation of a street, facility, utility, park facility or recreational amenity which is to be transferred to the City (or another public entity), or any other contribution of property (other than the payment of fees, taxes, charges or assessments) for public purposes.

1.25 “Reserved Powers” means those powers explicitly reserved by the City pursuant to Section 3.2 of this Agreement.

1.26 “Subsequent Approval” means an approval that is granted by the City after the Effective Date, related to the Property, and requested by or agreed upon by Landowner in writing. A Subsequent Approval includes, but is not limited to, any amendment to or modification of a Project Approval.

1.27 “Successor” or “Successor in Interest” means any subsequent owner that acquires all or any portion of the Property. No Successor shall acquire any rights pursuant to this Agreement unless and until that Successor complies with any applicable requirements of Article 11 of this Agreement.

1.28 “Uniform Codes” means the California Building, Plumbing, Mechanical, Electrical, Fire, Grading, and other similar Codes specified in the California Building Standards Codes, Title 24 of the California Code of Regulations, as adopted and amended by the City and applied by City on a Non-Project Specific basis.

ARTICLE 2. TERM.

2.1 Termination of Peri Agreement. The Parties agree that, upon the Effective Date, the Peri Agreement shall be superseded and of no further force or effect even if this Agreement is terminated.

2.2 Effective Date. The “Effective Date” of this Agreement means the day on which the Adopting Ordinance became effective. The Adopting Ordinance shall become effective thirty (30) days after its adoption by the City Council. While this Agreement shall not become effective until it is executed by both Parties, either Party’s failure to execute this Agreement prior to the Effective Date shall not affect the Effective Date. Litigation or a referendum filed to challenge the Adopting Ordinance or this Agreement shall not affect the Effective Date, absent a court order, judgment, or election overturning or setting aside the Adopting Ordinance, or staying the Effective Date, or remanding the Adopting Ordinance to the City.

2.3 Term. The term of this Agreement shall be twenty-five (25) years, which shall commence on the Effective Date and shall terminate twenty five (25) years thereafter, unless said term is terminated, modified or extended by circumstances set forth in this Agreement.

2.4 Extension Option. Landowner, in its sole discretion, shall have the right to exercise one (1) extension of five (5) years from the original termination date, provided that Landowner provides sixty (60) day written notice to the City of its intent to extend this Agreement in the manner set forth in Section 12.7. If so extended, this Agreement shall remain in full force and effect for the duration of the extension. If Developer elects to exercise the extension, the total term of this Agreement shall be thirty (30) years from the Effective Date.

2.5 Tolling and Extension During Legal Challenge. In the event that this Agreement or any of the Project Approvals or the EIR or any Subsequent Approvals required to implement the Project Approvals (including, but not limited to, any required federal permit or Environmental Impact Statement related thereto) are subjected to legal challenge by a third party, and Landowner is unable to proceed with the Project due to such litigation (or Landowner gives written notice to City that it is electing not to proceed with the Project until such litigation is resolved to Landowner's satisfaction), the Term of this Agreement and timing for obligations imposed pursuant to this Agreement shall, upon written request of Landowner, be extended and tolled during such litigation until the entry of final order or judgment upholding this Agreement and/or Project Approvals or Subsequent Approvals, or the litigation is dismissed by stipulation of the parties. Similarly, if Landowner is unable to develop the Property due to the imposition by the City or other public agency of a development moratoria for imminent health or safety reasons unrelated to the performance of Landowner's obligations hereunder (including without limitation, moratoria imposed due to the unavailability of water or sewer to serve the Property), then the Term of this Agreement and timing for obligations imposed pursuant to this Agreement shall, upon written request of Developer, be extended and tolled for the period of time that such moratoria prevents such development of the Project.

2.5.1 Continued Processing. Notwithstanding any extension or tolling of the term of this Agreement as provided in Section 2.5, the City agrees to process, during such tolling period, at Landowner's cost, any preliminary plans submitted by Landowner, including, without limitation, any applications for parcel map or tentative or final subdivision approval, provided, however, that Landowner waives the time limits set forth in the Subdivision Map Act or Permit Streamlining Act for any action by City during the tolling period to approve such parcel map or tentative or final subdivision map or other development permit approval. In the event of a

moratorium affecting final map or development permit approval, City shall not be obligated to approve such final map or development permit during the moratorium. In the event of a moratorium affecting the issuance of building permits, City shall process, but shall not be obligated to approve any building permits during such moratorium.

2.6 Automatic Termination Upon Completion and Sale of Individual Parcels and Lots. Except as provided in this Section 2.6, this Agreement shall automatically be terminated, without any further action by either party or need to execute or record any additional document, with respect to any improved commercial or residential parcel, including individual commercial or residential condominiums within a parcel designated by the Project Approvals for such use, upon issuance by the City of a final certificate of occupancy or its equivalent for all commercial structures or dwelling units upon such parcel. In connection with its issuance of a final inspection for all commercial or residential structures on each parcel, including commercial or residential condominiums, the City shall confirm that all Public Improvements which are required to serve the structures on the parcel have been dedicated to and accepted by the City, all applicable fees have been paid by Landowner, and the lot or parcel is included within any community facilities district (CFD) or other financing district, or zone thereof, to the extent required by City to fund public facility maintenance obligations and services to the lot or parcel. Automatic termination of this Agreement according to this Section shall not be construed to terminate or modify any applicable assessment or special tax lien with respect to the affected parcel or lot. Termination of this Agreement as to any such lot shall extend solely to that lot and shall not extend to other parcels or property encompassed by this Agreement.

2.7 Termination by Mutual Consent. This Agreement may be terminated in whole or in part by the mutual written consent of Landowner and City, provided that (1) no present liability exists between the Parties under this Agreement; (2) Landowner acknowledges its responsibility to comply with applicable Mitigation Measures, if any; (3) termination of this Agreement will not preclude Landowner from completing the construction of any structure on the Property or Public Improvement under construction at the time of termination, provided that any such structure or Public Improvement is completed in accordance with all necessary permits; and (4) any fees paid or Public Improvements dedicated to the City prior to the date of termination shall be retained by the City.

2.8 Quitclaim Deed. In the event of any termination of this Agreement as to all or any portion of the Property as provided herein (the "Released Property"), the City shall execute and deliver to Landowner a quitclaim deed in a form suitable for recordation and otherwise reasonably acceptable to Landowner with respect to the Released Property so as to eliminate any rights under this Agreement as to the Released Property. No termination of this Agreement shall affect Landowner's indemnification obligation in Section 11.1 of this Agreement, which shall survive termination of this Agreement.

ARTICLE 3. VESTED RIGHTS AND RESERVED POWERS.

3.1 Vested Rights. Except as provided in Section 3.2, City agrees that City is granting, and hereby grants Landowner, a fully vested right to develop the Project in accordance with the Collective Standards.

3.1.1 Term of Approved Maps. All approved parcel maps, vesting parcel maps, tentative subdivision maps, vesting tentative subdivision maps, or any re-subdivision or any amendment to any such map shall be valid for the Term of this Agreement, and any extensions thereof, as provided for in Government Code Section 66452.6. A subdivision, as

defined in Government Code Section 66473.7, shall not be approved unless any tentative map prepared for the subdivision complies with the provisions of said Section 66473.7; this sentence is included in this Agreement to comply with Section 65867.5 of the Government Code.

3.1.2 Applicable Standards. The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, location and maintenance of on-site and off-site improvements, location of public utilities, provisions related to timing, phasing and sequencing of development, and all other terms and conditions of development applicable to the Property, shall be those set forth in the Collective Standards.

3.1.3 Development Impact Fees, Exactions and Dedications. City agrees that the Project shall be subject only to the Impact Fees and Public Improvements set forth in Article 4 and Article 5 of this Agreement.

3.2 Reserved Powers. Notwithstanding Section 3.1, the City retains the following reserved powers and retains the authority to take the following actions:

3.2.1 Grant or deny applications for land use entitlements and approvals for the Project, provided such action does not prevent, alter, modify, reduce, delay or inhibit the development of the Project for the uses and to the density and intensity of development as provided in the Collective Standards;

3.2.2 Approve, disapprove or modify subdivision maps, parcel maps or lot line adjustments for the Project, provided such action does not prevent, alter, modify, reduce, delay or inhibit the development of the Project for the uses and to the density and intensity of development as provided in the Collective Standards;

3.2.3 Apply, or adopt and apply, design and construction requirements for specific Public Improvements to serve the Property, to the extent that such requirements do not prevent, alter, modify, reduce or inhibit the development of the Project for the uses and to the density and intensity of development as provided in the Collective Standards;

3.2.4 Adopt and apply Non-Project Specific property transfer and/or excise taxes;

3.2.5 Adopt and apply Non-Project Specific utility charges;

3.2.6 Adopt and apply Non-Project Specific permit processing fees;

3.2.7 Adopt and apply regulations to protect City residents from immediate risks to health and safety;

3.2.8 Adopt or increase Non-Project Specific fees, charges, assessments or special taxes otherwise authorized by and in compliance with the Law and not in conflict with Articles 4 and 5 of this Agreement and the Collective Standards;

3.2.9 Adopt and apply Non-Project Specific regulations relating to public health and safety, including the control of traffic, the regulation of sewers, water, and similar subjects, and the abatement of public nuisances;

3.2.10 Adopt and apply Uniform Codes;

3.2.11 Adopt or undertake enforcement of land use regulation ordinances, policies, programs, or resolutions in order to comply with federal or state laws, provided that in the event that such federal or state laws, plans, programs or regulations prevent or preclude compliance with any provision or provisions of this Agreement, such provision or provisions shall be modified or suspended solely to the extent necessary to comply with such federal or state laws or regulations;

3.2.12 Adopt land use regulations, ordinances, policies, programs, resolutions or fees that amend, modify or supplement one or more of the Project Approvals, but which are either expressly made not applicable to the Property or are consented to in writing by Landowner.

3.3 No Conflicting Enactments. Except as provided for as a Reserved Power, and subject to applicable Law relating to the vesting provisions of development agreements, so long as this agreement remains in full force and effect, neither the City nor any agency of the City shall enact any requirement, rule, regulation, policy, standard, specification, directive, condition, limitation, restriction, or other measure that relates to the nature, manner, cost, rate, timing, phasing or sequencing of the development or construction of the Project, on all or any part of the Property, that is in conflict with this Agreement, or any amendment thereto, including, but not limited to, any action that: (i) limits or restricts the uses to which the Property may be put; (ii) limits or reduces the density or intensity of development on the Property; (iii) controls the timing of the development of the Property; or (iv) imposes a cost or requirement upon the issuance of a building permit or Subsequent Approval for the Project.

3.3.1 Ballot Measures. Subject to Section 3.6, any requirement, rule, regulation, policy, standard, specification, directive, condition, limitation, restriction, or other measure that is enacted or imposed by initiative or referendum, or by the City directly or indirectly in connection with any proposed initiative or referendum, which would prevent, alter, modify, reduce or inhibit the development of the Project for the uses and to the density and intensity of development as provided in the Collective Standards, or restrict the rate, timing, phasing or sequencing of the development of the Project, shall not be applicable to the Property.

3.3.2 Engineering Design Standards; Uniform Codes. Except as may be set forth in the Tentative Map, Area Plan or Rezone, including any amendments thereof, the engineering design standards applicable to the Project and all Public Improvements shall be those in effect at the time complete Improvement Plans and plan review fees are submitted to the City. All construction within the Project shall be governed by the Uniform Codes in effect at the time that a complete building permit application and plan review fees are submitted to the City.

3.4 Meet and Confer. If Landowner believes that the City is taking action to impair a vested right in a manner that is not consistent with this Agreement, Landowner shall provide to City written notice describing the basis for Landowner's position. The Parties shall meet and confer within thirty (30) days thereafter in an attempt to arrive at a mutually acceptable solution. Nothing contained in this Section shall be construed to delay or otherwise modify the City's right under this Agreement and the Development Agreement Law in the event City determines that Landowner has failed to comply with this Agreement.

3.5 Further Reviews. Landowner acknowledges that the Collective Standards contemplate further reviews of elements of the Project by the City. These reviews include, but are not limited to, monitoring and implementation of environmental mitigation measures. Nothing in this Agreement shall be deemed to limit or expand the legal authority of City with respect to such reviews, as provided for by, and which are otherwise consistent with, this Agreement.

3.6 Referendum. Landowner acknowledges that the Adopting Ordinance, which is a legislative land use approval, is potentially subject to referendum. Notwithstanding anything in this Agreement to the contrary, Landowner shall not acquire a vested right to any legislative land use approval (or to any amendment thereto): (1) while such approval or amendment is still potentially subject to referendum, or (2) in the event that such approval or amendment is reversed by referendum.

ARTICLE 4. INFRASTRUCTURE IMPACT FEES

4.1 Impact Fees. City agrees to cap the fee burden of the Project such that development within the Project shall only be required to pay Impact Fees as provided in this Article 4, including but not limited to the Sewer Impact Fees, Water Impact and Meter Fee, Project Road Fee, and Regional Transportation Fee. Each of these fees shall be increased annually only as provided in Section 4.2.1. Subject to the foregoing, Landowner agrees to pay the Impact Fees in effect on the Effective Date, solely and exclusively as described in this Article 4.

The aforesaid limitation on Impact Fees shall not include the School Impact Fee, Fire District Impact Fee, or Impact Fees not adopted by City. In no event shall the Project be subject to the payment of any Impact Fee or Project Fair Share which is not discussed in this Article, or which is adopted to finance infrastructure which does not serve the Project. Nothing in this Article is intended to or shall limit the application of Non-Project Specific utility service charges to the Project, which are applied on a City-wide basis.

4.1.1 Sewer Impact Fees. Landowner shall pay City a fee for sewer service of five thousand eight hundred thirty one dollars (\$5,831.00) per single family dwelling unit equivalent ("EDU"). The purpose of said fee shall be for the City's Wastewater Treatment Plant (WWTP) upgrade project to improve City-wide waste water treatment capacity by expanding the WWTP from 1.3 to 2.2 million gallons per day (MGD). In addition to the payment of said fees, Landowner agrees to pay a capital improvement surcharge of three hundred and fifty dollars (\$350.00) per sewer connection.

City agrees that Landowner's payment of the fees specified in this Section (the "Sewer Impact Fees"), prior to the issuance of each building permit in the Project, shall fully and exclusively satisfy Landowner's obligation to mitigate the impacts of the Project on the City's wastewater treatment and collection system. Landowner agrees that the amount of said Sewer Impact Fee shall be increased annually as set forth in Section 4.2.1.

4.1.2 Water Impact and Meter Fees.

a. Pursuant to the City's updated water modeling anticipated to be completed in the Spring of 2016, Landowner agrees to pay its fair share up to, but not in excess of six thousand, one hundred ninety three dollars (\$6,193.00) per EDU for the City's construction of additional off-site treatment and main line transmission improvements that may

be necessary to serve the Project. Landowner agrees that the amount of said Water Impact Fee shall be increased annually as set forth in Section 4.2.1.

b. City and Developer agree to negotiate and enter into a Fee Credit and/or Reimbursement Agreement to allow Developer to obtain a credit or reimbursement for a portion of the off-site infrastructure improvements that may be necessary pursuant to Section 4.1.2a above, and/or on-site infrastructure improvements required pursuant to Section 5.2 below, when additional users obtain utility service from these infrastructure improvements. If a Fee Credit and/or Reimbursement Agreement cannot be agreed upon, it shall not affect the validity of this Development Agreement.

c. Upon the issuance of each building permit for development within the Project, Landowner further agrees to pay City a fee for the installation of a water meter (the "Water Meter Fee"), the amount of which shall be determined at the time that the fee is paid.

d. City agrees that Landowner's payment of the fees specified in this Section (the "Water Impact and Meter Fees"), prior to the issuance of each building permit in the Project, shall fully and exclusively satisfy Landowner's obligation to mitigate the impacts of the Project on the City's water treatment and collection system.

4.1.3 Transportation System Impact Fees. The EIR disclosed certain impacts of the Project on the transportation network and identified various improvements required to mitigate those impacts (the "Road Improvements"), which are more specifically identified on **Exhibit C**. City agrees that Landowner's construction of said Road Improvements, which includes payment of the Project Road Fee and the Regional Transportation Fee (if adopted), will fully mitigate the transportation impacts of the Project. Accordingly, City agrees that the Project will not be subject to the payment of the fee in Section 13.08.070 of the Municipal Code, or any other Impact Fee, the purpose of which is to finance the construction of transportation improvements, except for the Project Road Fee and the Regional Transportation Fee described below.

a. **Project Road Fee.** The EIR requires Landowner to contribute to improvements to intersections and road segments located outside of the Property (the "Off-Site Road Improvements"), which are more specifically described on **Exhibit C**. The Parties agree that the Project Fair Share of the cost of said Off-Site Road Improvements is six hundred sixty three thousand, one hundred dollars and no cents (\$663,100.00), which shall be increased in accordance with Section 4.2.1. City agrees to collect said Project Fair Share through the collection of an Impact Fee levied upon the issuance of each building permit in the Project (the "Project Road Fee"), the amount of which shall be determined in accordance with Section 4.2. City further agrees that the collection of the Project Fair Share of the Off-Site Road Improvements shall fully satisfy Landowner's obligation to mitigate the impacts of the Project on off-site roads both inside and outside the City limits.

b. **Regional Transportation Fee.** In order to finance improvements to Interstate 5, Caltrans, Shasta County, and the Cities of Anderson, Redding and Shasta Lake have considered establishing a "Regional Transportation Fee" to be charged and administered jointly by the cities and the county. Landowner agrees to pay, on a fair share basis, such a Regional Transportation Fee for improvements to Interstate 5, as determined by an approved nexus study, provided that such study is prepared in compliance with the Mitigation Fee Act and other applicable law and is adopted by the City and the jurisdiction in which the impact is being mitigated.

4.1.4 Electric Utility Service. Landowner agrees to construct the specific on-site and off-site “Electric Utility Infrastructure” needed to serve the Project, as more specifically set forth on **Exhibit C**.

4.1.5 Park Fees. Landowner is required to develop recreational facilities to serve the Project, and City agrees that said recreational facilities satisfy the Project’s obligation to provide parks in accordance with the Quimby Act (Government Code § 66477). The location, extent, timing, and development of parks and open space facilities to be provided within the Project are specified in Section 5.3. City agrees that the Project shall not be subject to Section 13.08.050 of the Municipal Code, or any other Impact Fee that is adopted for purposes of improving park land or open space.

4.1.6 Fire District Impact Fee. The Shasta Lake Fire Protection District (SLFPD) presently imposes a Fire District impact fee in the amount of one thousand and forty six dollars (\$1,046) per single family residential unit, eight hundred and sixty dollars (\$860) per multiple family residential unit, and three hundred eighty dollars (\$380) per one thousand (1,000) square feet of commercial or industrial development (the “Fire District Impact Fees”). Notwithstanding Landowner’s vested rights, as set forth in Section 3.1, Landowner agrees to pay said Fire District Impact Fees in effect on the date that a building permit is issued.

4.1.7 School Impact Fees. The Gateway Unified School District (GUSD) presently imposes a School Impact Fee of three dollars and thirty six cents (\$3.36) per square foot of new single-family residential construction, as well as other fees that are imposed on multi-family and non-residential construction (the “School Impact Fees”). Notwithstanding Landowner’s vested rights, as set forth in Section 3.1, Landowner agrees to pay said School Impact Fees in effect on the date that a building permit is issued.

4.2 Impact Fee Determination. Unless otherwise specified in this Agreement, whenever this Agreement calls for determination of the amount of an Impact Fee derived from a Project Fair Share, such Impact Fee amount shall be determined by dividing the Net Developable Acres of the relevant Development Parcel by the number of single family units (or the equivalent) approved for development by City. With respect to single family residential development, the number of units approved for development shall be determined by reference to the approved small lot tentative map. With respect to all other development, the number of single family equivalent units approved for development shall be determined at issuance of a building permit by reference to the appropriate EDU factor established and applied by City on a Non-Project Specific basis. City agrees to maintain Impact Fees collected for the Project in a separate Impact Fee account (the “Fee Account”), which shall not be commingled with any other development or impact fees collected by City.

4.2.1 Annual Increase. Where this Agreement calls for an annual increase in the amount of an Impact Fee or Project Fair Share, City shall increase such amount on January 1 of every year after the Effective Date by the Construction Cost Index as published in the most recent November Engineering News Record.

ARTICLE 5. INFRASTRUCTURE IMPROVEMENTS AND OTHER CONTRIBUTIONS.

5.1 Sewer Infrastructure. Landowner shall be responsible for the construction of all on-site sewer lines, lift stations, service connections and other facilities on the Property to be used in the collection and conveyance of wastewater specifically required for development of

the Property. Landowner shall be responsible for all off-site sewer system improvements (the "Sewer Infrastructure"), as more specifically set forth on **Exhibit C**.

5.2 Water Infrastructure. Landowner agrees to construct all on-site water lines, the water tank, service connections and other facilities to be used for conveyance of water specifically required for development of the Property. Specific on-site and off-site "Water Infrastructure" needed to serve the Project include, but are not limited to, those improvements set forth on **Exhibit C**.

5.3 Park Sites. City acknowledges that the Project will include a multi-purpose community park and drainage facilities on a total of 15.7 acres in one location near the center of the land use plan, as well as a 7.3 acre neighborhood park in the northern portion of the land use plan (the "Park Sites"). The 15.7-acre park site consists of parcels J and K, and the 7.3-acre park site consists of parcel C, as shown on the Land Plan Exhibit of the Area Plan.

The total cost to construct Park Sites improvements in parcels C, J, and K shall not exceed four million, seven hundred and ten thousand dollars (\$4,710,000.00), which shall be increased as provided in Section 4.2.1. Said "total cost" shall include all planning, engineering, materials, grading, construction and environmental costs. The Park Sites shall be offered for dedication to the City once they are completed in accordance with this Agreement.

Landowner agrees to develop the Park Sites for recreational, drainage and open space purposes as follows:

a. **Community Park.** Parcel J is envisioned as a programmed park. Landowner agrees that the recreational and drainage facilities developed within parcel J shall include turf, basins, parking, restrooms, sport fields, play equipment and similar active park improvements. Parcel K, due to topographic constraints, is envisioned for more passive programming, including potential trail and picnic facilities.

Landowner agrees to construct improvements in parcels J and K in three phases according to the terms of one or more park construction agreement(s) as described in Section 5.3.1. On or before the issuance of the 500th building permit issued for a residential unit in the Project, Landowner shall enter into an agreement with City to develop five (5) acres within the Park Site. On or before the issuance of the 800th building permit issued for a residential unit in the Project, Landowner shall enter into an agreement with City to develop an additional five (5) acres within the Park Site. On or before the issuance of the 1,100th building permit in the Project for a residential unit, Landowner shall enter into an agreement with City to develop the remainder of the Park Site (5.7 acres).

b. **Neighborhood Park.** Landowner agrees to construct improvements in parcel C according to the terms of a park construction agreement as described in Section 5.3.1. On or before issuance of the 50th building permit issued for a residential unit within parcel D and/or parcel H, Landowner shall enter into an agreement with the City to develop the entire Park site (7.3 acres).

5.3.1 Park Construction. Landowner's obligation to improve the Park Sites in accordance with Section 5.3 shall be set forth in a park construction agreement. Said agreement shall address: (a) applicable City standards for improvement and acceptance by the City, the cost of which improvements shall not exceed the amount set forth in Section 5.3, (b) approval of park design and improvement plans prepared in accordance with the aforesaid

standards, (c) timing of completion of park improvements required for the phase of Park Site development, and (d) the manner and terms under which City shall accept and maintain the improvements, which maintenance shall commence upon City's acceptance of the offer for dedication of the Park Sites. Where park improvements are completed in phases, City shall consider acceptance of each individual phase at the time the phase is completed.

5.4 Electric Substation. Landowner agrees to dedicate a site of two (2.0) acres to the City for an electric substation to serve the Project (the "Substation Site"). The precise location of the Substation Site shall be shown on the small lot final map for Area Q as shown on the Land Plan Exhibit of the Area Plan. Landowner is not required to improve the Substation Site.

5.5 Street Lighting System. The City will design the street lighting system according to existing construction standards. Landowner agrees to install a complete street lighting system. Landowner will install the poles, lamps, fixtures, boxes, conduit and appurtenances at no cost to the City.

5.6 Fire Station Site. Landowner agrees to dedicate a site of two (2.0) acres to the SLFPD for purposes of constructing a fire station to serve the Project (the "Fire Station Site"). The precise location of the Fire Station Site shall be shown on the small lot final map that includes either Development Parcel H or Development Parcel I. Landowner's election to locate the Fire Station Site within either Parcel H or Parcel I shall be made in Landowner's sole discretion at the time that an application for a small lot final map containing the Fire Station Site is submitted. City agrees that Landowner's dedication of said Fire Station Site shall fully satisfy Landowner's obligation to provide a location for a fire station to serve the Project.

ARTICLE 6. FINANCING.

6.1 Infrastructure Finance. Prior to approval of a small lot final subdivision map, or for residential properties that do not require subdivision, prior to issuance of building permits, City and Landowner may, at the request of Landowner, cooperate to establish one or more public financing districts, pursuant to and as authorized by Law, to fund necessary Public Improvements.

6.1.1 CFD Formation. At the request and with the support of the Landowner, City shall, at Landowner's expense, form one or more community facilities districts for the purpose of financing the acquisition of a portion or portions of any Public Improvement within the Property (an "Infrastructure CFD"). The infrastructure and facilities that may be constructed and/or acquired with Infrastructure CFD funds include, without limitation, roads, water, sewer, drainage, public utilities, fire district facilities, parks, open space, and public facilities of the City located within the Property and/or required to serve development of the Project ("CFD Improvements"). Formation of an Infrastructure CFD shall be pursuant to and consistent with the requirements of this Agreement, applicable City policies, and the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 *et seq.*).

a. Nothing in this Section 6.1.1 shall be construed to require Landowner to form an Infrastructure CFD nor, if formed, to preclude the payment by an owner of any of the parcels within the Property to be included within the Infrastructure CFD of a cash amount equivalent to its proportionate share of costs for the CFD improvements, or any portion thereof, prior to the issuance of bonds. Nothing in this Section shall be construed to require City to form

an Infrastructure CFD if City determines, in its sole discretion, formation would not be consistent with applicable city policies or with prudent public fiscal practice.

b. Concurrent with any formation of an Infrastructure CFD, Landowner and City shall enter into an acquisition agreement, in form and substance acceptable to City, in order to clearly identify the appropriate steps and requirements associated with bid procedures, prevailing wage, the acquisition of the public improvements and/or discrete portions and such other issues as the parties believe warrants inclusion (the "Acquisition Agreement"). The Acquisition Agreement shall include a covenant by the City to use any CFD tax and bond proceeds to acquire such improvements or portions thereof from the person or entity constructing the public infrastructure consistent with City financing policies and state law. To the extent permitted by and consistent with statute, including without limitation, Government Code Section 53313.51, the acquisition agreement shall include provisions to permit payments for discrete portions of improvements during construction of any CFD Improvements that have been accepted by City and are capable of serviceable use and to permit payments for discrete portions or phases of the partially completed improvement, as the costs thereof are incurred by the Landowner and confirmed by City.

c. Nothing herein shall be construed to limit Landowner's option to install the CFD Improvements through the use of traditional assessment districts or private financing.

d. Landowner acknowledges that notwithstanding the inclusion of the Property in an Infrastructure CFD, unless Landowner elects to include undeveloped portions of the Property into the Infrastructure CFD, only Developed Property shall be subject to the levy of special tax by an Infrastructure CFD. In other words, unless otherwise elected by Developer, any undeveloped portion of the Property shall be exempt from the levy of any Infrastructure CFD special taxes until it becomes Developed Property.

6.1.2 Effect of CFD Financing on Credits and Reimbursements. Wherever City provides for credits or reimbursements to Landowner for construction of Public Improvements, and such Public Improvements are financed by the Infrastructure CFD, at the request of Landowner, City shall allocate credits against the applicable Impact Fee, based on the amount of financing provided for the Public Improvements by the Infrastructure CFD that would otherwise have been funded by such Impact Fee up to, but not in excess of, the amount that will be funded by such Impact Fee by the properties within the Infrastructure CFD. Alternatively, Landowner may request that Infrastructure CFD funds be used to acquire facilities not included for financing by any Impact Fee program.

6.1.3 Effect of CFD Financing on Required Security. If and to the extent proceeds from CFD special taxes and/or bond sales are available to fund the acquisition and construction of Infrastructure, then upon request of Landowner, City shall consider reserving and sequestering the available CFD funds for the acquisition and construction of the Priority Infrastructure in the amount and for the improvements as designated by Landowner in such request, and said funds may then be credited against Landowner's obligation to post security acceptable to the City to assure completion of such designated improvements.

6.2 Special Tax and Assessment Limitation. Except as voluntarily agreed upon by Landowner, or as provided in Section 6.2.1, nothing in this Agreement is intended to or shall require Landowner to subject all or any portion of the Property to the obligation to pay any special tax or benefit assessment. Except as provided in Section 6.2.1, Landowner does not waive its right to protest the creation of, or vote against, any new special tax or assessment.

6.2.1 Park and Open Space Maintenance. Prior to occupancy of the first residential unit, the Parties agree, at Landowner's expense, to form one or more benefit assessment or special tax district(s) for purposes of funding the operations and maintenance of the park, landscaping, drainage and open space areas within the Project (the "Open Space Maintenance District"). All development within the Project shall be subject to the payment of the special tax or assessment levied within the Open Space Maintenance District(s).

ARTICLE 7. AMENDMENT.

7.1 Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto and in accordance with the procedures of State law and the Municipal Code.

7.2 Insubstantial Amendments. The City Manager is authorized to approve insubstantial amendments to this Agreement on behalf of the City without a hearing before or action by the Planning Commission or City Council. "Insubstantial amendments" means amendments to this Agreement which do not relate to (1) the term of the Agreement; (2) the permitted uses of the Property; (3) the reservation or dedication of land, other than minor modifications of alignment or size based on the final approved infrastructure design plans; (4) the location and maintenance of on-site and off-site improvements; (5) the density or intensity of use of the Project; or (6) the maximum height or size of proposed buildings. All amendments that are not insubstantial shall require approval by the City Council in accordance with the Development Agreement Law.

7.3 Amendment of Project Approvals. Any amendment of Project Approvals relating to: (1) the permitted use of the Property; (2) provision for reservation or dedication of land; (3) increases in the density or intensity of use of the Project; (4) the location and maintenance of on-site and off-site improvements; or (5) any other issue or subject not identified as an "insubstantial amendment" in Section 7.2 of this Agreement, shall require an amendment of this Agreement. Other amendments of the Project Approval(s) shall not require amendment of this Agreement unless the amendment of the Project Approval(s) relates specifically to some provision of this Agreement.

ARTICLE 8. MORTGAGEE PROTECTION.

8.1 Mortgage Protection. This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Agreement, including the lien of any deed of trust or mortgage (the "Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee (the "Mortgagee"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

8.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 8.1 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use, or to construct any improvements upon the Property, except in full compliance with the Project Approvals, including (without limitation) this Agreement. Any Mortgagee who comes into title or

possession of the Property, or any portion thereof, who intends to use or develop the Property, shall only be entitled to the rights of this Agreement upon presentation to the City of an assumption agreement executed by the Mortgagee, clearly indicating Mortgagee's express agreement to assume all of the Landowner's obligations under the Agreement, in the form of assumption agreement attached hereto as **Exhibit D**.

8.3 Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any notice of default given Landowner hereunder and specifying the address for service thereof, then City agrees to use its best efforts to deliver to such Mortgagee, concurrently with service thereon to Landowner, any notice given to Landowner with respect to any claim by City that Landowner has committed an event of default, and if City makes a determination of noncompliance hereunder, City shall likewise use commercially reasonable efforts to serve notice of noncompliance on such Mortgagee concurrently with service thereon on Landowner. Each Mortgagee shall have the right during the same period available to Landowner to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice. If a Mortgagee shall be required to obtain possession in order to cure any default, then vis-à-vis the Mortgagee, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure but in no event may this period exceed one hundred twenty (120) days from the City's notice. The time periods for notice and cure set forth in this section shall run concurrently with the time periods for notice and cure set forth in Sections 9.2 and 9.3 of this Agreement.

ARTICLE 9. ANNUAL REVIEW.

9.1 Review Date. The annual review date of this Agreement (the "Review Date") as required by Development Agreement Law shall be approximately twelve (12) months from the Effective Date and every twelve (12) months thereafter.

9.2 Procedures. The procedures for annual review shall be as set forth in the Development Agreement Law.

ARTICLE 10. DEFAULT.

10.1 Default. The failure of either party to perform any obligation or duty under this Agreement within the time required by this Agreement shall constitute an event of default. (For purposes of this Agreement, a Party asserting that the other Party is in default shall be referred to as the "Complaining Party" and the other Party shall be referred to as the "Defaulting Party.")

10.2 Notice. The Complaining Party may not place the Defaulting Party in default unless it has first given written notice to the Defaulting Party, specifying the nature of the default and the manner in which the default may be cured, if known to the Complaining Party. Any failure or delay by the Complaining Party in giving such notice shall not waive such default or waive any of the Complaining Party's remedies.

10.3 Cure. The Defaulting Party shall have thirty (30) days from the receipt of notice to cure the default. If the default cannot be reasonably cured within such time, the default shall be deemed cured if: (1) the cure is commenced at the earliest practicable date following receipt of notice; (2) the cure is diligently prosecuted to completion at all times thereafter; (3) at the earliest practicable date (but in no event later than thirty (30) days after receiving the notice of default), the Defaulting Party provides written notice to the Complaining Party that the cure

cannot be reasonably completed within such thirty (30) day period; and (4) the default is cured at the earliest practicable date, but in no event later than one hundred twenty (120) days after receipt of the first notice of default.

10.4 Remedies. If the Defaulting Party fails to cure a default in accordance with the foregoing, the Complaining Party shall have the right to terminate this Agreement upon notice to the Defaulting Party and, except as provided in Section 10.5, may pursue all remedies available at law or in equity, including specific performance and injunctive relief.

10.5 Waiver of Damages. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that the City would not have entered into this Agreement had it been exposed to liability for damages from Landowner, and that therefore, Landowner hereby waives all claims for damages against the City for breach of this Agreement. Landowner further acknowledges that under the Development Agreement Law, land use approvals (including development agreements) must be approved by the City Council and that under Law, the City Council's discretion to vote in any particular way may not be constrained by contract. Landowner therefore waives all claims for damages against the City in the event that this Agreement or any Project Approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions or deletions to which Landowner is opposed. Landowner further acknowledges that as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that under Law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Landowner waives all claims for damages against the City in this regard.

ARTICLE 11. INSURANCE AND INDEMNITY.

11.1 Indemnification, Defense and Hold Harmless. Landowner shall indemnify, defend, and hold harmless to the fullest extent permitted by law, City from and against all claims, liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with the Project, the Project Approvals or the Property (including any challenge to the validity of any provision of this Agreement or the Project Approvals, and including any actions or inactions of Landowner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Property and the Project), or Landowner's failure to comply with any of its obligations in this Agreement, or Landowner's failure to comply with any current or prospective Law; provided, however, that Landowner shall have no obligations under this section for such loss or damage to the extent caused by the negligence or willful misconduct of City, or with respect to any Property or any Improvement (or relating to the transfer thereof) sold, dedicated or otherwise transferred to City or another public entity by Landowner (except as provided in an improvement agreement or warranty bond). City shall indemnify, defend, and hold harmless to the fullest extent permitted by law, Landowner from and against any and all claims, liabilities, losses, damages, expenses, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with any Property or Public Improvements dedicated, sold or otherwise transferred to City or City's failure to comply with any of its obligations in this Agreement; provided, however, that City shall have no obligations under this section for such losses or damages to the extent caused by the negligence or willful misconduct of Landowner. This indemnification obligation shall survive this Agreement and shall not be limited by any insurance policy, whether required by this Agreement or otherwise.

11.2 Insurance.

11.2.1 Public Liability and Property Damage Insurance. At all times that Landowner is constructing any Public Improvements, Landowner shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of one million dollars (\$1,000,000) and a deductible of not more than fifty thousand dollars (\$50,000) per claim. The policy so maintained by Landowner shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

11.2.2 Workers' Compensation Insurance. At all times that Landowner is constructing any Public Improvements, Landowner shall maintain workers' compensation insurance for all persons employed by Landowner for work at the Project site. Landowner shall require each contractor and subcontractor similarly to provide workers' compensation insurance for its respective employees. Landowner agrees to indemnify the City for any damage resulting from Landowner's failure to maintain any such insurance.

11.2.3 Evidence of Insurance. Prior to commencement of construction of any Public Improvements, Landowner shall furnish City satisfactory evidence of the insurance required in Sections 11.2.1 and 11.2.2 and evidence that the carrier is required to give the City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the City, its elective and appointive boards, commissions, officers, agents, employees and representatives and to Landowner performing work on the Project.

ARTICLE 12. SUCCESSORS.

12.1 Assignment. Landowner may, in connection with any Property transfer, assign its interests under this Agreement, in whole or in part, without the consent of the City. No such assignment shall be effective until delivery to City by Landowner of an assignment executed by Landowner and assignee substantially in the form attached hereto as **Exhibit D**.

12.1.1 Transfers of Completed Buildings and Public Parcels. A private party who purchases a residential unit constructed on a lot defined by an approved and recorded final subdivision map, a private entity who purchases a fully constructed commercial building for which occupancy has been granted, and a public entity who acquires a portion of the Property, shall not be required to execute the form of assignment attached hereto as **Exhibit D**, shall not be considered a Successor, and shall not be bound by this Agreement.

12.2 Effect of Partial Assignments. With respect to any partial assignment of this Agreement by Landowner or any Successor, City acknowledges and agrees as follows: (a) the assignee under such partial assignment shall be liable only for the obligations under this Agreement that pertain to the portion of the Property transferred to such assignee; (b) neither Landowner nor any Successor with respect to such partial assignment shall have joint and several liability for the obligations or liabilities of the other under this Agreement; and (c) no breach or default by such party of its respective obligations under the Agreement shall be deemed, interpreted or construed to be a breach or default by the other party.

12.3 Subsequent Assignments. Any Successor may assign its rights under this Agreement by complying with the procedures set forth in this Agreement.

12.4 Runs with the Land. Except as otherwise provided in this Agreement, and for so long as this Agreement remains in effect, all of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 65868.5 of the Government Code and Section 1466 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any owned property: (a) is for the benefit of such properties and is a burden upon such properties; (b) runs with such properties; and (c) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each Party and its property hereunder and each other person succeeding to an interest in such properties.

ARTICLE 13. MISCELLANEOUS.

13.1 Relationship of City and Landowner. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Landowner and that Landowner is not an agent of City. The City and Landowner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Landowner joint venturers or partners.

13.2 Title to Property. Landowner represents and warrants that as of the Effective Date, Landowner holds legal and/or equitable interest in and to the Property.

13.3 Authority. The Parties represent and warrant that the persons signing this Agreement are duly authorized to enter into and execute this Agreement on behalf of their respective principals.

13.4 Procedures and Requirements. The Parties acknowledge that this Agreement is subject to the procedures for approval, amendment and administration set forth in the Development Agreement Law.

13.5 Estoppel Certificate. Either Party may at any time request the other Party to certify in writing that: (1) this Agreement is in full force and effect; (2) this Agreement has not been amended except as identified by the other Party; and (3) to the best knowledge of the other Party, the requesting Party is not in default, or if in default, the other Party shall describe the nature and any amount of any such default. The other Party shall use its best efforts to execute and return the estoppel certificate to the requesting Party within thirty (30) days of the request. The City Manager shall have authority to execute such certificates on behalf of the City.

13.6 Recordation. This Agreement shall not be operative until recorded with the Shasta County Recorder's office. City shall record this Agreement with the County Recorder's office within ten (10) days of the Effective Date, and shall cause any amendment to this Agreement or any instrument affecting the term of this Agreement to be recorded within ten (10) days from date on which the same become effective. Any amendment to this Agreement or any instrument affecting the term of this Agreement which affects less than all of the Property shall contain a legal description of the portion thereof that is the subject of such amendment or

instrument. Alternatively, Landowner and City may execute the instrument entitled "Memorandum of Development Agreement" attached hereto as **Exhibit E**, which shall be recorded against the Property, in lieu of recording the entire Agreement.

13.7 Notices. All notices required by this Agreement or the Development Agreement Law shall be in writing and personally delivered or sent by certified mail, postage prepaid, return receipt requested.

Notice required to be given to the City shall be addressed as follows:

CITY OF SHASTA LAKE
Attn: Development Services Director
1650 Stanton Drive
Shasta Lake, CA 96019
Facsimile: (530) 275-7406

with copies to:

CITY OF SHASTA LAKE
Attn: City Attorney
1650 Stanton Drive
Shasta Lake, CA 96019
Facsimile: (530) 225-8944

Notice required to be given to the Landowner shall be addressed as follows:

MOUNTAIN GATE MEADOWS, LLC
Attn: Ron Alvarado and Mark Hanson
5241 Arnold Avenue
McClellan, CA 95652
Facsimile: (916) 922-7600

with copies to:

HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON, LLC
Attn: David Temblador
980 9th Street, Suite 1400
Sacramento, CA 95814
Facsimile: (916) 382-4380

Either Party may change the address stated herein by giving notice in writing to the other Party, and thereafter notices shall be addressed and transmitted to the new address. All notices shall be deemed received on the earlier of the date that personal delivery is effected or the date shown on the return receipt.

13.8 Exhibits. The Exhibits to this agreement are as follows:

Exhibit A	Property Description
Exhibit B	[reserved]
Exhibit C	Project Infrastructure
Exhibit D	Form of Assignment and Assumption Agreement
Exhibit E	Form of Memorandum of Development Agreement

13.9 Third Party Beneficiaries. This Agreement is entered into for the sole benefit of the Parties and any Successors. No other party shall have any cause of action or the standing to assert any rights under this Agreement.

13.10 Force Majeure. Any delay in the performance of any obligation under this Agreement which is unforeseeable and beyond the control and without the fault or negligence of either Party shall be deemed not to be a default where the delay is an enforced delay due to causes beyond such Party's reasonable control, including without limitation war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, delays attributable to any applicable permitting agency (which delays extend beyond such agency's customary time period for permitting projects of the nature of the Project and provided that the Party claiming delay timely completed and delivered to such agency all submittals required by such agency to be submitted with respect to the Project), or the discovery of historical artifacts during construction. The Party claiming delay shall give the other Party notice of any enforced delay within thirty (30) days following the date such delay commences. An extension of time for any such cause shall be for a reasonable time, as approved by the other Party (such approval not to be unreasonably withheld). In no event shall any period of enforced delay exceed one hundred and eighty (180) days if the Party claiming delay has not made reasonable and prudent efforts to terminate such enforced delay.

13.11 Attorneys' Fees and Costs in Legal Actions By Parties to the Agreement. Should any legal action be brought by either Party for breach of this Agreement or to enforce any provisions herein, each Party shall bear its own costs (including attorneys' fees) and neither Party shall be entitled to recover such costs from the other Party.

13.12 Attorneys' Fees and Costs in Legal Actions By Third Parties to the Agreement. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the Parties shall cooperate and appear in defending such action. Landowner shall bear its own costs of defense as a real party in interest in any such action, and Landowner shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceeding, provided that City reasonably cooperates with Landowner in the defense of such action.

13.13 Liability of City Officials. No City official or employee shall be personally liable under this Agreement.

13.14 Delegation. Any reference to any City body, official or employee in this Agreement shall include the designee of that body, official or employee, except where delegation is prohibited by law.

13.15 Severability. Should any provision of this Agreement be found invalid or unenforceable by a court of law, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

13.16 Integration. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes any previous

oral or written agreement. This Agreement may be modified or amended only by a subsequent written instrument executed by all of the Parties.

13.17 Counterparts. This Agreement may be signed in one (1) or more counterparts, and will be effective when the Parties have affixed their signatures to counterparts, at which time the counterparts together shall be deemed one (1) original document; provided, however, that all executed counterparts are provided to the City Clerk.

13.18 Interpretation. The Parties acknowledge that this Agreement has been negotiated by both Parties and their legal counsel and agree that this Agreement shall be interpreted as if drafted by both Parties.

13.19 Inconsistency. In the event of any conflict or inconsistency between the provisions of this Agreement and the Project Approvals or Exhibits, this Agreement shall prevail.

13.20 Incorporation. The Recitals, Exhibits, and all defined terms in this Agreement are part of this Agreement.

13.21 Compliance with Laws. In connection with its performance under this Agreement, Landowner shall comply with all applicable present and prospective laws.

13.22 Applicable Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of law. In the event of litigation arising under this Agreement, venue shall reside exclusively in the Superior Court of the County of Shasta.

13.23 Time of the Essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the Parties hereto are executing this Agreement on the dates set forth below, to be effective as of the Effective Date.

“CITY”

“LANDOWNER”

CITY OF SHASTA LAKE,
a municipal corporation

MOUNTAIN GATE MEADOWS, LLC
a California limited liability company

By: _____

By: _____

Name: _____

Name: Charles M. Somers

Its: Mayor

Its: Managing Member

Dated: _____, 2015

Dated: _____, 2015

ATTEST:

APPROVED AS TO FORM

Toni M. Coates, CMC
City Clerk

John Sullivan Kenny
City Attorney

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

[Reserved]

EXHIBIT C

PROJECT INFRASTRUCTURE

A. PROJECT CONSTRUCTION COMMITMENTS

1. SEWER

a. New sanitary sewer lift station and force main

- Timing: Construct prior to the 1st occupancy
- Construct a new sanitary sewer lift station in accordance with city standards near the southerly boundary of the project. Construct a force main from the new lift station to the existing force main in Cascade Blvd.

b. Expansion of Salt Creek Lift Station

- Timing: As demand warrants
- Expand the capacity of the existing Salt Creek Lift Station as necessary to handle increased flows from the Project.

c. New Force Main

- Timing: In conjunction with expansion of the Salt Creek Lift Station
- Construct new parallel force main in Pine Grove Avenue from the Salt Creek Lift Station to the Sewage Treatment Plant.

2. WATER

a. New Booster Pump at Reservoirs 3A and 3B

- Timing: As demand warrants
- Construct new booster pumps at existing City reservoirs 3A and 3B in order to serve the southern portion of the Project.

b. New Onsite Water Tank and Water Main

- Timing: Concurrent with first building permit
- Construct a new 1.0-million gallon water tank and booster pump near the north boundary of the Project. Construct water mains through the Project that are capable of serving the new water tanks.

3. DRY UTILITIES

a. Joint Trench – Cascade to South Boundary of Project

- Timing: As demand warrants
- Install a joint utility trench with electric, gas, telephone and cable TV service from Cascade Blvd to the interior project road (Wonderland Blvd) at the south boundary of the project

b. Joint Trench – Black Canyon to West boundary of Project

- Timing: As demand warrants
- Install a joint utility trench with electric, gas, telephone and cable TV service from Black Canyon Road to the interior project road along the west boundary of the Project.

4. OFF-SITE ROADS

a. Intersection 1 – Old Oregon Trail / Wonderland Boulevard

- Timing: Timing: Commence construction prior to 400th residential permit within the Area Plan boundaries or earlier if directed by the City of Shasta Lake.
- Construct a roundabout or traffic signal.

b. Intersection 2 – Old Oregon Trail / I-5 NB Ramp

- Timing: Timing: Commence construction prior to 400th residential permit within the Area Plan boundaries or earlier if directed by the City of Shasta Lake.
- Construct a roundabout or traffic signal.

c. Intersection 5 – Shasta Dam Blvd / Shasta Way

- Based on Caltrans latest decision that this intersection cannot be signalized, no improvements will be required for this intersection.

d. Intersection 6 – Shasta Dam Blvd / Median Ave

- Timing: Commence construction prior to 50th residential permit within the Area Plan boundaries or earlier if directed by the City of Shasta Lake.
- Construct signalization improvements at this intersection.

e. Intersection 13 – Shasta Dam Blvd / Mussel Shoals

- Timing: Commence construction prior to 50th residential permit within the Area Plan boundaries or earlier if directed by the City of Shasta Lake.
- Construct signalization improvements at this intersection.

f. Wonderland Blvd (south access)

- Timing: Commence construction prior to 50th residential permit.
- Construct a public road from Cascade Blvd to the interior project road (Wonderland Blvd) at the south boundary of the Project in accordance with City Standards.

g. Intersection 14 – Shasta Dam Blvd / Cascade Blvd

- Timing: Commence construction prior to 400th residential permit within the Area Plan boundaries or earlier if directed by the City of Shasta Lake.
- Construct a right turn lane on westbound Shasta Dam Blvd at Cascade Blvd. Construct a second left turn lane on eastbound Shasta Dam Blvd at Cascade Blvd. Construct a second left turn lane on southbound Cascade Blvd at Shasta Dam Blvd.

h. Intersection 15 – Shasta Dam Blvd / I-5 SB Ramps

- Timing: Commence construction prior to 400th residential permit within the Area Plan boundaries or earlier if directed by the City of Shasta Lake.
- Convert eastbound through lane to a shared through/right turn lane. Widen on-ramp 1,000-feet long.

B. PROJECT FAIR SHARE COMMITMENTS

1. OFFSITE ROAD PROJECT FAIR SHARE

Intersection	Fair Share Percentage	Fair Share Amount	Project Fair Share for the traffic mitigation identified in the EIR; paid through building permit fees based on net developable acreage.
Inter 16 – Pine Grove Ave / Lake Blvd.	15%	\$750	
Inter 17 – Pine Grove Ave / Ashby Rd	17%	\$850	
Inter 18 – Pine Grove Ave / Cascade Blvd	7%	\$58,100	
Inter 19 – Pine Grove Ave / I-5 SB Ramps	9%	\$38,700	
Inter 20 – Pine Grove Ave / I-5 NB Ramps	14%	\$72,800	
Inter 21 – Pine Grove Ave / Twin View Blvd	14%	\$121,800	
Inter 22 – Oasis Road / Cascade Blvd	3%	\$54,000	
Inter 23 – Oasis Road / I-5 SB Ramps	4%	\$3,600	
Inter 24 – Oasis Road / I-5 NB Ramps	5%	\$87,500	
Inter 25 – Oasis Road / Twin View Blvd	4%	\$168,000	
Roadway Segment	Fair Share Percentage	Fair Share Amount	
Pine Grove Avenue – Cascade Boulevard west to Ashby Road	3%	\$57,000	
Total Project Fair Share	-	\$663,100	

EXHIBIT D

FORM OF ASSIGNMENT

OFFICIAL BUSINESS
Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Shasta Lake
1650 Stanton Drive
Shasta Lake, CA 96019
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**ASSIGNMENT AND ASSUMPTION AGREEMENT
RELATIVE TO MOUNTAIN GATE PROJECT
(Parcel(s) _____ of the Property)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Agreement") is entered into this day of , 20__, by and between _____, a _____ (hereinafter "Assignor"), and _____, a _____ (hereinafter "Assignee").

RECITALS

WHEREAS, on _____, 2015, the City of Shasta Lake and Mountain Gate Meadows, LLC entered into that certain agreement entitled "Development Agreement By and Between the City of Shasta Lake and Mountain Gate Meadows, LLC Relative to the Mountain Gate Project" (hereinafter the "Development Agreement"). Pursuant to the Development Agreement, Assignor agreed to develop certain property more particularly described in the Development Agreement (hereinafter, the "Subject Property"), subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of Shasta County on _____, 2015, as Instrument No. _____.

WHEREAS, Assignor intends to convey a portion of the Subject Property to Assignee, commonly referred to as Parcel _____, and more particularly identified and described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel").

WHEREAS, Assignor desires to assign and Assignee desires to assume all right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

1. Assignor hereby assigns, effective as of Assignor's conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations under the Development Agreement with respect to the Assigned Parcel. Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other property within the Subject Property owned by Assignor.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, and so long as Assignor has paid City any and all fees or amounts due to City arising out of the Development Agreement, the processing of the Entitlements, and the development of the Assigned Parcel, Assignee shall become substituted for and as the "Landowner" under the Development Agreement with respect to the Assigned Parcel, and Assignor shall be released of and from any obligations or liabilities under the Development Agreement with respect to the Assigned Parcel.

3. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. The Notice Address described in Section 12.7 of the Development Agreement with respect to the Assigned Parcel shall be:

Attn: _____

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written. This Agreement may be signed in identical counterparts.

ASSIGNOR:

ASSIGNEE:

a _____

a _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Its: _____

**CONFIRMATION OF PAYMENT OF OUTSTANDING FEES
RELATED TO DEVELOPMENT OF ASSIGNED PARCEL**

Upon request of _____, the Landowner of the Assigned Parcel described herein, and based on the review of the City's files related to the development of the Assigned Parcel and the obligations allocable thereto, the undersigned, as the City Planning Director or designated representative thereof, hereby confirms that the Landowner appears to have paid to the City any and all fees or amounts allocable to the Assigned Parcel and due to the City under or arising out of the Development Agreement, the processing of the Entitlements, and/or the development of the Assigned Parcel. This confirmation may be relied upon by Assignor to relieve Assignor of any continuing obligation as Landowner with respect to the Assigned Parcel upon this Assignment becoming effective; provided, however, in the event of any mistake or error by the City in making this determination, the City shall not be prohibited or limited hereby from enforcing the obligation to pay any such fees or amounts allocable to the Assigned Parcel subsequently determined to be due with respect thereto.

By: _____
Its: _____

EXHIBIT E

FORM OF MEMORANDUM OF AGREEMENT