

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF PLEASANTON APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLEASANTON AND THE ALAMEDA COUNTY SURPLUS PROPERTY AUTHORITY REGARDING THE STAPLES RANCH PROJECT

WHEREAS, Government Code, Sections 65865 through 65869.5, authorize a city to enter into binding development agreements with persons having legal interests in real property for the development of such property; and

WHEREAS, the Alameda County Surplus Property Authority has applied to the City for a development agreement concerning the Staples Ranch Project; and

WHEREAS, for the Staples Ranch Project, on February 25, 2009 the City of Pleasanton certified an Environmental Impact Report as complete and adequate and in compliance with the California Environmental Quality Act (CEQA) and on August 24, 2010 the City of Pleasanton certified an Environmental Impact Report Supplement as complete and adequate and in compliance with CEQA; and

WHEREAS, in connection with this application for a development agreement, the City of Pleasanton conducted a duly noticed public hearing on _____, 2010; and

WHEREAS, the City Council finds that the proposed development agreement is consistent with the City's General Plan, the Stoneridge Drive Specific Plan Amendment/Staples Ranch (as adopted on August 24, 2010) and the City's zoning ordinance; and

WHEREAS, the City Council finds and determines that it would not approve this development agreement unless the Stoneridge Drive Specific Plan Amendment/Staples Ranch, Ordinance No. X (approving and adopting the PUD development plan for the proposed auto mall site) and Ordinance No. Y (approving and adopting the PUD development plan for the continuing care communities site) were all in effect and therefore the "Effective Date" of this development agreement is contingent on the occurring of certain events as set forth in the development agreement itself.

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

Section 1. Approves the Development Agreement between the City of Pleasanton and the Alameda County Surplus Property Authority, a copy of which is attached hereto and incorporated herein by this reference.

Section 2. A summary of this ordinance shall be published once within fifteen days after its adoption in the "Valley Times", a newspaper of general circulation published in the City of Pleasanton, and the complete ordinance shall be posted for fifteen days in the City Clerk's office within fifteen days of its adoption.

Section 3. This ordinance shall be effective thirty days after its passage and adoption.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Pleasanton on _____, 2010 and adopted at a regular meeting of the City Council of the City of Pleasanton on _____, 2010 by the following vote.

Ayes:
Noes:
Absent:
Abstain:

Jennifer Hosterman, Mayor

ATTEST:

Karen Diaz, City Clerk

APPROVED AS TO FORM:

Jonathan P. Lowell, City Attorney

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566

(Space Above this Line Reserved for Recorder's Use)

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF PLEASANTON
AND
THE ALAMEDA COUNTY SURPLUS PROPERTY AUTHORITY**

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as of _____, 2010 by and between the Alameda County Surplus Property Authority (“SPA”), and the City of Pleasanton (“City”), pursuant to California Government Code § 65864 et seq.

RECITALS

A. To strengthen the public planning process, encourage participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted California Government Code § 65864 et seq. (the “Development Agreement Statute”), which authorizes City to enter into an agreement with any entity having a legal or equitable interest in real property proposed for development, whether such property be within City’s boundaries or in unincorporated territory within City’s sphere of influence.

B. This Development Agreement has been processed, considered and executed in accordance with the procedures and requirements of the Development Agreement Statute.

C. SPA has a legal interest in certain real property consisting of approximately 124 acres, commonly known as the Staples Ranch, most of which (122.5 acres) are located in the unincorporated area of Alameda County but within City’s sphere of influence, as more particularly described in Exhibit A-1 attached hereto, and as diagrammed in Exhibit A-2 attached hereto (the “Project Site”).

D. SPA intends to sell a portion of the Project Site to the Hendrick Automotive Group for the development of an approximately 37-acre auto mall site (the “Auto Mall Site”); an additional portion of the Project Site to Continuing Life Communities for the development of an approximately 46-acre continuing care community site with up to 800 units plus supporting assisted living and skilled nursing facilities (the “Continuing Care Site”); and another portion of the Project Site to a developer for the development of an approximately 11-acre commercial site with up to 120,000 square feet of retail uses or up to 200,000 square feet of office uses (the “Commercial Site”). Hendrick Automotive Group, Continuing Life Communities, and any other person or entity that purchases the Auto Mall Site, Continuing Care Site, or Commercial Site from SPA, and the successors and assigns of each of them, shall be referred to herein as “Developer” (individually) or “Developers” (collectively).

E. SPA intends to dedicate to City a 17-acre portion of the Project Site as a community park site (the “Community Park Site”), and to sell to City an approximately five-acre portion of the Project Site as a neighborhood park site (the “Neighborhood Park Site”). City intends to develop the Community Park Site and the Neighborhood Park Site.

F. On September 4, 2007, the City of Livermore, City and SPA entered into a Cost Sharing Agreement (the “Cost Sharing Agreement”). The Cost Sharing Agreement

concerns, among other matters, funding for certain improvements to El Charro Road from the I-580 interchange through the Jack London Boulevard/Stoneridge Drive intersection (the “El Charro Road Improvements”).

G. SPA intends to construct the extension of Stoneridge Drive as a four lane divided public road eastwards through the Project Site from its current terminus at Trevor Parkway to El Charro Road, with turn lanes and two, two-lane bridges across the Arroyo Mocho, as more fully described in the Staples Ranch Specific Plan Amendment (the “Stoneridge Drive Extension Improvements”);

H. SPA also intends to dedicate a portion of the Project Site to City as a right of way through the Project Site sufficient to accommodate the Stoneridge Drive Extension Improvements (the “Stoneridge Drive Right of Way”).

I. As described in the Staples Ranch Specific Plan Amendment, SPA intends to pay the City one and a half million dollars (\$1,500,000) for its contribution to the City’s construction of off-site traffic improvements, namely the repaving of Stoneridge Drive between Kamp Drive and Trevor Parkway with noise annuinating pavement, making intersection improvements at Stoneridge Drive and Santa Rita Road, and installing traffic signals at the intersection of Stoneridge Drive and Newton Way, Guzman Parkway and Trevor Parkway (collectively, the “Off-site Traffic Improvements”), to address any off-site effects of the extension of Stoneridge Drive (“SPA Off-Site Traffic Improvements Fund”). As described in the Mitigation Monitoring and Reporting Plan, SPA also intends to construct a soundwall adjacent to the two residences on Maria Street and Curry Street closest to the new Stoneridge Drive bridges (the “Maria/Curry Streets Soundwall”).

J. Collectively, the Stoneridge Drive Extension Improvements, City’s development of the Neighborhood Park Site and the Community Park Site, and the Developers’ private development of the Auto Mall Site, the Continuing Care Site and the Commercial Site shall be referred to as the “Staples Ranch Project”, a conceptual site plan of which is attached hereto as Exhibit B for illustrative purposes only and subject to future changes, such as the addition of an Ice Center to the Community Park Site, should the City elect to construct one.

K. City has taken several actions to review and plan for the future development of the Staples Ranch Project. These include, without limitation, the following approvals and development policies which are hereby incorporated into and made a part of this Agreement (the “Project Approvals”):

1. Staples Ranch Specific Plan Amendment. On August 24, 2010, City adopted Resolution No. 10-__ rescinding Resolution Nos. 09-268 and 09-268* and approving a revised Stoneridge Drive Specific Plan Amendment (“Staples Ranch Specific Plan Amendment”) that anticipates the Staples Ranch Project. A copy of Resolution No. 10-__ is attached hereto as Exhibit C. The Staples Ranch Specific Plan Amendment approved by Resolution No. 10-__ is incorporated herein by this reference.

2. Prezoning and Rezoning. On September 7, 2010, City, pursuant to Chapter 18.68 of the City of Pleasanton Municipal Code, adopted Ordinance No. ____ rescinding Ordinance No. 1989 and approving a prezoning of the Auto Mall Site and the Commercial Site as Planned Unit Development (“PUD”)-Commercial (PUD-C); the Continuing Care Site as PUD-High Density Residential/Commercial (PUD-HDR/C), PUD-Commercial (PUD-C) and PUD-Medium Density Residential (PUD-MDR); the Community Park Site and Neighborhood Park Site as PUD-Park (PUD-P); and rezoning portions of approximately 1.5-acres of the Project Site located within the City from PUD-Medium Density Residential (PUD-MDR) to PUD-Commercial (PUD-C) and PUD-High Density Residential/Commercial (PUD-HDR/C). A copy of Ordinance No. ____ is attached hereto as Exhibit D.

3. PUD Development Plans. On September 21, 2010, City adopted Ordinance No. ____ approving a PUD Development Plan pursuant to Chapter 18.68 of City of Pleasanton Municipal Code governing development of the Auto Mall Site. On September 21, 2010, City adopted Ordinance No. ____ approving a PUD Development Plan pursuant to Chapter 18.68 of City of Pleasanton Municipal Code governing development of the Continuing Care Site. On September 21, 2010, City adopted Ordinance No. ____ approving a PUD Development Plan pursuant to Chapter 18.68 of the Pleasanton Municipal Code governing development of the Neighborhood Park Site. Ordinance Nos. ____, ____ and ____ are incorporated herein by this reference. In addition, the three PUD development plans approved by Ordinance Nos. ____, ____ and ____ are incorporated herein by this reference..

L. Environmental Impact Report. The environmental impacts of the Staples Ranch Project, including the Project Approvals and the Subsequent Approvals, and alternatives to the Staples Ranch Project, have properly been reviewed and assessed by City pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq.; California Code of Regulations Title 14, Section 15000 et seq. (the “CEQA Guidelines”); and City’s local guidelines promulgated thereunder (hereinafter collectively referred to as “CEQA”). On February 24, 2009, pursuant to CEQA and in accordance with the recommendation of City’s Planning Commission (“the Planning Commission”), the City Council certified a final environmental impact report covering the Staples Ranch Project (the “EIR”). On August 24, 2010, pursuant to CEQA and in accordance with the recommendation of the City’s Planning Commission, the City Council certified a final environmental impact report supplement (“SEIR”). As required by CEQA, City adopted written findings and a mitigation monitoring program (the “Mitigation, Monitoring and Reporting Plan”) prior to approving the Project Approvals.

The EIR, SEIR and the Mitigation Monitoring and Reporting Plan are incorporated herein by this reference.

M. The Cities of Pleasanton and Livermore, the County of Alameda, SPA and the Developers have been working collaboratively toward the completion of necessary plans, approvals and permitting necessary for the development of the Staples Ranch Project in Pleasanton. As provided in Order R2-2009-0074 NPDES Permit CAS612008, dated October 14, 2009, development projects deemed complete after December 1, 2009 will be subject to the October 14, 2009 Order. Conversely, development projects deemed complete before December 1, 2009 will be subject to NPDES Permit CAS0029831 (Order No. R2-2003-0021, as amended by Order No. R2-2007-0025) that was in effect until November 30, 2009. The application for the Stoneridge Drive Specific Plan Amendment was deemed complete in October 2008, the application for the Continuing Care Site was deemed complete in January 2009, the application for the Auto Mall Site was deemed complete in February 2009, the application for the Community Park was deemed complete in May 2009 and the application for the Neighborhood Park was deemed complete in October 2009.

N. City has determined that the Staples Ranch Project presents certain public benefits and opportunities which are advanced by City and SPA entering into this Agreement. This Agreement will, among other things, (1) reduce uncertainties in planning and provide for the orderly development of the Staples Ranch Project; (2) mitigate many significant environmental impacts; (3) provide public infrastructure; (4) strengthen City's economic base with a variety of short-term construction jobs; (5) provide for and generate substantial revenues for City in the form of one time and annual fees and exactions, sales tax revenues, and other fiscal benefits; (6) provide a variety of needed services for seniors, including personal care/skilled nursing; (7) result in the funding of critical citywide facilities and other infrastructure improvements; (8) result in the dedication of 17 acres for a Community Park Site; (9) result in City's acquisition of the Neighborhood Park Site; and (10) otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

O. In exchange for the benefits to City described in the preceding Recital, together with the other public benefits that will result from the development of the Staples Ranch Project, SPA and Developers will receive by this Agreement assurance that it has a vested right to proceed with the Staples Ranch Project in accordance with Applicable Law (defined below) but subject to the availability of water -and therefore desires to enter into this Agreement.

P.. The City Council, after conducting a duly noticed public hearing, has found that this Agreement is consistent with the General Plan, the Stoneridge Drive Specific Plan as amended and City's zoning ordinance, and has conducted all necessary proceedings in accordance with City's rules and regulations for the approval of this Agreement.

Q. On June 24, 2009, following a duly noticed public hearing, the Planning Commission adopted Resolution No. [____] recommending that the City Council approve

this Agreement. On September 7, 2010, the City Council, following a duly noticed public hearing, introduced Ordinance No. [____] approving and authorizing the execution of this Agreement, and then on September 21, 2010 adopted Ordinance No [____].

AGREEMENT

NOW, THEREFORE, in consideration of the premises, covenants and provisions set forth herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1. DEFINITIONS

The following terms shall have the meanings defined for such terms in the Sections set forth below:

| <u>Term</u> | <u>Section</u> |
|-------------------------------------|----------------|
| Administrative Project Amendment | Section 7.01. |
| Agreement | Introduction. |
| Applicable Law | Section 6.03. |
| Assignment and Assumption Agreement | Section 8.02. |
| Assignor | Section 8.04. |
| Auto Mall Site | Recital D. |
| CEQA | Recital L. |
| CEQA Guidelines | Recital L. |
| Changes in the Law | Section 6.10. |
| City | Introduction. |
| City Law | Section 6.05. |
| CLC/City Agreement | Section 3.04 |
| Commercial Site | Recital D. |
| Community Park Site | Recital E. |
| Conflicting City Law | Section 6.05. |

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|---|----------------|
| Continuing Care Site | Recital D. |
| Cost Sharing Agreement | Recital F. |
| Default Notice | Section 10.01. |
| Deficiencies | Section 9.02. |
| Developer | Recital D. |
| Development Agreement Statute | Recital A. |
| Effective Date | Section 2.01. |
| EIR | Recital L. |
| El Charro Road Improvements | Recital F. |
| Growth Management Agreement | Section 4.06 |
| Judgment | Section 9.02. |
| LAFCo | Section 4.02. |
| Maria/Curry Streets Soundwall | Recital I. |
| Mitigation, Monitoring and Reporting Plan | Recital L. |
| Mortgagee | Section 8.05. |
| Neighborhood Park Purchase and Sale Agreement | Section 4.08. |
| Neighborhood Park Site | Recital E. |
| Neighborhood Park/Detention Basin Agreement | Section 4.08. |
| Notice of Compliance | Section 8.06. |
| Off-site Traffic Improvements | Recital I. |
| Periodic Review | Section 10.03. |
| Planning Commission | Recital L. |
| Project Approvals | Recital K. |
| Project Site | Recital C. |
| PUD | Recital K. |

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| SPA | Introduction. |
| SPA Off-Site Traffic Improvements Fund | Recital I. |
| Staples Ranch Project | Recital J. |
| Staples Ranch Specific Plan Amendment | Recital K. |
| Stoneridge Drive Extension Improvements | Recital G. |
| Stoneridge Drive Right of Way | Recital H. |
| Subsequent Approval | Section 5.01. |
| Term | Section 2.02. |
| Zone 7 | Section 4.04 |

ARTICLE 2. EFFECTIVE DATE AND TERM

Section 2.01. Effective Date. This Agreement shall become effective (the “Effective Date”) upon the latest of the following dates to occur: (i) the effective date of Resolution No. 10-___, adopting the Specific Plan Amendment/Staples Ranch; (ii) the effective date of Ordinance No. X, adopting the PUD development plan for the Auto Mall Site; or (iii) the effective date of Ordinance No. Y, adopting the PUD development plan for Continuing Care Site. The parties specifically acknowledge that the effective dates of Resolution No. 10-___, and Ordinance X and Y are subject to suspension pursuant to Elections Code, Section 9237. If Resolution No. 10-___, Ordinance X or Ordinance Y do not become effective, then the City Manager has no authority to sign this Agreement, this Agreement shall have no force or effect, no party shall have rights or obligations hereunder, and none of the entitlements contemplated in this Agreement shall vest hereunder, regardless of whether the ordinance adopting this Agreement becomes effective. If, however, Resolution No. 10-___, Ordinance X and Ordinance Y all become effective, then the City Manager shall sign this Agreement and the entitlements contemplated by this Agreement shall be deemed vested as of the effective date of the ordinance adopting this Agreement. Pursuant to Section 65865 of the Development Agreement Statute, this Agreement shall not become operative unless annexation proceedings annexing the Project Site to City are completed. If such proceedings are not completed within one year after the Effective Date, this Agreement shall become null and void unless SPA at its sole discretion agrees to an extension. If such proceedings are completed within one year after the Effective Date, this Agreement shall become operative.

Section 2.02. Term. The term of this Agreement (the “Term”) shall commence upon the Effective Date and continue for a period of 10 years following the date this Agreement becomes operative pursuant to Section 2.01, above.

ARTICLE 3. OBLIGATIONS OF SPA AND DEVELOPERS

Section 3.01. Obligations of SPA Generally. The parties acknowledge and agree that City's agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for SPA's agreement to perform and abide by its covenants and obligations, as set forth herein. The parties acknowledge that many of SPA's obligations set forth in this Agreement are in addition to SPA's obligation to perform all mitigation measures identified as SPA's responsibility in the Mitigation, Monitoring and Reporting Plan and the Project Approvals.

Section 3.02. Annexation. SPA shall cooperate with City in seeking and processing through LAFCo the annexation of the Project Site to City. SPA shall pay all the usual LAFCO annexation processing and related processing fees, as well as the cost of preparing all documents required for submittal with the annexation application; SPA shall not pay for City's staff and related administrative costs that the City incurs in processing the annexation application through LAFCO.

Section 3.03. Development and Related Fees. The fee schedule attached as Exhibit E sets forth (i) the only development and related fees to be paid to City by the Developers of the Auto Mall Site, (ii) the amount of those development and related fees, and (iii) the time at which the development and related fees are to be paid.

The other Developers shall pay development and related fees due under Applicable Law provided, however, that the Developer of the Continuing Care Site shall receive from the City a fee credit in the amount of \$1,754,880 applied first to the City's Public Facilities Fee and then to the City's Traffic Impact Fee. The credit is for the Continuing Care Site Developer's designing and constructing the Neighborhood Park improvements, agreeing to assume the costs of -the Auto Mall Site Developer's proportionate share of Detention Basin Improvements, acquiring and improving Street A as set forth in the Neighborhood Park Agreement and constructing a "Good Neighbor" fence as set forth in the conditions of approval for PUD 68.

Section 3.04. Units for Households of Certain Incomes. The Developer of the Continuing Care Site shall provide a certain percentage of its units for households of 100%, 80% and 50% of the Area Median Income as more particularly set forth in the Agreement between City and Continuing Life Communities Pleasanton LLC, dated __, 2010 (the "CLC/City Agreement"), incorporated herein by this reference.

Section 3.05. Dedications by SPA.

- (a) With the recordation of the first final map for the Project Site, SPA shall dedicate to City, and City shall accept "as is", the 17 acre Community Park Site, excepting the stockpiled fill material placed on the Community Park

Site from the adjacent 2003 Arroyo Realignment Project. Prior to the City's improvement of the Community Park Site, SPA and/or Developers shall have the right to remove all stockpiled fill material, except for approximately 13,500 cubic yards, which shall be left for the City's use. SPA shall have no further obligation to fund or make any improvements on, or related to, the Community Park Site, or carry out any mitigation measures associated with the development of the Community Park Site.

- (b) With the recordation of the first final map for the Project Site, SPA shall dedicate to City the Stoneridge Drive Right of Way to accommodate the construction of the Stoneridge Drive Extension Improvements.

Section 3.06. Construction of Stoneridge Drive Extension Improvements and Opening Stoneridge Drive to Through Traffic. SPA shall cause the construction of the Stoneridge Drive Extension Improvements as part of the Staples Ranch Project. Prior to the start of construction of the two bridges over the Arroyo Mocho, the City will hold a public workshop in the Stoneridge Drive neighborhood detailing the mitigations and conditions required for the opening of Stoneridge Drive to through traffic. The workshop will also provide potential timelines for when the milestones for the opening of Stoneridge Drive to through traffic are expected to occur. The Stoneridge Drive Extension Improvements shall include a gate(s) and/or barrier(s) to prohibit through traffic to and from El Charro Road if at the time the Stoneridge Drive Extension Improvements are completed, Jack London Boulevard (in Livermore) as a two lane road with four lanes at its intersection with El Charro Road and with Isabel Parkway ("the Jack London Boulevard Improvements") has not been completed and opened to through traffic. When the Jack London Boulevard Improvements have been completed and Jack London Boulevard is open to through traffic (or if the Jack London Boulevard Improvements have been completed and Jack London Boulevard is open to through traffic when the Stoneridge Drive Extension Improvements are completed), the City shall immediately open Stoneridge Drive to through traffic but the bridges over the Arroyo Mocho shall be striped for one lane of travel in each direction. Prior to the opening of Stoneridge Drive to through traffic, the City shall (1) place noise attenuating pavement on all portions of Stoneridge Drive from Santa Rita Road to its current terminus at Trevor Parkway and (2) construct a soundwall starting at the western edge of Snowdrop Circle and extending east approximately 65 feet. After Stoneridge Drive has been open to through traffic for two years, the City Council may at any time thereafter determine to stripe the bridges over the Arroyo Mocho for two lanes of travel in each direction thereby opening the road to its full four lane configuration. Prior to doing so, the City shall evaluate traffic data, solicit community input and schedule a public hearing for review and consideration of the matter.

Section 3.07. El Charro Road Improvements. SPA acknowledges that:

- (a) if the City of Livermore is the “Constructing Agency” under the Cost Sharing Agreement, the Cost Sharing Agreement obligates SPA to partially fund the construction of the El Charro Road Improvements.
- (b) if City is the “Constructing Agency” under the Cost Sharing Agreement instead of the City of Livermore, the Cost Sharing Agreement instead requires SPA to fully fund the El Charro Road Improvements, subject to partial reimbursement from the City of Livermore. If the City is the “Constructing Agency,” SPA shall fund the design and construction of the extension of all public utilities, including water, sewer, storm drainage and joint trench improvements, adjacent to the Project Site required for the Staples Ranch Project that are within the El Charro Road right of way.

SPA shall have no obligations with regard to the funding or construction of any future improvements relating to El Charro Road other than as set forth in the Cost Sharing Agreement and in this Section 3.07. SPA also shall have no obligation to fund any freeway or freeway interchange improvements as a result of the development of the Project Site.

Section 3.08. SPA Off-Site Traffic Improvements Fund and the Maria/Curry Streets Soundwall. With the recordation of the first final map for the Project Site, SPA shall pay to City the SPA Off-Site Traffic Improvements Fund. Prior to the completion of the Stoneridge Drive Extension Improvements, SPA shall construct the Maria/Curry Streets Soundwall. City agrees that the SPA Off-Site Traffic Improvements Fund and the Maria/Curry Streets Soundwalls are SPA’s only traffic obligation with regard to traffic improvements that are not part of the Staples Ranch Project or the El Charro Road Improvements.

Section 3.09. Public Art. SPA shall fund public art, with a design approved by the City, either at the El Charro Road/I-580 interchange or within the Community Park Site or Neighborhood Park Site, at a cost not to exceed \$15,000.

ARTICLE 4. OBLIGATIONS OF CITY

Section 4.01. Obligations of City Generally. The parties acknowledge and agree that SPA’s agreement to perform and abide by its covenants and obligations set forth in this Agreement is a material consideration for City’s agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.

Section 4.02. Annexation. City shall initiate through the Alameda County Local Formation Commission (“LAFCo”), as soon as practicable after the Effective Date and in accordance with LAFCo rules and regulations, but not before it has approved a vesting tentative subdivision map for the Project Site, an appropriate application for annexation of the Project Site to City. City shall take all necessary steps and use its best efforts to diligently and promptly complete the annexation proceedings.

Section 4.03. Protection of Vested Rights. City shall take any and all actions as may be necessary or appropriate to ensure that the vested rights provided by this Agreement can be enjoyed by SPA and the Developers and to prevent any City Law, as defined below, from invalidating or prevailing over all or any part of this Agreement. City shall cooperate with SPA and the Developers and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect.

Section 4.04. Availability of Water Services. The parties recognize that the City receives the majority of its potable water supply from the Alameda County Flood Control and Water Conservation District, Zone 7 (“Zone 7”) and that Zone 7 receives the majority of its water supply from the State Water Project; in the last few years, for a variety of reasons, the amount of water that Zone 7 has received from the State Water Project has been reduced. Should that trend continue, it is possible, but unlikely given the very small amount of water (350 AFA) that the Staples Ranch Project needs, that due to water being unavailable from Zone 7, City would be unable to issue building permits anywhere in the City until water whether from Zone 7 or otherwise became available to the City. Nevertheless, to the maximum extent permitted by law and consistent with its authority, City shall reserve such capacity for water service as may be necessary to serve the Staples Ranch Project. To the extent this capacity is available, this capacity shall be assured for the Term of this Agreement at a cost to be applied uniformly without discrimination as to user or use.

Section 4.05. Developers’ Right to Rebuild. Developers may renovate or rebuild a portion or all of the Staples Ranch Project within the Term of this Agreement if necessary due to natural disaster or changes in seismic requirements, or if a Developer determines in its sole discretion that a building or buildings located within the Staples Ranch Project have become functionally outdated due to changes in technology. Any such renovation or rebuilding shall be governed by the rights vested by this Agreement, and shall comply with the Project Approvals and any Subsequent Approvals, as well as with the building codes existing at the time of such rebuilding or reconstruction, and with the requirements of CEQA.

Section 4.06. Issuance of Residential Building Permits. The number of residential building permits available to be issued for the Continuing Care Site shall be as set forth in the Growth Management Agreement between City and Continuing Life Communities Pleasanton LLC, dated , 2010 (the “Growth Management Agreement”), incorporated herein by this reference.

Section 4.07. City’s Waiver of In Lieu Park Dedication Fees. City waives the in lieu park dedication fee obligations of SPA and the Developers pursuant to Chapter 19.44 of City’s Municipal Code in recognition of SPA’s dedication of the Community Park Site, which constitutes full and complete satisfaction of all in lieu park dedication fees that would otherwise apply.

Section 4.08. Neighborhood Park Purchase and Sale Agreement and Neighborhood Park/Detention Basin Agreement. With the recordation of the first final map for the Project Site, City shall acquire the Neighborhood Park Site pursuant to the terms of the Neighborhood Park Purchase and Sale Agreement (“Neighborhood Park Purchase and Sale Agreement”) entered into between SPA and City on _____, 2010. City shall fund, improve and maintain the Neighborhood Park Site pursuant to the terms of the Neighborhood Park/Detention Basin Funding and Improvement Agreement (“Neighborhood Park/Detention Basin Agreement”) entered into between SPA, Developers and City on _____, 2010.

Section 4.09. I-580 /Fallon Road Interchange Improvements. If the City of Livermore is the “Constructing Agency” under the Cost Sharing Agreement, the Cost Sharing Agreement obligates the City of Livermore to construct or cause to construct, at no cost to SPA, any modifications to the approved Caltrans I-580/Fallon Road Interchange Modification Project No. 04-257604 that are necessary to accommodate the El Charro Road Improvements or interchange modifications identified in the EIR. City acknowledges that, if City is the “Constructing Agency” under the Cost Sharing Agreement, the Cost Sharing Agreement obligates City to construct or cause to construct, at no cost to SPA, any modifications to the approved Caltrans I-580/Fallon Road Interchange Modification Project No. 04-257604 that are necessary to accommodate the El Charro Road Improvements or interchange modifications identified in the EIR.

Section 4.10. Conformance to Storm Water Quality Requirements. The parties recognize that there remain a number of offsite infrastructure improvements to be designed and constructed in order to provide for flood protection within the developable parcels along I-580, including the Staples Ranch Project, and that these improvements may take several years to complete. The parties also recognize that the ongoing efforts to complete these improvements, the necessary environmental clearances and the corresponding mitigation measures all constitute due diligence by the SPA, the Developers of the Continuing Care and Auto Mall Sites, and the City of Pleasanton, and therefore the provisions of NPDES No. CAS0029831 shall apply to the Continuing Care, Auto Mall and Community Park/Neighborhood Park Sites, and the infrastructure improvements contemplated by the Stoneridge Drive Project, including, but not limited to, the Stoneridge Drive Extension Improvements; provided, however, if an agency other than the City determines the provisions of NPDES NO. CAS0029831 do not apply, City shall not be financially responsible for any increased costs to SPA or Developers resulting therefrom.

ARTICLE 5. COOPERATION - IMPLEMENTATION

Section 5.01. Processing Application for Subsequent Approvals.

- (a) Subsequent Approval. “Subsequent Approval” means land use approvals, entitlements, and permits, other than the Project Approvals, that are requested by SPA or a Developer from City because they are necessary or

desirable for the development of the Staples Ranch Project, including, without limitation, the following: amendments to the Project Approvals, amendments to this Agreement, design review approvals, improvement agreements, PUD development plans, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps, rezonings, resubdivisions, general plan amendments, specific plan amendments, and any amendments to, or repealing of, any of the foregoing. In addition, approval of each of the following shall constitute a Subsequent Approval:

- (i) A PUD development plan for the Commercial Site;
- (ii) A PUD development plan for the Community Park Site; and
- (iii) Any tentative subdivision map or parcel map for all or a portion of the Project Site.

A project for which the Project Approvals contemplated that the project may be developed in phases does not need a Subsequent Approval in order to proceed with a later phase so long as development of that later phase is in substantial conformance with the Project Approvals.

- (b) Policy Changes. By approving the Staples Ranch Specific Plan Amendment, City has made a final policy decision that the Staples Ranch Project is in the best interests of the public health, safety and general welfare. Accordingly, in considering any application for a Subsequent Approval, City shall not, unless requested by a Developer applying for a Subsequent Approval, use its discretionary authority to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Staples Ranch Project.
- (c) Timely Submittals By Developers. SPA acknowledges that City cannot expedite processing of Subsequent Approvals until each Developer submits complete applications on a timely basis. SPA shall use its best efforts to encourage each Developer to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause each Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required by Applicable Law. SPA and City intend to cooperate and diligently work to obtain any and all Subsequent Approvals.
- (d) Timely Processing By City. In addition to the other general covenants concerning processing of Subsequent Approvals set forth in this Agreement, upon the filing of any application for a Subsequent Approval, City shall, to the maximum extent permitted by law, promptly and diligently commence

and complete all steps (including noticing and public hearings) necessary to act on the Subsequent Approval application.

- (e) Review of Subsequent Approvals. Subject to this Agreement, City may exercise its discretion to assess whether an application for a Subsequent Approval substantially conforms with Applicable Law and any prior Subsequent Approval. City may deny an application for a Subsequent Approval if it does not substantially conform with Applicable Law or any prior Subsequent Approval (provided, however, that inconsistency with the Project Approvals or a prior Subsequent Approval shall not constitute grounds for denial of a Subsequent Approval which is requested as an amendment to that Project Approval or prior Subsequent Approval). City may condition its approval of a Subsequent Approval application as necessary to bring the Subsequent Approval into compliance with Applicable Law or any prior Subsequent Approval.

Section 5.02. Other Government Permits. At each Developer's sole discretion and in accordance with each Developer's construction schedule, each Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Staples Ranch Project. City shall cooperate with each Developer in its efforts to obtain such permits and approvals and shall, from time to time at the request of a Developer, use its best efforts to enter into binding agreements with another governmental or quasi-governmental entity as may be necessary to ensure the timely availability of such permits and approvals.

Section 5.03. Public Financing of Improvements. SPA may, from time to time, request City to establish one or more assessment and or community facilities districts to finance infrastructure, public facilities and or fees that may be required in connection with the development of the Staples Ranch Project. City agrees to use reasonable efforts to implement such requests subject to applicable state and federal law and to the Applicable Rules.

ARTICLE 6. STANDARDS, LAWS AND PROCEDURES GOVERNING THE PROJECT

Section 6.01. Vested Right to Develop. SPA and each Developer shall have a vested right to develop its respective portion of the Staples Ranch Project on the Project Site in accordance with the terms and conditions of this Agreement. Nothing in this section shall be deemed to eliminate or diminish the requirement of each Developer to obtain any required Subsequent Approvals.

Section 6.02. Permitted Uses Vested by this Agreement. As of the Effective Date, the permitted uses of the Staples Ranch Project; the densities and intensities of the uses thereof; the maximum height, bulk and size of proposed buildings; the provisions for reservation or dedication of land for public purposes and the

location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Staples Ranch Project shall be vested as they are set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals, if any.

Section 6.03. Applicable Law.

- (a) The rules, regulations, official policies, standards and specifications applicable to the Staples Ranch Project (the “Applicable Law”) are those set forth in this Agreement, the Project Approvals and, with respect to matters not specifically addressed by this Agreement or the Project Approvals, only:
 - (i) Those rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing permitted uses, building locations, timing of construction, densities, design heights and other terms and conditions of development which are in effect on a City-wide basis on the Effective Date of this Agreement; and
 - (ii) Those fees and exactions, including, without limitation, dedications and any other fee or tax (including excise, construction or any other tax) reasonably relating to development or the privilege of developing, which:
 - a. With regard to all of the Staples Ranch Project other than development of the Commercial Site, are in effect on a City-wide basis on the Effective Date of this Agreement; and
 - b. With regard to development of the Commercial Site, are in effect on a City-wide basis on the date an application for a PUD development plan for the Commercial Site is deemed complete by City.
- (b) Applicable Law does not include fees that City collects on behalf of entities not controlled by City, and does not include normal and customary- fees charged by City to reimburse City’s cost of processing and permitting grading and building permits, land use approvals (except for development impact fees or other monetary exactions), and other similar permits, provided such fees are in force and effect on a City-wide basis at such time as City grants said approvals and permits.

Section 6.04. Uniform Codes. City may apply to the Project Site, at any time during the Term of this Agreement, then current California Building Code and other uniform construction codes, and City’s then current design and construction standards for road and storm drain facilities, provided any such uniform code or standard has been adopted and uniformly applied by City on a City-wide basis and provided that no such code or standard is adopted for the purpose of

preventing or otherwise limiting construction of all or any part of the Staples Ranch Project.

Section 6.05. No Conflicting City Law.

- (a) Absent prior written consent of SPA or a potentially affected Developer, City shall not impose on the Staples Ranch Project (whether by action of the City Council or by initiative, referendum or other means any ordinance, resolution, rule, regulation, standard, directive, condition or any other measure or action (each individually, a “City Law”) that is in conflict with, or reduces the development rights or assurances provided by, or invalidates or prevails over all or any part of, Applicable Law or any Subsequent Approval (“Conflicting City Law”). In no case shall a Conflicting City Law apply to the Staples Ranch Project and SPA (and its successors and assigns to this Agreement, including but not limited to, the Developers) reserves the right to challenge any Conflicting City Law in court.
- (b) Without limiting the generality of the foregoing but subject to the provisions of Section 4.04., absent prior written consent of SPA or a potentially affected Developer, any City Law shall be deemed to be a Conflicting City Law if it would accomplish any of the following results, either by specific reference to the Staples Ranch Project or as part of a general enactment which applies to or affects the Staples Ranch Project:
 - (i) Change any land use designation or permitted use of the Project Site;
 - (ii) Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Staples Ranch Project;
 - (iii) Limit or control the location of buildings, structures, grading, or other improvements in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals or any Subsequent Approvals;
 - (iv) Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Staples Ranch Project in any manner;
 - (v) Apply to the Staples Ranch Project any City Law otherwise allowed by this Agreement that is not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites;
 - (vi) Result in a Developer having to substantially delay construction of all or a portion of the Staples Ranch Project or require the issuance of additional permits or approvals by City other than those required by Applicable Law;

- (vii) Substantially increase the cost of constructing or developing the Staples Ranch Project or any portion thereof;
- (viii) Establish, enact, increase, or impose against the Staples Ranch Project any fees, taxes (including without limitation general, special and excise taxes), assessments, liens or other monetary obligations (including generating demolition permit fees, encroachment permit and grading permit fees) other than those specifically permitted by this Agreement or other connection fees imposed by third party utilities;
- (ix) Impose against the Staples Ranch Project any condition, dedication or other exaction not specifically authorized by Applicable Law; or
- (x) Limit the processing or procuring of applications and approvals of Subsequent Approvals.

Section 6.06. Moratoria. Without limiting the generality of any of the foregoing but subject to the provisions of Section 4.04., no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted within City, or portions of City, shall apply to the Staples Ranch Project.

Section 6.07. Environmental Mitigation. SPA and City understand that the EIR and SEIR were intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Staples Ranch Project. Consistent with the CEQA policies and requirements applicable to the EIR and SEIR, City agrees to use the EIR and SEIR in connection with the processing of any Subsequent Approval to the maximum extent allowed by law and not to impose on the Staples Ranch Project any mitigation measures other than those specifically identified as the responsibility of SPA by the Project Approvals and the Mitigation, Monitoring and Reporting Plan or specifically required by Applicable Law.

Section 6.08. Life of Subdivision Maps, Development Approvals, and Permits.

- (a) The term of any subdivision map or any other map, permit, rezoning or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the longer of the Term of this Agreement (including any extensions) or the term otherwise applicable to such Project Approval or Subsequent Approval if this Agreement is no longer in effect.
- (b) Without limiting the generality of, and subject to, Section 6.06, the Term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which a development moratorium imposed by an agency other than City (including, but not limited to, a water or sewer moratorium or water and sewer moratorium) or the actions of City or other public agencies that regulate land

use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Staples Ranch Project or a lawsuit involving any such development approvals or permits is pending.

- (c) Pursuant to California Government Code § 66454, SPA intends to file a vesting tentative subdivision map with City for the proposed subdivision of the Project Site. City and SPA agree that such tentative map is conditioned upon annexation to City of the portion of the Staples Ranch Project Site presently located in the unincorporated area of Alameda County within one year after the Effective Date. If annexation is not completed within one year after the Effective Date, then the approval of the tentative map by City shall be null and void unless SPA at its sole discretion agrees to an extension.

Section 6.09. Tentative Subdivision Maps. Pursuant to the Development Agreement Statute, any tentative subdivision map prepared for the Project Site shall comply with the provisions of California Government Code § 66473.7 to the extent such provisions apply. .

Section 6.10. State and Federal Law. As provided in Section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the application to the Staples Ranch Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and City and SPA or each affected Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article 5 (Cooperation-Implementation) and Section 10.05 (Excusable Delays; Extension of Time of Performance). Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on any Developer any fee specifically mandated and required by state or federal laws and regulations.

Section 6.11. Timing of Project Construction and Completion.

- (a) City and SPA agree that there is no requirement that SPA or a Developer initiate or complete development of the Staples Ranch Project or the Auto Mall Site, the Continuing Care Site, or the Commercial Site within any particular period of time, and City shall not impose such a requirement on any Project Approval or Subsequent Approval. The parties acknowledge that the rate, timing and order in which the Staples Ranch Project, the Auto Mall Site, the Continuing Care Site, and the Commercial Site will be developed cannot be predicted at this time. Such decisions depend on numerous factors that neither SPA nor a Developer can control, such as market orientation and demand, interest rates, competition and other similar factors.

- (b) In light of Subsection (a), above, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465 that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of City and SPA to avoid that result by acknowledging that SPA and each Developer shall have the right to develop the Staples Ranch Project, the Auto Mall Site, the Continuing Care Site, and the Commercial Site in such order and at such rate and at such times as each deems appropriate within the exercise of its subjective business judgment.
- (c) No requirement or condition of approval of a Project Approval or Subsequent Approval requiring SPA or a Developer to construct public or private improvements including but not limited to: (1) the storm water control basin on the Neighborhood Park Site; (2) as to the Continuing Care Site, the berm, the wall on top of the berm, the Central Plant, the Club House, the transfer of land to the Vermont Place property owners, the fencing and related grading and storm drainage improvements following the transfer of land to the Vermont Place property owners, and the wall between the Community Care Site and the Auto Mall Site; (3) as to the Auto Mall Site, the wall by the Neighborhood Park; and (4) as to SPA, off site improvements such as the Livermore Flood Control Improvements, landscaping throughout the Project Site and providing access prior to occupancy of, or prior to completion of a phase of development within, the Auto Mall Site, the Continuing Care Site, or the Commercial Site, shall constitute a development phasing requirement under Subsection (a) or (b) of this Section 6.11.
- (d) Nothing in this Agreement shall exempt SPA from completing work required by the Cost Sharing Agreement, a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.

Section 6.12. Exempting Fees Imposed by Outside Agencies. City agrees to exclude SPA and each Developer from any and all collection agreements regarding fees, including, but not limited to, development impact fees, which other public agencies request City to impose at City's discretion on the Staples Ranch Project or the Project Site after the Effective Date through the Term of this Agreement. This section shall not prohibit City from imposing on a Developer any fee or obligation that is imposed by a regional agency in accordance with state or federal obligations and implemented by City in cooperation with such regional agency.

ARTICLE 7. AMENDMENT

Section 7.01. Amendment of Project Approvals and Subsequent Approvals. To the extent permitted by state and federal law, any Project Approval or Subsequent

Approval may, from time to time, be amended or modified in the following manner:

- (a) Administrative Project Amendments. Upon the written request of SPA or a Developer for an amendment or modification to a Project Approval or Subsequent Approval, the Director of Community Development or his or her designee shall determine: (i) whether the requested amendment or modification substantially conforms to a Project Approval or Subsequent Approval when considered in light of the Staples Ranch Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement and Applicable Law. If the Director of Community Development or his or her designee finds that the proposed amendment or modification substantially conforms to a Project Approval or Subsequent Approval, is consistent with this Agreement and Applicable Law, and will not result in new significant impacts in addition to those already assessed and mitigated by the EIR and SEIR, the amendment shall be determined to be an “Administrative Project Amendment” and the Director of Community Development or his or her designee shall, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, the following shall be treated as Administrative Project Amendments: lot line adjustments; reductions in the density, scale or scope of the Staples Ranch Project; minor alterations in vehicle circulation patterns or vehicle access points; substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan; variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Staples Ranch Project; minor revisions to the Staples Ranch Project due to the requirements of permits received from state or federal agencies; and minor adjustments to the Project Site diagram or Project Site legal description.
- (b) Non-Administrative Project Amendments. Any request of SPA or a Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to Applicable Law.

Section 7.02. Amendment of this Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of City and SPA or their respective successors and assigns in the manner provided for in the Development Agreement Statute, subject to the following qualifications:

- (a) Administrative Agreement Amendments. Any amendment to this Agreement which does not substantially affect (i) the Term of this Agreement; (ii) permitted uses of the Project Site; (iii) provisions for the reservation or dedication of land; (iv) conditions, terms, restrictions or requirements for Subsequent Approvals; (v) the density or intensity of use of

the Project Site or the maximum height or size of proposed buildings; or (vi) monetary contributions by a Developer, shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. Such amendment may be approved by City resolution.

- (b) Amendment Exemptions. No Subsequent Approval or amendment to a Project Approval or Subsequent Approval shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Staples Ranch Project and vested under this Agreement subject to Applicable Law.
- (c) Amendments Applicable to Particular Sites. Unless otherwise so stated, an amendment to this Agreement affecting a portion of the Staples Ranch Project shall only affect the rights and obligations of the Developer of the portion of the Staples Ranch Project so affected. No amendment to this Agreement affecting a portion of the Staples Ranch Project may affect the rights and obligations of a Developer owning an interest in that portion of the Staples Ranch Project without the prior written consent of that Developer.

ARTICLE 8. ASSIGNMENT, TRANSFER AND NOTICE

Section 8.01. Assignment of Interests, Rights and Obligations. The interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals may be transferred or assigned to Developers or other third parties acquiring an interest or estate in the Project Site or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.

Section 8.02. Assignment and Assumption Agreement.

- (a) In connection with the transfer or assignment of all or any portion of the Project Site to a transferee or assignee, the transferor or assignor and the transferee or assignee shall enter into a written agreement (an “Assignment and Assumption Agreement”) in the form of the agreement attached hereto as Exhibit F. The Assignment and Assumption Agreement shall allocate the respective interests, rights and obligations of the transferor or assignor and the transferee or assignee in and under this Agreement, the Project Approvals, and the Subsequent Approvals. Such Assignment and Assumption Agreement may (i) release the transferor or assignor from obligations under this Agreement, the Project Approvals, and any Subsequent Approvals with respect to that portion of the Staples Ranch Project being transferred or assigned, as described in the Assignment and Assumption Agreement, provided that the transferee or assignee expressly

assumes such obligations; (ii) transfer or assign to the transferee or assignee vested rights under this Agreement to improve that portion of the Staples Ranch Project being transferred or assigned; and (iii) address any other matter deemed by the transferor or assignor to be necessary or appropriate in connection with the transfer or assignment.

- (b) Any Assignment and Assumption Agreement shall be binding on the transferor or assignor, City and the transferee or assignee. Unless otherwise provided in the Assignment and Assumption Agreement, upon recordation of any Assignment and Assumption Agreement in the Official Records of Alameda County, the transferor or assignor shall automatically be released from those obligations assumed by the transferee or assignee, including any and all liabilities associated with the breach or default of assumed obligations that accrue on or after the date of recordation.

Section 8.03. Transfer from SPA to Developers. City agrees that SPA need not obtain prior written consent from City before recording an Assignment and Assumption Agreement between SPA as transferor or assignor and a Developer or Developers as transferee or assignee.

Section 8.04. Other Transfers and Assignments. In connection with the transfer or assignment by a Developer (the “Assignor”) of all or any portion of the Staples Ranch Project to a transferee or assignee, the Assignor shall seek City’s written consent to the requisite Assignment and Assumption Agreement prior to its recordation, which consent shall not be unreasonably withheld or delayed. Failure by City to respond within 30 calendar days to any request made by Assignor for such consent shall be deemed to be City’s approval of the Assignment and Assumption Agreement in question. City may refuse to give its consent only if, in light of the proposed transferee or assignee’s reputation and financial resources, such transferee or assignee would not in City’s reasonable opinion be able to perform the obligations proposed to be assumed by such transferee or assignee. Such determination shall be made by the Director of Community Development, and shall be appealable by the Assignor to the City Council.

Section 8.05. Mortgagee Protection. City and SPA agree that this Agreement shall not prevent or limit SPA or a Developer, in any manner, at SPA or a Developer's sole discretion, from encumbering the Project Site or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Project Site. City acknowledges that the lender(s) providing such financing may require certain Agreement interpretations and modifications and agrees, from time to time, to meet with SPA or a Developer and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any mortgagee of a mortgage or a beneficiary of a

deed of trust ("Mortgagee") of the Property shall be entitled to the following rights and privileges:

- (a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust made in good faith and for value on the Project Site or a portion thereof.
- (b) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to SPA or a Developer under the terms of this Agreement, City shall provide a copy of any such notice to the Mortgagee within 10 days of receiving the request. 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.
- (c) Any Mortgagee who comes into possession of the Project Site, or any portion thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Project Site, or portion thereof, subject to the terms of this Agreement; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of SPA or a Developer arising prior to acquisition of title to the Project Site, or portion thereof, by such Mortgagee, except that any such Mortgagee or its successors or assigns shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary obligations due under this Agreement for the portion of the Project Site acquired by such Mortgagee have been paid to City.

Section 8.06. Notice of Compliance Generally. Within thirty 30 days following a written request from SPA or a Developer, City shall execute and deliver to SPA or a Developer (or to any party requested by SPA or Developer) a written "Notice of Compliance," in recordable form, duly executed and acknowledged by City, that certifies:

- (a) This Agreement is unmodified and in full force and effect, or, if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications;
- (b) There are no current uncured defaults under this Agreement or specifying the dates and nature of any such default;
- (c) Any other information reasonably requested by SPA or a Developer.

The failure to deliver such a statement within such time shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by SPA or a Developer and that there are no uncured defaults in the performance of SPA or a Developer, except as may be represented by SPA or a Developer. SPA or a Developer shall

have the right, at SPA or a Developer's sole discretion, to record the Notice of Compliance.

ARTICLE 9. COOPERATION IN THE EVENT OF LEGAL CHALLENGE

Section 9.01. Cooperation. In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement or any Project Approval or Subsequent Approval, City and SPA and/or those Developers affected by such action or proceeding shall cooperate in defending such action or proceeding unless prior to the time or within three business days of the City's approval of this Agreement, any Project Approval or Subsequent Approval, SPA and/or a Developer affected by such approval provides written notice to the City that it objects to the procedures used by the City or to the substantive provisions of such approval. City, SPA and/or those Developers affected by such action or proceeding shall use best efforts to select mutually agreeable legal counsel to defend such action, and SPA and any Developer shall pay compensation for such legal counsel; provided, however, that such compensation shall include only compensation paid to counsel not otherwise employed as City staff and shall exclude, without limitation, City Attorney time and overhead costs and other City staff time and overhead costs and normal day-to-day business expenses incurred by City. SPA or a Developer's obligation to pay for legal counsel shall not extend to fees incurred on appeal unless otherwise authorized by SPA or a Developer. Unless SPA or any Developer has provided written notice to the City as provided in the first sentence of this Section, SPA and any Developer shall also reimburse the City for any award of attorney fees or court costs awarded to any person not a party to this Agreement in any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement or any Project Approval or Subsequent Approval. In the event SPA and/or a Developer and City are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel at its own expense.

Section 9.02. Cure; Reapproval. If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 10.06, all or any portion of this Agreement, the Project Approvals, or any Subsequent Approvals are set aside or otherwise made ineffective by any judgment (a "Judgment") in such action or proceeding (based on procedural, substantive or other deficiencies, hereinafter "Deficiencies"), City and SPA and/or the Developers affected by the Judgment agree to use their respective best efforts to sustain and reenact or readopt this Agreement, the Project Approvals, and any Subsequent Approvals that the Deficiencies related to, as follows, unless City and SPA mutually agree in writing to act otherwise:

- (a) If any Judgment requires reconsideration or consideration by City of this Agreement, a Project Approval, or a Subsequent Approval, then City shall consider or reconsider that matter in a manner consistent with the intent of

this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement, a Project Approval, or a Subsequent Approval, then City and SPA and/or the Developers so affected shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement. City shall then readopt or reenact this Agreement, any Project Approval, Subsequent Approval, or any portion thereof, to which the Deficiencies related.

- (b) Acting in a manner consistent with the intent of this Agreement includes, but is not limited to: (i) recognizing that the parties intend that Developers may develop the Staples Ranch Project; and (ii) adopting such ordinances, resolutions, and other enactments as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and / or Subsequent Approvals without contravening the Judgment.

ARTICLE 10. DEFAULT; REMEDIES; TERMINATION

Section 10.01. Defaults. Any failure by City, SPA or a Developer to perform any term or provision of this Agreement, which failure continues uncured for a period of 30 days following written notice (“Default Notice”) of such failure from another party (unless such period is extended by mutual written consent between the noticing party and the noticed party), shall constitute a default under this Agreement. A Default Notice may be given only by the obligee of the covenant or covenants of this Agreement that have been breached. A Default Notice shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Upon the occurrence of a default under this Agreement, a non-defaulting party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement insofar as it relates to the defaulting party. If the default is cured, then no default shall exist and the noticing party shall take no further action.

Section 10.02. Termination. If City elects to consider terminating this Agreement as to SPA or any particular Developer due to a material default of SPA or such Developer, then City shall give a notice of intent to terminate this Agreement insofar as it applies to the noticed party and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. The noticed party shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement as to the noticed party, City shall give written notice of termination of this Agreement to the noticed party by certified mail and this Agreement shall thereby be terminated, insofar as it applied to the noticed party,

60 days thereafter; provided, however, that if the noticed party files an action to challenge City's termination within such 60-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City's termination of this Agreement insofar as it applied to the noticed party and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

Section 10.03. Periodic Review.

- (a) Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every 12 months following the execution of this Agreement, City may, and upon request of SPA or a Developer shall, review the extent of good-faith compliance with the terms of this Agreement. This review (the "Periodic Review") shall be conducted by the Director of Community Development or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to Section 65865.1 of the Development Agreement Statute.
- (b) Notice. At least 10 days prior to the Periodic Review, and in the manner prescribed in Article 10 of this Agreement, City shall deposit in the mail to SPA and the Developers a copy of any staff reports and documents to be used or relied upon in conducting the review of their compliance and, to the extent practical, related exhibits concerning their performance hereunder. SPA and the Developers shall be permitted an opportunity to respond to City's evaluation of their performance, either orally at a public hearing or in a written statement, at their election. Such response shall be made to the Director of Community Development.
- (c) Good Faith Compliance. During the Periodic Review, the Director of Community Development shall review SPA and the Developer's good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the Director of Community Development shall make written findings and determinations, on the basis of substantial evidence, as to whether or not SPA and the Developers have complied in good faith with the terms and conditions of this Agreement. The decision of the Director of Community Development shall be appealable to the City Council. If the Director of Community Development finds and determines that SPA or a Developer has not complied with such terms and conditions, the Director of Community Development may recommend to the City Council that it terminate or modify this Agreement as to SPA or that Developer by giving notice of its intention to do so, in the manner set forth in Sections 65867 and 65868 of the Development Agreement Statute. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally by the Developers and City.
- (d) Written Notice of Compliance. With respect to any year for which SPA or a Developer has been determined or deemed to have complied with this

Agreement, City shall, within 30 days following request by SPA or a Developer, provide a written notice of compliance, in recordable form, duly executed and acknowledged by City. SPA or Developer shall have the right, in its sole discretion, to record such notice of compliance.

Section 10.04. Default by City, SPA or a Developer. In the event City, SPA or a Developer defaults under the terms of this Agreement, City, SPA or Developer shall have all rights and remedies provided herein or under law.

Section 10.05. Enforced Delay; Extension of Time of Performance. In addition to other provisions of this Agreement relating to other types of delay, neither SPA, nor City, nor a Developer shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, terrorism, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting state or federal laws or regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement or any of the Project Approvals or Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Staples Ranch Project pursuant to this Agreement, or SPA's or a Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Staples Ranch Project, shall be deemed to create an excusable delay as to SPA or such Developer. Upon the request of either party hereto, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be memorialized in writing. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon.

Section 10.06. Legal Action. City, SPA or a Developer may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or obtain any remedies consistent with the purpose of this Agreement.

Section 10.07. California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 10.08. Resolution of Disputes. With regard to any dispute involving development of the Staples Ranch Project, the resolution of which is not provided for by Applicable Law, SPA and / or a Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 10.08 shall in any way be interpreted as requiring that SPA and / or a Developer and City and or City's

designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City, SPA or a Developer unless expressly agreed to by the parties to any such meetings.

Section 10.09. Attorneys' Fees. In any legal action or other proceeding brought by City, SPA or a Developer to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any other costs incurred in that proceeding in addition to any other relief to which it is entitled.

Section 10.10. Hold Harmless. SPA and each Developer shall hold City and its elected and appointed officers, agents, employees, and representatives harmless from claims (including claims for attorneys fees), actions, costs, and liabilities for any personal injury, death, or property damage which is a result of the construction of the Staples Ranch Project, or of operations performed under this Agreement by SPA, by each Developer, or by each Developer's contractors, subcontractors, agents or employees, whether such operations were performed by a Developer or any of Developer's contractors, subcontractors, agents or employees. Nothing in this section shall be construed to mean that SPA or a Developer shall hold City harmless from any claims of personal injury, death or property damage arising from, or alleged to arise from, any act, failure to act, on the part of City, its elected and appointed representatives, offices, agents and employees.

ARTICLE 11. NO AGENCY, JOINT VENTURE OR PARTNERSHIP

It is specifically understood and agreed to by and between City and SPA that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) SPA and the Developers shall have full power over and exclusive control of the Staples Ranch Project herein described, subject only to the limitations and obligations of SPA and the Developers under Applicable Law; and (iv) City and SPA hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and SPA and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and SPA.

ARTICLE 12. MISCELLANEOUS

Section 12.01. Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

Section 12.02. Enforceability. City and SPA agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change

hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the Effective Date as provided by Section 65866 of the Development Agreement Statute.

Section 12.03. Findings. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan and the Staples Ranch Specific Plan, as amended.

Section 12.04. Acknowledgement of Pre-Development and Cooperation Agreement. SPA acknowledges that City has provided to SPA a copy, and SPA is aware of the existence, of that certain Pre-Development and Cooperation Agreement by and among the City of Livermore, the County of Alameda, SPA, the City of Pleasanton, and CalMat Co., d/b/a Vulcan Materials Company, Western Division (“Vulcan”), dated as of September 18, 2007 (the “Cooperation Agreement”), and further acknowledges that SPA has reviewed and understands the provisions of the Cooperation Agreement, including but not limited to the provisions thereof that prohibit the City’s issuance of certain permits for SPA’s project unless and until City complies with its obligations under the Cooperation Agreement, and allow Vulcan to join SPA as a real party in interest in any action to enforce City’s obligations under the Cooperation Agreement. SPA consents to the recordation of the Memorandum of Agreement on title to SPA’s property and shall execute and deliver to City all documents required to evidence the consent to recordation. As required by Section 10.2(b) of the Cooperation Agreement, SPA and each Developer shall provide each potential tenant or purchaser of any property in the Project Site from SPA or such Developer with the written disclosure statement attached hereto as Exhibit G-1. As required by Section 10.3(b) of the Cooperation Agreement, SPA and each Developer shall attach the rider attached hereto as Exhibit G-2 to each deed from SPA or such Developer for any property in the Project Site.

Section 12.05. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City, or SPA, or a Developer insofar as the Agreement applies to the Developer, may (in its sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.

Section 12.06. Other Necessary Acts. City, SPA and the Developers shall execute and deliver to each other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to each other the full and complete enjoyment of its rights and privileges hereunder.

Section 12.07. Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to this Agreement, Project Approvals or Subsequent Approvals as they may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and SPA, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 12.08. Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

Section 12.09. Covenants Running with the Land. Subject to the terms of Article 8 of this Agreement, the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Staples Ranch Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Staples Ranch Project, as appropriate, runs with the Project Site and, subject to the terms of Article 8 of this Agreement, is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.

Section 12.10. Notices. Any notice or communication required hereunder between City or SPA or a Developer must be in writing, and may be given either personally, by telefacsimile (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party’s facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to

occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) 5 days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving 10 days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

City Manager
123 Main Street
P.O. Box 520
Pleasanton, CA 94566
Phone: 925-931-5002
Fax: 925-931-5482

With Copies to:

Director of Community
Development
200 Old Bernal Avenue
P.O. Box 520
Pleasanton, CA 94566
Phone: 925-931-5600
Fax: 925-931-5483

If to SPA, to:

Chris Bazar
Manager
Alameda County Surplus Property
Authority
224 Winton Avenue, Room 110
Hayward, CA 94544
Phone: 510-670-5333
Fax:

With Copies to:

R. Clark Morrison, Esq.
Cox Castle & Nicholson, LLP
555 California St., 10th Floor
San Francisco, CA 94104
Phone: 415-392-4200
Fax: 415-392-4250

Section 12.11. This Agreement Controls. This Agreement prevails over any conflicts or inconsistencies between its terms and the terms of any Project Approval or Subsequent Approval.

Section 12.12. Entire Agreement, Counterparts and Exhibits. This Agreement is executed in two duplicate counterparts, each of which is deemed to be an original. This Agreement consists of __ pages and exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and SPA. The following exhibits are attached to this Agreement and incorporated herein for all purposes:_____.

Section 12.13. Recordation of Development Agreement. Pursuant to the Development Agreement Statute, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of Alameda no later than 10 days after the City Manager signs this Agreement.

IN WITNESS WHEREOF, this Agreement has been entered into by and between SPA and City as of the day and year first above written.

[remainder of page intentionally left blank – signature pages follow]

SPA:

By: _____

By: _____

City:

By: _____

Name: Nelson Fialho _____

Its: City Manager _____

Attest:

Karen Diaz, City Clerk

Approved as to form:

Jonathan P. Lowell, City Attorney