

**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF SUTTER CREEK AND GOLD RUSH GOLF, LLC
RELATIVE TO THE DEVELOPMENT KNOWN AS GOLD RUSH RANCH AND GOLF RESORT**

This DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into this _____ of _____, 2008, by and between the City of Sutter Creek, a Governmental Entity of the State of California, (the “**City**”), and Gold Rush Golf, LLC, a California limited liability company, (the “**Developer**”), pursuant to the provisions of the California Government Code relating to development agreements. (Government Code §§65864, et seq.)

RECITALS

A. In order to strengthen the public land use planning process, to encourage private participation in the process, to reduce the economic risk of development and to reduce the waste of resources, the Legislature adopted the Development Agreement statutes. (Government Code, §§65864, et seq.)

B. The Development Agreement statutes permit cities and counties to enter into agreements with developers for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements, as authorized by the Development Agreement statutes, can assure developers they may proceed with projects assured that approvals granted by public agencies will not change during the period of development of their projects. Cities and counties are equally assured that costly infrastructure and public facilities such as, but not limited to, roads, sewers, utilities, transportation systems, fire protection facilities and affordable housing will be available at the time that proposed developments are completed and utilized.

C. This Agreement pertains to that certain development project (the “**Project**”) generally described as Gold Rush Ranch and Golf Resort, a golf course and associated residential housing development on property more particularly described in **Exhibit “A”** (the “**Property**” or the “**Subject Property**”). The Project is more particularly described in, and is the subject of, those certain land use approvals granted by the City Council on ____, 2008 as listed in Recital F below. All of the parties to this Agreement have, in good faith, negotiated the terms hereof which carry out the legislative purpose set forth in Recital B above. The parties to this Agreement mutually desire to achieve the full development and completion of the Project.

D. Project amenities include a residential development integrated with the existing City's community coupled with an 18-hole golf course; supply land for commercial development; enhance the City and ARSA disposal capacity by wastewater treatment facility expansion and development of the golf course/spray field; include over 300 acres of permanently preserved open space and recreational areas coupled with oak tree preservation and mitigation; provide in excess of 20 acres of parkland; provide a hotel and associated vacation ownership homes; and provide land needed to house new police and fire facilities.

E. Developer has a legal and/equitable interest in that certain real property more particularly described on **Exhibit "A"**, located in the City and County of Amador, and desires thereon to develop the Project.

F. City, in response to earlier applications and after public hearings and environmental analysis, has granted the following entitlements:

1. By Resolution No. _____ dated _____, 2008; amended the City General Plan.
2. By Resolution No. _____ dated _____, 2008 adopted the Gold Rush Ranch and Golf Resort Specific Plan (the "**Specific Plan**"), a copy of which is included as **Exhibit "B"**.
3. By Ordinance Nos. _____ effective _____, 2009 created five (5) new zoning designations: Conservation and Open Space Preserve (COSP); Mixed-Use Commercial, Office, and Residential (MXCOR); Mixed-Use Commercial/Recreation (MXCR); Single Family Residential (SFR); and Attached Residential (ATR), a copy of which is included as **Exhibit "C"**.
4. By Resolution No. _____, dated _____, 2008 approved and adopted a vesting large lot tentative subdivision map ("Vesting Tentative Map") subject to conditions, a copy of which is included as **Exhibit "D"**.
5. By Resolution No. _____, dated _____, 2008 approved and adopted the Gold Rush Ranch and Golf Resort Community Design and Performance Standards, a copy of which is included as **Exhibit "E"**.
6. By Ordinance No. _____, effective _____ 2009, authorized the City to enter in this Agreement with Developer.

G. In support of this Agreement, the City concurs in and has certified the Environmental Impact Report (“EIR”) and Notice of Determination for the Project and finds that no subsequent or supplemental environmental review, in addition to the previously certified Final EIR (“FEIR”), is necessary. In reaching this determination, the City finds that there have been no changes proposed to the Project by the adoption of this Agreement which create or relate to new significant environmental impacts not previously considered in the FEIR. No subsequent changes are anticipated to occur with respect to the circumstances under which the Project will be undertaken, and no information has become, or is anticipated to become available which will relate to significant effects not previously discussed, nor will any significant effect previously analyzed in the FEIR become more severe, nor will mitigation measures or alternatives not found to be feasible or not previously considered have any significant effect. Except as potentially required for subsequent discretionary entitlements, no further environmental documentation is anticipated.

H. The City and the Developer have taken all actions mandated by and fulfilled all requirements set forth in the City Code governing requirements for development agreements.

I. The Development of the Property pursuant to the terms and conditions of the various entitlements, the Specific Plan and the FEIR will provide for orderly growth and development consistent with the City’s General Plan and other development policies and programs.

J. On _____, the City Planning Commission, designated by the City as the Planning Agency for purposes of Development Agreement Review pursuant to Government Code section 65867, considered this Agreement, prior to approval by the City Council.

K. Having duly considered this Agreement and having held the requisite noticed public hearings, the City finds and declares that the provisions of this Agreement are consistent with the maps and text of the City's General Plan, and the Specific Plan.

THEREFORE, the parties hereto agree as follows:

ARTICLE 1

GENERAL PROVISIONS

1.1 The Project. The Project is the development and use of the Subject Property, consisting of approximately nine hundred forty-five (945) acres southwest of the City’s downtown area, in accordance with the Specific Plan. The Specific Plan describes a mixed-use project consisting of an 18-hole golf course/wastewater spray field, a golf course and related facilities, one thousand three hundred thirty-four (1334) single family residential units, three hundred (300) interval-ownership vacation units, a sixty (60) room hotel, fifty-seven thousand (57,000) square feet of neighborhood commercial uses, parks,

and a police/fire station site, and twenty (20) acres of passive recreational uses, three hundred (300) acres permanently preserved open space with hiking trails, plus oak tree preservation and mitigation areas. The land use characteristics of the above uses are described in more detail in the Specific Plan, implementing zoning ordinance, and Community Design and Performance Standards.

The Project which is the subject of this Agreement contemplates the development of the Subject Property as set forth in the **Exhibit “B”** through **Exhibit “E”** incorporated herein. The layout, site design, and building designs of the Project shall be in the form generally depicted in the approved Vesting Tentative Map. It is understood that the Project may be developed in phases, and Developer wishes to secure assurances regarding the existing land use regulations to be applied and the approvals to be granted to the Project through this Agreement.

1.2 Best Interests. By approving the Planning Documents and this Agreement, City has made a final policy decision and finding that the Project has been approved and is in the best interests of the public health, safety and general welfare and, specifically, in the best interests of the City. All subsequent City Development Approvals shall be deemed to be tools to implement those final policy decisions and approvals.

1.3 Other Definitions. As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

1.3.1 “Adopting Ordinance” means Ordinance No. _____ entitled: “An Ordinance of the City of Sutter Creek Approving a Development Agreement between the City of Sutter Creek and Gold Rush Golf, LLC” dated_____, 2008 which approves this Development Agreement as required by Government Code section 65867.5.

1.3.2 “Agreement” or “Development Agreement” as used herein refers to this Development Agreement.

1.3.3 “Annexation Area” means three hundred and thirty-three acres (333) of land between the existing City limits and the Project Specific Plan area that may be annexed into the City boundaries as depicted on **Exhibit “F”**.

1.3.4 “Assumption Agreement” shall mean an agreement substantially conforming to the model assumption agreement included in **Exhibit “G”**, executed by a Landowner with the Developer, expressly assuming various obligations relating to the development of the Project, or a portion thereof.

1.3.5 “CEQA” shall means the California Environmental Quality Act, §§21000, et seq., of the Public Resources Code of the State of California.

1.3.6 “Certificate of Occupancy” shall mean either a certificate issued after inspections by the City authorizing a person or persons in possession of property to use a specified building, or the City approval of the final inspection of an improvement plan, grading plan, or other plan authorizing a person to construct certain improvements if a formal certificate is not issued.

1.3.7 “City” shall mean the City of Sutter Creek, a Governmental Entity of the State of California.

1.3.8 “City Council” shall mean the duly elected governing body of the City of Sutter Creek.

1.3.9 “Collective Standards” shall mean the Development Agreement, Planning Documents, Existing Land Use Regulations and Impact Fees.

1.3.10 “Developer” shall mean Gold Rush Golf, LLC, a California limited liability company, and its successor(s) in interest.

1.3.11 “Development Approvals” shall mean site-specific permits and other entitlements to use of every kind and nature approved or granted by the City in connection with the Project including, but not limited to: subdivision approvals (including tentative maps, vesting tentative maps, final maps, parcel maps, and map waivers), development permits, conditional use permits, variances, oak tree permits, grading permits, building permits, and occupancy permits.

1.3.12 “Director” shall mean the Planning Director of the City, or if none, then the City Manager.

1.3.13 “Effective Date” shall mean the effective date of the Adopting Ordinance.

1.3.14 “Existing Land Use Regulations” shall mean the ordinances, resolutions and regulations adopted by the City in effect on the Effective Date including the adopted ordinances that govern the permitted uses of land, the density and intensity of use and the timing of development, the design, improvement and construction standards, and specifications applicable to the development of the Subject Property, including but not limited to, the General Plan, the zoning ordinances and all other ordinances, codes, rules, and regulations of the City establishing subdivision standards, park regulations, impact or development fees, building standards and road and infrastructure improvement standards.

1.3.15 “General Plan” shall mean the General Plan of the City as it exists on the Effective Date, including the text and maps, as amended in connection with the Project.

1.3.16 “Impact Fees” shall mean those impact fees set forth in **Exhibit “H”**.

1.3.17 “Planning Documents” mean, and shall be limited to, those approvals set forth in Recital F(1)-(5) as well as other subsequent approval granted to Developer.

1.3.18 “Project” means the anticipated development of the Subject Property in accordance with the Specific Plan and as set forth in Section ___ and as provided for in the provisions of this Agreement, including all incorporated exhibits.

1.3.19 “Specific Plan” means the Gold Rush Ranch and Golf Resort Specific Plan, a copy of which has been included as **Exhibit “B”**.

1.3.20 “Subject Property” or “Property” means the property described in **Exhibit "A"**.

1.3.21 “Zoning Ordinance” or “Rezoning” means that Project specific ordinance which is included as **Exhibit “C”**.

1.4 Exhibits. Exhibits to this Agreement are bound in a separate volume and are on file with the City Manager. The Exhibits are:

| | |
|------------------|---|
| Exhibit A | Legal Description |
| Exhibit B | Specific Plan |
| Exhibit C | Zoning Ordinances |
| Exhibit D | Large Lot Map |
| Exhibit E | Gold Rush Community Design and Performance Standards |
| Standards | |
| Exhibit F | Annexation Area Map |
| Exhibit G | Assignment and Assumption Agreement |
| Exhibit H | Impact Fees |
| Exhibit I | Revised and Restated Wastewater Disposal Spray Easement Agreement |
| Exhibit J | Park Fee Credits |
| Exhibit K | Fiscal Report |
| Exhibit L | Road Reimbursement Schedule |
| Exhibit M | Secondary Access Map |
| Exhibit N | Secondary Road Reimbursement Standards |
| Exhibit O | Road Fee Credits |

1.5 Incorporation of Recitals and Exhibits. The recitals A through K to this Agreement and all exhibits referred to in said recitals and in the other provisions of this Agreement are herein incorporated by reference.

1.6 Parties to Agreement The Parties to the Agreement are:

(a) The City. The City of Sutter Creek is Municipal Corporation formed under the Laws of the State of California exercising general governmental functions and power. The principal office of the City is located at:

City of Sutter Creek
18 Main Street
Sutter Creek, California 95685

(b) The Developer. Gold Rush Golf, LLC is a private enterprise which has legal or equitable interest in the Subject Property. Developer's principal office for the purpose of this agreement is:

Gold Rush Golf, LLC
45 Koch Road, Suite A
Corte Madera, CA 94925

(c) Landowner. From time to time, as provided in this Agreement, Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

1.7 Project is A Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions. Nothing in this Agreement shall preclude the Developer from forming any form of private investment entity for the purpose of completing any portion of the Project.

1.8 Term of Agreement and Effective Date. This Agreement shall commence upon the Effective Date of the Adopting Ordinance approving this Agreement and, so long as the Developer is in compliance with its provisions, it shall continue in full force and effect for fifteen (15) years from the Effective Date unless extended or terminated as provided herein. This Agreement shall be automatically extended for an additional five (5) years, for a total of twenty (20) years, upon completion of the golf course and three hundred fifty (350) dwelling units. If, after the original Effective Date of this Agreement, its initiation, subsequent implementation, phasing or timing, and/or completion, is delayed by unforeseen circumstances beyond the reasonable control of the Developer, including, but not limited to, development or building moratoria, governmental restrictions of any kind on development or building, initiatives, referenda, or lawsuits adverse to the Developer and/or the Project, the term of this Agreement shall be extended by the length of time during which proceeding with the Project was subject to the period of unforeseen delay. In the event of a legal challenge to the Planning Documents, the term shall be automatically extended by the period of time required to obtain final adjudication of the legal challenge.

As to the portions of the Project subject to annexation to the City, this Agreement shall not take effect as to-be annexed property until such time as annexation proceedings are completed.

1.9 Priority of Enactment. In the event of conflict between the Development Agreement, the Planning Documents, and the Existing Land Use Regulations, the parties agree that the following sequence of approvals establishes the relative priority of the approvals; with each approval being superior to the approvals listed thereafter: (1) The Specific Plan (2) the Development Agreement; (3) the Planning Documents, other than the Specific Plan; and (4) the Existing Land Use Regulations.

1.10 Assignment and Assumption. Developer shall have the right to sell, assign, or transfer this Agreement or any portion hereof with all the rights, title and interests therein to any person or entity who, at any time during the term of the Agreement, succeeds to any interest in any portion of the Subject Property, such rights, title and interest being appurtenant to the Subject Property and all part and portions thereof. The conditions and covenants set forth in this Agreement and incorporated herein through exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties and their successors. Notwithstanding any such assignment, the Developer shall be entitled to all of the rights, title and interest hereunder with respect to the property retained by the Developer.

Delivery to the City of an executed Assignment Agreement in substantial compliance with **Exhibit “G”** shall constitute a complete release of the Developer as to the real property subject of the Assignment Agreement.

1.11 Covenants Running With the Land. Each and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of the Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned, or transferred to it. Provided however, notwithstanding anything to the contrary above, if any such sale, assignment or transfer relates to a completed residential or commercial unit or non-residential building or a portion thereof, which has been approved by the City for occupancy, the automatic termination provisions of Section 5.1 herein shall apply thereto, and the rights and obligations of the Developer hereunder shall not run with respect to such portion of the Subject Property sold, assigned or transferred and shall not be binding upon such purchaser, assignee or transferee. Any such sale, assignment or transfer shall constitute a release from this Agreement of the Developer as to that Property approved for occupancy.

1.12 Amendment to Agreement. This Agreement, as it pertains to any portion of the Subject Property, may be amended by mutual consent of the City and the Developer, or, if the portion has been purchased, assigned or transferred, by mutual consent of the City and such purchaser, assignee or transferee, in writing, in accordance with the provisions of California Government Code §65868, provided that any amendment which relates to the term, permitted uses, density, intensity of use, height and size of proposed buildings, or provisions for reservation and dedication of land shall require a noticed public hearing before the parties may execute any amendment. Unless otherwise provided by law, all other amendments may be approved without a noticed public hearing.

1.13 Operating Memorandum. The City and Developer may implement or clarify provisions of this Agreement through the execution of an “Operating Memorandum” approved by the City and Developer, from time to time during the Term. Any such Operating Memoranda shall be automatically deemed a part of this Agreement, but approval, implementation and/or amendment thereof shall not constitute or require an amendment to the Agreement or require public notice or hearing. In the event a provision in any Operating Memorandum conflicts with this Agreement, the Agreement shall control. The Planning Director or City Manager is authorized to approve any Operating Memorandum or amendment thereto on behalf of the City, but may request City Council review and approval of any proposed Memorandum, if he or she deems it necessary or desirable.

1.14 Agreement is between the Developer and the City. This Agreement is between the Developer and the City. Unless otherwise provided by law or provisions of this Agreement, this Agreement does not apply to other special districts or governmental agencies not party to this Agreement and whose permit or approval authority is not exercised through, by, or on behalf of the City. This Agreement has no effect on the rules, regulations and fees of other special districts or governmental agencies that may have independent permit or approval authority over the Project and whose permit or approval authority is not exercised through, by, or on behalf of the City.

ARTICLE 2

PROJECT DEVELOPMENT

2.1 Vested Right to Develop. It is agreed that the development rights, obligations, terms and conditions specified in this Agreement are fully vested in the Developer and may not be changed, modified, invalidated or otherwise limited by the City, whether by administrative action, legislative action, or, to the extent allowed by law, vote of the electorate through initiative, referenda and/or other voting process, except as may be expressly permitted by and in accordance with the terms and conditions of this Agreement, or as are expressly consented to by the Developer or any approved successor in interest.

The Developer is assured, and the City agrees, that development rights, obligations, terms and conditions specified in the Collective Standards are fully vested in the Developer and may not be changed or modified by the City except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, or as expressly consented thereto by the Developer to the extent such proposed change or modification is applicable thereto.

To the maximum extent permitted by law, the City shall take any and all actions as may be necessary or appropriate to ensure that the vested rights allowed by this Agreement can be enjoyed by Developer. The City shall not support, adopt, or enact any ordinance, resolution, land use regulation or other measure, or take or fail to take any other action, which would violate the provisions or intent of any Project Approvals necessary or appropriate to implement this Agreement.

Should such vested rights not be exercised during the term of this Agreement by the Developer by undertaking and completing the contemplated Project, then such vested rights shall not survive beyond the term of this Agreement and any applicable extensions. Should, in the future within the term of this Agreement, any or all of the

Project be destroyed by fire, earthquake, or other similar causes, then the Developer, or its successors, shall have a continuing vested right to rebuild or repair such damaged or destroyed structures, infrastructure, public and private facilities and Property within the term of this Agreement and to continue the vested uses granted hereunder.

2.2 Vested Rights Established Independent of the Development Agreement. Nothing in this Agreement, nor the termination or expiration thereof, shall conflict with any rights the Developer possesses as a result of other statutes (e.g., vesting tentative subdivision map approvals) or at common law.

2.3 Permitted Uses and Development Standards. The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public and private improvements, subdivision standards, development guidelines and standards, implementation program for processing of subsequent entitlements, and other conditions of development for the Subject Property shall be those set forth in the Collective Standards. The parties hereto intend that the Collective Standards shall serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to the development, subdivision, and occupancy of the Project. All development shall be in substantive conformity with the Collective Standards to the approval of the Planning Director. Except as otherwise stated in this Agreement, subsequent approvals undertaken pursuant to and in conformity with the Project, approved concurrently with the adoption of this Agreement, shall not be conditioned upon adherence to other ordinances, rules, regulations or requirements.

2.4 Life of Subdivision Maps, Development Approvals, and Permits. The term of any subdivision map, tentative map, vesting tentative map, final map or any other map, pursuant to California Government Code section 66452.6, permit (except building permits and grading permits), rezoning or other land use entitlements approved as a Project Approval or subsequent City Approval shall automatically be extended for a minimum term equal to the Term of this Agreement. The Term of this Agreement and of any subdivision map, tentative map, vesting tentative map, final map or any other map or any other City Approvals shall not include any periods of time during which the Project is delayed by unforeseen circumstances beyond the control of the Developer, including, but not limited to, development or building moratoria, or other governmental restrictions of development or building, or lawsuits adverse to the Developer and/or the Project.

2.5 Amendments. Any amendments to Recital Documents F(1)-(5) agreed to by the Developer and City do not require an amendment to this Agreement.

Amendments to this Agreement shall require the approval of the Developer or successor in interest of the real property which is subject to the amendment.

2.6 No Conflicting Enactments. Neither the City, any agency of the City, nor the voters shall enact and apply to the Subject Property any ordinance, resolution or other measure that relates to the rate, timing or sequencing of the development or construction of the Subject Property on all or any part of the Subject Property that is in conflict with this Agreement, or any amendments thereto, or that reduces the development rights provided by this Agreement. Without limiting the foregoing general statement, and for all purposes pursuant to this Agreement generally, and this Section specifically, an ordinance, resolution or other measure, including an initiative shall be deemed to conflict with this Agreement if the ordinance, resolution or other measure seeks to accomplish any one or more of the following results, either with specific reference to this Subject Property or as part of a general enactment that applies to this Subject Property would or could:

- (a) Limit or reduce the density or intensity of the Project development granted by the Collective Standards or otherwise require any reduction in the height, number, size or square footage of lots, structures or buildings;
- (b) Expand or increase Developer's obligations under the Collective Standards with respect to the provision of parking spaces, streets, roadways and/or any other public or private improvements or structures;
- (c) Directly limit public services or facilities otherwise available (e.g., water, drainage, sewer or sewage treatment capacity) to, within, or available for use by the Project;
- (d) Limit or control in any manner the timing or phasing of the construction/development of the Project allowed by the Collective Standards;
- (e) Limit the location of buildings, structures, grading or other improvements relating to the development of the Project in a manner which is inconsistent with or more restrictive than the Collective Standards;
- (f) Limit the processing of applications for, or procurement of, Subsequent Approvals;
- (g) Establish, enact or increase in any manner applicable to the Project, or impose against the Project, any fees, taxes (including, without limitation, general, special, and excise taxes), assessments, liens or other financial obligations other than those specifically permitted by this Agreement; or

(h) Initiate, support or establish any assessment district or other public financing mechanism that would include or otherwise burden or affect the Project or the Subject Property that has not been established prior to the Effective Date.

Clauses (a) through (h) above are intended as examples, and not as a comprehensive or exclusive list, of new development requirements that would or could conflict with the Collective Standards, and therefore with this Agreement. This section is written and included specifically to avoid the result in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465.

2.7 Changes to Existing Land Use Regulations. Only the following changes to the Existing Land Use Regulations shall apply to the development of the Subject Property:

(a) Land use regulations, ordinances, policies, programs, resolutions or fees adopted or undertaken by the City in order to comply with regional, state or federal laws, plans or regulations, provided that in the event that such regional, state or federal laws, plans or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provision or provisions shall be modified or suspended as may be necessary to comply with such regional, state or federal laws or regulations.

(b) City land use regulations, ordinances, policies, programs, resolutions or fees adopted after the Effective Date, that are not in conflict with the terms and conditions for development of the Subject Property established by this Agreement or otherwise applicable Existing Land Use Regulations and which do not impose additional burdens on such development.

(c) City land use regulations, ordinances, policies, programs, resolutions or fees adopted after the Effective Date, which are in conflict with the Existing Land Use Regulations, but the application of which to the development of the Subject Property has been consented to in writing by the Developer and/or the applicable Landowner either through this Agreement or by later separate document.

2.8 Application, Processing and Inspection Fees. Application fees, processing fees and inspection fees that are revised during the term of this Agreement shall apply to the Project, provided that such revised fees apply generally to similar private projects or works within the City.

2.9 No New Impact Fees. Except as expressly set forth in **Exhibit "H"**, the Developer, shall have no obligation to participate in, pay, contribute, or otherwise provide as a condition or exaction of any subsequent approval by the City, any new impact fee.

2.10 Timing of Payment of Impact Fees. Unless otherwise provided for in this Agreement or the Planning Documents, impact fees are payable at the time of issuance of a building permit.

2.11 Timing of Development and Phasing Plan. The parties acknowledge that the most efficient and economic development of the Subject Property depends upon numerous factors, such as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers to have the rate of development determined by Developer. The timing, scope, sequencing and phasing of the development is solely the responsibility of the Developer, and the City Council shall not impose, by ordinance, resolution or otherwise, any restrictions on such timing, sequencing or phasing of development within the Subject Property. Furthermore, the timing of the construction of acquired facilities, pursuant to any acquisition agreement, is the sole discretion of the Developer. Developer may phase final subdivision maps as the Developer determines in its sole discretion. The City may impose reasonable conditions on the phasing of final maps as permitted by the Subdivision Map Act.

2.12 Obligations and Rights of Mortgage Lenders. The holder of any mortgage, deed of trust or other security arrangement with respect to the Subject Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Subject Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Subject Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Subject Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Subject Property, or such portion thereof, which accrue prior and subsequent to the time such holder comes into possession. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Subject Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

2.13 Sales and Use Tax Allocations. Developer shall make reasonable efforts to ensure that its general contractors and major subcontractors exercise their option to obtain a Board of Equalization sub-permit for the job site and allocate all eligible use tax payments to the City. Developer shall direct its general contractors and major subcontractors to provide the City with either a copy of the sub-permit or a statement that a use tax does not apply to their portion of the job. The City will use best efforts to provide the Developer and/or the Developers' contractors and subcontractors with the information and materials necessary to exercise the above use tax option. Developer shall not be liable for monetary damages for non-compliance with this section.

2.14 Local Economic Opportunity. It is in the best interest of both the Developer and the City to create economic and job opportunities for local residents

through the construction and operation of the Projects. Employment of local residents will not require the creation of new housing, will reduce the turn over of employees, and maximize the number of dollars retained and recirculated within the City. In order to meet the objectives of this section in a manner consistent with state and federal laws regarding discrimination, right to travel, and interstate commerce, the Developer shall, with the support of the City, use reasonable efforts to encourage economic and job opportunities for local residents, including soliciting local contractors and subcontractors to participate in the bid process and utilizing local labor.

2.15 Wastewater Treatment Plant Improvements. Developer agrees to fund Developer's fair share of improvements to the City's wastewater treatment facilities (interim and long term) through a financing strategy mutually agreed upon by the City and Developer. Developer's share shall be based upon the costs of facilities which are designed in the most cost efficient manner while meeting all applicable laws and regulations. The estimated costs of the improvements are as set forth in the report prepared by HDR Engineering on file with the office of the City Manager. Subject to a mutually agreed upon financing strategy, the City agrees to undertake interim improvements and long term expansion in a timely and diligent manner, and to reserve capacity for the Developer. The parties shall meet in good faith and as maybe necessary to be reach joint approval within 180 days of the Effective Date.

(Note: subject to ongoing refinement and discussion.)

2.16 Restated Wastewater Agreement and Easement. The City and Developer recognize that various contractual arrangements respecting the Noble Ranch and wastewater disposal have been entered into by the City, the Amador Regional Sanitation Agency ("ARSA") and the Developer or its predecessors. These agreements are as follows and are collectively referred to as the Noble Ranch Contracts:

- (a) Memorandum of Agreement between the City and Troy D. Claveran dated November 19, 2001;
- (b) Amendment to Memorandum of Agreement between the City and Troy D. Claveran dated January 22, 2002;
- (c) Contract for Funding of Wastewater Disposal Facilities and Grant of Easement between ARSA and the City dated April 25, 2002;
- (d) Agreement between the City and Developer dated April 25, 2002; and
- (e) First Amendment to Contract for Funding Of Wastewater Disposal Facilities and Grant of Easement dated March ____, 2006

The City and Developer concur that the Revised and Restated Wastewater Disposal Spray Easement Agreement ("Disposal Easement"), a copy of which is included as **Exhibit "I"**, acknowledges, clarifies and restates all respective rights, duties and obligations

contained in the above identified Noble Ranch Contracts and thereby formally terminates those Nobel Ranch Contracts still in effect.

The City and Developer further recognize that the restatement of respective rights, duties and obligations, and termination of the Nobel Ranch Contracts has resulted in the Developer waiving its rights to the Put Option set forth in Section 7 of the Agreement between the City and the Developer dated April 25, 2002. In the event that Gold Rush Project entitlements were denied by the City, said Put Option gave Developer the option to put Project Phases to the City, and the City would have been required to purchase such Phases from the Developer at a cost of Two Million Four Hundred Thousand Dollars (\$2,400,000.00) plus interest of 6.25 percent compounded annually to 2009 for a total amount of Three Million Six Hundred Sixty Eight Thousand Seven Hundred Ten Dollars (\$3,668,710.00).

The City and Developer recognize that the Disposal Easement must be ratified independently by ARSA and the parties agree to cooperate with each other and to work timely and diligently to that end.

(Note: subject to ongoing refinement and discussion.)

2.17 Developer – City Collaboration on Open Space Lands Acquisition.

(a) Developer Responsibilities:

- (1) Developer commits, for the benefit of the City, up to one million dollars (\$1,000,000) in cash, for the acquisition of open space resources.
- (2) In the event of, and upon City execution of an option to purchase, Developer will make annual option payments of up to thirty thousand dollars (\$30,000.00), and shall fund the acquisition, the purchase of the property no later than the end of the option period, which shall be no earlier than 48 months from the Effective Date. The first payment by Developer to the City shall not be any earlier than six (6) months from the Effective Date.
- (3) Developer will make the payments to the City or to the optionee, as directed by the City Manager.
- (4) Developer shall not take title to the property.

(b) City Responsibilities:

- (1) The City shall identify the property and acquire the option, said option for a minimum of four (4) years, and the option shall not exceed thirty thousand dollars (\$30,000.00) annually in option payments.

- (2) The City shall give Developer ninety (90) days written notice before the first option payment is due.
- (3) The City shall, in good faith, and as permitted by law, keep Developer informed of the negotiations for the acquisition of the property.
- (4) The City shall give Developer credits against City park and recreation fees in an amount equal to the option and acquisition payments.
- (5) The City shall take title directly from the seller.
- (6) The City is not obligated to acquire any property, and the potential acquisition of any real property is subject to compliance with the California Environmental Quality Act.

2.18 Park Fee Credits. The City finds that the open space and recreational benefits of the Project are of significant public benefit. City will give Developer a partial credit against those fees adopted pursuant to Ordinance 319. Facilities, improvements and commitments as set forth in **Exhibit “J”** shall be eligible for credits against the Ordinance 319 fees, as set forth in the Exhibit.

2.19 Developer Support for Protection of Historic Resources.

(a) Developer Responsibilities:

- (1) Developer shall pay the City Historical Capital Facility Fee in the amount and at the time specified by the existing ordinance. The City may use the fees towards acquisition of the Knight Foundry.
- (2) Upon written demand by the City, Developer shall advance additional fees, not to exceed thirty-five thousand dollars (\$35,000.00) a year, to be used for debt service, due diligence and title costs, incurred by the City in acquiring the Knight Foundry. The first payment by Developer to the City shall not be any earlier than six (6) months from the Effective Date.
- (3) Developer’s maximum liability under this section is limited to the total amount of fees that the Developer would otherwise be obligated to pay pursuant to the City’s existing Historical Capital Facility Fee.

(b) City Responsibilities:

- (1) The City shall use the impact fees for the purposes authorized by the existing ordinance, and shall use funds advanced by the Developer for debt service, title and due diligence expenses only.

- (2) The City shall give the Developer a credit against the City Historical Capital Facility Fee for all payments received pursuant to this section.
- (3) The City shall give Developer ninety (90) days written notice before Developer is required to advance any additional fees.
- (4) The City is not obligated to acquire the Knight Foundry, and the potential acquisition is subject to compliance with the California Environmental Quality Act.

2.20 Developer – City Cooperation on Additional Public Land Acquisition.

As part of implementation of the existing General Plan, the City is interested in investigating and potentially acquiring additional land for public purposes. Developer agrees to support this effort by donating up to sixty thousand dollars (\$60,000.00) a year, for up to five years (maximum obligation of three hundred thousand dollars (\$300,000.00)) which may be used by the City for legal, title, due diligence and option payments on real property as may be selected by the City.

The first payment by Developer to the City shall not be any earlier than six months from the Effective Date. The City will give Developer ninety (90) days written notice before Developer is required to donate funds.

The City is not obligated to acquire any additional land, and the potential acquisition is subject to compliance with the California Environmental Quality Act.

2.21 Community Facilities District.

(a) District Formation

- (1) City and Developer shall cooperate in the formation of a Community Facilities District (“District”). The purpose of the District is to (a) provide a revenue stream to the City to offset potential revenue shortfalls as identified in the Fiscal Report prepared by Goodwin Associates entitled “City of Sutter Creek: Analysis of the Fiscal Impacts of the Gold Rush Ranch and Golf Resort”, dated _____ (**Exhibit “K”**) and (b) provide a mechanism for financing capital improvements as determined necessary by, and in the sole discretion of, the Developer. For purpose of offsetting potential revenue shortfall, the maximum annual tax for each dwelling unit shall not exceed three hundred eight dollars (\$308.00; expressed in 2008 dollars), as may be adjusted for inflation. The City will monitor revenues and expenses and adjust the annual levy to conform to actual revenue and expense experience, but in no event will the tax levy exceed the maximum set forth in this paragraph.

(2) The District shall be formed and maximum authorized tax shall be levied prior to the recordation of the first small lot subdivision map.

(b) Developer Option for Credit

(1) Developer Responsibilities:

a) Developer has the option to dedicate up to ten (10) acres of land within the City limits. The City has the option, but not the obligation to accept the dedication. At the time of the dedication, the parties will meet in good faith to determine whether or not the dedication property is suitable for a fire/police station. If both parties agree, then the Developer shall have the option to transfer the fire/police station site planned within the boundaries of the Project to the new dedicated site.

b) If the property to be dedicated is located within 500 feet of the perimeter of the Project, then City and Developer will meet in good faith for the purpose of recording covenants, conditions and restrictions which assure compatibility of the future use of the property with the Project, including architectural compatibility.

(2) City Responsibilities:

a) City shall give the Developer a credit for the value of the dedication, based upon fair market value. "Fair Market Value" shall be determined by a reputable MAI appraiser to be chosen by the City and the Developer. In the event the City and the Developer are unable to agree on an appraiser, each shall select one appraiser, and the two appraisers shall select a third appraiser to provide an appraisal of the property. The appraisal by the third appraiser shall be binding on both parties.

b) In the event that the fire/police station site is relocated from the Project to the new dedication site, then the value of the dedication will be reduced by the acreage set aside for the fire/police facility.

c) The credit will be applied first to the estimated shortfall funding provided for in Section 2.21(a), and if none, to City impact fees.

d) If the property to be dedicated is located within 500 feet of the perimeter of the Project, then City and Developer will meet in

good faith for the purpose of recording covenants, conditions and restrictions which assure compatibility of the future use of the property with the Project, including architectural compatibility.

e) The City is not obligated to accept the dedication. The dedication of any property is subject to compliance with the California Environmental Quality Act.

2.22 Affordable Housing Strategy.

(a) Developer Responsibilities:

(1) Developer has the option to dedicate to the City, two acres of land for the construction of affordable housing or constructing forty-two (42) units of housing affordable to individuals and families earning 80-120% of median income. The dedication of land or construction of units may be onsite or offsite to the Project.

(b) City Responsibilities:

(1) In the event that the Developer elects to construct forty-two units of housing affordable to individuals and families earning 80-120% of median income, the Developer shall be entitled to a density bonus onsite of an equal number of units.

2.23 Oversizing of Loop Road B. Prior to issuance of the grading permit for Phase 4, the Developer shall complete the oversizing of Loop Road B to permit access to APN 11-270-03, also known as the “Manikas property”. Loop B shall be oversized, if required by the City at the time of development for Phase 3, from the planned sixty foot (60’) right-of-way “Primary Local Street” to a eighty foot (80’) right-of-way “Local Collector Street” from the intersection of Road ‘A’, Loop Road ‘B’ and Loop Road ‘C’ to the point of access to said Manikas Property.

The road improvements shall be as set forth in the Specific Plan

The Developer shall be reimbursed for the roadway expansion in accordance with the reimbursement standards included as **Exhibit “L”**.

2.24 Road Construction and Reimbursement. The Developer shall be responsible to construct secondary access through the Manikas Property to Highway 88, as shown and as described in **Exhibit “M”**, prior to the issuance of certificates of occupancy for the fourth Phase of the Project unless the City is unable to acquire the right of way through the Manikas property. If the City is unable to acquire the right of way, the Developer will provide a secondary access. If the alternate secondary access provides benefits to real property outside the Project, the Developer shall be reimbursed for the

roadway construction in accordance with the reimbursement standards included as **Exhibit “N”**.

2.25 Regional Road Impact Fees.

(a) Developer Responsibilities:

(1) Developer shall construct all onsite roads and offsite road and traffic improvements in accordance with existing City road and Caltrans road improvement standards, or where a specific standard is referenced in the Planning Documents, in accordance with that standard.

(2) The Developer shall keep such books and records as may be reasonably required by the City to calculate the costs of major onsite roads and offsite traffic improvements.

(3) Developer, at no expense to Developer, agrees to cooperate with the City towards the adoption of a new Martell subregional traffic fee to be developed by ACTC. Developer agrees to pay the new Martell subregional traffic fee when adopted.

(4) Developer agrees to donate to the City the sum of one million dollars (\$1,000,000) for non project related road/traffic improvements. This sum will be donated on a pro-rata basis (five hundred ninety dollars and thirty-one cents (\$590.31) per unit). The intent is that the City will use this sum as matching funds for downtown road maintenance, but the Developer agrees that the City, through the City Council, may use the Developer donated funds for other purposes. Use of these funds will be subject to compliance with the California Environmental Quality Act.

(b) City Responsibilities:

(1) The City shall give the Developer a credit against the City Road Fees for the improvements set forth on **Exhibit “O”**. Credits shall not apply to the regional fee or to the to-be-adopted Martell fee.

(2) At the time that the City adopts the new Martell subregional fee, the City agrees that payment of the fee constitutes full and complete mitigation of regional traffic impacts. City, at no expense to the City, agrees to assist Developer in obtaining a similar finding from ACTC.

(3) The City will use the supplemental road donation referenced in Section 2.25(a)(4) for downtown road maintenance, unless the City Council approves an alternative use.

2.26 Fire Protection Following approval of the first small lot tentative subdivision map, the parties will cooperate to annex the Property to the Amador County Fire Protection Community Facilities District 2006-1 (maximum tax at time of formation is five hundred fifteen dollars and thirty cents (\$515.30)).

2.27 EIR Applies to Subsequent City Development Approvals. the EIR for the Project is intended to be used in connection with each of the City approvals needed for the Project consistent with the Public Resources Code and the CEQA Guidelines, which streamlines the review of the Project and reduces the need to prepare repetitive environmental studies. Consistent with the CEQA policies and requirements applicable to the EIR, the EIR will be used to the fullest extent allowed by law in connection with the processing of any City approval. Additional environmental review may only be required by the City, in strict conformity with the terms and intent of the Public Resources Code and the CEQA Guidelines.

2.28 Water Supply Infrastructure Planning. Any tentative map for a “subdivision” as defined in Government Code Section 66473.5, shall comply with the provisions of that section.

ARTICLE 3

ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS, AND RELATED MATTERS

3.1 City Approvals and Allocations. The City shall permit the uses on the Subject Property that are consistent with this Agreement. The City agrees to approve and grant and implement the Development Approvals (collectively “Project Approvals”), necessary or desirable to accomplish the Project. City Approvals shall include any entitlements required to complete the infrastructure and improvements necessary to develop the Subject Property (collectively, the "Improvements"), in accordance with this Agreement, including, without limitation, those related to: (i) clearing the Subject Property; (ii) grading the Subject Property; (iii) construction of roads, storm drainage facilities, sewer facilities, and other utility facilities and connections; (iv) construction of water treatment and delivery facilities and storage tanks; and (v) construction of all commercial, industrial and residential structures and all structures and facilities accessory thereto, subject to the limitations set forth in this Agreement.

3.2 Duty to Grant and Implement. The City's obligation to grant and implement the City Approvals set forth above shall not infringe upon the City's right to withhold Project Approvals for a failure by the Developer to conform to the requirements of this Agreement.

3.3 Timely Processing. Subject to compliance with the provisions of applicable law, the aforementioned City Approvals and any environmental review required thereon shall be granted and approved on a timely basis; provided that applications for such

approvals are submitted to the City during the term of this Agreement; and provided further that there is no uncured default under the terms and conditions of this Agreement with respect to the portion of the Subject Property for which such approval is sought. The City may hire and/or retain, at the Developer expense, appropriate personnel and consultants if required to process all City Approvals as set forth below.

a) Improvement plans shall be acted on within sixty (60) working days of submittal pursuant to California Government Code section 66456.2, unless the time limits are extended by mutual consent of the City and the Developer.

b) All other permits, including permits relating to improvement plans, building permits, PUD, and encroachment permits, shall be acted on within sixty (60) working days of submittal, unless the time limits are extended by mutual consent of the City and the Developer.

3.4 Inspections. The City shall perform all required inspections in good faith and in a timely manner in accordance with the City procedures and policies in effect at the time of inspection request.

3.5 Cooperation in Project Implementation. The parties shall cooperate with each other for the purpose of implementing the Specific Plan and this Agreement. The cooperation includes timely execution of documents and processing and action on all applications. Due to market conditions and other considerations, Developer may, in its sole discretion, phase development and annexation of the Project. The City agrees to cooperate in the implementation of the Project. This includes:

(a) timely review, permitting and inspection of all Development Approvals necessary for Project Development;

(b) the phasing of annexation in cooperation with the Developer;

(c) cooperate and assist Developer in making application to LAFCo; and

(d) land based financing (i.e. the formation and use of a Community Facilities District.)

ARTICLE 4

DEFAULT, TERMINATION, ENFORCEMENT & OTHER MISCELLANEOUS PROVISIONS

4.1 General Provisions. Subject to extensions of time by mutual consent in writing, failure or delay by any party to perform any term or provision of this Agreement shall constitute a default; provided, however, that so long as the Developer has obtained an Assumption Agreement, the Developer shall not be in default for the failure of some other

person or entity to perform any term or provision of this Agreement, and no party to this Agreement shall be in default as a result of the failure of a previously-released party to perform any term or provision of this Agreement.

(a) In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party, and the case of notice to the Developer, to any lender of record, not less than sixty (60) days notice in writing specifying the nature of the alleged default and the manner in which said default may be cured. During any such sixty (60) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings. Upon request of any lender on the Project, the City shall extend the right of cure period an additional one hundred twenty (120) days.

(b) After notice and expiration of the sixty (60) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the non defaulting party may give notice of its intent to terminate this Agreement pursuant to California Government Code section 65868. The City, following notice of intent to terminate or prior to instituting legal proceedings, shall schedule the matter for consideration and review in the manner set forth in California Government Code sections 65865, 65867, and 65868..

(c) Following consideration of the evidence presented in said review before the City and an additional thirty (30) day period to cure, either party alleging the default by the other party may institute legal proceedings or may give written notice of termination of this Agreement to the other party; provided, however, a Developer may only give such notice with respect to such portion of the Subject Property in which such defaulting Developer then owns an interest.

(d) Evidence of default may also arise in the course of a regularly scheduled periodic review of this Agreement pursuant to California Government Code section 65865.1. If either party determines that the other is in default following the completion of the normally scheduled periodic review, said party may give written notice of termination of this Agreement specifying in said notice the alleged nature of the default, and potential actions to cure said default where appropriate. If the alleged default is not cured in sixty (60) days or within such longer period specified in the notice, or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the City or the Developer.

4.2 Annual Review. The City, acting through the Planning Director or designee, shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by the Developer with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code §65865.1. Each said review shall be completed within thirty (30) days of the first meeting at which such review is undertaken, unless said period is extended by mutual consent of the City and the

Developer, or as the result of circumstances beyond the reasonable control of the City and the Developer. Failure to complete said review within the prescribed period shall be deemed a finding of good faith and substantial compliance. Notice of such annual review shall include the statement that any review may result in notice of termination of this Agreement as provided for herein. A finding by the City of good faith compliance by the Developer with the terms of this Agreement shall conclusively determine said issue up to and including the date of said review. The City shall deposit in the mail or fax to the Developer a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least seven (7) calendar days prior to such periodic review. The Developer shall be entitled to appeal any determination of the performance review to the City Council. Any appeal has to be filed within twenty (20) days of receipt by the Developer of all staff reports, exhibits and other documents concerning contract performance from which the appeal is taken. The Developer shall be permitted an opportunity to be heard orally and in writing regarding its performance under this Agreement before the City Council.

4.3 Estoppel Certificates.

(a) The City shall, at any time and upon not less than twenty (20) days prior written notice from the Developer, execute, acknowledge and deliver to the Developer, lender, investor, or other party identified by the Developer, an estoppel certificate stating the Developer is in compliance with the provisions of this Agreement.

(b) If the City does not execute, acknowledge and deliver the statement required by this section within the time period set forth therein, the party requesting such statement shall provide the City with a second notice by telecopy/facsimile transmission. The failure by the City to deliver such statement within ten (10) calendar days after such telecopy/facsimile notice, shall be conclusive evidence that this Agreement is in full force and effect, that there are no uncured defaults by the Developer in the performance of this Agreement or of any City ordinances, regulations and policies regulating the use and development of the Property subject to this Agreement.

4.4 Default by Developer/Withholding of Building Permit. The City may, in the reasonable exercise of discretion, refuse to issue a building permit for any structure within the Property if the Developer has failed and refuses to complete any requirement reasonably required for such permit issuance.

4.5 Default by City. In the event the City does not accept, review, approve or issue necessary development permits or entitlements for use in a timely fashion as defined by this Agreement, or as otherwise agreed to by the parties, or the City otherwise defaults under the terms of this Agreement, the City agrees that the Developer shall not be obligated to proceed with or complete the Project or any phase thereof or perform the covenants of this Agreement, nor shall resulting delays in performance constitute grounds for termination or cancellation of this Agreement by the City.

4.6 Cumulative Remedies of Parties. The parties are permitted to pursue all remedies permitted by law and this Agreement, including but not limited to legal or equitable proceedings to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein, to enjoin any threatened or attempted violation of the provisions of this Agreement, or to obtain a judgment to determine the rights and responsibilities of the parties hereunder. Prior to initiating any such legal action, the party intending to seek such relief shall first give the other thirty (30) days written notice of its intent to seek such judicial relief and the reasons therefore. In the case of notice to Developer, the City shall also give notice to any lender of record. Upon the request of the other party receiving such notice, both parties shall then, within fifteen (15) days thereafter, meet and confer in good faith to attempt to resolve such dispute. If such dispute is not then resolved, the complaining party may then pursue judicial relief.

4.7 Forced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to events or circumstances beyond the Developer's control including, but not limited to the following: insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the City, An extension of time for such cause shall be granted in writing by the City for the period of the forced delay or longer, as may be mutually agreed upon, but in no case shall the cumulative extensions granted by the City add more than ten (10) years to the effective period of this Agreement.

ARTICLE 5

TERMINATION

5.1 Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the term or when the Subject Property has been fully developed and all of the Developer's obligations in connection therewith are satisfied as determined by the City. This Agreement shall automatically terminate and be of no further force or effect as to any single-family residence, any other residential dwelling unit(s) or any non-residential building, and the lot or parcel upon which such residence or building is located, when it has been approved by the City for occupancy. Upon termination of this Agreement, in whole or in part, the City shall record a notice of termination in a form, which may be reasonably required by a title company

5.2 Effect Upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City General Plan and the terms and conditions of any applicable zoning, or subdivision map or other land use entitlements approved with respect to the Subject Property, any other covenants or any other development requirements specified in this Agreement to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees or taxes.

5.3 Effect Upon Termination on City. Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the Property affected by such termination (provided vesting of such entitlements, conditions or fees may then be established for such Property pursuant to then existing planning and zoning laws) and the City shall no longer be limited, by this Agreement, to make any changes or modifications to such entitlements, conditions or fees applicable to such Property.

ARTICLE 6

STANDARD PROVISIONS

6.1 Notices. Notices, demands, correspondence and other communication to City and Developer shall be deemed given if dispatched by prepaid first-class mail or by nationally recognized overnight mail service such as Federal Express (FedEx) to the principal offices of the parties as designated in Section 1.6. Notice to the City shall be to the attention of both the City Attorney and the City Manager. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notices. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

6.2 Recordation of Agreement. Within ten (10) days of the City Council entering into this Agreement, the Clerk of the City Council shall record this document.

6.3 Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date, the remaining provisions shall continue in full force and effect.

6.4 Third Party Legal Challenge.

(a) In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner, challenging this Agreement or any provision herein, Developer agrees to defend, indemnify, and hold harmless the City and its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, and employees arising from such approval. The obligation of Developer to defend, indemnify, and hold harmless arises only if the City notifies the Developer of any claim, action, or proceeding within a reasonable time after the City knows of the claim, action, or proceeding.

(b) The Developer shall, upon written request of the City, prepare a defense for the City at Developer's sole expense. Alternatively, the City, at the City's sole discretion, may prepare its own defense, with Developer paying the reasonable costs of the City's defense. Such costs shall include attorney fees and other related costs of defense, including without limitation, travel, postage, photocopies, and the City staff costs.

(c) The Developer shall not be required to pay or perform any settlement unless the settlement is approved in advance by the Developer. The City must approve any settlement affecting the rights and obligations of the City.

(d) In all cases, regardless of whether the City or the Developer defends the City, the Developer shall indemnify the City for any judgment, order, or settlement rendered as a result of any claim, action, or proceeding arising from the approval.

(e) The Developer shall pay to the City, within thirty (30) calendar days upon written demand, any amount owed to the City as a result of the City incurring costs or expenses due to its defense under the terms of this sub-section.

6.5 Covenant of Good Faith and Fair Dealing. Implicit in this Agreement are all the covenants of good faith and fair dealing recognized under California law. All parties pledge and agree to use their best efforts to reach accord with respect to all details required to affect the intentions evidenced by this Agreement.

6.6 Effect of Termination on Vested Rights. Upon any early termination for cause of this Agreement due to Developer failure to perform prior to the execution of the full term, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning law) and the City shall no longer be limited, by this Agreement, to make any changes or modifications to such entitlements, conditions or fees applicable to such property.

6.7 Standard Terms and Conditions.

(a) **Venue.** Venue for all legal proceedings shall be in the Superior Court of California, County of Amador.

(b) **Waiver.** A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No

party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

(c) **Completeness of Instrument.** This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

(d) **Supersedes Prior Agreements.** It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations or agreements, written or oral, between the parties hereto.

(e) **Captions.** The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

(f) **Number and Gender.** In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

(g) **Mandatory and Permissive.** "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

(h) **Term Includes Extensions.** All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

(i) **Successors and Assigns.** All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

(j) **Modifications.** No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification is in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

(k) **Counterparts.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(l) **Other Documents.** The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to

execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

(n) **Controlling Law.** The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

(o) **Time is of the Essence.** Time is of the essence of this Agreement and each covenant and term a condition herein.

(p) **Authority.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms nor conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect thereon.

(q) **Document Preparation.** This Agreement will not be construed against the party preparing it, but will be construed as if prepared by all parties.

(r) **Advice of Legal Counsel.** Each party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement.

(s) **Attorneys Fees and Costs.** If any action at law or in equity, including an action for declaratory relief or any arbitration, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

(t) **Time Periods.** All time periods are measured as calendar days, unless a different intent is clearly stated.

IN WITNESS THEREOF, this Agreement was executed by the parties on the dates set forth below.

CITY OF SUTTER CREEK, a Municipal Corporation organized under the laws of the State of California

Dated: _____

By: _____

Chair, City Council

Dated: _____

By: _____
City Clerk

Approved as to Form:

Dated: _____

By: _____
City Attorney

GOLD RUSH GOLF, LLC a California
Limited Liability Company

Dated: _____

By: _____
_____ [title]

DRAFT