ORDINANCE SUMMARY FOR PUBLICATION

ORD. NO. 1717-NS

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THOUSAND OAKS APPROVING A DEVELOPMENT AGREEMENT WITH LATIGO HILLCREST, LLC, RELATING TO THE DEVELOPMENT OF PROPERTY LOCATED AT 2150 WEST HILLCREST DRIVE (APN #667-0-113-075), THOUSAND OAKS, CALIFORNIA (DEVELOPMENT AGREEMENT 2022-70777-DAGR)

NOTICE IS HEREBY GIVEN that at a regular meeting held on July 18, 2023, the City Council of the City of Thousand Oaks adopted Ordinance No. 1717-NS relating to the development of a mixed-use commercial and residential project located at 2150 West Hillcrest Drive, Thousand Oaks, California, consistent with the General Plan, Specific Plan No. 24, other City rules and regulations, and introduced an Ordinance relating to Development Agreement 2022-70777-DAGR and vested entitlements referenced therein, and approved related entitlements and legislative actions, including Environmental Impact Report 2022-70774-EIR, General Plan Amendment 2021-70169-LU, Zone Change 2022-70776-Z, Specific Plan 2022-70778-SP, Development Permit 2022-70773-DP, Special Use Permit 2022-70779-SUP, and Protected Tree Permit 2022-70780-PTP.

VOTE:

AYES:  Councilmembers Engler, Newman, Taylor, Adam, and Mayor McNamee

NOES:  None

ABSENT:  None

This Ordinance shall go into full force and effect at 12:01 a.m. on the thirty-first (31st) day following its passage.

A certified copy of the full text of this Ordinance is available in the office of the City Clerk of the City of Thousand Oaks.

Laura B. Maguire, City Clerk

Publish:  July 25, 2023
ORDINANCE NO. 1717-NS

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THOUSAND OAKS APPROVING A DEVELOPMENT AGREEMENT WITH LATIGO HILLCREST, LLC, RELATING TO THE DEVELOPMENT OF PROPERTY LOCATED AT 2150 WEST HILLCREST DRIVE (APN #667-0-113-075), THOUSAND OAKS, CALIFORNIA (DEVELOPMENT AGREEMENT 2022-70777-DAGR)

The City Council of the City of Thousand Oaks does hereby ordain as follows:

Part I

Based upon the information contained in the Staff Report, exhibits, and public testimony given at a public hearing on June 20, 2023 and July 11, 2023, the City Council approved this Development Agreement with the following findings:

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 et seq. (the “Development Agreement Statute”) which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, in accordance with the Development Agreement Statute, the City of Thousand Oaks (the “City”) has adopted regulations (the “Development Agreement Regulations”) to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute, which are contained in Section 9-11.01 et seq. of the Thousand Oaks Municipal Code; and

WHEREAS, the Latigo Hillcrest, LLC (“Developer”) desires to carry out the development of a mixed-use commercial and residential project (“Project”) located at 2150 West Hillcrest Drive (APN 667-0-113-075), (“Property”), consistent with the General Plan, Specific Plan (SP-24), other City rules and regulations, and the Development Agreement and vested entitlements referenced therein;

WHEREAS, this Development Agreement (2022-70777-DAGR) will assure the City and the Developer that the Project will proceed as proposed and that the
Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing, and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project;

WHEREAS, the Planning Commission held a duty noticed public hearing on June 5, 2023 on the Project, during which the Planning Commission received comments from the Developer, City staff, and members of the general public and made a recommendation to the City Council on the Project entitlements and legislative actions.

WHEREAS, the City Council of the City of Thousand Oaks held a duly noticed public hearing on the Project on June 20, 2023, and July 11, 2023, during which the City Council received comments from the Developer, City staff, and members of the general public and approved related entitlements and legislative actions, including a 2022-70774-EIR, 2021-70169-LU, 2022-70776-Z, 2022-70778-SP, 2022-70773-DP, 2022-70779-SUP, 2022-70780-PTP and 2022-70777-DAGR.

Part 2

NOW THEREFORE, the City Council of the City of Thousand Oaks does hereby ordain as follows:

SECTION 1. This Ordinance incorporates, and by this reference makes a part hereof, the Development Agreement (including all exhibits to the Agreement), attached hereto as Exhibit A, subject to the provisions of Section 5 hereof.

SECTION 2. This Ordinance is adopted under the authority of Government Code Section 65864 et seq. and pursuant to the City’s "Development Agreement Regulations."

SECTION 3. In accordance with the Development Agreement Regulations, the City Council hereby finds and determines, as follows:

(a) The Development Agreement is consistent with the goals and policies of the Thousand Oaks General Plan and Specific Plan 24,

(b) The Development Agreement establishes certain development rights, obligations and conditions for implementation of the Project located at 2150 West Hillcrest Drive (APN 667-0-113-075).
(c) The Development Agreement is in conformity with public convenience, general welfare and good land use practice;

(d) The Development Agreement will not be detrimental to the public health, safety and general welfare;

(e) The Development Agreement will support the orderly development of the Property and the preservation of property values;

(f) The project qualifies as a “mixed-use” project consisting of approximately 5,300 square feet of commercial space and 333 units of multi-family residential development, which is a development concept for the Specific Plan area intended to produce a mix of interactive uses, which will create an active and interesting atmosphere in both the site and within nearby properties. Complementary uses are to be located in close proximity to each other in order to promote interaction between uses to advance the development concept of the Specific Plan.

(g) The project is consistent with the “Commercial/ Residential” land use designation of the Thousand Oaks General Plan.

(h) The architectural design of the project complies with the development standards of SP-24 and the intent of the City’s Architectural Design Review Guidelines, Precise Plan of Design Guidelines, Commercial Design Guidelines, and Freeway Corridor Guidelines.

(i) 2022-70774-EIR was prepared for the subject project in accordance with the California Environmental Quality Act (CEQA). A comprehensive evaluation of the potential environmental impacts for this project was performed. This evaluation determined that the project could have a significant effect on the environment without appropriate mitigation measures in place, therefore an EIR was prepared for the project. Appropriate measures are detailed in the report to ensure appropriate mitigation is in place so no significant adverse environmental impact results from the project. To that end, a mitigation monitoring plan is required to ensure the indicated mitigation measures are applied to the project.

SECTION 4. The foregoing findings and determinations are based upon the following:

cdd:600-60/jk/H:COMMON/City Council/Agenda Packet/2023/2023-06-20/Latigo/Latigo 2022-70733 Attach 8.docx/pz
(FILE ID: 2022-70777-DAGR)
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(a) The Recitals set forth in this Ordinance, which are deemed true and correct;

(b) The City’s General Plan, as amended by General Plan Amendment 2021-70169-LU (City Council Resolution No. 2023-043) prior to adoption of this Ordinance;

(c) Resolution Nos. 2023-043 and 2023-044 for the Project entitlements, adopted by the City Council on July 11, 2023, and which Resolutions and exhibits are incorporated herein by reference as if set forth in full;

(d) All City Staff reports (and all other public reports and documents) prepared for the Planning Commission and City Council, relating to the Development Agreement and other actions relating to the Project;

(e) All documentary and oral evidence received at public hearings or submitted to the City during the comment period relating to the Development Agreement, and other actions relating to the Project; and

(f) All other matters of common knowledge to the Planning Commission and City Council, including, but not limited to the City’s fiscal and financial status; City policies and regulations; reports, projections and correspondence related to development within and surrounding the City, State laws and regulations and publications.

SECTION 5. The City Council hereby approves the Development Agreement, attached hereto as Exhibit A, subject further to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, and conformity to the General Plan, as amended, as approved by the City Council.

SECTION 6. The approval contained in Section 5 hereof is subject to and conditioned upon Resolution No. 2023-043, adopted by the City Council approving the General Plan Amendment, becoming effective.

SECTION 7. The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Development Agreement pursuant to the terms of the Development Agreement.
Part 3  
(Uncodified)  
Severability  

SECTION 8. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this title; it being hereby expressly declared that this title, and each section, subsection, sentence, clause and phrase hereof, would have been prepared, proposed, adopted, approved and ratified irrespective of the fact that anyone or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Part 4  
(Uncodified)  
Effective Date  

SECTION 9. This ordinance shall become effective on and after the thirty-first (31st) day following its adoption, provided, however, that if the actions referred to in Section 6 hereof are not effective on such date, then the effective date of this Ordinance shall be the date on which all of said actions become effective, as certified by the City Clerk.

PASSED AND ADOPTED this 18th day of July, 2023, by the following vote:

Ayes: Councilmembers Engler, Newman, Taylor, Adam, and Mayor McNamee
Noes: None
Absent: None

Kevin McNamee, Mayor  
City of Thousand Oaks City Council  

ATTEST/CERTIFY:  

Laura B. Maguire, City Clerk  
Date Attested: 7/26/2023
APPROVED AS TO FORM:
Office of the City Attorney

Tracy M. Noonan, City Attorney

APPROVED AS TO ADMINISTRATION:

Andrew P. Powers, City Manager

Introduced: July 11, 2023
Published: July 13, 2023 and July 25, 2023
Ordinance No.: 1717-NS

The presence of electronic signature certifies that the foregoing is a true and correct copy as approved by the City of Thousand Oaks City Council on the date cited above.
EXHIBIT “A”
DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Thousand Oaks
2100 E. Thousand Oaks Boulevard
Thousand Oaks, CA 91362
Attn: City Clerk

WITH A COPY TO:
Thomas S. Cohen, Esq.
Cohen Land Use Law, LLP
1534 N. Moorpark Road, #337
Thousand Oaks, CA 91360
Email: tcohen@cohenlanduselaw.com

This Development Agreement
is recorded at the request and
for the benefit of the City of
Thousand Oaks and is exempt
from the payment of a
recording fee pursuant to
Government Code § 6103.

DEVELOPMENT AGREEMENT

by and between

CITY OF THOUSAND OAKS

and

LATIGO HILLCREST, LLC

THIS DEVELOPMENT AGREEMENT is entered into this ___ day of
_____________________, 2023, by and among the CITY OF THOUSAND OAKS, a California
municipal corporation (“City”), on the one hand, and LATIGO HILLCREST, LLC
(“Owner”), on the other hand. City and Owner are at times collectively referred to as the
“Parties” herein.
RECITALS

This Agreement is predicated upon the following facts, understandings, and intentions of the Parties.

A. The State of California adopted the Development Agreement Act to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development. Sections 65865 through 65869.5 of the California Government Code Section (the Development Agreement Act), authorizes City and persons who have legal or equitable interests in real property to enter into a binding development agreement establishing certain development rights in the real property that is the subject of the development project application. City has also codified the process of development agreements in Chapter 11 of Title 9 of the Thousand Oaks Municipal Code ("TOMC").

B. Throughout this Agreement, including the Recitals contained herein, certain capitalized terms are used which are defined in Section 1 of this Agreement. City and Owner intend to refer to those definitions when the capitalized terms are used.

C. Pursuant to Government Code Section 65865, City adopted Title 9, Chapter 11 of the TOMC – Development Agreements ("Development Agreement Ordinance"), further authorizing this Agreement and establishing the City Council’s intent that development agreements be entered into in those situations where the agreement is fair, just and reasonable at the time of its execution; and where it is prompted by the necessities of the situation, or is, by its nature, advantageous to City.

D. Throughout this Agreement the terms “Owner” or “Developer” may be used synonymously, and both refer to LATIGO HILLCREST, LLC.

E. On April 27, 2021, per the applicant Amgen, Inc.’s (“Amgen”) request to change the use of the Property located at 2150 W. Hillcrest Drive from administrative offices to commercial/residential use, the City Council adopted Resolution No. 2021-014, “A Resolution of the City Council of the City of Thousand Oaks Declaring Intention to Consider an Amendment to the Land Use Element of the General Plan and Allowing Concurrent Processing of Entitlement Applications for Land Located at 2150 W Hillcrest Drive (LU 2021-70169). As part of that Resolution, the City Council approved initiating LU 2021-70169 and allocated 246 residential dwelling units of Citywide Measure E residential capacity to the Property under RCA 2021-70168. On March 29, 2022, City Council approved an extension of time for Amgen to submit its formal application for the proposed project at the site. Subsequent to the City’s authorization of the extension, Amgen transferred its rights to the property and the project applications to Latigo Hillcrest, LLC.
F. Owner and the City have agreed that the parties should enter into a development agreement pursuant to City’s Development Agreement Ordinance and proceedings have been taken in accordance with the rules and regulations of City and State law.

G. Owner voluntarily enters into this Agreement to implement the General Plan and in consideration for the rights conferred and the procedures specified herein for the development of 2150 W Hillcrest Drive, Thousand Oaks, California A.P.N. Number 667-0-113-075 (“Property” or “Project site”). City, in the exercise of its legislative discretion, voluntarily enters into this Agreement to implement the General Plan Amendment and in consideration of the agreements and undertakings of Owner as specified herein.

H. Concurrent with this Agreement (2022-70777-DAGR), Owner proposed that City grant Owner the following land use entitlement approvals (hereinafter “Project Approvals”) for the Project (defined below in Section 1 – Definitions) which are incorporated and made a part of this Agreement.

   a. General Plan Land Use Amendment No. LU 2021-70169 to Commercial/Residential
   b. Specific Plan 2022-70778 (No. 24; with density bonus units in exchange for affordable housing)
   c. Zone Change and Zoning Map Amendment 2022-70776
   d. Development Permit (DP) 2022-70773
   e. Protected Tree Permit No. 2022-70780
   g. Special Use Permit (SUP) 2022-70779

I. During the application process, Owner submitted architectural plans, site plans, landscape plans and grading plans to the City for review by staff. The Parties worked on creating a specific plan (2022-70778-SP) that will govern the development of the Project and identify land use standards for the Property. The Project was approved subject to certain conditions and the approved plan and conditions of approval are attached to this Agreement as Exhibits C and D.

J. City has approved the Project, subject to the associated conditions, and determined that this Agreement is consistent with City’s General Plan and Specific Plan No. 24 and specifically determined that this Agreement: (1) is fair, just and reasonable; (2) is prompted by the necessities of the situation and is by its nature advantageous to
City; and, (3) that this Agreement encourages and assures private participation in the construction of housing stock, as determined in the absolute discretion of the City Council.

K. On June 5, 2023, the Planning Commission of City considered the Project, the material terms of this Agreement, and the Environmental Impact Report (“EIR”) at a duly noticed public hearing and made appropriate findings that the provisions of this agreement are consistent with the General Plan and recommended approval / disapproval of the Project to City Council.

L. The City Council, after conducting a duly noticed public hearing on June 20, 2023 and July 11, 2023, certified and adopted the Final EIR and associated mitigation monitoring and reporting program, and considered, confirmed, and approved that the Project’s Final EIR adequately addresses the environmental impacts of the Project at the Project Site, including consideration of the Project Approvals, approved the form and material elements of this Agreement, authorized the execution of this Agreement, and found that the provisions of this Agreement are consistent with the General Plan, State law, and the Development Agreement Ordinance. The City Council conducted the first reading of the new ordinance on June 20, 2023 and July 11, 2023, followed by the City Council’s second reading of the new ordinance on July 18, 2023.

M. In exchange for the benefits to City listed herein, City agrees to take those actions required to facilitate Owner’s development of the Project, including the approval, adoption, or issuance of necessary development permits and the future ministerial approval of any additional building plans, building permits, occupancy permits, and other such permits necessary to implement the Project (“Ministerial Approvals”) which are consistent with this Agreement.

N. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with the California Environmental Quality Act (“CEQA”), state law governing adoption of development agreements, the Thousand Oaks Municipal Code, City’s Development Agreement Ordinance, and applicable development entitlements.

O. This Agreement is made and entered into in consideration of the mutual covenants and in reliance upon the various representations and warranties contained herein. The Parties acknowledge that, in reliance on the agreements, representations, and warranties contained herein, Owner will take certain actions, including making substantial investments and expenditures of monies, relative to the Property and the development thereof.

P. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide certainty necessary for the Owner to make significant investments in public infrastructure, public gathering areas, and other improvements, assure the timely and progressive installation of necessary improvements.
and public services, establish the orderly and measured build-out of the Project consistent with the vision of City's Specific Plan No. 24 and will provide public benefits to City it would not be entitled to absent this Agreement. All such public improvements or projects are beneficial to the health, safety, and general welfare of the City in general.

Q. The terms of this Agreement support a vital and important interest of City by ensuring the development is consistent with the General Plan, Specific Plan No. 24 and the proposed improvements to the property. The Agreement is necessary to assure Developer that the Project will not be reduced in density, intensity or use, or be subjected to new rules, regulations, ordinances, or policies unless otherwise expressly allowed by this Agreement.

R. In exchange for the benefits to City, Developer desires to receive the General Plan Amendment and other Project Approvals to permit mixed use on the Property, the designated number of residential units allocated for the Project, assurance that it may proceed with the Project in accordance with the Project Approvals and existing land use ordinances and development standards in effect on the Agreement Date, subject to the terms and conditions contained in this Agreement and, to secure the benefits afforded Developer by Government Code §65864 et seq., and the City's Development Agreement Ordinance.

S. For the foregoing reasons, Owner, and the City (each individually, a "Party" and, collectively, the "Parties") desire to enter into a development agreement for the Project pursuant to the Development Agreement Act and other applicable laws upon the terms and conditions set forth herein and, in the exhibits, attached hereto.

**AGREEMENT**

NOW, THEREFORE, in consideration of the above-stated recitals and of the mutual covenants contained in this Agreement as well as in consideration of the mutual promises and covenants herein contained and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions


1.2. "Agreement Date" means the date this Agreement is executed by both City and Owner.

1.3. "Agreement Effective Date" is the date on which this Agreement is attested by the City Clerk of the City after execution by Owner and Mayor of the City.
1.4. “Applicable Rules and Laws” means the City’s rules, regulations, ordinances, and official policies in force and effect as of the Agreement Effective Date governing permitted uses of the land, the density or intensity of use, the maximum height and size of proposed buildings, parking requirements, setbacks, development standards, the provisions for reservation or dedication of land for public purposes, as well as those rules and laws governing design, improvement, and construction standards, specifications, policies and guidelines applicable to development of the Property, including the General Plan, as amended by the General Plan Amendment, and Specific Plan No. 24, and unless otherwise provided by this Agreement or the Project Approvals.

1.5. “Area Median Income” or “AMI” means the median income for Ventura County, California, adjusted for Actual Household Size, as determined by the U.S. Department of Housing and Urban Development (“HUD”) pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development (“HCD”) in Section 6932 of Title 25 of the California Code of Regulations or any successor provision published pursuant to California Health and Safety Code section 50093(c). If there is a discrepancy between applicable HUD and HCD AMI levels, then the HCD AMI will be applied, unless otherwise required by mandatory requirements of applicable federal law.

1.6. “CEQA” means the California Environmental Quality Act and any state and local rules, regulations or guidelines adopted pursuant thereto.

1.7. “City” means the City of Thousand Oaks, California.

1.8. “Development Agreement Ordinance” means Title 9, Chapter 11 of the Thousand Oaks Municipal Code wherein City has set forth the procedures and requirements for consideration and administration of development agreements.

1.9. “Development Fees” means any monetary fee or exaction other than a tax or special assessment that would be charged by a local government agency pursuant to Government Code Section 66000, et seq., to a project applicant in connection with new development for the purpose of defraying all or a portion of the cost of public facilities related to the new development, including without limitation, fees for utility construction, use, linkage or connection fees; public transit; traffic improvement and operations and any other traffic-related fees; affordable housing; sustainability or green initiatives; capital facilities; police and fire; parks; libraries; and other exactions, assessments, fair share charges or other similar impact fees or charges imposed on and in connection with new development.

1.10. “Future Development Entitlements” means all necessary City discretionary approvals (including conditions of approval) for the development of the Project that are not addressed in this Agreement and that must be consistent with the
current General Plan and Zone Change Ordinance for the Project Site, the Applicable Laws, and this Agreement.

1.11. “General Plan” means the General Plan of the City.

1.12. “Measure E Residential Capacity” means the citywide residential units available for reallocation to a proposed development project pursuant to Section 9-2.203 of City’s Municipal Code.

1.13. “Ministerial Approvals” means the non-discretionary City permits and approvals necessary for the development of the proposed Project as required by the Applicable Laws or State law, including but not limited to approval of building plans, final map, building permits, occupancy permits, and other similar types of permits necessary to implement the Project. Notwithstanding the foregoing, Ministerial Approvals may be processed and approved in accordance with amended versions of the Applicable Laws upon Owner’s request and in Owner’s sole discretion.

1.14. “Moderate Income Households” means a household with income that does not exceed the greater of (i) 120 percent of the Area Median Income, as adjusted by Actual Household Size, or (ii) the then current income range limit for Moderate Income Households established for Ventura County under Section 6932 of Title 25 of the California Code of Regulations as in effect at the time the household submits its application for occupancy of the Moderate Income rental Unit, as such limit is adjusted by Actual Household Size. Refer to the 2022 Ventura County Income Limits chart attached hereto as Exhibit E and future amendments and revisions thereto.

1.15. “Owner” or “Developer” means LATIGO HILLCREST, LLC, and each and all of their respective transferees, partners, successors, and assigns, whether voluntary or involuntary.

1.16. “Processing Fees” means fees and charges (i) adopted by the City for the purpose of defraying the City’s reasonable costs incurred or to be incurred in the processing and administration of any form of permit, license, or land use entitlements, or (ii) imposed by the City to defray the costs of periodically updating its plans, policies, and procedures, including but not limited to, the fees and charges referred to in Government Code Section 66014.

1.17. “Project” means the proposed development of the Property in accordance with the Project Approvals, this Agreement, and the conditions of approval and mitigation measures adopted as part of this Agreement.

1.18. “Project Approvals” means those discretionary City permits and approvals, including those listed in Recital H of this Agreement (including conditions of
approval), necessary for the development of the proposed Project consistent with the needed General Plan amendment and Zone Change for the Project Site, the TOMC and other Applicable Laws in effect on the Agreement Effective Date, any amendment to such permit or approval allowed by the TOMC and this Agreement.

1.19. “Property” is that certain real property located within the City of Thousand Oaks at 2150 W Hillcrest Drive, Thousand Oaks, California 91320, A.P.N 667-0-113-075 and as more particularly described in Exhibit A attached hereto. The Property may also be referred to from time to time herein as the “Project Site.”

1.20. “Reserved Powers” means the rights and authority expected from this Agreement’s restriction on the City’s police powers and which are instead reserved to the City. The Reserved Powers include (a) the powers to enact regulations or take future Discretionary Actions after the approval of the Project Approvals that may be in conflict with the Applicable Rules and Project Approvals, but (i) are necessary to protect the public health and safety, and are generally applicable on a citywide basis (except in the event of natural disasters as found by City Council such as floods, earthquakes, pandemics and similar acts of God), (ii) are necessary to comply with State or federal laws and regulations (whether enacted previous or subsequent to the final administrative approval of the Project Approvals), or (iii) constitute Processing Fees and charges imposed or required by the City to cover its actual costs in processing applications, permit requests and approvals of the Project or in monitoring compliance with permits issued or approvals granted for the performance of any conditions imposed on the Project, unless otherwise waived in writing by the City, and (b) the power to enact and amend the Building Codes.

1.21. “Term” means the period of time for which this Agreement shall be effective in accordance with Section 3 below.

1.22. “Very Low Income Households” means a household with income that does not exceed the greater of (i) 50 percent of the Area Median Income, as adjusted by Actual Household Size, or (ii) the then current income range limit for Very Low Income Households established for Ventura County under Section 6932 of Title 25 of the California Code of Regulations as in effect at the time the household submits its application for occupancy of the Very Low Income Rental Unit, as such limit is adjusted by Actual Household Size.

2. Exhibits. The following documents are referred to in this Agreement, attached hereto and made a part hereof by this reference.
3. Agreement Effective Date and Term. This Agreement shall become effective ("Agreement Effective Date") as set forth in Subsection 1.3 above. Unless extended by mutual written agreement of the Parties, this Agreement shall expire and be of no further force or effect on the earlier of seven (7) years from the Agreement Effective Date ("Term") or the date on which the City issues a Certificate of Occupancy or approves final permits to allow occupancy of buildings for the Project. The term may be terminated, modified, or extended by mutual consent in writing of the Parties with good cause, not to be unreasonably withheld by the City. Owner intends to submit plans for building permits within the first year of the Term, subject to unforeseen delays and the Parties will act in good faith to move the project forward through construction and completion in a time efficient manner. Notwithstanding the Owner’s intent, Owner shall submit plans for building permits within two years of the Effective Date. Following the expiration of the Term, this Agreement shall terminate and be of no further force and effect, except with respect to terms and provisions that expressly survive the termination of this Agreement. If this Agreement is terminated because the City has issued a Certificate of Occupancy or otherwise issued final occupancy permits for the entire Project, then Owner’s obligations to make any Public Benefit Payments or provide the Public Benefits as identified in Section 6.1, below, shall survive such termination until the obligation has been completely satisfied. In the event the Project Approvals are challenged, the Term is tolled through the duration of the litigation. All Project Approval expiration dates will extend through the term of the Agreement.

4. State Enabling Statute. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interest in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

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<tr>
<th>Exhibits Designation</th>
<th>Description</th>
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<tbody>
<tr>
<td>A</td>
<td>Legal Description of Property</td>
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<td>B</td>
<td>Site Plan</td>
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<td>C</td>
<td>Project Plan Set dated May 26, 2023</td>
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<tr>
<td>D</td>
<td>Conditions of Approval</td>
</tr>
<tr>
<td>E</td>
<td>Ventura County Income Limits Chart</td>
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</tbody>
</table>
“The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules, and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development.”

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City: (1) accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties as permitted hereunder; and (2) to offset controls and conditions imposed on development project applications.

5. **Purpose of this Agreement.**

   5.1. **General Acknowledgement.** This Agreement is entered into for the purpose of permitting the development of the Property in a manner that will assure certain anticipated benefits to both City and Owner as set forth in this Agreement.

   5.2. **Developer Objectives.** In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City’s policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurance that the Project may be developed in accordance with the Applicable Rules, the Project Approvals, and other Discretionary Actions and with the terms of this Agreement, but subject to the City’s Reserved Powers. In the absence of this Agreement, Developer would have no assurance that it can complete the Project with the zoning, and proposed density for the development (including, without limitation, the location and number of improvements, proposed height and building limits (e.g., requested density, maximum floor area, etc.) and the provisions of open space, vehicular access, and

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parking set forth in this Agreement, the Project Approvals, and other Discretionary Actions. This Agreement, therefore, is necessary to assure Developer that, except as otherwise expressly provided in this Agreement, the Project will not be (a) reduced or otherwise modified in density, intensity or use from what is set forth in the Project Approvals and other Discretionary Actions, (b) “subjected to new rules, regulations, ordinances or official policies or plans that are not adopted or approved pursuant to the City’s Reserved Powers or (c) subjected to unreasonable delays for reasons other than Citywide health and safety enactments related to force majeure events such as, but not limited to, floods, earthquakes, pandemics, labor shortages and similar acts of God.

5.3. Mutual Objectives. Development of the Project in accordance with this Agreement will provide for the orderly development of the Property in accordance with the policies and objectives set forth in the General Plan, as amended by the General Plan Amendment. Moreover, this Agreement will eliminate uncertainty in planning for and securing orderly development of the Property, assure installation of necessary improvements for, and other features of, the Project reflected in the Project Approvals, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which they Development Agreement Act was enacted. The Parties believe that such orderly development of the Project will provide public benefits to the City through the imposition of development standards and requirements under this Agreement, including without limitation increased tax revenues, installation of onsite improvements, creation and retention of jobs, and the development of an aesthetically attractive Project, as well as the public benefits described in Section 6.1, below. In addition, although development of the Project in accordance with this Agreement will restrain the City’s land use or other relevant police powers, this Agreement provides the City with sufficient reserved powers during the Term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to the City, Developer will receive assurance that the Project may be developed during the Term of this Agreement in accordance with the Applicable Rules, Project Approvals and other Discretionary Actions, and the Reserved Powers, subject to the terms and conditions of this Agreement.

5.4. Applicability of the Agreement. This Agreement does not (a) grant height, density or intensity in excess of that otherwise established in the Applicable Rules and the Project Approvals; (b) eliminate future Discretionary Actions relating to the Project if applications requiring such Discretionary Action are initiated and submitted by the Owner of the Property after the Effective Date of this Agreement; (c) guarantee that Developer will receive any profits from the Project; (d) prohibit the Project’s participation in any benefit assessment district that is generally applicable to surrounding properties; (e) amend the General Plan; or, (f) amend the City’s Planning and Zoning Code (Title 9). This Agreement has a fixed Term. Furthermore, in any subsequent Discretionary Actions applicable to the Property, the City may apply such new rules, regulations and official policies as are contained in its Reserved Powers.
6. **Public Benefits.** This Agreement provides assurances that the public benefits identified in Section 6.1, below, will be achieved in accordance with the Applicable Rules and Project Approvals and with the terms of this Agreement and subject to the City’s Reserved Powers.

   6.1. **Benefits to City and Obligations of Owner.** The benefits to City (including, without limitation, the residents of City) and obligations of Owner under this Agreement include, but are not limited to:

   6.1.1. Construction of the Project in a single phase which increases residential stock in the City by adding 300 market-rate apartments in a mixture of one-bedroom, one bedroom with a den, two bedroom, and three bedroom units;

   6.1.2. Owner is pursuing a 35% density bonus pursuant to the State Density Bonus Law. To qualify for this percentage of additional market-rate units, Owner is going to construct and preserve 11% (28 units) of the base 246 units as Very Low Income Household. Two additional Very Low Income Household units are provided in exchange for certain modifications to the Objective Design Standards. The thirty (30) affordable Very Low-Income Households apartment units are made up of 17 one-bedroom units, 11 two-bedroom units, and 2 three-bedroom units. All affordable units will be protected by a recorded covenant to maintain the units in the relevant income range for fifty-five (55) years;

   6.1.3. Three Moderate Income Household Affordable units are provided in exchange for modifications to the Objective Design Standards. The three Moderate Income Household units will be made up of 2, one-bedroom units, and 1, two-bedroom unit. All affordable units will be protected by a recorded covenant to maintain the units in the relevant income range for fifty-five (55) years;

   6.1.4. Removal of vacant commercial use and structures, and replacement with mixed-use residential and commercial uses and structures;

   6.1.5. Two (2) live/work units which results in the Project providing vehicular trip reduction benefits as a result of the dedication of live/work units and work share space for use by the residents of Latigo Hillcrest. In addition, onsite retail and restaurants will also result in fewer vehicles miles traveled thereby reducing air, noise, and traffic impacts on the community at-large;

   6.1.6. Construction of 5,300 square feet of Commercial retail space with 3,000 square feet of public exterior commercial plaza;

   6.1.7. Approximately 1,050 square feet of work/share space;
6.1.8. Enhanced architectural design with appropriate massing and scale, extensive articulation, glazing, and extensive detailing with upgraded materials;

6.1.9. Provision of necessary fees, dedications and public improvements that will provide benefits for the community;

6.1.10. Integrate sustainable features including but not limited to electric-only residential utilities, rooftop solar farm (as required by state law), electric bicycle stations, and EV charging stations including the following:

   6.1.10.1 226 EV Capable parking spaces (40% of overall Parking) with pre-wiring installed for future Level 2 EV Charging;

   6.1.10.2 174 EV Ready parking spaces (30% of parking) that equates to 5% more than required by Cal Green) and which are equipped with low power Level 2 EV charging 120-240 volt 30 Amp receptacles;

   6.1.10.3 57 EV Chargers (10% of overall Parking) equipped with Level 2 EVSE Supply Equipment installed and operational prior to issuance of the Certificate of Occupancy;

   6.1.10.4 Indoor/Outdoor bike parking with electric bicycle and scooter charging stations;

6.1.11. In lieu of providing public art on the site, Owner will modify or replace the gateway sign currently installed on Rancho Conejo Boulevard west of the Property with a new gateway sign adjacent to Rancho Conejo Boulevard. The Parties agree to use good faith efforts to design and construct the gateway sign as outlined in the Conditions of Approval.

6.2. Benefits to Owner and Obligations of City. Owner will expend time and money in constructing public improvements and facilities in connection with the Project, and thus the vested rights provided by this Agreement will be of considerable benefit to Owner. The benefits to Owner and obligations of City also include the following:

   6.2.1. City’s adoption of a General Plan amendment that provides residential units on the property in conjunction with a mixed-use project that also provides an affordable housing component that is necessary for the proposed number of residential units, which significantly enhances the value of the Property;

   6.2.2. City’s allocation of 246 Measure E residential units for the Project;
6.2.3. City's adoption of a General Plan amendment that provides for commercial/retail uses as detailed in the attached exhibits;

6.2.4. Approval of a Specific Plan No. 24 that provides unique elements to the building facades, and permits the overall composition, standards, and placement of buildings within the plan;

6.2.5. As more fully set forth in the Conditions of Approval, some specific waivers of the City's objective standards pertaining to architectural design and construction materials;

6.2.6. Consistent with California Government Code Section 65915, the City's approval of 87 "density bonus" market rate units above and beyond the 246 base density units permitted by the General Plan's 30 dwelling units per acre limitation;

6.2.7. City's guarantee that certain City fees related to development of the Property will not increase during the term of this Agreement;

6.2.8. City's agreement to allow Owner to file all applications for City entitlements and any required maps in a single process not restricted as to the time of filing, but not later than the expiration of this Agreement;

6.2.9. City's agreement to not change the existing zoning and General Plan designations of the Property without Owner's consent during the term of this Agreement;

6.2.10. City's assurance that any permits for the Project as described herein for which owner has submitted plans entitled "Project Plans" (attached as Exhibit "C") will be processed expeditiously and in accordance with the terms and provisions of this Agreement, the approved Project Plans, and the Conditions of Approval (attached as Exhibit "D").

7. **Project Development**

7.1. **Project Description and Binding Covenants.** The Property is that property described in the attached Exhibits A and B which include a map showing its location and boundaries. The Property is commonly described as located at 2150 West Hillcrest Drive, Thousand Oaks, California, A.P.N. 667-0-113-075. Owner represents that it has a legal or equitable interest in the Property and that all other persons holding legal or equitable interests in the Property (excepting owners or claimants in easements) agree to be bound by this Agreement. The Parties intend and determine that the provisions of this Agreement shall constitute covenants which shall run with said Property,
and the burdens and benefits hereof shall bind and inure to all successors in interest to the Parties hereto.

7.2. **General Development.** Any development of the Project on the Property shall be conducted in accordance with the terms and conditions of this Agreement and attached exhibits.

7.3. **Ministerial Approvals.** City hereby agrees that Ministerial Approvals for the Project will be approved in a manner consistent with the Project Approvals and Applicable Laws, provided that Owner satisfactorily complies with all preliminary procedures, actions, payments, criteria, and regulations applicable as of the Agreement Effective Date and generally required of developers by City for processing applications for developments at such time.

7.4. **CEQA Compliance.** The City Council approved the current General Plan Land Use Element designation and zoning for the Property after considering the information and findings of the Environmental Checklist for this Project and EIR No. 2022-70774. The Project is subject to all applicable mitigation measures and project design features as described in EIR No. 2022-70774.

7.5. **Permitted Uses and Development Standards.** In accordance with and subject to the terms and conditions of this Agreement, Developer shall have a vested right to develop the Property for the uses and in accordance with and subject to the terms and conditions of this Agreement, the Project Approvals, the Future Development Entitlements (if and when approved), Ministerial Approvals (if and when approved), any amendments to the foregoing approved by the City, and, to the extent not addressed in the foregoing, the Applicable Laws, the exhibits attached hereto and incorporated herein by reference, and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement.

7.6. **Owner to Build Approved Project.** Owner hereby agrees that development of the Project shall be in accordance with the Project Approvals, including the conditions of approval and the mitigation measures and project design features for the Project as adopted by City, any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement, the Future Development Entitlements (if and when approved), Ministerial Approvals (if and when approved), any amendments to the foregoing approved by the City, and, to the extent not addressed in the foregoing, the Applicable Laws. Nothing in this Section shall be construed to restrict the ability to make minor changes and adjustments in accordance with Subsection 10.2. Notwithstanding the foregoing, nothing in this Agreement shall require Owner to construct the Project or pay fees for any portion of the Project that Owner does not construct.
7.7. Timing of Development. The California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that failure of the parties in that case to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over the parties’ agreement. It is the intent of Developer and the City to cure that deficiency by expressly acknowledging and providing that any future City action that purports to limit over time the rate or timing of development or to alter the sequencing of development phases (whether adopted or imposed by the City Council or through the initiative or referendum process) shall not apply to the Project and shall not prevail over this Agreement. In particular, but without limiting any of the foregoing, no numerical restriction shall be placed by the City on the amount of total square feet or the number of buildings, structures, residential units that can be built each year on the Property except as expressly provided in this Agreement. The Project shall be completed within the Term unless extended pursuant to this Agreement. Owner intends to submit plans for building permits within the first year of the Term, subject to unforeseen delays.

8. **Rules, Regulations, and Fees.**

8.1. **Main Rules, Regulations, Ordinances and Policies.** For the Term of this Agreement, the rules, regulations, ordinances and official policies governing the permitted uses of land, the density and intensity of use, phasing, design, improvement and construction standards and specifications applicable to the development of the Property, including the maximum height and size of proposed buildings, shall be the Applicable Laws, the Project Approvals, Conditions of Approval (Exhibit D), the Future Development Entitlements (if and when approved), Ministerial Approvals (if and when approved), any amendments to the foregoing approved by the City, and Project Plan Set dated May 26, 2023 (Exhibit C). Except as otherwise provided in this Agreement, to the extent any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations, or policies adopted by the City purport to be applicable to the Property but are inconsistent with the terms and conditions of this Agreement, the terms of this Agreement shall prevail, unless the Parties mutually agree to amend or modify this Agreement.

8.2. **Changes in State and Federal Rules and Regulations.** Nothing in this Agreement shall preclude the application to the development of the Property of changes in City’s laws, regulations, plans, or policies, the terms of which are specifically mandated and required by changes in state and federal laws or regulations as provided in Government Code Section 65869.5. This includes, but is not limited to, the California Building Code, California Fire Code, California Mechanical Code, California Plumbing Code, California Residential Code, California Green Building Standards Code, and California Energy Code all of which have also been adopted in the TOMC. In the event State or federal laws or regulations enacted after the Agreement Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans...
maps or permits approved by the City, this Agreement, or portions thereof, may be modified, extended, or suspended as may be necessary to comply with such State or federal laws or regulations or the regulations of such other governmental jurisdiction.

8.3. No City Liability for Federal or State Actions Affecting Project. To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including City, insofar as they are required by said federal or state agencies) have the effect of preventing, delaying, or modifying development of the Property, City shall not in any manner be liable for any such prevention, delay, or modification of said development or for costs incurred by Developer in complying with such actions. To the extent possible, in the event of any ambiguity, any such regulations shall be applied and construed so as to provide the Owner with the rights and assurances provided under this Agreement.

8.4. Development Impact Fees and Public Benefit Program Cash Contribution. All City Processing Fees and Development Fees Owner shall pay for the Project shall be at the rates in effect on the Agreement Effective Date. Fees payable directly to, or collected by City for payment on behalf of, other public agencies, including but not limited to the State of California, County of Ventura, Ventura County Watershed Protection District, Calleguas Municipal Water District, Cal-Am, Conejo Recreation and Park District, and Conejo Valley Unified School District, are not subject to the limitation set forth herein. Any fees, charges, taxes, assessments, or levies (including, but not limited to, those for water and wastewater usage, and landscape and lighting assessments) other than Processing Fees and Development Fees that are revised or adopted on a Citywide or regional or communitywide basis during the term of this Agreement shall apply to the Property. Owner shall be entitled to fee credits where Owner demonstrates credits should be applied.

Per California Government Code Section 65915 and Section 65915.1, affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, shall not be imposed on Project's affordable units.

8.5. Health and Safety Exception. Nothing herein shall be construed to limit the authority of City to adopt and apply codes, ordinances and regulations which have the legal effect of protecting persons or property from conditions which create a serious and imminent health, safety, or physical risk. To the extent possible, any such codes, ordinances, and regulations shall be applied and construed so as to provide the Owner with the rights and assurances provided under this Agreement.

8.6. Uniform Codes Applicable. All project construction, grading, and building plans for the Project shall comply with the uniform codes, construction standards and specifications in effect at the time the construction and improvements plans are approved, including those standards and specifications set forth in the California Building Code.
Code, California Fire Code, California Mechanical Code, California Plumbing Code, California Residential Code, California Green Building Standards Code, and California Energy Code all of which have also been adopted in the TOMC.

8.7. **Future Development Entitlements.** City agrees to cooperate with Owner to facilitate the processing of and to expeditiously process all Future Development Entitlements and City shall exercise its discretion in a manner consistent with and in recognition of this Agreement, the Project Approvals, the Applicable Laws, and other approved documents associated with this Agreement. City and Owner shall meet to identify all necessary Future Development Entitlements and to develop a schedule processing them. City and Owner agree to cooperatively work together to ensure expeditious review and processing and assign a dedicated City planner of the Future Development Entitlements.

8.8. **Reserved Discretionary Approvals.** Development Permit (DP) 2022-70773 and other land use entitlements identified in Exhibit H have been approved and adopted for the development of the Project on the Subject Property. Owner will first need to obtain a building permit(s) and other future discretionary approvals to complete construction and development of the Project on the Subject property as described in the exhibits attached to this Agreement. City agrees to cooperate with Owner to facilitate the processing of and to expeditiously process all future applications for such reserved discretionary approvals and City shall exercise its discretion in a manner consistent with and in recognition of this Agreement and other approved documents associated with this Agreement.

8.9. **Governing Rules, Regulations, Ordinances, Conditions, and Policies.** Notwithstanding anything to the contrary set forth in this Agreement, for the term of this Agreement, the rules, regulations, ordinances and official policies governing the permitted uses of the Property, the density and intensity of use, design, improvement and construction standards and specifications applicable to the development of the Property, including the maximum height and size of proposed buildings, shall be those rules, regulations and official policies in force on the effective date the City Council approves this Agreement, including the Conditions of Approval and Exhibits labeled “Project Plans” dated May 26, 2023, and attached as Exhibit “C”. To the extent any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City purport to be applicable to the Property but are inconsistent with the terms and conditions of this Agreement, the terms of this Agreement shall prevail, unless the Parties mutually agree to amend or modify this Agreement. To the extent that any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations, or policies adopted by the City are applicable to the Property and are not inconsistent with the terms and conditions of this Agreement or are otherwise made applicable by other provisions of this Agreement, such future changes in the General Plan, zoning codes or such future rules, ordinances, regulations or policies shall be applicable to the Property.
8.10. **Applicable City Construction Standards.** All project construction and improvement plans for the Project shall comply with the applicable governmental rules, regulations, and design guidelines in effect at the time the Project Plans are approved. If no permit is required for the public improvements, the date of permit approval shall be the date the improvement plans are approved by the City or the date construction for the public improvements is commenced, whichever occurs first.

8.11. **Uniform Codes Applicable.** This Project shall be constructed in accordance with the requirements of all applicable California Building Codes and local amendments, in effect at the time of submittal of the appropriate building, grading, encroachment or other construction permits for the Project. The Project must be built consistently with the City’s General Plan, Thousand Oaks Municipal Code, and Specific Plan No. 24. If no permits are required for any infrastructure improvements, such improvements will be constructed in accordance with the provisions of the codes delineated herein in effect at the start of construction of such infrastructure.

9. **Relationship of Parties.** The contractual relationship between City and Owner is independent and under no circumstances shall Owner be considered an agent or partner of City.

10. **Amendments to Agreement.** This Agreement may be amended in whole or in part only in writing and only by the mutual consent of the Parties. Amendments shall be processed either as Major Amendments or Minor Amendments, as defined and set forth below in Subsections 10.1 and 10.2.

10.1. **Major Amendments.** Amendments to this Agreement which affect or relate to (a) the Term of this Agreement; (b) the permitted uses of the Property; (c) the provisions for the reservation or dedication of land; (d) an increase in the density or intensity of use of the Property or the maximum height or maximum gross square footage; (e) changes to the percentage of commercial uses to residential use; (f) changes to the community benefits affecting the total monetary contributions by Developer; (g) changes to building materials which are not comparable or better than those included in the project plans dated May 26, 2023; or, (h) changes to the features of the conceptual landscape plan, including common outdoor spaces which are to comparable or better than the details included in the Specific Plan dated May 25, 2023, shall be deemed a “Major Amendment” and shall require giving of notice and a public hearing before the Planning Commission and the City Council in accordance with Government Code Section 65868 and TOMC Section 9-11.14(a). Any amendment which is not a Major Amendment shall be deemed a Minor Amendment subject to Subsection 10.2. Consistent with Sections 10.1 and 10.2, the City Manager or his or her designee shall have the discretionary authority to determine if any amendment is a Major Amendment subject to this Section or a Minor
Amendment subject to Subsection 10.2 below. Said determination may be appealed to the City Council.

10.2. Minor Amendments. The Parties acknowledge that refinement and further implementation of the Project may demonstrate that certain minor changes may be appropriate with respect to the details of the development and performance of the Parties under this Agreement, Minor changes include any modification to the Project that is substantially consistent with the intent of the Project Approvals and does not involve any deviation from Specific Plan No. 24 or Applicable Laws. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Agreement. If and when the Parties find that clarifications, minor changes, or minor adjustments are necessary or appropriate and do not constitute a Major Amendment under Subsection 10.1, they shall effectuate such clarifications, minor changes or minor adjustments through a written Minor Amendment approved in writing by Owner and the City Manager. Minor amendments authorized by this subsection are ministerial and may not constitute a discretionary action or “amendment” for the purposes of Government Code Sections 65867, 65867.5, and 65868. Unless otherwise required by law, no such Minor Amendment shall require prior notice or hearing.

11. Cancellation and Termination. This Agreement may be canceled, in whole or in part, by mutual consent of the Parties in the manner provided for in Government Code Section 65868 and TOMC Section 9-11.14. Any termination under Government Code Section 65865.1 or TOMC Section 9-11.14(b) shall be effective only if Owner is provided no less than thirty (30) days in which to cure any alleged noncompliance, provided that City shall not terminate this Agreement pursuant to Section 65865.1 or Section 9-11.14(b) if City determines that the nature of the noncompliance requires more than thirty (30) days to cure and that Owner is capable of effecting such cure, and within such thirty (30) days Owner commences such cure and thereafter diligently and with continuity prosecutes such cure to completion. Any termination of this Agreement pursuant to Government Code Section 65865.1 or TOMC Section 9-11.14(b) shall be preceded by an opportunity for Owner to be heard before the City Council. This provision shall not limit City’s or Owner’s remedies as provided in this Agreement.

12. Enforcement. Unless canceled or terminated as provided herein, this Agreement is enforceable by City, Owner, or any successor in interest, notwithstanding any change in any applicable General or specific plan, zoning, or subdivision regulation adopted by City or otherwise imposed which alters or amends the rules, regulations or policies specified in this Agreement.

13. Periodic Review of Compliance with Agreement.
13.1. Periodic Review. City may review compliance with this Agreement every twelve (12) months from the date this Agreement is executed unless a shorter time is specified by the City Council. City shall notify Owner in writing of the date for review at least thirty (30) days prior thereto, and Owner shall provide such information as City may require so City may properly perform the review. The City shall conduct any such annual review to determine whether Developer is acting in good-faith compliance with the provisions of this Agreement in accordance with Section 65865.1 of the California Government Code. Developer shall reimburse the City for the cost of each annual review conducted during the term of this Agreement. Such cost reimbursement shall include all direct and indirect expenses actually incurred in such annual reviews, provided that such cost shall be generally consistent with the cost charged for annual reviews for other development agreements to which the City is a party.

13.2. Good Faith Compliance. During each periodic review, Owner shall be required, in accordance with TOMC Section 9-11.13, to demonstrate by substantial evidence good faith compliance with the terms and conditions of this Agreement.


14.1. Defaults by Owner. If City determines that Owner is in default under the terms and conditions of this Agreement, City shall, by written notice to Owner, specify the manner in which Owner is in default and state the steps Owner must take to comply. If, within thirty (30) days after the effective date of notice from City specifying the manner in which Owner has failed to so comply, Owner does not commence all steps reasonably necessary to comply as required and/or thereafter diligently and with continuity pursue such steps to cure the default, then Owner shall be deemed to be in default under the terms of this Agreement and City may seek to terminate this Agreement providing Owner an opportunity to be heard before the City Council in accordance with Government Code Section 65865.1 and TOMC Section 9-11.14(b), or seek other remedies as set forth in this Agreement.

14.2. Defaults by City. If Owner determines that City is in default under the terms and conditions of this Agreement, Owner shall, by written notice to City, specify the manner in which City is in default and state the steps City must take to comply. If, within thirty (30) days after the effective date of notice from Owner specifying the manner necessary to comply as required and/or thereafter diligently and with continuity pursue such steps to completion, then City shall be deemed to be in default under the terms of this Agreement and Owner may terminate this Agreement or seek other remedies as set forth in this Agreement.

14.3. Failure to Cure Default Procedures. If after the cure period has elapsed, the City finds and determines that Owner remains in default, the City shall make a report to the City Council and then set a public hearing in accordance with the notice and hearing requirements of Government Code Section 65867 and 65868. If, after public hearing requirements of Government Code Section 65867 and 65868. If, after public

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hearing, the City Council finds and determines, on the basis of substantial evidence that the Owner has not cured the applicable default pursuant to this Section, City Council may terminate the Agreement and seek all remedies as set forth in this Agreement.

14.4. **No Monetary Damages.** It is acknowledged by the Parties that neither the City nor Owner would have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. The Parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages that would adequately compensate Owner for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the Parties agree that each of the Parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that neither Party nor any Transferee shall be liable in monetary damages and the Parties covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement. The Parties understand and agree, however, that nothing in this Section 14.4 shall prohibit, restrict, or otherwise affect the rights of a Party to seek monetary damages as a result of Owner's failure to make the required Benefit Payments or pay to the City any other required payments under this Agreement. If Owner fails to make the Public Benefit Payments as required by this Agreement, the City shall be entitled to sue for the City's actual, direct monetary damages in the amount of such unpaid Benefit Payments. In no event shall either Party be entitled to special, consequential, or punitive damages or damages measured by lost profits.

14.5. **Remedies.** The exclusive remedy for Owner for a default by City shall be specific performance under the terms of this Agreement to construct the Project as described within this Agreement. To the extent permitted by applicable law, Owner shall not assert, and hereby waives, any claim against City, its Officials, Officers, Employees, and Agents, on any theory of liability, for special, indirect, consequential, or punitive damages arising out of, in connection with, or as a result of, this Agreement and any actions by City to approve the Project and this Agreement. Owner further waives any right to monetary damages such as compensatory damages, loss of economic benefit, or lost profits.

14.6. **Commencement of Legal Action.** In addition to any other rights or remedies, either Party may initiate legal action to cure, correct, or remedy any default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, to recover damages or any default, or to obtain any other remedies consistent with the purpose of this Agreement. Venue for such action shall be in Ventura County.

15. **Waivers and Delay.**
15.1. **Waiver.** Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a default by the other Party hereto, shall not constitute a waiver of such Party’s right to demand strict compliance by such other Party in the future.

15.2. **Third Parties.** Non-performance shall not be excused because of a failure of a third person, except as provided in Subsection 15.4.

15.3. **Covenant Not to Sue.** Notwithstanding anything to the contrary in this Agreement, Developer hereby agrees that neither Developer nor any of its agents, employees, representatives, members, managers, officers, assigns, heirs and successors in interest shall commence, prosecute, assist, promote or encourage, financially or otherwise, either individually or in any collective way, either directly or indirectly, either on its own behalf or on behalf of any other person or entity, any arbitration, litigation or any other judicial proceeding of any kind, nature or description against or involving the City challenging that any applicable conditions, mitigation measures, obligations, requirements or restrictions contained in the Agreement violate any California statutory requirements, constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, constitute or result in a taking of property without payment of just compensation, or impose an unlawful fee, or exaction or tax. Nothing in this Section shall prevent Developer from exercising its rights under Section 14, above, with respect to a default by the City.

15.4. **Force Majeure.** The Parties shall not be deemed to be in default of any provision of this Agreement where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, pandemic, states of emergency, stay-at-home orders, strikes and other labor difficulties, or similar events and occurrences beyond the Parties’ control. If any such events shall occur, the terms of this Agreement and the time for performance by a Party of any of its obligations hereunder shall be extended by the period of time that such events prevented performance of the obligation. To assist the Parties in determining the period of time for excusable delay, the Parties may refer to federal, State, and local orders, including health orders, adopted by any of the various agencies that directly impact this Project and the Parties’ ability to either work on the Project or process permits.

15.5. **Nexus/Reasonable Relationship Challenges.** Notwithstanding Subsection 15.1, Owner consents to, and waives any rights it may have now or in the future to bring a nexus/reasonable relationship challenge relating to the legal validity of (1) the express conditions, requirements, policies, rules, regulations or programs required by City’s Applicable Laws, including City’s General Plan, TOMC, Subdivision Map Act regulations, Specific Plan No. 24, Residential Planned Development rules and regulations, and Oak/Landmark Tree Preservation rules and regulations as they exist on the Agreement Date as to the Project; or (2) this Agreement, including without limitation, cdd:420-82/H:COMMON/City Council/Agenda Packet/2023/2023-06-20/Latigo/Latigo 2022-70733 Attach 9.docx/pz (FILE ID: 2022-70777-DAGR)

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any claim that the Agreement constitutes an abuse of the police power, violates substantive due process, denies equal protection of the laws, constitutes or results in a taking of property without payment of just compensation, or imposes an unlawful fee, exaction, or tax.

15.6. **Cooperation by Owner.** Owner will, in a timely manner, provide City with all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder, and cause Owner’s planners, engineers, and all other consultants to submit in a timely manner all required materials and documents, therefore. Owner shall also apply in a timely manner for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Property as may be required for the development of the Project.

16. **Notices.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and email. Notices required to be given to City shall be addressed as follows:

City of Thousand Oaks  
2100 E. Thousand Oaks Boulevard  
Thousand Oaks, California 91362  
Attention: Community Development Director  
Email: kparker@toaks.org

Notices required to be given to Owner shall be addressed as follows:

Latigo-Hillcrest, LLC  
11845 West Olympic Blvd, Suite 515W  
Los Angeles, CA 90064  
Attn: Mark Maron, Co-Founder and Managing Partner  
Email: mark@latigo-group.com

With a copy to:  
Thomas S. Cohen, Esq.  
Cohen Land Use Law, LLP  
1534 N. Moorpark Road, #337  
Thousand Oaks, CA 91360  
Email: tcohen@cohenlanduselaw.com

Formal written notices, demands, correspondence and communications between City and Owner shall be sufficiently given if dispatched by certified mail, postage prepaid, to the principal office of City and Owner, as set forth in this Section. Owner shall give written notice to City, at least thirty (30) days prior to the close of escrow, of any sale or
transfer of any portion of the Property and any assignment of this Agreement, specifying
the name or names of the transferee, the transferee’s mailing address, the acreage and
location of the land sold or transferred, and the name and address of a single person or
entity to whom any notice relating to this Agreement shall be given, and any other
information reasonably necessary for City to consider approval of an assignment pursuant
to Section 18 or any other action City is required to take under this Agreement.

Any notice given as required, herein, shall be deemed given a seventy-two (72)
hour notification after deposit in the United States mail, if sent by mail, or upon delivery if
personally delivered. A Party may change its address for notices by giving notice in writing
to the other Party as required, herein, and thereafter notices shall be addressed and
transmitted to the new address.


17.1. Challenges to Agreement. In the event of any legal action instituted
by a third party, including but not limited to any other governmental entity or official,
challenging the validity of any provision of this Agreement, City and Owner hereby agree
to use reasonable efforts to cooperate in defending such action. Each Party shall bear
their own costs and attorney’s fees in defending any such third-party challenge to the
Agreement, except that the Parties may by mutual written consent agree to joint legal
representation in any such suit, the cost of which shall be equally shared between City
and Owner. In the event of any litigation challenging this Agreement, or any portion
hereof, this Agreement shall remain in full force and effect while such litigation, including
any appellate review, is pending.

17.2. Challenges to Entitlements. In the event of any administrative, legal,
or equitable action or other proceeding instituted by any person or entity not a party to the
Agreement challenging any entitlement issued in reliance upon City approvals or
challenging the sufficiency of any environmental review of this Project (each an
“Entitlement Challenge”), each Party must cooperate in the defense of such Entitlement
Challenge, in accordance with this Section. Owner agrees to pay City’s costs of
defending an Entitlement Challenge, including all court costs and reasonable attorney’s
fees incurred by City in defense of any Entitlement Challenge, as well as the time of the
City’s staff spent in connection with such defense, and any costs and attorneys’ fees
awarded against the City to a successful third party. Owner may select its own legal
counsel to represent Owner’s interests in any Entitlement Challenge at Owner’s sole cost
and expense. City agrees that it will not enter into a settlement agreement to any
Entitlement Challenge without Owner’s written consent. Owner’s obligation to pay City’s
costs in the defense of an Entitlement Challenge does not extend to those costs incurred
on appeal filed by City as against a successful third party unless otherwise authorized by
Owner in writing.

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17.3. City’s Right to Independent Legal Evaluation. Nothing in this Section shall be construed as preventing City from independently evaluating its rights, obligations and causes of action in the event of litigation.

17.4. Cooperation. The City shall cooperate with Developer in the defense of the Proceeding; provided, however, that such obligation of the City to cooperate in its defense shall not require the City to (a) assert a position in its defense of the Proceeding which it has determined, in its sole discretion, has no substantial merit, (b) advocate in its defense of the Proceeding legal theories which it has determined, in its sole discretion, lack substantial merit, or (c) advocate in its defense of the Proceeding legal theories which it has determined, in its sole discretion, are contrary to its best interests, or to public policy. Nothing contained in this Section 17.4 shall require Developer to refrain from asserting in its defense of the Proceeding positions or legal theories that do not satisfy the foregoing requirements.

17.5. Defending The Proceeding. Developer shall have the right, but not the obligation, to timely retain legal counsel to defend against any Proceeding, including without limitation a lawsuit to challenge a Project Approval or this Agreement based on an alleged violation of CEQA. The City shall have the right, if it so chooses, to defend any Proceeding utilizing in-house legal staff, or to retain outside legal counsel. Whether the City utilizes in-house legal staff, or outside legal counsel, Developer shall be liable for all legal costs, fees and expenses reasonably incurred by the City in defending a Proceeding. Provided that Developer is not in breach of the terms of this Agreement, the City shall not enter into any settlement of a Proceeding that involves the modification of any Project Approval or otherwise results in Developer incurring liabilities or other obligations, without the prior written consent of Developer.

18. Transfers and Assigns.

18.1. Transfers in General. Owner shall have the right to sell, assign or transfer (collectively “transfer”) this Agreement, and any and all of its rights, duties and obligations hereunder, to any person or entity at any time during the term of this Agreement, provided, however, in no event shall the rights, duties and obligations conferred upon Owner pursuant to this Agreement be at any time so transferred to or assigned except through a transfer of Owner’s interest in the Property or a portion thereof.

18.2. City Review of Proposed Transfer. Prior to any such proposed transfer, Owner shall provide a Notice of Transfer to City, including the name, net worth, and development experience of the transferee. Any such transfer to an entity whose development experience confirms the transferee’s ability to develop a project comparable in size and complexity to the Project shall be approved by the Community Development Director. Unless agreed to in writing, if Owner transfers the rights under the Agreement before the Project is completely constructed, the subsequent Owner will be required to build or complete the construction of the Project based on the architectural plans.
approved by City and under the same entitlement conditions previously approved, subject to any changes proposed consistent with subsections 10.1 and 10.2 above. The Director may require the submittal of reasonable documentation regarding the information provided relative to the proposed transferee. Any proposed transferee shall provide City all documents within fifteen (15) days from receipt of the Director’s request that support a finding transferee has the requisite experience and the financial stability to develop the Project or respective portion thereof. The Community Development Director may withhold approval of such transfer only if the proposed transferee fails to provide requested document to the Director in the time set forth above, the Director determines with reasonable discretion that the transfer would be to an entity that has not had experience developing projects of comparable size and complexity to the Project, or the entity does not have sufficient net worth and financial fitness to carry out the Project, provided that the Community Development Director’s approval shall not be unreasonably withheld. City shall notify Owner in writing of the Community Development Director’s approval or disapproval of the transferee within thirty (30) days of City’s receipt of Owner’s Notice of Transfer and all supporting information requested by the Director regarding the proposed transferee. Failure by City to notify Owner within such thirty (30) day period shall constitute the Community Development Director’s approval of such transferee. Owner shall have the right to appeal the determination of the Community Development Director to the City Council within ten days of the Director’s determination.

18.3. **Transfer to Lender.** Nothing contained in this Section 18 shall prevent a transfer of the Property, or any portion thereof, to an institutional lender as a result of a foreclosure or deed in lieu of foreclosure and any lender acquiring the Property, or any portion thereof, as a result of foreclosure or a deed in lieu of foreclosure shall take such Property subject to the rights and obligations of Owner under this Agreement; provided, however, that, in no event shall such lender be liable for any defaults or monetary obligations of Owner arising prior to acquisition of title to the Property by such lender and, provided further that, in no event shall any such lender or its successors or assigns be entitled to a building permit or occupancy clearance for which the applicable permits have not been issued and/or fees have not been paid to City.

18.4. **Conditions of Transfer.** The sale, transfer or assignment of Owner’s rights and interests under this Agreement may be permitted only if (a) Owner is not then in default under this Agreement; (b) Owner has provided to City notice of such transfer; and (c) the transferee executes and delivers to City a written agreement in which (1) the name and address of the transferee is set forth; and (2) the transferee expressly and unconditionally assumes all the obligations of Owner under this Agreement with respect to the Property and Project or with respect to the portion of the Property and Project that is being transferred.
18.5. **Exceptions to Obtaining City Consent.** Notwithstanding Subsection 18.4, mortgages, deeds of trust, sales and leasebacks or any other form of conveyance required for any reasonable method of financing are permitted without consent, but only for the purpose of securing loans of funds to be used for financing or refinancing the development and construction of improvements related to the Project and other necessary and related expenses. The holder of any mortgage, deed of trust or other security arrangement with respect to the 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. Nothing in this Agreement shall be deemed to construe, permit, or authorize any such holder to devote the 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.

18.6. **Reorganization of Owner’s Business Structure Exception.** Nothing in this Section shall be deemed to constitute or require City consent to an assignment that consists solely of a reorganization of the Developer’s business structure, such as (i) any sale pledge, assignment or other transfer of all or a portion of the Project Site to an entity directly controlled by Developer or its affiliates and (ii) any change in Developer entity form, such as a transfer from a corporation to a limited liability company or partnership, that does not affect or change beneficial ownership of the Project Site; provided, however, in such event, Developer shall provide to City written notice, together with such backup materials or information reasonably requested by City, within thirty (30) days following the date of such reorganization or City’s request for back up information, as applicable.

19. **Affordable Housing Agreement** – The applicant shall submit to the City an affordable housing agreement for review and approval by the Community Development Department that provides for the on-going affordability of the Project.

19.1. Approval of this residential project is subject to execution of an Affordable Housing Covenant entered into between the Owner and City of Thousand Oaks. Said Affordable Housing covenant shall incorporate the following conditions and is subject to approval by the City Attorney and Community Development Director.

19.2. Affordable Housing Covenant shall be recorded prior to final building permit issuance. Covenant shall be recorded to provide notice to any future owners.
19.3. The Affordable Housing Covenant shall require Owner to maintain thirty (30) units as Very Low Income affordable units and three (3) units as Moderate Income affordable units. The units will be preserved at the Very Low-income level of fifty (50%) percent of the Ventura County median income and the Moderate Income affordable units at one-hundred, twenty (120%) percent of the Area Median Income, or the then current income range limit for Very Low Income Households and Moderate Income Households established for Ventura County under Section 6932 of Title 25 of the California Code of Regulations as in effect at the time the Owner submits its application for occupancy for the two housing categories, as such limits are adjusted by Actual Household Size. Refer to the 2022 Ventura County Income Limits chart attached hereto as Exhibit E and future amendments and revisions thereto.

19.4. Applicant agrees to execute an Affordable Rental Housing Regulatory Agreement and Declaration of Restrictive Covenant with City that provides for the on-going affordability of these thirty-three (33) restricted units for 55 years from the date the units initially become available for lease.

19.5. The City may extend affordable period if owner does not comply with Affordable Housing Covenant.

19.6. Affordable units must be comparable in exterior appearance and overall quality of construction to market-rate dwelling units in the same residential development. The design and appearance of the affordable units shall be compatible with the design of the market-rate units.

19.7. Affordable units must be dispersed throughout the mixed-use and residential use buildings of the development in a manner acceptable to the City.

19.8. The Affordable Housing Covenant shall be in compliance with the latest California State requirements.

19.9. The Affordable Agreement shall be reviewed and approved by the Community Development Department and City Attorney’s office prior to the issuance of a building permit for construction of any new building(s).

20. **No Third-Party Beneficiaries.** This Agreement is for the exclusive benefit of Owner and City and not for the benefit of any other party. There shall be no incidental or other beneficiaries of any of Owner’s or City’s obligations under this Agreement.

21. **Severability.** If any terms, provisions, conditions or covenants in this Agreement, or the application thereof to any Party or circumstances, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms, provisions, conditions or covenants to persons or circumstances other than
those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22. **Interpretation and Governing Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. Venue shall be in Ventura County.

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

24. **Rules of Construction and Miscellaneous Terms.**

24.1. **General/Mandatory/Permissive.** The singular includes the plural; the masculine gender includes the feminine; “shall” is mandatory, “may” is permissive.

24.2. **Time of Essence.** Time is of the essence regarding each provision of this Agreement of which time is an element.

24.3. **Cooperation.** Each Party covenants to take such reasonable actions and execute all documents that may be necessary to achieve the purposes and objectives of this Agreement, provided City shall not be obligated to institute a lawsuit or other court proceeding in this connection.

24.4. **Covenant of Good Faith and Fair Dealing.** Neither Party shall do anything which shall have the effect of harming or injuring the right of the Party to receive the benefits of this Agreement; each Party shall refrain from doing anything which should render its performance under this Agreement impossible; and each Party shall do everything which this Agreement contemplates that such Party shall do in order to accomplish the objectives and purposes of this Agreement.

24.5. **Estoppel Certificates.** Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and a binding obligation of the Parties; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and extent of any such defaults. The requesting Party may designate a reasonable form of certificate (including a lender’s form) and the Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within fifteen (15) days following the receipt thereof. The City Manager, or his or her designee, shall be authorized to execute any certificate requested by Developer hereunder. Developer
and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, lenders, partners, bond counsel, underwriters, and other mortgagees. The request shall clearly indicate that failure of the receiving Party to respond within the fifteen (15) day period will lead to a second and final request and failure to respond to the second and final request within five (5) days of receipt thereof shall be deemed approval of the estoppel certificate. Failure of City or Developer to execute an estoppel certificate shall not be deemed a default.

24.6. **Project Is Owner’s Undertaking.** The development proposed to be undertaken by Owner is a private development, and Owner may exercise full dominion and control over the Project subject only to the limitations and obligations of Owner contained in this Agreement and the Project Approvals.

24.7. **Entire Agreement.** This Agreement and any exhibits hereto or any amendments and addenda that may be executed in accordance with Section 10 herein contains the entire agreement between the Parties and any agreement or representation respecting the matters dealt with herein or the duties of any Party in relation thereto not expressly set forth in this Agreement shall be null and void.

24.8. **Recitals.** The Recitals set forth in this Agreement are specifically incorporated into and made a part of this Agreement.

25. **Binding Effect of Agreement.** Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement. The Property and Owner are subject to each term, condition, and covenant of this Agreement.

26. **Equitable Servitudes and Covenants Running with the Land.** Any successors in interest to City and Developer shall be subject to the provisions set forth in Sections 65865.4 and 65868.5 of the California Government Code. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 18, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the developer in writing pursuant to Section 18. In any event, no owner or tenant of an individual completed residential unit within Project shall have any rights under this Agreement.
27. **Attorneys’ Fees.** In the event of any action between the City and Owner for enforcement or interpretation of any of the terms or conditions of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation court costs and attorneys’ fees actually and reasonably incurred, as awarded by a court of competent jurisdiction. This Section shall survive the termination of this Agreement.

28. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This agreement, not counting the Cover Page or signature page, consists of 32 pages and 5 Exhibits.

29. **Duty to Hold Harmless, Defend and Indemnify.** Excepting as to the extent any loss, property damage or injury arose from the City’s or the City’s officers’, agents’, employees’, or contractors’ breach of this Agreement, or their acts of negligence or willful misconduct, as determined by a court of competent jurisdiction, Developer hereby agrees to end, indemnify, and hold City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage arising from this Agreement or alleged to have been caused by Developer or Developer’s contractors, subcontractors, agents or employees operations under this Agreement, whether such operations be by Developer, or by any of Developer’s contractors, subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for Developer or any of Developer’s contractors or subcontractors. Developer further agrees to defend, indemnify, and hold harmless the City and its officers and employees, from any third-party claim, action or proceeding against the City or its officers or employees to set aside, void, or annul, all or any part of this Agreement or any Project Approval.

In the event any claim, action, or proceeding is instituted against City, and/or its officers, agents, and employees, by any third party on account of the processing, approval, or implementation of the Project Approvals and/or this Agreement, then the Parties shall comply with Section 17. As an alternative to defending any such action, Developer may request that the City rescind any approved land use entitlement. The City will promptly notify Developer of any known claims, actions, or similar proceedings, and will cooperate fully in the defense thereof.

30. **Prevailing Wages.** Without limiting the foregoing, Owner acknowledges the requirements of California Labor Code §1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects, as defined. If on-site or off-site improvements pursuant to this Agreement are being performed by Developer as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation under the contract in question is $1,000 or cdd:420-82/H:COMMON/City Council/Agenda Packet/2023/2023-06-20/Latigo/Latigo 2022-70733 Attach 9.docx/pz (FILE ID: 2022-70777-DAGR)
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more, Developer agrees to fully comply with such Prevailing Wage Laws. Developer understands and agrees that it is Developer’s obligation to determine if Prevailing Wages apply to work done on the Project or any portion of the Project. Upon Developer’s request, the City shall provide a copy of the then current prevailing rates of per diem wages. Developer shall defend, indemnify, and hold the city, its elected officials, officers, employees, and agents free and harmless pursuant to the indemnification provisions of this Agreement from any claim or liability arising out of any failure or alleged failure by Developer to comply with the Prevailing Wage Laws associated with any “public works” or “maintenance” projects associated with Project development.

31. **Enforced Delay:** Extension of Time of Performance. In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which either Party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including: war; insurrection; strikes; walkouts; riots; floods; earthquakes; fires; casualties; pandemics; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs such as the annual review).

32. **Dispute Resolution**

32.1. **Dispute Resolution Proceedings.** The Parties may agree to dispute resolution proceedings in an effort to resolve disputes or questions of interpretation under this Agreement in a fair expeditious manner. These dispute resolution proceedings may include: (a) procedures developed by the City for expeditious interpretation of questions arising under development agreements; (b) arbitration as provided below; or (c) any other manner of dispute resolution which is mutually agreed upon by the parties.

32.2. **Arbitration.** Any dispute between the Parties that the Parties agree to resolve by arbitration shall be settled and decided by arbitration conducted by an arbitrator who must be a former judge of the Ventura County Superior Court or Appellate Justice of the Second District Court of Appeals or the California Supreme Court. This arbitrator shall be selected by mutual agreement of the Parties. If the parties are unable to promptly agree upon an arbitrator, each will provide a list of three available judges to the other and the other party may strike one. If only one judge remains from this process (because some of the judges on the two lists are identical), then that judge shall serve as the arbitrator. If two or more judges remain from this process, then the parties shall endeavor in good faith to select one of them as the arbitrator. In the event that the parties cannot select an arbitrator, the matter shall be submitted to JAMS for selection of a JAMS panel arbitrator.
32.3. Arbitration Procedures. Upon appointment of the arbitrator, the matter shall be set for arbitration at a time not less than thirty (30) nor more than ninety (90) days from the effective date of the appointment of the arbitrator. The arbitration shall be conducted under the procedures set forth in California Code of Civil Procedure Sections 638 et seq., or under such other procedures as are agreeable to both Parties, except that provisions of the California Code of Civil Procedure pertaining to discovery and the provisions of the California Evidence Code shall be applicable to such proceeding.

33. Extension of Term. The Term of this Agreement, as set forth in Section 3, above, shall automatically be extended for the period of time in which the Parties are engaged in dispute resolution to the degree that such extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as the result of such dispute resolution.

34. Recordation.

34.1. This Agreement and any amendment or cancellation hereof shall be recorded in the Official Records of Ventura County by the Clerk of City within ten (10) days after the Agreement Effective Date and within ten (10) days after any amendment or cancellation hereof. Failure to timely record the Agreement shall not constitute a default or invalidate the Agreement.
IN WITNESS WHEREOF, this Agreement is entered into by the parties hereto and made effective as of the Effective Date set forth hereinabove.

“CITY”
CITY OF THOUSAND OAKS,
a municipal corporation

By: _______________________________
Kevin McNamee, Mayor

ATTEST:

Laura B. McGuire, City Clerk

APPROVED AS TO FORM:

 Patrick J. Hehir,  
 Chief Assistant City Attorney

APPROVED AS TO ADMINISTRATION:

 Andrew P. Powers, City Manager

“OWNER”

By: _______________________________

Name: ____________________________
Title: ______________________________

Acknowledgements on following pages.
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF ________________

On ________________, ____, before me, __________________________________________________________

(here insert name and title of the officer)

personally appeared ___________________________________________________________________________

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

________________________________________ (Signature)  (Seal)
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _______________________

On ____________________, ____, before me, ________________________________
(here insert name and title of the officer)

personally appeared ________________________________

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

__________________________________ (Signature)

__________________________________ (Seal)