

ORDINANCE NO. 856

ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF ROCKLIN APPROVING A DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF ROCKLIN
AND ALLEGHANY PROPERTIES, INC. FOR
DEVELOPMENT OF THE PROPERTY KNOWN
AS GRANITE LAKES ESTATES
(Granite Lakes Estates / DA 2000-01)

The City Council of the City of Rocklin does resolve as follows:

Section 1. The City Council of the City of Rocklin finds and determines that:

- A. An environmental impact report has been certified for the project;
- B. The development agreement is consistent with and implements the policies of the City of Rocklin's General Plan, including the Housing Element;
- C. The development agreement is compatible with the land uses and development regulations prescribed by the planned development zoning (PDG-2000-08) for the site;
- D. The development agreement will not be detrimental to the health, safety, and welfare of persons residing in the immediate area nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of residents of the city as a whole;
- E. The development agreement will not adversely affect the orderly development of property or the preservation of property, on or off the project site;
- F. The agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.

Section 2. The City Council of the City of Rocklin hereby approves the development agreement by and between the City of Rocklin and Alleghany Properties, Inc. Relative to the Development Known as Granite Lakes Estates, attached hereto and incorporated by reference herein as Exhibit 1.

Section 3. The City Council of the City of Rocklin hereby directs the Mayor to sign the Development Agreement By and Between the City of Rocklin and Alleghany Properties, Inc. Relative to the Development Known as Granite Lakes Estates on behalf of the City of Rocklin and directs City Clerk to record said document with the Placer County Recorder.

Section 4. Within fifteen days of passage of this ordinance, the City Clerk shall cause the full text of the ordinance, with the names of those City Council members voting for and against the ordinance, to be published in the Placer Herald. In lieu of publishing the full text of the ordinance, the City Clerk, if so directed by the City Attorney and within fifteen days, shall cause a summary of the ordinance, prepared by the City Attorney and with the names of the City Council members voting for and against the ordinance, to be published in the Placer Herald, and shall post in the office of the City Clerk a certified copy of the City Council members voting for and against the ordinance. The publication of a summary of the ordinance in lieu of the full text of the ordinance is authorized only where the requirements of Government Code section 36993 (c) (1) are met.


PASSED AND ADOPTED this 11th day June, 2002, by the following roll call vote:

AYES: Councilmembers: Magnuson, Storey, Lund


NOES: Councilmembers: None

ABSENT: Councilmembers: Hill, Yorde

ABSTAIN: Councilmembers: None


Kathy Lund, Vice Mayor

ATTEST:



City Clerk

First Reading: 5-28-02

Second Reading: 6-11-02

Effective Date: 7-11-02

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RECORDING REQUESTED BY
AND RETURN TO:

CITY CLERK
CITY OF ROCKLIN
3970 ROCKLIN ROAD
ROCKLIN, CA 95677



PLACER, County Recorder
JIM MCCAULEY Co Recorder Office
DOC- 2002-0079207

Wednesday, JUL 10, 2002 09:38:19
NOC \$0.00

Ttl Pd \$0.00

Nbr-0000655516

rec/R2/1-35

DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF ROCKLIN
AND
ALLEGHANY PROPERTIES, INC.
RELATIVE TO THE DEVELOPMENT KNOWN AS
GRANITE LAKE ESTATES

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**DEVELOPMENT AGREEMENT
CITY OF ROCKLIN/ALLEGHANY PROPERTIES, INC.
GRANITE LAKE ESTATES**

This Development Agreement ("Agreement") is entered into this 11th day of June, 2002 ("Effective Date"), by and between the CITY OF ROCKLIN, a Municipal Corporation of the State of California, ("City") and ALLEGHANY PROPERTIES, INC., ("Developer") pursuant to the authority of Government Code sections 65864 through 65869.5.

RECITALS

A. Authorization.

To strengthen the public planning process, encourage private participation in comprehensive long range planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code section 65864 et seq. authorizing the City to enter into a development agreement with any person or business entity having a legal or equitable interest in real property within the City regarding the development of such property and establishing certain development rights therein.

B. Development Agreement Procedures.

The City has adopted policies, ordinances, procedures, and requirements regarding its consideration of development agreements. This Agreement has been processed, considered, and executed in accordance with those City policies, ordinances, procedures, and requirements.

C. Property.

Developer has a legal and equitable interest in those certain parcels of land consisting of approximately 80 acres situated in the City of Rocklin, County of Placer (hereinafter, the "Property"), as more particularly described and shown in Exhibit "A," attached hereto and by this reference incorporated herein. The nature of this ownership and equitable interest is such that Developer has or will have control of the use of the Property as contemplated by this Agreement.

D. Planning Commission Consideration and Recommendation.

On March 19, 2002, the City of Rocklin's Planning Commission, designated by Rocklin Municipal Code section 17.92.110 as the planning agency for purposes of development agreement review pursuant to Government Code section 65867, in a duly noticed and conducted public hearing, considered the Granite Lakes Estates Subdivision development project including the Final Environmental Impact Report (EIR) (hereinafter the "Project")

and this Agreement and recommended that the City Council of the City of Rocklin approve this agreement.

E. Environmental Impact Report.

On May 28, 2002, the City Council of the City of Rocklin, in a duly noticed public hearing, in Resolution No. 2002-165, certified as adequate and complete the Final Environmental Impact Report ("EIR") (EIR-2000-01) for the Granite Lake Estates Project. Mitigation measures were identified in the EIR and are incorporated to the extent feasible in the conditions of approval for the Project and in the terms and conditions of this Agreement, as reflected by the findings adopted by the City Council concurrently with this Agreement.

F. Entitlements.

The City Council of the City of Rocklin has approved the following land use entitlements for the Property, which entitlements are the subject of this Agreement:

1. Tentative Subdivision Map (SD-2000-02), Resolution No. 2002-166
2. Oak Tree Preservation Permit (TRE-2000-33), Resolution No. 2002-166
3. General Development Plan. (PDG-2000-08), Ordinance No. 855
4. Mitigation Monitoring Program (EIR-2000-01), Resolution No. 2002-165

The approvals described in paragraphs 1 through 4, inclusive, are referred to herein as the "Entitlements."

G. General Plan.

Development of the Property in accordance with the Entitlements and this Agreement will provide for orderly growth and development of the area as contemplated by, and consistent with, the goals, policies, and other provisions of the City of Rocklin's General Plan.

H. Substantial Costs to Developer.

Developer has incurred and will incur substantial costs in order to comply with conditions of approval of the Entitlements and to assure development of the Property in accordance with the Entitlements and the terms of this Agreement.

I. Development Agreement Ordinance.

The City and Developer have taken all actions mandated by, and have fulfilled all requirements set forth in, the Development Agreement Ordinance of the City of Rocklin, Title 17, Chapter 17.92 of the Rocklin Municipal Code.

J. Consistency with General Plan.

Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City Council of the City of Rocklin, in approving this Agreement, specifically finds as follows:

1. This Agreement and the Entitlements are consistent with the objectives, policies, general land uses, and programs in the City of Rocklin's General Plan;
2. This Agreement and the Entitlements are compatible with the uses authorized in, and the regulations prescribed for, the land use districts in which the Property is located;
3. This Agreement and the Entitlements are in conformity with the public convenience, general welfare, and good land use practices;
4. This Agreement and the Entitlements will not be detrimental to the health, safety, and general welfare of persons residing in the general neighborhood of the Property or the City of Rocklin as a whole;
5. This Agreement and the Entitlements will not adversely affect the orderly development of the Property or the preservation of property values; and
6. This Agreement is consistent with and is subject to the provisions of Government Code sections 65864 through 65869.5.

K. Property Description and Binding Covenants.

The Property is that property described in Exhibit A. The City and Developer recognize and determine that the terms and conditions of this Agreement constitute covenants that shall run with the Property and the benefits and burdens hereof shall bind, and be legally enforceable by, each of them and/or all successors in interest to and assigns of the parties hereto. Accordingly, all references herein to "Developer" shall mean and refer to Alleghany Properties, Inc., and each and every subsequent purchaser or transferee of the Property or any portion thereof from Developer.

AGREEMENT

1. DEFINITIONS

"City Manager" means and refers to the City Manager of the City of Rocklin.

"County" means and refers to the County of Placer.

"Council" means and refers to the City Council of the City of Rocklin.

"Conditions of Approval" means and refers to the conditions attached to the Entitlements and shall be collectively included in any reference to the Entitlements.

"Developer" means Alleghany Properties, Inc., or, where applicable, its successor(s) in interest.

"Developer Improvements" means and refers to those improvements required of Developer under the Entitlements and any Subsequent Approvals.

"Entitlements" means Tentative Subdivision Map (SD-2000-02), Oak Tree Preservation Permit (TRE-2000-33), General Development Plan. (PDG-2000-08), and EIR and Mitigation Monitoring Program (EIR-2000-01) inclusive.

"General Plan" means and refers to the General Plan of the City of Rocklin.

"Subsequent Approvals" means and refers to all approvals by the City, whether discretionary or ministerial, requested or agreed to by Developer, required under the Entitlements, or required by City laws, rules, regulations, or official policies, which are necessary or desirable for development of the Property and which occur on or after the Effective Date of this Agreement.

Subsequent Approvals may include, but are not limited to, final subdivision maps, grading permits, encroachment permits, building permits, zoning approvals, boundary adjustments, certificates of occupancy, certificates of compliance, modifications to the current zoning, and modifications to the Entitlements.

2. COMMENCEMENT AND EXPIRATION

- a. **Initial Term.** The term of this Agreement shall commence on the Effective Date and shall extend for a period of ten (10) years thereafter, unless said term is terminated, modified, or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto.

b. Termination; Extension of Time.

Following the expiration of the initial term this Agreement shall be deemed terminated and of no further force and effect; provided, however, said termination of this Agreement shall not affect any right or duty emanating from City entitlements on the Property approved concurrently with or subsequent to the approval of this Agreement.

If any litigation affecting development of the Property is filed challenging the Entitlements, any Subsequent Approvals, or this Agreement, including, but not limited to, any environmental determinations related to any of the foregoing, or challenging the validity and binding nature of this Agreement, the term of this Agreement shall be extended for the period of time such litigation is pending. Upon the conclusion of such litigation by dismissal or entry of final judgment, Developer and the City shall indicate the period of such extension by amendment to this Agreement and by recording a notice of such effect.

3. DEVELOPMENT OF THE PROPERTY

a. Vested Right to Develop.

- i. This Agreement confers on Developer vested development rights to use and develop the Property in accordance with the terms and conditions of the Entitlements and this Agreement. Except as otherwise specified in this Agreement, the laws, rules, regulations, and official policies governing the permitted uses of the Property, the density and intensity of use, and the design, improvement and construction standards and specifications applicable to the on-site development and use of the Property, are those of the City of Rocklin in force on the Effective Date.
- ii. All subsequent actions applicable to the Property, including applications made to City for Subsequent Approvals necessary or convenient to exercise the development rights under the Entitlements, and actions to abate nuisances and other activities injurious to the public health, safety, and welfare, shall be subject to the laws, rules, regulations and official policies of City then in effect; provided that these laws, rules, regulations and official policies shall not be applied in a manner that will interfere with the full exercise of Developer's rights under the Entitlements or to prohibit Developer from applying for, or City from taking action on, a modification to the Entitlements and any conditions of those Entitlements.

Actions of the City which would be deemed to interfere with the full exercise of Developer's rights under this Agreement are actions which limit or reduce the density or intensity of the Project as permitted under the Entitlements, or which change the location of roads, grading, or other improvements included in the Entitlements.

In addition (and to the extent all necessary Subsequent Approvals of a discretionary nature have been obtained and have been made a part of the Development Agreement) actions which would be deemed to interfere with the full exercise of Developer's rights under this Agreement are actions which limit or control the timing or phasing of construction, which restrict or limit Developer's ability to receive building permits, or which limit the rate of development over time, unless such actions apply on a Citywide basis, or apply uniformly to all properties within the City which are zoned in the same classification as this Property as set forth in the Entitlements.

- iii. This section shall not preclude the application to the Property of changes in City laws, rules, regulations, or official policies specifically mandated by county, state, other state or local agencies with applicable jurisdiction, or federal laws, rules, or regulations.
 - iv. This section shall not be construed to limit the authority or obligation of the City to hold necessary public hearings, or to limit discretion of the City or any of its officers or officials with regard to rules, ordinances, regulations, or policies that require the exercise of discretion by the City or any of its officers or officials, provided that subsequent discretionary actions do not interfere with the full exercise of Developer's rights under this Agreement as described in part ii, above.
- b. **Permitted Uses.** The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes and location of public improvements, and other terms and conditions of development applicable to the Property shall be those set forth in the Entitlements and this Agreement.
 - c. **Taxes, Fees and Assessments.** Development of the Property and the Project under this Agreement shall be subject to all existing and future City fees, taxes and assessments; provided that these fees, taxes, or assessments do not unreasonably interfere with the full exercise of Developer's rights under the Entitlements, and Developer's obligation to pay future fees is limited to those fees adopted on a City-wide basis or that apply uniformly to all properties within the City of Rocklin that are zoned in the same classification as the Property as set forth in the Entitlements.

d. Laws of Other Agencies.

- i.** If any public agency, other than the City, adopts any new law, regulation, or ordinance, or imposes any new condition (hereinafter referred to collectively as the "New Law") after the Effective Date of this Agreement, which prevents or precludes either the City or Developer, or both, from complying with one or more provisions of this Agreement, then immediately following the enactment of the New Law, the parties shall meet and confer in good faith to determine whether the New Law applies to the Property, and whether suitable amendments to this Agreement can be made, in order to maintain Developer's right to develop the Property in a reasonable manner pursuant to the Entitlements and this Agreement.
- ii.** In the event that the parties, after having engaged in good faith negotiations, are unable to agree on such amendments, the parties shall consider whether suspension of the term of this Agreement is appropriate, and if so, what the terms and conditions of any such suspension should be. In the event that the parties, after having engaged in good faith negotiations are unable to agree on the suspension issues, either party shall have the right to terminate this Agreement by giving the other party sixty (60) days written notice of termination.
- iii.** Developer or the City shall have the right to institute litigation relating to the New Law, and raise any issues relating to its validity. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued. Provided, however, that if any action that the City would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the New Law, the City shall not be required to undertake such action until the litigation is resolved, or the New Law is otherwise determined invalid, inapplicable, or is repealed. In the event that such judgment invalidates the New Law, or determines that it does not affect the validity of this Agreement, this Agreement shall remain in full force and effect, and its term shall be extended by the amount of time between the effective date of the New Law, and the effective date of the judgment. In the event that such judgment determines that the validity of this Agreement is directly or indirectly affected by the New Law, the provisions of subparagraphs (A) and (B) above shall apply.

4. PROCESSING OF PERMITS AND ENTITLEMENTS

- a. **Subsequent Approvals.** The City shall accept for processing, review, and action all applications submitted by Developer for Subsequent Approvals necessary or convenient for the exercise of Developer's rights under the Entitlements for the use and development of the Property, and shall act upon such applications in a timely manner.
- b. **Application of Development Agreement to Subsequent Approvals.** At Developer's request, an amendment to add any approved Subsequent Approval as an Entitlement under this Agreement shall be processed and approved by the City.
- c. **Extension of Entitlements.** Pursuant to Government Code section 66452.6, all vesting tentative subdivision maps, parcel maps, subdivision tentative maps, conditional use permits, or any other maps, rezonings, or land use entitlements of potentially limited duration previously, contemporaneously, or subsequently approved for the Property which are, or are added as, Entitlements under this Agreement, shall be valid for a minimum term equal to the remaining term of this Agreement, or for a period of thirty-six (36) months, whichever is longer, but in no event for a shorter period than the maximum period of time permitted by the Subdivision Map Act or Government Code for such land use entitlements. The provisions of this Agreement relating to estoppel certificates shall apply to any request made by Developer to the City with respect to the life of any entitlement covered by this subparagraph. Nothing in this section shall be construed or operate to extend the term of this Agreement.

5. IMPLEMENTATION

- a. **Timing of Project Construction.** Except as specifically identified in the Entitlements, this Agreement, or Subsequent Approvals, Developer shall not be required to develop the Property in accordance with any time schedule except Developer's schedule, unless an action by City which limits or controls timing or phasing of construction, or restricts or limits Developer's ability to receive building permits, or limits the rate of development over time, is adopted on a City-wide basis or applies uniformly to all properties within the City that are zoned in the same classification as the Property as set forth in the Entitlements.

b. Developer Improvements and Other Obligations.

- i.** Developer Improvements shall be constructed in accordance with the Entitlements and Subsequent Approvals, except that Improvement plans for development of the Property shall reflect the most current City Construction Standards and Specifications except for those Construction Standards and Specifications which would conflict with, or be inconsistent with, the permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or provisions for reservation and dedication of land as provided in this Agreement and the Entitlements. Specifically, it is intended that the street widths, number, size and location of sidewalks, and roadway curvatures and grades are to be constructed in substantial compliance with the approved tentative subdivision map, and shall not be modified to conform with changes made to the City Construction Standards and Specifications after the Effective Date of this Agreement. However, in all other respects construction of improvements shall conform to the most current City Construction Standards and Specifications in place at the time of approval of the Subdivision Improvement Plans.
- ii.** Consistent with the terms and conditions of approval of the Entitlements, Developer shall:

 - (1)** Donate the public open space area shown as Lot J on the Tentative Subdivision Map to the City, with the exception of land within the proposed fence around the small quarry.
 - (2)** Provide surveying and mapping services to identify, map, and prepare a legal description of the peninsula area at the north edge of Lot J which is bordered by the creeks, so that this land may be subsequently transferred to the adjoining landowner to expand the existing dedicated preserve area in exchange for property needed for a future trail connection of the bicycle and pedestrian trail described below.
 - (3)** Design and construct a bicycle and pedestrian trail through the Open Space Lot J and dedicate said trail to the City upon completion of all of the trail facilities. Construction of the bicycle and pedestrian trail with temporary access as described in the Entitlements shall be completed in Phase 1 of the project. The permanent access facility for the bicycle and pedestrian trail shall be constructed in Phase 2.
 - (4)** Annex into City of Rocklin Community Facilities District No. 5 to fund the maintenance of the City owned open space and bicycle and pedestrian trail.

(5) Extend Monument Springs Drive from the entrance of the Project on Greenbrae Road, across the parcel to the north of the Project site commonly known as the "Bell property," to connect the Property to the existing terminus of Monument Springs Drive. This extension of Monument Springs Drive connecting China Garden Road with Greenbrae Road is consistent with the Southeast Rocklin Circulation Element, and shall include design and construction of a bridge over Secret Ravine Creek, connecting the City of Rocklin to the County of Placer. The bridge shall be completely constructed and open to the public prior to issuance of the 41st building permit for the project.

- c. **City Obligation to Cooperate with Financing District.** In consideration for the planning, design, and construction, at Developer's expense, of the bridge over Secret Ravine Creek connecting the City of Rocklin to the County of Placer, City agrees to form and implement a Mello-Roos Community Facilities District to finance the bridge and ancillary improvements to be constructed by Developer. (the "CFD") Any such CFD shall be formed consistent with and adhere to the City's standards governing the formation of such districts, including Developer's payment of application fees. City and Developer shall cooperate in good faith with each other in the formation of the CFD and the ultimate issuance of bonds thereunder to fund the bridge improvements consistent with the applicable substantive and procedural requirements, however, the CFD financing shall be structured so that no individual single family parcel within the project shall be taxed in excess of eight hundred and 00/100 dollars (\$800.00) per year to repay the costs of financing the bridge, any ancillary improvements, and the administrative costs associated with the CFD.
- d. **Participation in Bridge Financing By Other Benefited Properties.** The planning, design, and construction, at Developer's expense, of the bridge over Secret Ravine Creek connecting the City of Rocklin to the County of Placer will benefit the City generally, and future developers of similarly situated properties in particular. Therefore, the City shall, to the extent permitted by law, require that all other landowners of undeveloped land located southeast of Interstate 80, south of Rocklin Road and within one mile of the borders of the project, and benefited by the bridge improvements, participate in the CFD and pay their proportionate share of such costs as determined by the City.
- e. **City Obligations.** The City agrees to cooperate with Developer in securing all permits that may be required by the City. Each party agrees to extend to the other its prompt and reasonable cooperation in modifying this Agreement or the approved plans, should a future modification of the Agreement or approved plans become necessary.

- f. **Other Government Permits.** Developer shall be responsible for applying for and obtaining approvals required by other governmental agencies having jurisdiction over, or providing services to, development of the Property. To the extent possible, the City shall cooperate with Developer in obtaining all such approvals in a timely manner.
- g. **Operating Memorandum.** The City and Developer desire to retain a certain degree of flexibility with respect to the details of the development of the Property and with respect to those items covered in general terms in this Agreement. If and when the City and Developer find that clarifications, minor changes, or minor adjustments are necessary or appropriate to the implementation of this Agreement and development of the Property, the clarification, minor change, or minor adjustment shall be stated in a written operating memorandum agreed to and approved by Developer and the City Manager acting on behalf of the City. As used in this section, "minor" shall not include an increase in the number of dwelling units otherwise allowed by the Entitlements and applicable City rules, regulations, ordinances, and official policies, or reduce the amount of public open space by more than one percent (1%). Contents of the operating memorandum shall not constitute an amendment to this Agreement, and shall not require prior public notice or hearing.

6. AMENDMENT

This Agreement may be amended from time to time or may be voluntarily canceled by mutual consent of the City and Developer in accordance with the provisions of Government Code section 65868 and Rocklin Municipal Code section 17.92.150. Reference to "Agreement" shall include any such amendments properly approved and executed by the parties.

7. COOPERATION IN THE EVENT OF LEGAL ACTION

- a. **Third Party Challenge.** If any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Project, or the Entitlements, the parties shall cooperate in defending against such challenge. Developer, at Developer's expense, shall defend such action as the real party in interest and assist the City in its defense. To the extent that any such action challenges Developer's right to proceed with the Project under this Agreement, Developer shall have control of the defense of the action or proceeding and may use legal counsel of its choice. Developer shall indemnify the City for any liability incurred by the City as a result of any such action or proceeding, including any award of attorneys' fees or costs.

- b. **Reconsideration.** If any litigation results in a judgment wherein the courts order the City to reconsider any matter pertaining to this Agreement or the Entitlements, the City and Developer agree that such reconsideration shall be expeditiously performed to remedy any defects noted in the judgment. If such remedy includes the need to re-approve any or all of the Entitlements, the City agrees to expeditiously re-approve any or all of the Entitlements in a manner consistent with the requirements of the judgment and to the extent re-approval is in harmony with the spirit and intent of this Agreement, the original Entitlements, and the public welfare.

8. DEFAULT; REMEDIES; TERMINATION

- a. **General Provisions.** Subject to any extensions of time by mutual consent of the parties, and subject to the cure provisions set forth herein, any failure or unreasonable delay by either party to perform any material term or provision of this Agreement shall constitute a default.
 - i. **Developer Default.** In addition to any other remedy specified herein, in the event that notice of default has been given in accordance with this section, wherein a default by Developer is alleged, the City shall not be obligated to issue any building permit, or grant any entitlement as to which an application has been filed.
 - ii. **City Default.** In addition to any other remedy specified herein, in the event that notice of default has been given in accordance with this section, wherein a default by the City is alleged, any resulting delays in Developer's performance caused by the City's default shall not constitute a Developer default, or be grounds for termination or cancellation of this Agreement.
 - iii. **Successors in Interest.** Where the Property, following the Effective Date, has been lawfully conveyed in whole or in part to one or more successors in interest, in such a manner as to invoke the provisions of section 10 of this Agreement, and one or more of such successors in interest is in default with respect to the portion of the Property owned by it, neither Developer nor any other non-defaulting successor in interest shall be liable for the default, if the provisions of section 10 have been complied with, and in accordance with the terms and conditions of that section.

- b. **Cure of Default.** In the event of an alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured and a reasonable period of time in which to cure, that shall in no event be less than thirty (30) days. During any such period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.
- c. **Remedies After Expiration of Cure Period.** After notice and expiration of the thirty (30) day period, if the alleged default has not been cured in the manner set forth in the notice, the other party may at its option:
 - i. institute legal proceedings to obtain appropriate judicial relief, including but not limited to mandamus, specific performance, injunctive relief, or termination of this Agreement; or
 - ii. give the other party notice of intent to terminate this Agreement pursuant to Government Code section 65868. In the event that such notice is given, the City shall schedule the matter for public hearing before the City Council to review the matter and make specific written findings regarding the alleged default. Where Developer is the party alleged to be in default, Developer shall be afforded a reasonable opportunity to respond to all allegations of default at such public hearing. The City shall provide Developer at least thirty (30) days prior written notice of such public hearing, as well as provide Developer copies of all City staff reports prepared in connection therewith at least five (5) days prior to the hearing.
- d. **Annual Review.**
 - i. General Provisions. In accordance with Government Code section 65865.1, the City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith compliance by Developer with the terms of this Agreement. Failure of the City to conduct an annual review shall not constitute a waiver by the City or Developer to conduct a future annual review or to otherwise enforce the provisions of this Agreement, nor shall a party have or assert any defense to such enforcement by reason of any such failure. The failure of the City to undertake such review shall not, in itself, invalidate the terms of this Agreement or excuse any party hereto from performing its obligations under this Agreement.
 - ii. Scope of Review. The annual review shall be limited in scope to compliance with the terms and conditions of this Agreement.

- iii. **Proceedings.** The procedures specified in Rocklin Municipal Code Chapter 17.92 for conduct of the annual review shall apply to this Agreement. At least ten (10) days prior to the commencement of any annual review, the City shall deliver to Developer a copy of any public staff reports and other documents to be used or relied upon in conducting the review. Developer shall be permitted an opportunity to respond to the City's evaluation of Developer's performance by written and oral testimony at the public hearing to be held before the Planning Commission or, if the matter is referred to the City Council, before said Council.

At the conclusion of the annual review, the City shall make written findings and determinations on the basis of substantial evidence, as to whether or not Developer or its successors have complied in good faith with the terms and conditions of this Agreement.

- e. **Failure of Compliance.** Any determination of failure of compliance shall be subject to the notice requirements and cure periods set forth in this Agreement. If termination is proposed, it shall apply solely with respect to that portion of the Property (if less than all) affected by the failure to show good faith compliance. If modification of the Development Agreement is proposed, the modification shall pertain solely to the provisions hereof as applicable to that portion of the Property (if less than all) affected by the condition that has prompted the proposed modification.
- f. **Termination Upon Completion of Development.** This Agreement shall terminate as to each lot or parcel of property contained within the Property when that lot or parcel of property has been fully developed and all of Developer's obligations in connection therewith are satisfied, as reasonably determined by the City. In no event shall Developer's obligations in connection with development of the Property apply to the owner of any lot or parcel once the City issues an occupancy permit for that lot or parcel. The City shall, upon written request made by Developer to the City's Community Development Department, determine if the Agreement has terminated with respect to any lot or parcel, and shall not unreasonably withhold termination as to that parcel if Developer's obligations therewith are satisfied. The City shall be entitled to receive payment of a fee commensurate with the cost of processing the request and making such a determination, including but not limited to the City's administrative and legal expenses. Upon termination of this Agreement, the City shall upon Developer's request record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. The aforesaid notice may specify, and Developer agrees, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement.

9. NOTICES

A. Any notice, demand, or other communication ("Notice") required and given under this Agreement, the enabling legislation, or the City of Rocklin's procedures adopted pursuant to Government Code section 65865 shall be in writing and delivered in person or sent by registered or certified mail, postage prepaid and return receipt requested. If given by registered or certified mail, Notice shall be deemed to have been given and received upon actual receipt by the addressee. A courtesy copy of the Notice may be sent by facsimile transmission. Any party may designate any other address in substitution of the address contained herein by like written notice.

B. Notice shall be given to the parties at their addresses set forth below.

If to City, to:
City Manager
City of Rocklin
3980 Rocklin Road
Rocklin, California 95677
Telephone: (916) 632-4050
Facsimile: (916) 624-8010

If to Developer to:
David Bugatto
Alleghany Properties, Inc.
2150 River Plaza Drive, Suite 155
Sacramento, California 95833
Telephone: (916) 648-7700
Facsimile: (916) 648-7739

with copy to

with copy to

Director of Community
Development
City of Rocklin
3970 Rocklin Road
Rocklin, California 95677
Telephone: (916) 632-4020
Facsimile: (916) 624-4759

James G. Moose
Remy, Thomas and Moose, LLP
455 Capitol Mall, Suite 210
Sacramento, California 95814
Telephone: (916) 443-2745
Facsimile: (916) 443-9017

10. ASSIGNMENT

Developer shall have the right to sell, assign, or transfer its interest under this Agreement as part of a contemporaneous and related sale, assignment or transfer of its interest in the Property, or any portion thereof, without the consent of the City, provided that Developer shall notify the City of such sale, assignment or transfer by providing written notice thereof to the City in the manner provided in this Agreement. Developer shall remain obligated to perform all terms and conditions of this Agreement, unless such purchaser, assignee or transferee, to the satisfaction of and in a form acceptable to the City Attorney, executes and delivers to the City an express agreement to assume all of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred. The execution of such an assumption agreement shall relieve Developer of the obligations expressly assumed only if: (a) Developer is not in default under this Agreement at the time of the assignment or transfer; and (b) Developer has provided the

City with notice of said assignment or transfer in the manner provided hereunder. Any such assumption agreement with respect to Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form of the Assignment and Assumption Agreement attached hereto as Exhibit "C" and incorporated herein by this reference, or such other form as shall be proposed by Developer and approved by the City Attorney prior to the effective date of the assignment.

Any purchaser, assignee, or transferee shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of Developer under this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred.

11. COVENANTS RUN WITH THE LAND

All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including without limitation, section 1648 of the California Civil Code, provided that in no event shall Developer's obligations in connection with development of the Property apply to the owner of any lot or parcel once the City issues an occupancy permit for that lot or parcel. Each covenant to do or refrain from doing some act on the Property: (i) is for the benefit of the Property and shall be a burden upon the Property; (ii) runs with the Property; and (iii) is binding upon each party and each permitted successor owner during its ownership of the Property or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of the Property, or any portion thereof, and shall benefit each party and the Property hereunder, and each other person or entity succeeding to an interest in the Property.

12. PROVISIONS RELATING TO LENDERS

a. Lender Rights and Obligations.

- i. Prior to Lender Possession. No lender shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of Developer or Developer's successors in interest, but shall otherwise be bound by all of the terms and conditions of this Agreement, which pertains to the Property or such portion thereof in which it holds an interest. Nothing in this section shall be construed to grant to a lender rights beyond those of Developer hereunder, or to limit any remedy the City has hereunder in the event of default by Developer, including but not limited to termination and/or refusal to grant entitlements with respect to the Property.

ii. **Lender in Possession.** A lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of Developer, and which remain unpaid as of the date such lender takes possession of the Property or portion thereof. Provided, however, that a lender shall not be eligible to apply for or receive entitlements with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development contemplated or authorized by this Agreement, which development shall be subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of Developer hereunder; provided, further, that no lender, or successor thereof, shall be entitled to the rights and benefits of the Developer hereunder or entitled to enforce the provisions of this Agreement against the City unless and until such lender or successor thereof qualifies as a recognized assignee under the provisions of section 10 this Agreement.

b. **Notice of Developer's Default Hereunder.** If the City receives notice from a lender requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then the City shall deliver to such lender, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by the City that Developer has committed a default, and if the City makes a determination of non-compliance, the City shall likewise serve notice of such non-compliance on such lender concurrently with service thereof on Developer.

c. **Lender's Right to Cure.** Each lender shall have the right (but not the obligation) during the same period of time available to Developer to cure or remedy, on behalf of Developer, the default claimed or the areas of non-compliance set forth in the City's notice. Such action shall not entitle a lender to develop the property or otherwise partake of any benefits of this Agreement unless such lender shall assume and perform all obligations of Developer hereunder.

13. MISCELLANEOUS

a. **No Agency, Joint Venture, or Partnership.** The Project is a private development, and the Developer shall have full power over and exclusive control of the Project, subject to the terms and conditions of this Agreement. Although the City and Developer intend to cooperate to carry out the Project, the parties renounce the existence of any form of agency relationship, joint

venture, or partnership between the City and Developer, and nothing contained herein or in any document executed in connection herewith shall be construed as creating any such legal relationship.

- b. **Severability.** If any term, covenant, or condition of this Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be determined invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby; and each term, covenant, or condition of this Agreement shall be valid, and shall be enforced to the fullest extent permitted by law, provided that if any provision of this Agreement is determined to be invalid or unenforceable and the effect of said determination is to deprive a party hereto of an essential benefit of its bargain hereunder, then such party so deprived shall have the option to terminate this Agreement from and after such determination.
- c. **Other Necessary Acts.** Each Party shall execute and deliver to the other all further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to each party the full and complete enjoyment of its rights and privileges hereunder.
- d. **Estoppel Certificate.** 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: (i) this Agreement is in full force and effect and a binding obligation of the parties; (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (iii) 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 of such default in the form attached hereto as Exhibit "B." The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees of Developer.
- e. **Construction.** This Agreement shall be subject to and construed in accordance with the laws of the State of California and the Rocklin Municipal Code, as it may be amended, provided that such amendments do not affect the rights granted to the parties by this Agreement. This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

- f. **Attorneys' Fees.** If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action.

Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

- g. **Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the City and Developer and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.
- h. **Limitation on Actions.** No court action shall be filed by a party to this Agreement on the grounds of default or breach of its terms unless such action is filed within one hundred and eighty (180) days from the date of discovery by the aggrieved party of the facts underlying the claim of breach or default.

14. **ENTIRE AGREEMENT, COUNTERPARTS, EXHIBITS AND RECORDING**

- a. **Waivers.** No provision or condition of the Agreement shall be considered waived unless such waiver is in writing and signed by the party to be bound.
- b. **Duty to Act Reasonably and in Good Faith.** Each party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The City and Developer agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement, and each of them covenants that it will not at any time voluntarily engage in any actions that frustrate the purpose and intent of the parties, which is to develop

the Property in conformity with the terms and conditions specified in this Agreement.

- c. **Recording.** The City shall cause this Agreement, any amendment hereto, and any other termination thereof to be recorded with the County Recorder within ten (10) days of this Agreement or such amendment or termination becoming effective. In accordance with the provisions of Government Code Section 65868.5, and from and after the time of recording of this Agreement, the Agreement shall impart such notice thereof to all persons as is afforded by the recording laws of the State of California. The burdens of this Agreements shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement.
- d. **Time of Essence.** Time is of the essence in the performance of each and every covenant and obligation to be performed by the parties hereunder.
- e. **Entire Agreement.** This Agreement, together with all exhibits hereto, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement is specifically intended by the parties to supersede all prior agreements, whether written or oral, for the Property that may exist between the City and Developer.
- f. **Counterparts.** This Agreement may be executed in any number of counterparts and shall be deemed duly executed when each of the parties has executed such a counterpart.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

City

CITY OF ROCKLIN

By: Kathy Lund
Kathy Lund, Vice Mayor

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

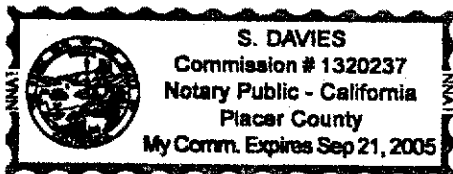
County of Placer } SS.

On 19 June 2002, before me, S. DAVIES, NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared KATHY LUND
Name(s) of Signer(s)

☒ personally known to me
☐ 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.



Place Notary Seal Above

WITNESS my hand and official seal.

S. Davies

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement - OR. 856

Document Date: 6-11-02 Number of Pages: —

Signer(s) Other Than Named Above: Allegany Properties, Inc.

Capacity(ies) Claimed by Signer

Signer's Name: _____


- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here


Developer

ALLEGHANY PROPERTIES, INC.


By: 
David Bugatto

Its: PRESIDENT & CEO

ATTEST


City Clerk

APPROVED AS TO FORM:

By: 
Sabina Gilbert, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Sacramento

SS.

On

June 7, 2002

Date

before me,

Lillian Ann Higgins

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

David J. Bucatto

Name(s) of Signer(s)

☒ personally known to me

☐ 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.

WITNESS my hand and official seal.

Lillian Ann Higgins
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

GRANITE LAKES ESTATES

DESCRIPTION

CITY OF ROCKLIN

PARCEL ONE:

PARCELS 2, AND 3, AS SHOWN AND DESIGNATED UPON THAT CERTAIN PARCEL MAP FILED FEBRUARY 27, 1990, IN BOOK 25, AT PAGE 98.

EXCEPTING THEREFROM: PARCEL 4, AS DESCRIBED IN THE PARTIAL RECONVEYANCE DATED MAY 11, 1990, EXECUTED BY CENTRAL VALLEY SECURITY COMPANY, A CALIFORNIA CORPORATION, RECORDED JUNE 18, 1990, IN BOOK 3928, PAGE 345, OFFICIAL RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND PUBLIC UTILITIES, OVER AND ACROSS THOSE CERTAIN PARCELS OF REAL PROPERTY LOCATED IN THE COUNTY OF PLACER, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL A:

THE EAST 114.00 FEET OF THE SOUTH 25.00 FEET OF PARCEL "A", AS SAID PARCEL IS SHOWN ON THAT MAP RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF PLACER COUNTY, STATE OF CALIFORNIA, IN BOOK 7 OF PARCEL MAPS, AT PAGE 105.

PARCEL B:

THE WEST 32.00 FEET OF THE EAST 83.00 FEET OF THE FOLLOWING DESCRIBED REAL PROPERTY:

ALL THAT PORTION OF THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 29, TOWNSHIP 11 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, SITUATE IN THE COUNTY OF PLACER, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL "A", AS SHOWN ON THAT MAP RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF PLACER COUNTY, STATE OF CALIFORNIA, IN BOOK 7 OF PARCEL MAPS, AT PAGE 105; THENCE SOUTH 00°14'00" WEST 35.00 FEET; THENCE SOUTH 89°46'00" EAST 241.03 FEET TO A POINT IN THE EAST LINE OF SAID NORTHWEST ONE-QUARTER AS SAID EAST LINE IS SHOWN ON THAT SURVEY RECORDED IN THE OFFICE OF SAID RECORDER IN BOOK 1 OF SURVEYS, AT PAGE 58; THENCE ALONG SAID EAST LINE, NORTH 00°03'00" EAST 35.00 FEET TO THE NORTHEAST CORNER OF SAID NORTHWEST ONE-QUARTER AS SHOWN ON SAID SURVEY, SAID CORNER ALSO BEING THE SOUTH LINE OF SAID PARCEL "A", NORTH 89°46'00" WEST 241.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF CONTAINED IN DEED TO THE HEIRS OR DEVISEES OF IVAN B. QUINCEY, SR., DECEASED, SUBJECT TO ADMINISTRATION OF THE ESTATE OF SAID DECEDENT, RECORDED AUGUST 4, 1965, IN BOOK 1075, AT PAGE 152, PLACER COUNTY RECORDS.

PARCEL C:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND PUBLIC UTILITIES, OVER AND ACROSS THAT CERTAIN PARCEL OF REAL PROPERTY LOCATED IN THE COUNTY OF PLACER, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THE WEST 168.87 FEET OF AREA "K", AS SAID AREA IS SHOWN ON THAT MAP RECORDED IN

DESCRIPTION

THE OFFICE OF THE COUNTY RECORDER OF PLACER COUNTY, STATE OF CALIFORNIA, BOOK 7 OF PARCEL MAPS, AT PAGE 105.

PARCEL THREE:

THE WEST HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 11 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPTING THEREFROM THE EAST 496.0 FEET THEREOF.

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF LYING WITHIN THE PARCEL CONVEYED TO DRY MIX MATERIALS COMPANY, A CALIFORNIA CORPORATION, RECORDED JUNE 16, 1959, IN BOOK 799, OFFICIAL RECORDS, PAGE 292.

ALSO EXCEPTING THEREFROM ALL THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 11 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, FROM WHICH A 3/4 IRON PIPE WITH CAP STAMPED LS 2720 MARKING THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER BEARS NORTH 0°03' EAST 472.26 FEET; THENCE FROM SAID POINT OF BEGINNING ALONG SAID WEST LINE SOUTH 0°03' WEST 172.85 FEET TO A SIMILAR IRON PIPE; THENCE SOUTH 89°46' EAST 138.64 FEET TO A SIMILAR IRON PIPE; THENCE NORTH 0°03' EAST 172.85 FEET TO A SIMILAR IRON PIPE; THENCE NORTH 89°46' WEST 138.65 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF LYING ON THE WEST SIDE OF THE FOLLOWING DESCRIBED LINE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 3/4 INCH CAPPED IRON PIPE STAMPED L.S. 2720, LOCATED IN THE NORTH LINE OF SAID SECTION 29, AS SHOWN ON THAT CERTAIN "RECORD OF SURVEY OF SECTION 29, TOWNSHIP 11 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN," FILED IN THE OFFICE OF THE PLACER COUNTY RECORDER ON JULY 14, 1959, IN BOOK 1 OF SURVEYS AT PAGE 58, FROM WHICH THE NORTHWEST CORNER OF SAID SECTION 29 BEARS NORTH 89°46'00" WEST 1,321.87 FEET; THENCE FROM SAID POINT OF BEGINNING SOUTH 00°03'30" WEST 1,311.80 FEET TO A SIMILAR 3/4 INCH CAPPED IRON PIPE.

PARCEL FOUR:

ALL THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 29, TOWNSHIP 11 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, LYING ON THE EAST SIDE OF THE FOLLOWING DESCRIBED LINE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 3/4 INCH CAPPED IRON PIPE STAMPED L.S. 2720, LOCATED IN THE NORTH LINE OF SAID SECTION 29, AS SHOWN ON THAT CERTAIN "RECORD OF SURVEY OF SECTION 29, TOWNSHIP 11 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN," FILED IN THE OFFICE OF THE PLACER COUNTY RECORDER ON JULY 14, 1959, IN BOOK 1 OF SURVEYS AT PAGE 58, FROM WHICH THE NORTHWEST CORNER OF SAID SECTION 29 BEARS NORTH 89°46'00" WEST 1,321.87 FEET; THENCE FROM SAID POINT OF BEGINNING SOUTH 00°03'30" WEST 1,311.80 FEET TO A SIMILAR 3/4 INCH CAPPED IRON PIPE.

DESCRIPTION

PARCEL FIVE:

BEGINNING AT A 3/4 INCH IRON PIPE WITH CAP STAMPED L.S. 2720 MARKING THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 11 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN; THENCE ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER SOUTH 0°03' WEST 472.26 FEET; THENCE NORTH 89°46' WEST 50.76 FEET TO A 3/4 INCH IRON PIPE WITH CAP STAMPED L.S. 2720; THENCE NORTH 0°03' EAST 471.92 FEET TO A SIMILAR IRON PIPE IN THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE ALONG SAID NORTH LINE NORTH 89°50'49" EAST 50.76 FEET TO THE POINT OF BEGINNING.

PARCEL SIX:

AN EASEMENT FOR ROADWAY AND PUBLIC UTILITY PURPOSES OVER AND ACROSS THE WEST 30 FEET OF THE EAST 527 FEET OF THE WEST HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 11 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN.

PARCEL SEVEN:

AN EASEMENT FOR ROADWAY PURPOSES AND INCIDENTS THERETO AS CONTAINED IN THAT CERTAIN INSTRUMENT ENTITLED, "GRANT OF RIGHT OF WAY, ROAD DEVELOPMENT AND MAINTENANCE, AND ENTITLEMENT PROCESSING AGREEMENT", RECORDED JULY 14, 1999, SERIES NO. 99-0062739.

ASSESSOR'S PARCEL NUMBER 046-030-052, 046-030-055 AND 046-030-058

EXHIBIT "B"

ESTOPPEL CERTIFICATE

_____ (Third Party Address)

RE: Granite Lake Estates Development Agreement
Dated: _____
Between the City of Rocklin ("City" and "Developer"

Dear _____:

Reference is made to the above-described Development Agreement between the City and Developer. The City understands that you are entering into a transaction with Developer that relates to, among other things, this Agreement. The City represents that:

1. A true and correct copy of the Agreement is attached as Exhibit "A."
2. There are no modifications, amendments, supplements, arrangements, side letters, or understandings, oral or written, of any sort, modifying, amending, altering, supplementing, or changing the terms of the Agreement except as follows: _____.
3. The Agreement is in full force, and the Agreement has been duly executed and delivered by, and is a binding obligation of, the City.
4. The City acknowledges that Developer is in full compliance with all terms of the Development Agreement, as well as all other City ordinances, regulations, and policies regulating the use and development of the Developer's property subject to this Development Agreement.
5. The undersigned is authorized to execute this letter on the City's behalf.

Very truly yours,

CITY OF ROCKLIN

By: _____

Its: Community Development Director

EXHIBIT "C"

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (herein this "Agreement") is entered into this _____ day of _____, 20 ____, by and between _____ (herein "DEVELOPER") and _____ (herein "ASSIGNEE").

RECITALS

A. DEVELOPER has entered into a Development Agreement (herein "the Development Agreement") dated _____, with the City of Rocklin, pursuant to which DEVELOPER agreed to develop certain property more particularly described in the Development Agreement (herein "the Property") subject to certain conditions and obligations set forth in the Development Agreement.

B. DEVELOPER has assigned its interests under the Development Agreement to ASSIGNEE under a written agreement dated _____, as to that part of the Property identified and incorporated herein by this reference (herein the "Assigned Parcel(s)").

C. ASSIGNEE desires to assume all of Developer's rights and obligations and other terms and conditions under the Development Agreement with respect to the Assigned Parcel(s).

AGREEMENTS

NOW, THEREFORE, DEVELOPER AND ASSIGNEE HEREBY AGREE AS FOLLOWS:

1. ASSIGNEE hereby assumes all of the burdens and obligations of DEVELOPER under the Development Agreement, and agrees to observe and fully perform all of the duties and obligations of DEVELOPER under the Development Agreement, and to be subject to all of the terms and conditions thereof, with respect to the Assigned Parcel(s), it being the express intention of both DEVELOPER and ASSIGNEE that, upon the execution of this Agreement, ASSIGNEE shall become substituted for DEVELOPER as the "DEVELOPER" under the Development Agreement with respect to the Assigned Parcel(s).

2. ASSIGNEE understands and agrees that this Agreement is subject to Section 10 of the Development Agreement. Section 10 reads as follows:

Page 1 of Exhibit C
to Development Agreement
Ord. No. 856

SECTION 11. ASSIGNMENT

Developer shall have the right to sell, assign, or transfer its interest under this Agreement as part of a contemporaneous and related sale, assignment or transfer of its interest in the Property, or any portion thereof, without the consent of the City, provided that Developer shall notify the City of such sale, assignment or transfer by providing written notice thereof to the City in the manner provided in this Agreement. Developer shall remain obligated to perform all terms and conditions of this Agreement, unless such purchaser, assignee or transferee, to the satisfaction of and in a form acceptable to the City Attorney, executes and delivers to the City an express agreement to assume all of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred. The execution of such an assumption agreement shall relieve Developer of the obligations expressly assumed only if: (a) Developer is not in default under this Agreement at the time of the assignment or transfer; and (b) Developer has provided the City with notice of said assignment or transfer in the manner provided hereunder. Any such assumption agreement with respect to Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form of the Assignment and Assumption Agreement attached hereto as Exhibit "D" and incorporated herein by this reference, or such other form as shall be proposed by Developer and approved by the City Attorney prior to the effective date of the assignment.

Any purchaser, assignee, or transferee shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of Developer under this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred.

3. At the request of the City, ASSIGNEE agrees to enter into a separate development agreement with respect to the Assigned Parcel(s).

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

5. ASSIGNEE agrees that it has read, and has sought and received all required legal and other expert consultation with regard to the Development Agreement, and fully understands all of its terms and conditions. ASSIGNEE further agrees that: (i) DEVELOPER has furnished ASSIGNEE with a copy of the City of Rocklin's Zoning Ordinance and all other documents and materials containing or relating to terms and conditions of development of the Property pursuant to this Agreement; (ii) ASSIGNEE has read and understands all of the terms and conditions of said documents and materials; and (iii) with such knowledge and understanding, which includes the nature and extent of the fees, taxes, assessments and other financial mechanisms and obligations inherent in such documents and materials, nevertheless has voluntarily, freely and knowingly assumed and agreed to perform all of the obligations and requirements, and be bound by all of the provisions of such documents and materials.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

By: _____
"ASSIGNEE"

ORDINANCE NO. 856

ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF ROCKLIN APPROVING A DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF ROCKLIN
AND ALLEGHANY PROPERTIES, INC. FOR
DEVELOPMENT OF THE PROPERTY KNOWN
AS GRANITE LAKES ESTATES
(Granite Lakes Estates / DA 2000-01)

The City Council of the City of Rocklin does resolve as follows:

Section 1. The City Council of the City of Rocklin finds and determines that:

- A. An environmental impact report has been certified for the project;
- B. The development agreement is consistent with and implements the policies of the City of Rocklin's General Plan, including the Housing Element;
- C. The development agreement is compatible with the land uses and development regulations prescribed by the planned development zoning (PDG-2000-08) for the site;
- D. The development agreement will not be detrimental to the health, safety, and welfare of persons residing in the immediate area nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of residents of the city as a whole;
- E. The development agreement will not adversely affect the orderly development of property or the preservation of property, on or off the project site;
- F. The agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.

Section 2. The City Council of the City of Rocklin hereby approves the development agreement by and between the City of Rocklin and Alleghany Properties, Inc. Relative to the Development Known as Granite Lakes Estates, attached hereto and incorporated by reference herein as Exhibit 1.

Section 3. The City Council of the City of Rocklin hereby directs the Mayor to sign the Development Agreement By and Between the City of Rocklin and Alleghany Properties, Inc. Relative to the Development Known as Granite Lakes Estates on behalf of the City of Rocklin and directs City Clerk to record said document with the Placer County Recorder.

Section 4. Within fifteen days of passage of this ordinance, the City Clerk shall cause the full text of the ordinance, with the names of those City Council members voting for and against the ordinance, to be published in the Placer Herald. In lieu of publishing the full text of the ordinance, the City Clerk, if so directed by the City Attorney and within fifteen days, shall cause a summary of the ordinance, prepared by the City Attorney and with the names of the City Council members voting for and against the ordinance, to be published in the Placer Herald, and shall post in the office of the City Clerk a certified copy of the City Council members voting for and against the ordinance. The publication of a summary of the ordinance in lieu of the full text of the ordinance is authorized only where the requirements of Government Code section 36993 (c) (1) are met.

PASSED AND ADOPTED this 11th day June, 2002, by the following roll call vote:

AYES: Councilmembers: Magnuson, Storey, Lund

NOES: Councilmembers: None

ABSENT: Councilmembers: Hill, Yorde

ABSTAIN: Councilmembers: None



Kathy Lund, Vice Mayor

ATTEST:


City Clerk

First Reading: 5-28-02
Second Reading: 6-11-02
Effective Date: 7-11-02

The foregoing instrument is a
correct copy of the original document
on file in this office.

Attest: 
City Clerk, City of Rocklin

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