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**DEVELOPMENT AGREEMENT BY AND BETWEEN**

**THE CITY OF ROCKLIN**

**AND**

**SIERRA JOINT COMMUNITY COLLEGE DISTRICT, EVERGREEN SIERRA EAST  
LLC, CRESLEIGH HOMES CORPORATION, AND USA PROPERTIES, INC.**

**RELATIVE TO COLLEGE PARK**

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**DEVELOPMENT AGREEMENT  
RELATIVE TO COLLEGE PARK**

This Development Agreement ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the CITY OF ROCKLIN, a municipal corporation ("City"), and SIERRA JOINT COMMUNITY COLLEGE DISTRICT, (individually "College"), EVERGREEN SIERRA EAST LLC, (individually "Evergreen"), and CRESLEIGH HOMES CORPORATION, a California corporation (individually "Cresleigh") and (collectively "Developers"), and USA PROPERTIES FUND, INC. ("USA" or "Affordable Developer") are hereinafter sometimes collectively referred to as the "Parties" and singularly as "Party." Further, Developers are hereinafter sometimes referred to singularly as "Developer" if meant to reference one of the Developers.

**RECITALS**

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

B. Property. College owns certain real property located in the City of Rocklin, County of Placer, more particularly described in Exhibit A-1 and depicted in Exhibit A-2 attached hereto (the "Property"). The College, through separate transactions with Evergreen, Cresleigh and USA, has agreed to convey portions of the Property depicted in Exhibit A-3, attached hereto, or to develop or co-develop portions of the Property depicted in Exhibit A-4, attached hereto. Developers represent that all persons holding legal or equitable interests in the Property shall be bound by this Agreement.

C. Project. Developers have obtained various approvals from the City (described in more detail in Recital F below), including approval of a General Plan Amendment, General Development Plan, Zoning, Large and Small Tentative Subdivision Maps, Parcel Maps, and Design Review entitlements for a project known as College Park ("College Park" or the "Project") to be located on the Property. All conditions of approval of the Project are incorporated into this Agreement as though fully set forth herein.

D. Public Hearing. On \_\_\_\_\_ 2022, the Planning Commission of the City of Rocklin, serving as the City's planning agency for purposes of development agreement review pursuant to Government Code Section 65867, considered this Agreement and recommended approval of this Agreement to the City Council.

E. Environmental Review. On \_\_\_\_\_ 2022, the City Council certified as adequate and complete, the College Park Environmental Impact Report ("EIR") for the Project. Mitigation measures were required in the EIR and are incorporated into the Project and into the terms and conditions of this Agreement, as reflected by the findings adopted by the City Council concurrently with this Agreement.

F. Project Approvals. The following land use approvals which are collectively referred to hereinafter as the "Project Approvals" have been granted for the Property, which entitlements are the subject of this Agreement:

1. General Plan Amendment;
2. General Development Plan
3. General Development Plan Amendment (Remove North Village from Sierra College GDP)
4. General Development Plan Amendment (Remove portion of South Village from East of I-80 GDP)
5. Rezone;
6. Design Review (Cresleigh Homes)
7. Oak Tree Preservation Plan
8. Environmental Impact Report
9. The Large and Small Lot Tentative Subdivision Maps and Parcel Maps for the Project, including all conditions of approval approved by the City on \_\_\_\_\_, by City Resolution No. \_\_\_\_\_;
10. This Development Agreement, as adopted on \_\_\_\_\_ by City Ordinance No. \_\_\_\_\_ (the "Adopting Ordinance").

G. Need for Services and Facilities. Development of the Property will result in a need for municipal services and facilities, some of which services and facilities will be provided by the City to the Project subject to the performance of Developers' obligations hereunder. With respect to water, pursuant to Government Code Section 65867.5, any tentative map approved for the Property will comply with the provisions of Government Code 66473.7.

H. Intent of the Parties; Public Benefit. The Parties desire to enter into this Agreement relating to the Property in conformance with the applicable provisions of state and local law in order to achieve the development of the Project in accordance with the Project Approvals, City ordinances and resolutions, the City Code, and the Zoning Code, which together assure the health, safety and general welfare of the City and its existing and future residents. In addition, the Parties want to provide clear public benefits not usually obtained through the land development approval process and to achieve the development permitted under this Agreement and the provision of public services, public uses and infrastructure all in the promotion of the health, safety and general welfare of the City. City has determined that as a result of the development of the Property in accordance with the Project Approvals, including this Agreement, clear public benefits will accrue to the public that may not otherwise be obtained to the same extent through applicable development approval processes.

I. Contribution to Costs of Facilities and Services. Developers agree to contribute to the costs of such public facilities and services as may be required herein to mitigate impacts on the community resulting from the development of the Property, and City agrees to provide such public facilities and services, as required under its municipal responsibilities and not including water (Placer County Water Agency) and sewer services (South Placer Municipal Utility District) and any other municipal services provided by outside agencies, as may be required herein to assure that Developers may proceed with and complete development of the Property in accordance with the terms of this Agreement. City and Developers recognize and agree that, but for Developers' contributions to mitigate the impacts arising from the development entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement and that, but for City's covenant to provide certain facilities and services for development of the Property, Developers would not and could not commit to provide the mitigation as provided by this Agreement. City's vesting of the right to develop the Property as provided herein is in reliance upon and in consideration of Developers' agreement to make contributions toward the cost of public improvements as herein provided to mitigate the impacts of development of the Property as development occurs.

J. Development Agreement Ordinance. City and Developers have taken all actions mandated by, and fulfilled all requirements set forth in Chapter 17.92 of the Rocklin Municipal Code establishing procedures for consideration of Development Agreements.

K. Consistency with General Plan. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, in City Ordinance No. \_\_\_\_\_, the City found that this Agreement satisfies the Government Code Section 65867.5 requirement of general plan consistency.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereinafter set forth, the Parties agree as follows:

### **AGREEMENT**

1. Incorporation of Recitals and Exhibits. The Preamble, Recitals, all defined terms set forth therein and exhibits attached hereto are hereby incorporated into this Agreement as if set forth herein in full.

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

2.1. Rights and Obligations Contingent on Property Ownership. The rights and obligations of Cresleigh and USA as set forth in this Agreement are contingent upon Cresleigh and USA acquiring from College their respective portions of the Property shown for conveyance to them in Exhibit A-3.

**3. Effective Date and Term.**

**3.1. Effective Date.** The effective date of this Agreement ("Effective Date") is \_\_\_\_\_, which is the effective date of City Ordinance No. \_\_\_\_\_, adopting this Agreement.

**3.2. Term.** Upon execution, the initial term of this Agreement shall commence on the Effective Date and extend for a period of twenty (20) years, unless said initial term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties hereto. Following the expiration of the term, as applicable, this Agreement shall be deemed terminated and of no further force and effect.

If an act of any federal, state, or local government extends the term of any of the Project Approvals beyond the term of this Agreement, but such act does not extend this Agreement, the term of this Agreement and any other subsequent approvals as defined in Sections 7.1.3 and 9.3 this Agreement shall automatically extend to coincide with the term of the extended Project Approval.

**3.3. Term of Project Approvals.** Pursuant to California Government Code Section 66452.6(a), the term of any parcel map or tentative subdivision map shall automatically be extended for the term of this Agreement.

**3.4. Automatic Termination Upon Completion and Sale of Single-Family or Condominium Residential Lots.** This Agreement shall automatically be terminated, without any further action by either party or need to record any additional document, with respect to any single-family residential lot or condominium residential lot, within a parcel designated by the Project Approvals for residential use upon completion of construction and issuance by the City of a final occupancy permit for a dwelling unit upon such single-family residential lot, condominium residential lot, and conveyance of such improved single-family residential lot or condominium residential lot by Developers to a bona-fide good-faith purchaser thereof. In connection with its issuance of a final inspection for such improved lot, City shall confirm that all improvements, which are required to serve the lot, as determined by City, have been accepted by City. Termination of this Agreement for any such single-family residential lot or condominium residential lot, as provided for in this Section shall not in any way be construed to terminate or modify any assessment district or Mello-Roos Community Facilities District lien affecting such lot at the time of termination.

**3.5. Termination Upon Developer Request.** This Agreement may also be terminated, at the election of the then property owner, with respect to any legally subdivided parcel designated by the General Plan for residential or non-residential use (other than parcels designated for public use), when recording a final residential lot subdivision map for such parcel, or receiving a certificate of occupancy for final inspection, whichever is applicable, for a multi-family or non-residential building within such parcel, by giving written notice to City of its election to terminate the Agreement for such parcel, provided that all improvements which are required to serve the parcel, as determined by City, have been accepted by City. Termination as provided for in this Section shall not in any way be construed to terminate or modify any assessment district or Mello-Roos Community Facilities District lien affecting such parcel at the time of termination. City shall

cause any written notice of termination approved pursuant to this Section to be recorded against the applicable parcel with the County Recorder.

**3.6. Tolling.** In the event that this Agreement or any of the Project Approvals are the subject of legal challenge or any subsequent approvals or permits required to implement the Project Approvals are subjected to legal challenge by a third party, the terms, timing of obligations imposed, and the requirement that the City perform any obligations pursuant to this Agreement, other than Section 19 of this Agreement (Transfers and Assignments), shall be automatically tolled during the pendency of the litigation upon service of a lawsuit on the City. The tolling shall terminate upon the earlier of the two following dates: (1) the date of entry of final order or judgment upholding this Agreement, the Project Approvals and/or the challenged approvals with no further appeals remaining, or (2) the date of entry of dismissal of the litigation pursuant to stipulation of the Parties. In the event a court enjoins either the City or Developers from taking actions with regard to the Project as a result of such litigation that would preclude either or any of them from enjoying the benefits of this Agreement, then the term of this Agreement shall be automatically tolled during the period of time such injunction or restraining order is in effect.

Similarly, if Developers are unable to develop the Project due to the imposition by City, pursuant to Section 4.3 of this Agreement, or other public agency of a development moratoria for a health or safety reason unrelated to the performance of Developers' obligations hereunder, the term of this Agreement and timing for obligations imposed pursuant to this Agreement shall, upon written request of Developers, be extended and tolled for the period of time that such moratoria prevents such development of the Project.

Notwithstanding any extension or tolling of the term of this Agreement as provided in this Section, City shall, at Developers' sole risk and cost, process any preliminary plans submitted by Developers, including, without limitation, any applications for tentative or final parcel map or tentative or final subdivision map, or improvement plans during such tolling period, provided, however, no such applications or plans shall be approved unless or until the tolling period has been terminated, without modification to the Project Approvals, and all fee obligations outlined in this Agreement and the Project Approvals have been satisfied.

#### **4. Use of Property.**

**4.1. Right to Develop.** Developers shall have the vested right to develop the Project in accordance with the terms and conditions of the Project Approvals, including this Agreement and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. Developers' vested right to develop the Property shall be subject to subsequent approvals; provided however, except as stated in Section 4.3, that any conditions, terms, restrictions and requirements for such subsequent approvals shall not prevent development of the Property for the uses, or limit the rate or timing of development set forth in this Agreement, so long as Developers are not in default under this Agreement.

**4.2. 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, the location, design and maintenance of on-site and off-site improvements, location of public utilities and other terms and

conditions of development applicable to the Property, shall be those set forth in the Project Approvals, including this Agreement and any amendments to this Agreement or the Project Approvals as shall, from time to time, be approved. City acknowledges that the Project Approvals provide for the land uses and approximate acreages for the North Village as shown in Exhibit B-1, and for the South Village Exhibit as shown in Exhibit B-2, both of which are attached hereto.

**4.3. Moratorium, Quotas, Restrictions or Other Growth Limitations.**

Subject to applicable law relating to the vesting provisions of development agreements, Developers and City intend that, except as otherwise provided in this Agreement, this Agreement shall vest the Project Approvals against subsequent City resolutions, ordinances and initiatives that directly or indirectly limit the rate, timing, sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses as set forth in the Project Approvals; provided however, Developers shall be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted on a uniformly applied, city-wide or area-wide basis, and directly concerns a public health or safety issue, in which case City shall treat Developers in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by that public health or safety issue. By way of example only, an ordinance which precludes the issuance of a building permit because the district providing sewer service has inadequate sewage treatment capacity to meet the demand therefor (either city-wide or in a designated sub-area of the City) would directly concern an imminent public health issue under the terms of this Section and would support a denial of a building permit within the Property, so long as the City were also denying city-wide or area-wide all other requests for building permits which require sewage treatment capacity; however an attempt to limit the issuance of building permits because of a general increase in traffic congestion levels would not directly concern an imminent public health or safety issue under the terms of this Section.

**4.4 Timing of Development.**

In developing the Project, Developers shall be obligated to comply with the terms and conditions of the Project Approvals and this Agreement at those times specified in either the Project Approvals or this Agreement. Parties acknowledge that Developers cannot at this time predict with certainty when or the rate at which the Project would be developed. Such decisions depend upon numerous factors, including market orientation and demand, interest rates, competition and other factors. It is the intent of City and Developers to hereby acknowledge and provide for the right of Developers to develop the Project in such order and at such rate and times as Developers deem appropriate within the exercise of their sole and subjective business judgement, subject to the terms, requirements and conditions of the Project Approvals and this Agreement. Developers will use best efforts, in accordance with sound business judgment taking into consideration market conditions and other economic factors, in whether or not to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Agreement and with the Project Approvals. Nothing in the Project Approvals or this Agreement, impose an affirmative obligation upon Developers to develop the Project, but only to develop the Project once commenced pursuant to and consistent with the Project Approvals and this Agreement. As well, nothing in the Project Approvals or this Agreement precludes the City's ability to fully and without condition or restriction review, modify, or terminate this Agreement under Chapter 17.92 of the Rocklin Municipal Code.

**4.5. Additional Conditions.**

**4.5.1. Affordable Housing.** Developers have entered into an agreement with USA for USA to develop a senior affordable housing project on Parcel C-2 East, shown on Exhibit C-1, attached hereto ("Affordable Parcel"). The commitments of Developers and USA as they relate to the development of affordable housing for College Park on Affordable Parcel are set forth in this Section 4.5.1.

(A) Upon the approval of this Agreement, this Agreement shall be recorded against the Property, including the portion of the Property constituting the Affordable Parcel.

(B) At the time of recordation of the Final Parcel Map creating the Affordable Parcel, College shall record a deed restriction to the benefit of City on the parcel limiting its development and use to affordable housing.

(C) The price to USA for the Affordable Parcel shall be One Dollar (\$1.00). The Affordable Parcel shall be conveyed to USA upon the later of the date of approval of the Final Parcel Map creating the Affordable Parcel consistent with the Project Approvals, or the date on which Cresleigh closes escrow on the purchase of Cresleigh's portions of the Project, in which case Developers shall provide City with written notice of the conveyance of the Affordable Parcel to USA within thirty (30) days of Cresleigh's close of escrow on Cresleigh's portions of the Project.

(D) USA shall pursue and separately perfect final site-specific approvals for the development of a senior affordable project on the Affordable Parcel which approvals shall consist of Design Review for 180 senior affordable residential units earning 50% to 80% of the area median income ("Affordable Project"). USA shall be entitled to use no more than two (2) of the residential units to house on-site managers for the Affordable Project.

(E) Developers shall fund and construct, at no cost to USA, certain physical improvements to or for the benefit of the Affordable Parcel, including frontage improvements of the Affordable Parcel on Rocklin Road, construction of an access bridge to the Affordable Parcel from Rocklin Road, the extension of wet and dry utilities to the Affordable Parcel, and the construction of a private sewer lift station on the Affordable Parcel ("Access Improvements") as shown in Exhibit C-2 attached hereto, such that the Affordable Parcel is a construction-ready site. Construction of the Access Improvements shall commence upon the later of City issuance of a production home building permit to Cresleigh, or upon the conveyance of the Affordable Parcel to USA as outlined in Subsection 4.5.1(C) of this Agreement.

(F) Prior to construction of the Access Improvements, Developers shall deposit into an escrow account ("Affordable Housing Escrow Account") the cost of the Access Improvements. Separate from and in addition to the cost of the Access Improvements, Developers shall deposit into the Affordable Housing Escrow Account Two Million Dollars (\$2,000,000.00) to be paid as follows: 1) One Million Dollars (\$1,000,000.00) by College and Evergreen upon the close of escrow by Cresleigh for Cresleigh's purchase of its portions of the Project, and 2) Cresleigh shall pay into the Affordable Housing Escrow Account an amount equal to one percent (1%) of the sale price or building permit valuation of each home until One Million Dollars (\$1,000,000.00) is paid

in full (“Cresleigh Affordable Housing Fee”). If, at any time prior to Cresleigh funding the entirety of the Cresleigh Affordable Housing Fee obligation, USA has assembled the funding necessary to proceed with construction of the Affordable Project, Cresleigh shall deposit any balance Cresleigh owes to the Affordable Housing Escrow Account into such account.

To the satisfaction of City, Developers shall establish the Affordable Housing Escrow Account with escrow instructions to the Escrow Holder that City shall have the right to monitor deposits to, disbursements from and balances in the Affordable Housing Escrow Account for purposes of monitoring the compliance of Developers and USA with this Section 4.5.1. USA shall have access to the funds in the Affordable Housing Escrow Account only when sufficient funding exists for the Affordable Project to be constructed, and shall have no access to such funds for any pre-development costs.

(G) The timing for actual development of the Affordable Project will be dependent upon the availability of additional outside funding which timing shall not restrict in any way the timing for or buildout of the market rate housing within the Project.

(H) In the event that USA has not commenced construction of the Affordable Project by December 31, 2032, or any extension thereto agreed upon by City and USA based on good faith efforts of USA to obtain funding for the Affordable Project, USA shall within thirty (30) days convey the Affordable Parcel for One Dollar (\$1) to Housing Trust Placer, Inc., a Placer County Non-Profit corporation (“HTP”), or entity similar to HTP at City’s sole determination, for purposes of developing affordable housing on the Affordable Parcel. HTP, or similar entity as applicable, shall be given access to the Affordable Housing Escrow Account subject to the same limitations to which USA was subject. The time period within which USA is to commence construction of the Affordable Project, or any extension thereto, as set forth in this Section 4.5.1, shall automatically be extended by any tolling of this Agreement pursuant to Sections 3.6 or 4.3 of this Agreement.

(I) The commitments of Developers for affordable housing set forth in this Section shall satisfy in full Developers’ obligation to provide affordable housing for the Project, and no additional requirements or conditions to provide affordable housing may be imposed on the Project, except, consistent with Sections 5.3 and 9.1 of this Agreement, as may be mandated or required by state or federal law.

#### **4.5.2. Parks.**

(A) Park Site Dedication. Pursuant to California Government Code Section 66477 (“Quimby Act”), Cresleigh shall dedicate 5.8 acres of park land on Parcel A comprising two (2) parks, the large park (“Large Park”) and the small park (“Small Park”) as shown in Exhibit D-1, attached hereto. Cresleigh’s total park acreage obligation pursuant to the Quimby Act is 6.48 acres. The difference in park acreage between Cresleigh’s Quimby Act obligation and the total acreage of the Large and Small Parks (6.48 acres – 5.8 acres = 0.68 acres) shall take the form of a Quimby Act in-lieu fee (“Quimby In-Lieu Fee”). Dedication of the Large Park and Small Park shall occur upon Cresleigh’s completion and City’s acceptance of park improvements to each park consistent with the facilities and amenities recommended for approval by the City’s Parks, Recreation and Arts Commission at its meeting of September 8, 2021, as shown in Exhibits D-2 and D-3, respectively, attached hereto, and approved by the City Council with

the Project Approvals. Construction of the Large Park shall be completed prior to issuance of the building permit for the 275th dwelling unit on either Parcel A or Parcel C-1 as depicted on Exhibit A-3. Construction of the Small Park shall be completed prior to issuance of the building permit for the 400th dwelling unit on either Parcel A or Parcel C-1 as depicted on Exhibit A-3, or earlier consistent with Subsection 4.5.5 of this Agreement. The construction of the park improvements referenced in this Section shall be subject to the City's form Turnkey Park Agreement, ("Turnkey Park Agreement"), attached hereto as Exhibit "D-4," and incorporated herein by reference, to be completed by City and Cresleigh prior to approval of the first Small Lot Final Map, and which shall be consistent with the terms of this Agreement and specifically Section 22 hereof.

(B) Park Fee Credits and Reimbursement. The owner of Parcel A shall receive a credit against Park Development Fee obligations for the actual total cost of constructing the Large Park and Small Park, subject to review and verification of such actual cost by City. The actual cost, including both hard and soft costs, of constructing the park improvements required pursuant to this Agreement may exceed Cresleigh's total Park Development Fee obligations. City shall therefore reimburse Cresleigh from Park Development Fees paid to City for the residential development of Parcels C-2 East and B-2, as shown in Exhibit D-5, at the earliest time available following acceptance of park improvements by City. City shall retain any excess Park Development Fees resulting from the development of Parcels C-2 East and B-2 exceeding the amount necessary to reimburse Cresleigh in full and may apply those excess fees anywhere in the City.

(C) Payment of Park Fees by Others. Residential development on Parcels B-2 and C-2 East, as shown in Exhibit D-5, shall pay to City Quimby Act Fees and Park Development Fees as calculated by City and due at the time of issuance of building permits.

(D) Fees to Improve Monte Verde Park. Fees collected pursuant to Rocklin Municipal Code Chapter 3.16, Article VI, or its successor statute, from the development of Parcel C-1 shall be used to improve the park and/or recreational facilities associated with Monte Verde Park.

**4.5.3. Transfer of Fee Title – City Detention Basin and Monte Verde Park.** College is the owner of certain real property totaling approximately 4.4 acres, which is the subject of a drainage and recreation easement granted by College to City in 1988 for purposes of City constructing a drainage detention basin and certain recreation facilities ("Drainage and Recreation Easement"). The location of the Drainage and Recreation Easement is shown in Exhibit E-1, a copy of the grant of easement and accompanying agreement between College and City is shown in Exhibit E-2, both of which are attached hereto. Within the Drainage and Recreation Easement area, City has constructed and maintained a detention basin ("City Detention Basin") and a public park ("Monte Verde Park") as shown in Exhibit E-3, attached hereto. In the construction of the City Detention Basin and Monte Verde Park, City has encroached onto College land beyond the boundaries of the Drainage and Recreation Easement. The areas of encroachment are shown in Exhibit E-4, attached hereto ("Encroachment Areas"). College wishes to transfer to City fee title and City agrees to accept fee title to the Drainage and Recreation Easement area and the Encroachment Areas free of all existing encumbrances within ninety (90) days following City Council approval or denial of the Project. City shall thereafter own and maintain the aforementioned properties.

Pursuant to California Government Code Section 66428(a)(2), Colledge shall create a single parcel encompassing the Drainage and Recreation Easement and the Encroachment Areas and transfer fee title for same to City.

**4.5.4. City Detention Basin – Deferred Maintenance and Capacity.**

The Parties agree that there are deferred maintenance matters relating to the City Detention Basin that will exist at the time of fee transfer and that City shall be responsible for correcting such deferred maintenance matters at its sole cost and expense in a timely manner such that development of the portions of the Project that drain into the City Detention Basin is not delayed. Developers shall notify City at least 180 days prior to the development of any portion of the Project that drains into the City Detention Basin. The timing for City's responsibility hereunder shall be subject to obtaining the requisite regulatory permits from other third-party agencies necessary to perform the deferred maintenance, together with the time of year limitations that may apply to any such permit. City shall submit the necessary application for any such regulatory permit in a timely manner and shall diligently pursue its issuance.

Drainage plans have been submitted to the City for Parcels C-1 and C-2 East and will be submitted for Parcel C-2 West prior to development, demonstrating the ability of the City Detention Basin to adequately detain stormwater resulting from the development of Parcels C-1, C-2 East, and C-2 West. In the event City determines any modifications to the design of the City Detention Basin beyond deferred maintenance issues referred to in this Section 4.5.4 are required to accommodate runoff from any portion of the Project, the construction of any such modifications and any associated review pursuant to the California Environmental Quality Act ("CEQA") shall be at the sole cost and expense of the Developer(s) whose specific project(s) require(s) such modifications to the City Detention Basin.

**4.5.5. New Detention Basins.** The Project includes the construction of new detention basins for detaining stormwater and water quality purposes, including one underground detention vault within the Small Park (Detention Vault), as shown in Exhibit F, attached hereto ("New Detention Basins"). The New Detention Basins shall be located in City-owned park and open space areas and constructed by Developers subject to review and approval by City, and shall be owned and maintained by City. The Detention Vault in the Small Park shall be constructed no later than issuance of the building permit for the 400<sup>th</sup> dwelling unit on either Parcel A or Parcel C-1 as depicted on Exhibit A-3 or such earlier time as required to accept drainage from any portion of the Project. Subject to approval by City, an interim detention basin may be constructed in the Small Park prior to completion of the Detention Vault and Small Park. Small Park will not be accepted prior to the completion of the permanent Detention Vault.

Additional detention basins or underground detention vaults will be constructed with the development of Parcels B-1, B-2, C-2 East and C-2 West ("Additional New Detention Basins"). Any such Additional New Detention Basin shall be constructed, owned, and maintained by the Developer and/or owner of the applicable parcel.

**4.5.6. Dedication of Open Space.** Certain portions of the Project will remain open space as shown in Exhibit G-1, attached hereto ("Open Space Areas"). Ownership and maintenance of the Open Space Areas for the North Village and South Village are shown in Exhibits G-2 and G-3, respectively, attached hereto ("Open Space

Ownership and Maintenance Areas –North Village”) and (“Open Space Ownership and Maintenance Areas – South Village”). Developers shall dedicate such Open Space Areas to City no later than September 1, 2023. At the time of such dedication, Developers shall pay City approximately Seventy-Five Thousand Dollars (\$75,000) for costs incurred by City to address the initial fuel load reduction, flood plain management, if applicable, removal of non-native invasive vegetation, and trash and debris collection and disposal (“Open Space Fee”). The actual amount of the Open Space Fee shall be determined from a formal competitive bid process (“Bid Process”) conducted and completed by the City prior to City acceptance of the Open Space Areas.

**4.5.7. Dedications of Rights-of-Way.** Prior to City’s acceptance of the Monte Verde Park, City Detention Basin, Encroachment Areas or Open Space Areas, Developers shall irrevocably offer to dedicate to City all rights-of-way necessary for the improvements required by this Agreement and the Project Approvals.

**4.5.8. Legal Boundaries and Encroachments.** Prior to City acceptance of Monte Verde Park, the City Detention Basin, and the Open Space Areas, Developers shall verify all legal boundaries and address and remove any encroachments, physical, recorded, or otherwise, affecting Monte Verde Park, the City Detention Basin, and the Open Space Areas by neighboring property owners and easement holders.

**4.5.9. Land Dedications to City.** All property to be dedicated to City by College or other Developer(s), as applicable, pursuant to this Agreement shall be free of any liens, encumbrances, special taxes, or assessments, and successfully remediated of Hazardous Materials consistent with Section 4.5.17 of this Agreement. Prior to any such dedication, except as to Monte Verde Park, City Detention Basin and Encroachment Areas, College or Developers, as applicable, shall provide to City at College or Developers’ expense, as applicable, a current preliminary title report and Phase I or, if required, Phase II site assessment for Hazardous Materials in a form acceptable to the City Attorney. Any policy of title insurance required by City shall be at City’s expense.

**4.5.10. Low Impact Development Improvements.** Development of each portion of the Project shall comply with the City’s Low Impact Development (“LID”) requirements applicable at the time of approval of each Final Small Lot Subdivision Map.

**4.5.11. Project Areas Privately Maintained.** Certain areas within the Cresleigh portions of the Project will be maintained by the creation of and assessments paid by homeowners through a private homeowners association (“HOA”). Areas to be maintained by the HOA shall be privately owned as shown and classified in Exhibits G-2 and G-3.

**4.5.12. Oak Mitigation/Conservation.** In order to comply with the Chapter 17.77 of the Rocklin Municipal Code, College and Evergreen shall be responsible for the cost of mitigating for impacts to oak trees within the Project and hereby reserve the option to pay the Oak Mitigation Fee, but, in the alternative, have prepared an Oak Mitigation Plan, requiring the dedication of an oak conservation easement (“Oak Conservation Easement”) over 16.3 acres of existing oak woodland located on College’s campus for permanent preservation as shown in Exhibit H, attached hereto (“Oak Conservation Easement Area”).

In the event the Oak Conservation Easement option is selected by College and Evergreen, College and Evergreen shall acquire the Oak Conservation Easement from the College and pay to the College an annuity for permanent protection, management and maintenance of the Oak Conservation Easement Area based on a Property Analysis Record (“PAR”) prepared by a qualified biologist, subject to review and approval by City. The Oak Conservation Easement shall be held by City. College and Evergreen shall prepare an Oak Woodlands Operations and Maintenance Plan for the easement area, subject to review and approval of City. The Oak Conservation Easement Area shall be maintained by College in perpetuity pursuant to and consistent with the Oak Woodlands Operations and Maintenance Plan. College shall prepare and submit to City an annual report of the current status and maintenance actions taken in the prior year by the College for the Oak Conservation Easement Area, due annually on July 1 of every year. College shall provide any additional information regarding the status and maintenance of the Oak Conservation Easement Area immediately upon City’s request. All costs associated with the management and maintenance of the Oak Conservation Easement Area pursuant to the PAR shall be paid by College and Evergreen.

**4.5.13. Road Frontage Improvements, Phasing, Responsibility.**

On-site road frontage improvements for the Project shall be constructed by the applicable designated Party in phases as described and shown in Exhibit I-1 (“Road Frontage Improvements”), attached hereto. The trigger for the completion of each phase and whose responsibility it is to construct each phase is shown in Exhibit I-2, attached hereto (“Timing of and Responsibility for Road Frontage Improvements”). Construction of each phase will be completed by the applicable Party as commercially feasible, subject to weather and other force majeure delays, if any.

**4.5.14. Off-Site Road Improvements, Phasing and Reimbursement.**

Improvements to off-site regional and sub-regional roadway facilities have been identified by the Project EIR. Improvements to these facilities are required in that they do not currently meet the City’s General Plan policies relating to level of service (LOS). Developers agree to construct the off-site road improvements in a single phase as described and shown in Exhibit J-1, attached hereto (“Off-Site Road Improvements”), to be completed as shown in Exhibit J-2, attached hereto (“Timing of Off-Site Road Improvements”) subject to only to weather and other force majeure delays. City shall reimburse Developers for the cost of constructing the Off-Site Road Improvements from regional or City traffic impact fees or the Memorandum Of Understanding For Traffic Impact Mitigation Measures Associated With Rocklin Road And Sierra College Boulevard For Rocklin Campus Facilities Master Plan Project Environmental Impact Report entered into by the City and College, dated \_\_\_\_\_, 20\_\_, as applicable, within ninety (90) days of City’s acceptance of the Off-Site Road Improvements. Developers shall provide City with copies of all invoices, proof of payment, and any other documentation necessary to establish the cost of construction, including both hard and soft costs, for City’s review and approval, such approval not to be unreasonably withheld. City agrees that construction of the Off-Site Improvements is necessary for the orderly development of the City. At the completion of the City’s Circulation Element update process, City shall update its Traffic Impact Fee to include the cost of City’s fair share of the Off-Site Road Improvements. Developers fair share of the Off-Site Road Improvements shall be paid to City through Developers’ payment of the City’s Traffic Impact Fee.

To the extent possible, City reimbursement shall be structured in such a way as to deliver the improvements in the most cost-effective manner. The Parties agree that Developers may create a separate entity to construct the Off-Site Road

Improvements to insulate other private roadway and frontage improvements constructed by Developers from the Off-Site Road Improvements. Prior to any reimbursement paid by City to Developers as provided in this Section 4.5.14, Developers shall notify City in writing of the appropriate entity to which the reimbursement payment should be made. Prior to commencement of any of the Off-Site Road Improvements, Developers, or a separate entity created by Developers (“Separate Entity”), shall enter into a Road Construction and Reimbursement Agreement which shall be consistent with the terms of this Agreement and specifically Section 22 hereof.

**4.5.15. Construction Adjacent to Dedicated Land – Inspections.**

Each development area adjacent to lands that either are or will be owned by City (City Land) will be inspected prior to the commencement of construction, including a video recording of the area in question, which will establish the baseline condition of the City Land’s pre-construction condition.

Prior to City issuance of a Certificate of Occupancy for the last structure within development area(s) adjacent to City Land, a post-construction inspection shall be conducted to determine whether the post-construction condition is consistent with the pre-construction condition, including a video recording of the area in question. The inspector shall notify the City and the applicable Developer of any City Land in which the post-construction condition has been modified from the pre-construction condition, and whether any remedial work is necessary to restore the City Land to its pre-construction condition. The applicable Developer shall thereafter have thirty (30) days to remedy City Land and have an inspection conducted to verify compliance with the remedial work required by the inspector. Failure to remediate City Land as required pursuant to this section shall result in City prohibiting issuance of the subject Certificate of Occupancy, and shall constitute a default of this Agreement by the applicable Developer(s).

To avoid unnecessary burden to City inspection staff, at the determination of the Community Development Director, the inspections outlined above may be conducted by a City-contracted third-party inspector at the sole cost and expense of the applicable Developer.

**4.5.16. Hold Harmless Agreement and Indemnification.** Developers and their successors-in-interests and assigns, hereby agree to, and shall defend and hold harmless City, its elective and appointive councils, boards, commissions, officers, agents, employees, and representatives (collectively, the “Indemnified Parties”) from any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligation, damages, actions, causes of action, suits, losses, judgements, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever (individually, a “Claim”, collectively “Claims”), which may arise directly or indirectly as a result of any action or inaction of Developers’ or Developers’ Separate Entity, or any action or inaction by Developers’ or Developers’ Separate Entity’s contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation or maintenance of the Property or Project, provided that Developers shall have no indemnification obligation with respect to damages or claims which arise from the gross negligence or willful misconduct of the Indemnified Parties. City acknowledges hereby that the foregoing liability of Developers shall be limited to their respective interests in the Property or Project and that neither Developers nor any of their partners, officer, shareholders, employees or agents shall have any personal liability therefor.

Further, Developers agree, or applicable Developer agrees, to indemnify, defend and hold harmless the Indemnified Parties from and against any and all Claims due to the negligence or willful misconduct of Developers, or applicable Developer, which arise from incidents on or conditions of any property to be transferred by Developers, or applicable Developer, to the City under this Agreement which occurred or existed prior to the transfer of the property to the City, provided that Developers, or applicable Developer, shall have no indemnification obligation with respect to damages or Claims which arise from the gross negligence or willful misconduct of the Indemnified Parties.

In addition to the foregoing indemnity obligation, Developers agree to and shall defend, indemnify and hold City, its elective and appointive council, boards, commissions, officers, agents, employees and representatives harmless from any suits or actions at law or in equity arising out of the execution, adoption or implementation of this Agreement, exclusive of any such actions brought by Developers.

**Section 4.5.17. Hazardous Materials.** As of the date of this Agreement, to the extent that Hazardous Materials are present on areas of the Property to be dedicated to City other than Monte Verde Park, City Detention Basin and the Encroachment Areas (collectively, the “City Operated Areas”), College shall, prior to such dedication and at College’s sole cost and expense, successfully remediate any contaminants of concern on such properties to the extent required by the Department of Toxic Substances Control (“DTSC”) and provide City with a No Further Action (“NFA”) letter from DTSC (or other appropriate lead environmental agency) confirming that such properties are suitable for unrestricted residential use. Receipt of such NFA letter shall constitute conclusive evidence that such property is available and appropriate for its intended use under this Agreement and that College has satisfied all of its remediation obligations under this Section 4.5.17.

“Hazardous Materials” shall mean any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any “hazardous substances”, “hazardous wastes”, “hazardous materials” or “toxic substances” under applicable federal, state and local laws, ordinances and regulations.

Effective upon City’s acceptance of the property dedicated to City by College or its successor(s) pursuant to this Agreement, College agrees to indemnify, defend and hold harmless City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives (collectively, the “City Indemnified Parties”) from any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever (individually, a “Claim”; collectively, “Claims”), asserted by any third party relating to the presence of any Hazardous Materials existing on such property as of the date of City’s acceptance of the property. College’s indemnity, defense and hold harmless obligations shall not apply to any City Operated Areas, or to any Claims: (1) relating to or arising in connection with Hazardous Materials first released on such property following the date of City’s acceptance, or (2) to the extent arising from the gross negligence or willful misconduct of any City Indemnified Party. College’s indemnity, defense and hold

harmless obligations shall terminate on the date that is five years following the date of City's acceptance of the property at issue.

In the event of any Claim subject to the foregoing indemnity, defense and hold harmless obligations, City shall immediately notify College and College shall have the right to address and resolve such Claim, including performing any required investigation or remediation work, subject to the reasonable approval of City. In the event that any covered Claim requires additional remediation, such remediation shall be performed to the extent required for unrestricted residential use as determined by DTSC or other appropriate lead environmental agency.

**Section 4.6** Meet and Confer Regarding the General Plan Designation for Parcel B-2. City and Developer or Developers who own Parcel B-2 shall meet and confer in good faith, prior to the approval of improvement plans for College Park to determine whether City and the owner of Parcel B-2 can amend the high density residential general plan designation to another more flexible use for the Parcel B-2 area.

**5. Applicable Rules, Regulations, Fees and Official Policies.**

**5.1. Rules Regarding Permitted Uses.** Except as provided in this Agreement, the City's ordinances, resolutions, rules, regulations and official policies governing the permitted uses of the Property, the density and intensity of use, the rate timing and sequencing of development, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land shall be those in force on the Effective Date of this Agreement. Except as provided in Section 6.2, this Agreement does not vest Developers' rights regarding the payment of any development impact fees, exactions and dedications, processing fees, inspection fees, plan checking fees or charges, or any other fee or charge imposed by City. All fees and charges shall be paid at the rate in effect at the time such fees are customarily due, unless otherwise provided for in this Agreement.

**5.2. Rules Regarding Design and Construction.** Unless otherwise expressly provided in this Agreement, all ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project and to public improvements to be constructed by Developers shall be those in force and effect at the time the applicable plan or permit approval is granted.

**5.3. Changes in State or Federal Law.** This Agreement shall not preclude the application, to development of the Property, of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations, subject to the additional provisions contained in Section 9.1 of this Agreement.

**5.4. Reservation of Authority.** Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Property, which are collectively referred to in this Agreement as "City Law":

(A) Existing or new fees and charges of every kind and nature imposed by the City to cover the actual costs to the City of processing applications for Project Approvals or for monitoring compliance with any Project Approvals or subsequent approvals granted or issued, as such fees and charges are adjusted from time to time.

(B) Existing or new regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are applied on a city-wide basis to all substantially similar types of development projects and properties.

(C) Existing or new regulations governing construction standards and specifications including the City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the City at the time of permit application.

(D) New City ordinances, rules, regulations or policies which may be in conflict with this Agreement or the Project Approvals, but which are reasonably necessary to protect the public health or safety, provided such new City ordinances, rules, regulations or policies are applied on a city-wide basis to all substantially similar types of development projects and properties.

(E) Any other existing or new City ordinances, rules, regulations or policies applicable to the Property, which do not conflict with this Agreement or the Project Approvals.

**6. Subsequently Enacted Fees, Dedications, Assessments and Taxes.**

**6.1. Processing Fees and Charges.** Developers shall pay those processing, inspection, and plan check fees and charges required by City under then current regulations for processing applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Developers hereunder.

**6.2. Development Impact Fees, Exactions and Dedications.** Developers shall pay all City development impact fees, connection fees, mitigation fees, and other exactions in effect at the time such fees and exactions are assessed, and provide all dedications of land, required by the City to support the construction of any public facilities and improvements or the provision of public services in relation to development of the Project (together "Exactions") so long as said Exactions otherwise comply with applicable law, including but not withstanding, Government Code Section 66000 *et seq.*, and are (1) required on a city-wide basis, or (2) apply uniformly to all properties within the City that are zoned consistent with the Project Approvals, or (3) apply uniformly to all properties that are similarly situated, whether by geographic location or other distinguishing circumstances. Notwithstanding the foregoing, with respect to the Park Improvement, Trail, Community and Recreation Facilities, and Public Facilities Impact Fees ("Park Development Fee"), the Project shall be subject to the increase in the Park Development Fee at its December 31, 2023 level until December 31, 2032. Likewise, the Project shall be subject to the applicable Traffic Impact Fee ("TIF") as of the effective date of this Agreement, subject only to the increase in the TIF resulting from the City's update to its Circulation Element and corresponding update to its Capital Improvement

Plan (“CIP”) and TIF until December 31, 2032. After December 31, 2032, the Project shall be subject to Park Development Fee and TIF in effect at the time such fees and exactions are assessed. Except as otherwise provided in this Agreement, Exactions required by City to be paid by Developers that do not meet one of the preceding criteria, shall be the Exactions authorized as of the Effective Date.

**7. Processing of Permits and Approvals.**

**7.1. Subsequent Approvals.**

**7.1.1. Applications for Subsequent Approvals.** City shall accept for processing, review, and action, all complete applications submitted by Developers for Subsequent Approvals, necessary or convenient for the exercise of Developers’ rights under the Project Approvals for the use and development of the Property.

**7.1.2. Timely Processing.** City acknowledges that the timely review and approval of improvement plans, including the phasing of improvement plans, tentative and final subdivision maps, design review, and building permits, and inspection of constructed facilities and structures is important to Developers in achieving the success of the Project. City will use good faith, commercially reasonable efforts to dedicate sufficient resources and staff to process all applications submitted by Developers for Subsequent Approvals and/or applications for approval of improvement plans, and phasing of improvement plans, inspections and acceptance of improvements to be constructed by Developers, with the intent of at least satisfying all statutory timelines and/or guidelines for the processing of such applications. In the event, at the determination of the Community Development Director, City does not have adequate personnel resources or otherwise cannot meet its obligations under this Section, City will utilize, consistent with City policy, outside consultants for processing applications for Subsequent Approvals, other planning, processing, inspection and plan review (building permit plan review, improvement plan review, etc.) purposes at the sole cost of Developers. City will consult with Developers on the selection of the most knowledgeable, efficient and available consultants for purposes of providing the application planning, processing, inspection and plan review duties for the City and the Project.

**7.1.3. Application of Development Agreement to Subsequent Approvals.** Upon approval, a Subsequent Approval shall be deemed a Project Approval under this Agreement and shall be subject to any extension of this Agreement consistent with Section 3.2 of this Agreement.

**7.2. Infrastructure Funding - Use of SCIP or BOLD Funds.** Nothing in this Agreement shall preclude Developers’ opportunity to apply for Statewide Community Infrastructure Program (“SCIP”) or Bond Opportunities for Land Development (“BOLD”) funding for infrastructure for purposes of developing the Project.

**7.3. Private Financing.** Nothing in this Agreement shall be construed to limit Developers’ option to install the Public Benefit Facilities, or other facilities or improvements required by the Project Approvals through the use of private financing.

**8. Service Districts for Maintenance.**

**8.1. Annexation, Consent, Waiver and Special Benefit.** Prior to September 1, 2023, the Project and Property shall be annexed into City CFD-1 and CFD-5 (“Service Districts”) without protest, by which each parcel within the Project and Property shall pay its respective fair share for annual maintenance of project areas to be maintained by the City. Prior to such annexation and pursuant to California Government Code Section 66428(a)(2), College shall create parcels reflecting the development plan for the Project so that such parcels can be assigned under the Service Districts. Developers hereby consent to the levy of such special taxes or assessments as are necessary to fund the maintenance obligations described below and in the Project Approvals. No building permit shall be issued within any portion of the Project or Property until the Project and Property have been annexed into the Service Districts. For purposes of Article XIID of the California Constitution, Developers acknowledge that all the services described herein to be provided by the Services Districts will provide a “special benefit” to the Project and Property, as defined by said Article, and that the foregoing support and consent shall apply as to any claim that any portion of the services supported by the special tax does not provide special benefit to the Project or Property. The Service Districts shall provide City assured funding for the ongoing maintenance and operation of public facilities and all improvements required herein or in the Project Approvals, whether such facilities and improvements are located within or outside of the boundaries of the Project, including, but not limited to, public roads, public streets, bridges/culverts, traffic signals, traffic signs, striping and legends, ITS operation, street lights, public alleys and associated frontage improvements such as curb, gutter and sidewalks, intersection signals, and street signs; road special features (e.g. speed bumps, textured or painted surfaces, modified crosswalks, etc.); project monument signs; all public landscaping, including street frontage landscaping and road medians, including landscaping; streetlights within the Property and upon the Property frontages and statuary, fountains or ornamental structures, public parks, public open space and detention basins.

At the time of annexation into CFD-5, City shall impose upon all parcels to be developed within the Project and Property, including parcels initially defined as undeveloped parcels, an assessment sufficient to pay the annual cost of Open Space Areas dedicated by Developers to the City pursuant to Section 4.5.6 of this Agreement

All road damage, both onsite and offsite, due to construction of the Project shall be the responsibility of the Developer or Developers conducting such construction and all costs associated with the damage shall be borne by such Developer or Developers.

**8.2. Public Parcel Exclusion.** Developers expressly agree that Parcels conveyed or dedicated or to be conveyed or dedicated to City shall be excluded from any assessment to be imposed by the Services Districts.

**8.3. Financing Mechanisms for Private Improvements.** Prior to approval of the Final Map for each phase of the Project, Developers shall prepare and submit to the City Manager or his/her designee for review and approval a plan, that may include establishment of property owner and homeowner associations, to ensure payment of the on-going costs of operation, maintenance, repair and replacement of private open space, private recreation and private parks, private landscaped areas and private alleys included within the Project. In proposing a particular plan to City, Developers shall demonstrate to the satisfaction of City Manager or his or her designee (in his or her sole discretion) that funding of such on-going costs is economically sound and feasible.

**9. Amendment or Cancellation.**

**9.1. Modification Because of Conflict with State or Federal Laws.** In the event that State or Federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to the minimum extent necessary to comply with such Federal or State law or regulation. Any such amendment or suspension of the Agreement shall be approved by the City Council in accordance with City Codes and this Agreement.

**9.2. Amendment by Mutual Consent.** This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of State law and City Codes and regulations.

**9.3. Amendment of Project Approvals.** Any amendment of Project Approvals relating to: (1) the permitted use of the Property; (2) provision for reservation or dedication of land; (3) the density or intensity of use of the Project; (4) the maximum height or size of proposed buildings; (5) monetary contributions by the Developers; or (6) the location and maintenance of on-site and off-site improvements, shall require an amendment of this Agreement. Such amendment shall be limited to those Parties and to those provisions of this Agreement, which are implicated by the specific amendment of the Project Approvals. Any other amendment of the Project Approvals shall not require amendment of this Agreement unless the amendment of the Project Approvals relates specifically to some provision of this Agreement.

**9.4. Cancellation by Mutual Consent.** Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by the mutual consent of the parties or their successors in interest, in accordance with the provisions of City Codes. Any fees paid pursuant to this Agreement prior to the date of cancellation shall be retained by City.

**10. Periodic Review.**

**10.1. Review Date.** The annual review date for this Agreement shall be approximately the anniversary date of the Effective Date and follow the procedures set forth in Sections 17.92.180, 17.92.190, and 17.92.200 of the Rocklin Municipal Code.

**10.2. Initiation of Review.** The City Manager shall initiate the annual review by giving to Developers written notice that City intends to undertake such review. Within thirty (30) days of City's notice, Developers shall provide evidence to the City Manager to demonstrate good faith compliance with the Agreement. The burden of proof, by substantial evidence of compliance, is upon the Developers. City's failure to timely initiate the annual review is not deemed to be a waiver of the right to do so at a later date; accordingly, Developers are not deemed to be in compliance with the Agreement by virtue of such failure to timely initiate review.

**10.3. Staff Reports.** City shall deposit in the mail or provide by e-mail to Developers a copy of all staff reports, and related exhibits, concerning contract performance at least ten (10) days prior to any annual review.

**10.4. Costs.** Costs reasonably incurred by City in connection with the annual review shall be paid by Developers in accordance with City's schedule of fees and billing rates in effect at the time of review.

**10.5. Non-compliance with Agreement; Hearings.** If the City Manager, or his/her designee, finds that a Party, or Parties has/have not complied in good faith with the terms and conditions of the Agreement during the period under review, the City Manager, or his/her designee, may refer the Agreement to the Planning Commission for review. Such referral shall be made by the City Manager or his/her designee, together with a staff report of the City Manager or his/her designee's findings. Upon such referral, the Planning Commission shall conduct a noticed public hearing to determine the good faith compliance by the Party or Parties with the terms of the Agreement in accordance with Section 19.92.190 of the Rocklin Municipal Code. The City Council shall thereafter place the Planning Commission's report on its agenda, in accordance with Section 17.92.200 of the Rocklin Municipal Code. If the City Council finds, based on substantial evidence, that a Party, or Parties is/are not in compliance with the terms of this Agreement, it may either terminate this Agreement or modify this Agreement as to such Party or Parties. The City Council may impose such conditions as it deems necessary to protect the interests of the City. The decision of the City Council shall be final.

**11. Default.** Subject to any applicable extension of time, failure by any party to perform any term or provision of this Agreement required to be performed by such party shall constitute an event of default ("Event of Default"). For purposes of this Agreement, a party claiming another party is in default shall be referred to as the "Complaining Party," and the party alleged to be in default shall be referred to as the "Party in Default." A Complaining Party shall not exercise any of its remedies as the result of such Event of Default unless such Complaining Party first gives notice to the Party in Default as provided in Section 11.1.1, and the Party in Default fails to cure such Event of Default within the applicable cure period.

**11.1. Procedure Regarding Defaults.**

**11.1.1. Notice of Default.** If an Event of Default occurs prior to exercising any remedies, the Complaining Party shall give the Party in Default written notice of such default.

**11.1.2. Cure.** If the default is reasonably capable of being cured within thirty (30) days, the Party in Default shall have such period to effect a cure prior to the exercise of remedies by the Complaining Party. If the nature of the alleged default is such that it cannot, practicably be cured within such thirty (30) day period, the cure shall be deemed to have occurred within such thirty (30) day period if: (1) the cure is commenced at the earliest practicable date following receipt of the notice; (2) the cure is diligently prosecuted to completion at all times thereafter; (3) at the earliest practicable date (in no event later than thirty (30) days after the curing party's receipt of the notice), the curing party provides written notice to the other party that the cure cannot practicably be completed within such thirty (30) day period; and (4) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from

exercising remedies if a default is not cured within ninety (90) days after the first notice of default is given. The rights and obligations of any other Party to this Agreement not in default shall not be affected by this Section.

**11.1.3.** Failure to Assert. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies.

**11.1.4.** Legal Proceedings. Subject to the foregoing, if the Party in Default fails to cure a default in accordance with the foregoing, the Complaining Party, at its option, may institute legal proceedings pursuant to this Agreement or, in the event of a material default, terminate this Agreement. Upon the occurrence of an Event of Default, the parties may pursue all other remedies at law or in equity, which are not otherwise provided for or prohibited by this Agreement, or in City's regulations governing development agreements, expressly including the remedy of specific performance of this Agreement.

**11.1.5.** Effect of Termination. If this Agreement is terminated following any Event of Default of a Party or Parties or for any other reason, such termination shall not affect the validity of any building or improvement within the Property constructed by such Party or Parties which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by City. Furthermore, no termination of this Agreement shall prevent a Party or Parties in default from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination. Any termination of this Agreement by City as a result of an Event of Default by a Party or Parties shall not result in the termination of this Agreement as it relates to any other Party or Parties not in default of this Agreement.

**12.** Several Obligations of Property Owners. Notwithstanding anything to the contrary contained in this Agreement, no liability under, or default in the performance of a covenant or obligation in, this Agreement with respect to a particular portion of the Property shall constitute a liability or default applicable to any other portion of the Property, and any remedy arising by reason of such liability or default shall be applicable solely to the portion of the Property where the liability or default has occurred. Similarly, the obligations of Developers and their respective successors in interest shall be several and no liability or default hereunder by any one Party shall constitute a liability or default applicable to any other Party, and any remedy arising by reason of such liability or default shall be solely applicable to the liable party or Defaulting Party and the portion of the Property owned by such liable party or Defaulting Party.

**13.** Estoppel Certificate. Either Party may, at any time, and from time to time, request written notice from the other Party requesting such Party to certify in writing that, (1) this Agreement is in full force and effect and a binding obligation of the Parties; (2) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (3) to the knowledge of the certifying Party 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 amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the Parties. The City Manager, or his/her designee shall be authorized to execute any certificate requested by Developers. Should the Party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default.

**14. Mortgagee Protection; Certain Rights of Cure.**

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

**14.2. Mortgagee Not Obligated.** Notwithstanding the provisions of Section 14.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement. If the Mortgagee chooses to use the Property or construct any improvements thereon as permitted or authorized by the Project Approvals or by this Agreement, the Mortgagee shall be bound by the terms of the Project Approvals and this Agreement.

**14.3. Notice of Default to Mortgagee and Extension of Right to Cure.** If City receives notice from a Mortgagee requesting a copy of any notice of default by a given Party or Parties hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to such Party or Parties, any notice given to such Party or Parties with respect to any claim by City that such Party or Parties has/have committed an Event of Default. Each Mortgagee shall have the right during the same period available to such Party or Parties to cure or remedy, or to commence to cure or remedy, the Event of Default claimed set forth in the City's notice. City, through its City Manager, may extend the cure period provided in Section 11.1.2 for not more than an additional sixty (60) days upon request of such Party or Parties or a Mortgagee.

**15. Severability.** Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and

each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof 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 entire Agreement as to such Party from and after such determination.

**16. Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

**17. Attorneys' Fees and Costs in Legal Actions By Parties to the Agreement.** Should any legal action be brought by any party for breach of this Agreement or to enforce any provisions herein, the prevailing party to such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the Court.

**18. Attorneys' Fees and Costs in Legal Actions By Third Parties to the Agreement.** If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate and appear in defending such action. Developers shall bear their own respective costs of defense as a real party in interest in any such action, and Developers shall reimburse City on an equal basis for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceeding.

**19. Transfers and Assignments.** From and after recordation of this Agreement against the Property, Developers or a Party shall have the full right to assign this Agreement as to the Property, or any portion thereof, in connection with any sale, transfer or conveyance thereof, and upon the express written assignment by Developers or a Party and assumption by the assignee of such assignment in substantially the form attached hereto as Exhibit K and the conveyance of Developers' or a Party's interest in the Property related thereto, Developers or such Party shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Party" with all rights and obligations related thereto, with respect to such conveyed property. Prior to recordation of this Agreement, any proposed assignment of this Agreement by Developers or a Party shall be subject to the prior written consent of City Manager on behalf of City and the final form of such assignment shall be subject to the approval of City Attorney, neither of which shall be unreasonably withheld.

**20. Agreement Runs with the Land.** Except as otherwise provided for in this Agreement, all the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitude and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any owned property; (1) is for the benefit of such properties and is a burden upon such properties; (2) runs with such properties; and (3) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall

be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.

**21. Bankruptcy.** The obligations of this Agreement shall not be dischargeable in bankruptcy.

**22. Insurance – Construction Activity.** Prior to commencement of construction of any improvements that will become public improvements, Developers, Developers' Separate Entity, or contractors of Developers or Developers' Separate Entity, undertaking construction of such improvements shall, as applicable, enter into a Subdivision Improvement Agreement, Turnkey Park Agreement, Road Construction and Reimbursement Agreement, or such other construction related agreement with the City, which shall include City's then applicable requirements for indemnification and insurance coverage.

**23. Excuse for Nonperformance.** In addition to specific provisions of this Agreement, performance by any Party to this Agreement shall not be deemed to be in default where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, acts of terrorism, pandemic, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, or litigation that results in project requirements being delayed. except any obligation to pay any sum of money under the applicable provisions hereof. The Party claiming such extension shall send written notice of the claimed extension to the other Party within thirty (30) days from the commencement of the cause entitling the Party to the extension.

**24. No Damages.** Developers, and USA acknowledge that City would not enter into this Agreement if it were to be liable for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) under, or relating to, this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, and CEQA documents. Accordingly, Developers, and USA covenant and agree on behalf of themselves and their successors and assigns, not to sue City (either in its capacity as a party in this Agreement or in its capacity as the City of Rocklin) for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) or monetary relief for any breach of this Agreement by City or for any dispute, controversy, or issue between City and Developers, or USA arising out of or connected with this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, CEQA documents, or any future amendments or enactments thereto, the Parties agreeing that declaratory relief, injunctive relief, mandate and specific performance shall be Developers', and USA's sole and exclusive judicial remedies.

In the event of Termination of the Agreement due to Party default, the defaulting Party waives its right to seek or claim consequential, special, punitive or similar damages.

**25. Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the Developers, USA, and City, and their successors and

assigns. No other person shall have any right of action based upon any provision in this Agreement.

**26. Notices.** All notices required by this Agreement, the enabling legislation, or the procedure adopted pursuant to Government Code Section 65865, shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notice required to be given to City shall be addressed as follows:

CITY OF ROCKLIN  
City Manager  
3970 Rocklin Road  
Rocklin, CA 95677

With a Copy to:

CITY OF ROCKLIN  
City Attorney's Office  
3970 Rocklin Road  
Rocklin, CA 95677  
Email: [LegalNotices@rocklin.ca.us](mailto:LegalNotices@rocklin.ca.us)

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

SIERRA JOINT COMMUNITY COLLEGE DISTRICT  
5100 Sierra College Boulevard  
Rocklin, CA 95677  
Attn: William H. Duncan IV  
[wduncan@sierracollege.edu](mailto:wduncan@sierracollege.edu)

EVERGREEN SIERRA EAST, LLC  
2484 Natomas Park Dr., Suite 101  
Sacramento, CA 95833  
Attn: Rob Cole  
[rcole@colepartners.com](mailto:rcole@colepartners.com)

CRESLEIGH HOMES  
1410 Rocky Ridge Dr., Suite 120  
Roseville, CA 95661  
Attn: Deana Ellis  
[dellis@cresleigh.com](mailto:dellis@cresleigh.com)

Notice required to be given to USA shall be addressed as follows:

USA PROPERTIES FUND, INC. 3200 Douglas Boulevard,  
#200  
Roseville, CA 95661  
Attn: Steve Gall  
[sgall@usapropfund.com](mailto:sgall@usapropfund.com)

Either party may change the address stated herein by giving notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

**27. Form of Agreement; Recordation; Exhibits.** Except when this Agreement is automatically terminated due to the expiration of the Term of the Agreement or the provisions of Section 3.4 (Automatic Termination Upon Completion and Sale of Single-Family or Condominium Residential Lots) or the provisions of Section 3.5 (Termination Upon Developer Request), City shall cause this Agreement, any amendment hereto and any other termination of any parts or provisions hereof, to be recorded, at Developers' expense, with the County Recorder within ten (10) days of the effective date thereof. Any amendment or termination of this Agreement to be recorded that affects less than all of the Property shall describe the portion thereof that is the subject of such amendment or termination. This Agreement is executed in five (5) duplicate originals, each of which is deemed to be an original. This Agreement consists of 32 pages, including an Exhibits cover page, and 27 Exhibits, which constitute the entire understanding and agreement of the parties.

**28. Further Assurances.** The Parties agree to execute such additional instruments and to undertake such actions as may be necessary to effectuate the intent of this Agreement.

**29. City Cooperation.** The City agrees to cooperate with Developers in securing all permits which may be required by City. In the event State or Federal laws or regulations enacted after the Effective Date, or action of any governmental jurisdiction, prevent delay or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the Parties agree that the provisions of this Agreement shall be modified, extended, or suspended as may be necessary to comply with such State and Federal laws or regulations or the regulations of other governmental jurisdictions. Each Party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

IN WITNESS WHEREOF, the City of Rocklin, a municipal corporation, has authorized the execution of this Agreement in duplicate by its Mayor and attested to by its City Clerk under the authority of Ordinance No. \_\_\_\_\_, adopted by the City Council of the City on the \_\_\_\_\_, and Developers have caused this Agreement to be executed.

"CITY"

"DEVELOPERS"

CITY OF ROCKLIN,  
a municipal corporation

SIERRA JOINT COMMUNITY COLLEGE  
DISTRICT

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: William H. Duncan IV

Its: Mayor

Its: Superintendent/President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EVERGREEN SIERRA LLC

By: \_\_\_\_\_

Name: Daniel Cole

Its: \_\_\_\_\_

Date: \_\_\_\_\_

CRESLEIGH HOMES

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

“USA”

USA PROPERTIES FUND, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

## EXHIBIT LIST

Exhibit A-1	Legal Description of the Property
Exhibit A-2	Diagram of the Property
Exhibit A-3	Project Portions to be Conveyed by College
Exhibit A-4	Project Portions to be Developed or Co-Developed by College
Exhibit B-1	Approved Land Uses – North Village
Exhibit B-2	Approved Land Uses – South Village
Exhibit C-1	Affordable Parcel (Parcel C-2 East)
Exhibit C-2	Access Improvements for Affordable Parcel
Exhibit D-1	Large Park and Small Park
Exhibit D-2	Large Park Plan
Exhibit D-3	Small Park Plan
Exhibit D-4	Turn Key Park Agreement
Exhibit D-5	Parcels B-2 and C-2 East
Exhibit E-1	Drainage and Recreation Easement
Exhibit E-2	Grant of Drainage and Recreation Easement and Accompanying Agreement
Exhibit E-3	City Detention Basin and Monte Verde Park
Exhibit E-4	Encroachment Areas
Exhibit F	New Detention Basins
Exhibit G-1	Open Space Areas
Exhibit G-2	Open Space Ownership and Maintenance - North Village
Exhibit G-3	Open Space Ownership and Maintenance - South Village
Exhibit H	Oak Conservation Easement Area
Exhibit I-1	Road Frontage Improvements
Exhibit I-2	Timing of and Responsibility for Road Frontage Improvements
Exhibit J-1	Off-Site Road Improvements
Exhibit J-2	Timing of Off-Site Road Improvements
Exhibit K	Form of Assignment