ORDINANCE NO. 08-1945

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF COVINA AND MASONIC HOMES OF CALIFORNIA, PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65864 ET SEQ.

WHEREAS, the City of Covina ("City") has found that development agreements will strengthen the public planning process, encourage private participation in comprehensive planning by providing a greater degree of certainty in that process, reduce the economic costs of development, allow for the orderly planning of public improvements and services, allocate costs to achieve maximum utilization of public and private resources in the development process, and ensure that appropriate measures to enhance and protect the environment are achieved; and

WHEREAS, pursuant to California Government Code Section 65864 *et seq.*, the City of Covina is authorized to enter into development agreements providing for the development of land under terms and conditions set forth therein; and

WHEREAS, Masonic Homes of California ("Developer") proposes to redevelop 30 acres of land located in the City of Covina, more particularly described in Exhibit "A", attached hereto and incorporated herein by reference ("Project Site"), for a mix of senior citizen active living residences, senior citizen assisted living/memory care residences, skilled nursing facilities serving senior citizens, common dining, community and recreational amenities serving senior citizens living thereon, and group homes for children on the Project Site in accordance with the submitted Site Plan, more commonly known as "Acacia Creek" ("Project"); and

WHEREAS, the City has approved the Project and the related Planned Community Development Overlay Ordinance ("PCD Overlay"), Site Plan Review, Tree Preservation Permit and Lot Line Adjustment to provide for the orderly growth and quality development of the Project in accordance with the General Plan; and

WHEREAS, because of the logistics, magnitude of the expenditure and considerable lead time prerequisite to planning and developing the Project, the Developer has proposed to enter into a development agreement concerning the Project ("Development Agreement") to provide assurances that the Project can proceed without disruption caused by a change in the City's planning policies and requirements except as provided in the Development Agreement, which assurance will thereby reduce the actual or perceived risk of planning for and proceeding with development of the Project; and

WHEREAS, the City desires the timely, efficient, orderly and proper development of the Project in furtherance of the goals of the General Plan and the Zoning Code; and

WHEREAS, the City Council has, for the reasons more particularly set forth therein, found that this Development Agreement is consistent with the City's General Plan; and

WHEREAS, the City Council has found that this Development Agreement is consistent with the City's Zoning Code because it implements and facilitates the development the Project in the way and subject to the land use regulations called for in the Zoning Code, as modified by adoption of the PCD Overlay. Further, the Development Agreement will remain subject to the regulations contained in the Zoning Code, as modified by the PCD Overlay; and

WHEREAS, for the same reasons articulated above, the Development Agreement will be beneficial to the health, safety and general welfare of the City. The Development Agreement will result in the development of a unique gated, private and full-service continuing care community for active senior citizens, as well as for senior citizens who require assisted living and skilled nursing amenities, which also provides for clustered design and large amounts of open space; and

WHEREAS, the City Council has found that this Development Agreement will not adversely affect the orderly development of property or the preservation of property values. The General Plan establishes the City's goals, policies and objectives that ensure the orderly development of property within the City, as well as preservation of property values. For the reasons set forth above, the Development Agreement is consistent with the General Plan and zoning of the Project Area which implement the City's standards; and

WHEREAS, it is the intent of the City and Developer to establish certain conditions and requirements related to review and development of the Project which are or will be the subject of subsequent development applications and land use entitlements for the Project; and

WHEREAS, the City and Developer have reached mutual agreement, and desire to voluntarily enter into the Development Agreement to facilitate development of the Project subject to conditions and requirements set forth therein; and

WHEREAS, the terms and conditions of the Development Agreement have undergone review by the City Council at a publicly noticed hearing and have been found to be fair, just and reasonable, and consistent with the General Plan and Zoning Code, as modified by the PCD Overlay; and

WHEREAS, a Mitigated Negative Declaration ("MND") addressing the Project that is the subject of the Development Agreement has been prepared and adopted by the City Council in accordance with the provisions of the California Environmental Quality Act ("CEQA"); and

WHEREAS, on June 12, 2007, the City of Covina Planning Commission held a duly noticed public hearing on the Development Agreement, after which it recommended to the City Council approval of the Development Agreement; and

WHEREAS, on September 18, 2007, as continued from time to time to February 5, 2008, the City Council held a duly noticed public hearing on the Development Agreement; and

WHEREAS, the City Council considered the Staff Report, the MND, all other land use entitlements in connection with the Project, all recommendations by staff, all documents contained in the record, and all public testimony and written submissions.

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

SECTION 1. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds this Ordinance promotes the public health, safety and welfare of the community because the Development Agreement will permit land uses that best reflect community needs, and will allow for the most efficient and logical development of the real property governed by the Development Agreement in the City.

SECTION 2. Pursuant to California Government Code Section 65867.5(b), and based on the entire record before the City Council, including all written and oral evidence presented to the City Council, the City Council hereby finds that, for the reasons set forth above, the Development Agreement is consistent with the General Plan and the Zoning Code, as modified by the PCD Overlay, because the Development Agreement will result in the development of the Property at the intensity and density allowed under the General Plan and consistent with the restrictions and standards in the Zoning Code, as modified by the PCD Overlay.

SECTION 3. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds that: (i) the interests of Covina citizens and the public health, safety and welfare will be best served by entering into the Development Agreement; (ii) this Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the area in which the Property is located; (iii) the Development Agreement is in conformity with the public convenience, general welfare and good land use practice; (iv) the Development Agreement will not be detrimental to the public health, safety and general welfare; and (v) the Development Agreement will not adversely affect the orderly development or the preservation of property values for the property it governs or any other property.

SECTION 4. A Mitigated Negative Declaration ("MND") has been prepared for the proposed Development Agreement in accordance with CEQA and State CEQA Guidelines.

SECTION 5. Based upon the MND, the administrative record, and all written and oral evidence presented to the City Council, the City Council finds that the environmental impacts of the Project and the Development Agreement are either less than significant or can be mitigated to a level of insignificance through implementation of mitigation and monitoring measures outlined in the MND. The City Council finds that the MND is supported by substantial evidence and that it contains a complete, objective, and accurate reporting of the environmental impacts associated with the Project and the Development Agreement and reflects the independent judgment of the City Council.

SECTION 6. Pursuant to California Government Code Sections 65864, et seq., the City Council hereby approves the Development Agreement attached hereto as Exhibit "B".

SECTION 7. This Ordinance shall become effective on the thirtieth (30th) day following its adoption.

SECTION 8. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 9. Certification. The City Clerk shall certify the adoption of this Ordinance, shall cause the same to be entered into the book of original ordinances of said City, shall make a minute passage of adoption thereof in the records of the meeting at which this Ordinance is passed and adopted, and shall cause the same to be posted and published as required by the Charter of the City.

SECTION 10. Recording of Development Agreement. Pursuant to Government Code Section 65868.5, within 10 days following the entering into of the Development Agreement, the City Clerk shall record with the Los Angeles County Recorder a copy of the Development Agreement.

PASSED, APPROVED, AND ADOPTED this 19th day of February, 2008.

John C. King, Mayor

ATTEST:

Rosie Fabian, City Clerk

APPROVED AS TO FORM:

Edward W. Lee, City Attorney

I, AMY M. TURNER, CMC, Chief Deputy City Clerk of the City of Covina, hereby CERTIFY that Ordinance No. 08-1945 was introduced and placed upon its first reading at a regular meeting of the Covina City Council held February 5, 2008, and that thereafter said Ordinance was duly adopted at a regular meeting of the City Council held February 19, 2008, and was approved and passed by the following vote:

AYES: Council Members Allen, Delach, Juarez, Mayor Pro Tem Stapleton, Mayor King
NOES: None
ABSTAIN: None
ABSENT: None

Amy M. Turner, CMC
Chief Deputy City Clerk

EXHIBIT "A"

Legal Description of the Property

LOTS 5, 6 7 AND THAT PORTION OF LOT 8, LYING WESTERLY OF THE WESTERLY LINE OF REEDER STREET, DESCRIBED IN THE DEED TO THE COUNTY OF LOS ANGELES, RECORDED OCTOBER 28, 1919 AS INSTRUMENT NO. 205 IN BOOK 6975 PAGE 139 OF DEEDS, ALL IN BLOCK 2, AS SHOWN ON THE MAP OF THE PARTITION OF THE HOLLENBECK RANCH SITUATED IN THE NORTHEAST PART OF THE RANCHO LA PUENTE, IN THE CITY OF COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 2 PAGE 39 OF RECORDS OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM SAID LOTS 5 AND 8, THE SOUTH 33 FEET THEREOF INCLUDED IN PUENTE STREET.

ALSO EXCEPT FROM SAID LOTS 6 AND 7, THE NORTH 33 FEET THEREOF INCLUDED IN BADILLO STREET AND ALSO EXCEPT THAT PORTION OF SAID LOT 7 INCLUDED IN REEDER STREET.

ALSO EXCEPT THAT PORTION OF LOT 5 IN BLOCK 2, AS SHOWN ON MAP OF PARTITIONS OF THE HOLLENBECK RANCH, SITUATED IN THE NORTHEAST PART OF RANCHO LA PUENTE, IN THE CITY OF COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 2 PAGE 39 OF RECORDS OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WITHIN THE FOLLOWING DESCRIBED BOUNDARIES:

COMMENCING AT THE INTERSECTION OF THE WESTERLY LINE OF SAID LOT WITH THE NORTHERLY LINE OF THE SOUTHERLY 33 FEET OF SAID LOT; THENCE NORTH 89°31'27" EAST ALONG THE NORTHERLY LINE 39.91 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 26°10'26" EAST 106.78 FEET; THENCE NORTH 71°28'26" EAST 117.90 FEET; THENCE SOUTH 57°02'59" EAST 239.60 FEET TO SAID NORTHERLY LINE; THENCE SOUTH 89°31'27" WEST ALONG SAID NORTHERLY LINE 359.97 FEET TO THE TRUE POINT OF BEGINNING

APN: 8426-012-003 AND 8426-012-004

EXHIBIT "B"

Development Agreement

[attached behind this page]

CPH 1
1/15/08

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Covina
125 E. College Street
Covina California 91723
Attn: Jeff Kugel, Assistant Community Development Director

Exempt from Fees Per Gov. Code § 6301

Space above this line for Recorder's Use Only

STATUTORY DEVELOPMENT AGREEMENT

By and Between

City of Covina

a California municipal corporation

and

Masonic Homes of California

a California not-for-profit corporation

_____, 200___

Los Angeles County, California

This Statutory Development Agreement (hereinafter "Agreement") is entered into as of the _____th day of _____, 200___ (hereinafter the "Effective Date") by and among the City of Covina, a California municipal corporation (hereinafter "CITY"), and Masonic Homes of California, a California not-for-profit corporation (hereinafter "OWNER"):

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement through a Mitigated Negative Declaration, adopted by CITY on _____, 200____; and

WHEREAS, this Agreement and the Project are consistent with the CITY's General Plan; and

WHEREAS, the Property that is the subject of this Agreement is not subject to any Specific Plan; and

WHEREAS, all actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, development of the Property in accordance with this Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Statutory Development Agreement.

1.1.2 "CITY" means the City of Covina, California, a California municipal corporation.

1.1.3 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.4 "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

(a) general plans, specific plans, and general plan and specific plan amendments;

(b) tentative and final subdivision and parcel maps, including lot mergers or lot line adjustments;

(c) site plan review;

(d) conditional use permits, public use permits and plot plans;

(e) zoning, including variances;

(f) grading and building permits.

1.1.5 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.6 "Development Impact Fee" means a monetary exaction other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an *ad hoc* basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the Project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of Chapter 4 of the Government Code (commencing with Section 65864), or fees collected pursuant to agreements with redevelopment agencies that provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superceded, including by amendment or replacement.

1.1.7 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.8 "Effective Date" means the effective date of the ordinance approving this Agreement.

1.1.9 "Existing Development Approvals" means all Development Approvals approved or issued prior to or concurrent with the Effective Date. Existing Development Approvals includes the Development Approvals incorporated herein as Exhibit "C" and all other Development Approvals which are a matter of public record on the Effective Date.

1.1.10 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations includes the Land Use Regulations incorporated

herein as Exhibit "D" and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date.

1.1.11 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of rights and interests that provide for the use of or the entry upon public property; or

(e) the exercise of the power of eminent domain.

1.1.12 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.13 "OWNER" means the person and entities listed as owner on page 1 of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.14 "Project" means the Development of the Property contemplated by the Development Plan as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.15 "Property" means the real property legally described on Exhibit "A" and shown by map on Exhibit "B" to this Agreement.

1.1.16 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.

1.1.17 "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

1.1.18 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.19 "Unified Development" shall have the meaning contained in Section 2.4.1 below.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" — Legal Description of the Property.

Exhibit "B" — Map showing Property and its location.

Exhibit "C" — Existing Development Approvals.

Exhibit "D" — Existing Land Use Regulations.

Exhibit "E" — Conceptual Phasing Plan.

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to the Property.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of **Ten (10) Years** thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) OWNER provides at least 180 calendar days written notice to CITY prior to expiration of the initial term;

(b) OWNER shall have obtained, as applicable, certificates of occupancy for at least sixty-seven percent (67%) of the total gross floor area of all buildings, structures and appurtenances permitted under this Agreement.

(c) OWNER is not then in uncured default of this Agreement.

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the Property to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of the Property;

(b) Not later than thirty (30) calendar days prior to any such sale, transfer or assignment, OWNER shall notify CITY's City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement; and (2) the payment of the applicable processing charge to cover the CITY's review and consideration of such sale, transfer or assignment.

(c) OWNER expressly acknowledges that, notwithstanding the fact that the Property consists of four legally subdivided lots, OWNER may only sell, transfer or assign the Property so long as it will continue to be operated as a Unified Development. For purposes of this Agreement, **"Unified Development"** means that the Property and improvements on the Property shall be developed, operated and maintained as an integrated development project with functional linkages maintained between each of the lots on the Property, such as pedestrian and vehicular connections; common architectural and landscaping features so that the Project, when viewed from adjoining streets and rights-of-way, appears to be a consolidated whole; and consolidated operations so that facilities and services are shared between the different structures, uses and lots on the Property.

Notwithstanding the provisions of this subparagraph, OWNER may separately finance each of the four subdivided lots. Prior to the approval of the lot line adjustment for the Project (defined in Section 4.4.2 herein), OWNER shall execute and record a written covenant against the Property, in form and substance acceptable to CITY, that shall run with the land for the life of the Site Improvements or until otherwise released by CITY, which shall restrict the assignment of the Property as set forth above. The covenant shall provide that CITY shall have the right, but not the obligation, to enforce the terms of the covenant. The assignment restrictions contained in this Section 2.4 and the development obligations contained in Section 3.1.1 below, and the density provisions contained in Section 4.4 below may be consolidated into a single covenant document.

(d) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny a proposed sale, transfer or assignment pursuant to the terms of this Section 2.4, provided that the City Manager's approval of a sale, transfer or assignment shall not be unreasonably withheld.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring OWNER is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring OWNER of the following conditions:

(a) OWNER no longer has a legal or equitable interest in the Property.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

2.4.3 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement. Either Party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the Property. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) calendar days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party

shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY for residential units on which construction has not yet begun shall be refunded to OWNER by CITY.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) on the date of delivery shown in the records of a facsimile machine the recipient named below. All notices shall be addressed as follows:

If to CITY:

Paul Philips, City Manager
City of Covina
125 E. College Street
Covina, California, 91723
Facsimile: (626) 858-7208

with a copy to:

Edward W. Lee, City Attorney
Best Best & Krieger
300 S. Grand Avenue, Ste. 2850
Los Angeles, California 90071
Facsimile: (213) 617-7480

If to OWNER:
John E. Howl, Executive Director
Masonic Homes of California
1650 E. Old Badillo Street
Covina, California 91724-3163
Facsimile: (626) 251-2301

with a copy to:
Clare Bronowski, Esq.
Christensen, Glaser, Fink,
Jacobs, Weil & Shapiro, LLP
10250 Constellation Boulevard
Los Angeles, California 90067
Facsimile: (213) 556-2920

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.1.1 OWNER expressly acknowledges that, notwithstanding the fact that the Property consists of four legally subdivided lots, OWNER shall develop, operate and maintain the Property and the Project as a Unified Development, as defined herein. OWNER shall develop, operate and maintain functional linkages between each of the lots on the Property, such as pedestrian and vehicular connections, as well as common architectural and landscaping features so that the Project, when viewed from adjoining streets and rights-of-way, appears to be a consolidated whole, and shall ensure that services and operations are shared between various project elements on the Property. Prior to the approval of the Lot Line Adjustment for the Project (defined in Section 4.4.2 herein), OWNER shall execute and record a written covenant against the Property, in form and substance acceptable to CITY, that shall run with the land for the life of the Site Improvements or until otherwise released by CITY, which shall restrict the development of the Property and Project as set forth above. The covenant shall provide that CITY shall have the right, but not the obligation, to enforce the terms of the covenant. The development obligations contained in this Section 3.1.1, the assignment restrictions contained in Section 2.4, above, and the density provisions of Section 4.4, below, may be consolidated into a single covenant document.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be

the Existing Land Use Regulations. CITY shall accept for processing, review and take action upon all applications for Subsequent Development Approvals as provided in Section 3.10. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.4 Conceptual Phasing Plan. Development of the Property is contingent in part on the phasing of areawide infrastructure improvements over which the OWNER has limited control. Attached hereto as Exhibit "E" is a conceptual phasing plan which is based on the OWNER's best estimate of the timing of the completion of needed infrastructure improvements and the availability of interim improvements and services as described below. The conceptual phasing plan is an estimate only and is subject to the same timing constraints and the exercise of OWNER's business judgment as set forth in Section 3.3 above.

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property; or,

(b) Increase the density or intensity of use of the Property; or,

(c) Increase the maximum height and size of permitted buildings; or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the applicant/OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;

(c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the engineering and construction standards and specifications that are expressly identified in this Agreement;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;

(f) Regulations that may conflict but to which the OWNER consents.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Plan, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

3.6.3 Modification or Suspension by State or Federal Law. 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 of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall contract with the City for City-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.8 Provision of Real Property Interests by CITY. In any instance where OWNER is required by any Development Approval or Land Use Regulation to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the City and Owner shall cooperate in acquiring the necessary legal interest ("Offsite Property") in accordance with the procedures set forth in this Agreement or as otherwise set forth by law. This Section 3.8 is not intended by the parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act or other legal authority.

3.8.1 CITY Acquisition of Offsite Property. In the event OWNER is required to construct any Offsite Improvements, Sections 3.8.1 and 3.8.2 shall control the acquisition of Offsite Property. If the OWNER is unable to acquire such Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the

Offsite Property by negotiation within thirty (30) calendar days after OWNER'S written request, CITY shall consider initiating proceedings utilizing its power of eminent domain to acquire that Offsite Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Offsite Property, subject to the conditions set forth in this Section 3.8.

The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.8.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) calendar days prior to making an offer to the owner of the Offsite Property. At any time within that fifteen (15) calendar day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Offsite Property, whereupon CITY shall cease such proceedings.

CITY shall provide written notice to OWNER no later than fifteen (15) calendar days prior to the date of the hearing on CITY'S intent to consider the adoption of a resolution of necessity as to any Offsite Property. At any time within that fifteen (15) calendar day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings.

If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) calendar day period, then the CITY may proceed to consider and act upon the Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY shall diligently institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Offsite Property.

3.8.3 No Commitment by CITY to Adopt Resolution of Necessity. No provision of this Section 3.8 shall constitute a binding commitment by CITY to adopt a resolution of necessity to exercise the power of eminent domain. The parties expressly acknowledge that the adoption of a resolution of necessity is a legislative act that remains vested in the sound discretion of CITY's City Council and the decision to exercise the power of eminent domain depends upon many facts and circumstances that must be considered by the City Council at a public hearing.

3.9 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies. CITY agrees to cooperate fully, at no out of pocket cost to CITY, with OWNER in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations or policies of the CITY.

3.10 Development Processing. CITY shall employ all lawful actions capable of being undertaken by CITY to promptly (i) accept all complete applications for Subsequent Development Approvals (collectively, "Applications") and (ii) process and take action upon the Applications in accordance with applicable law with a goal of competing the first review or plan check within four weeks and the second and third review or plan check within two weeks; provided however, that CITY shall not be deemed in default under this Agreement should such time frame(s) not be met. To the extent that OWNER desires that the CITY plan check or process an Application on an expedited basis and to the extent that it requires an additional expense beyond the customary expense applicable to the general public, CITY shall inform OWNER of such additional expense, including the cost of overtime and private consultants and other third-parties. If acceptable to OWNER, OWNER shall pay the additional cost and CITY shall use best efforts to undertake the most accelerated processing time as lawfully possible utilizing overtime and the services of private consultants and third parties to the extent available.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that Development of the Property will result in substantial public needs that will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER which should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fees. Development Impact Fees shall be paid by OWNER, in accordance with the then-applicable CITY impact fee ordinance or resolution in effect at the time of required payment. Without limiting the nature of the foregoing, nothing contained in this Agreement shall affect the ability of other public agencies to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY at those times and subject to those terms as set forth in the then-current Development Impact Fee ordinance or resolution.

4.2.3 Reimbursement Agreements. To the extent OWNER is required to construct public improvements that benefit other property owners, CITY agrees that OWNER shall be reimbursed for the cost of such improvements in an amount and in accordance with the terms and conditions as shall be mutually agreed between CITY and OWNER, and reduced to writing in the form of an impact fee reimbursement agreement between the Parties.

4.3 Undergrounding of Utilities. OWNER shall be subject to all City requirements regarding undergounding of utilities, including Southern California Edison (SCE) lines.

4.4 Modified Density. The Parties acknowledge that under the Covina General Plan the Property is classified as "Low Density Residential" and the General Plan limitation upon residential density within the Property would be six (6) Dwelling Units per acre. The Parties also acknowledge that under the Covina Municipal Code, the Property is zoned "PCD/RD-8500", which imposes an additional residential density limitation upon the Property at 5.2 Dwelling Units per acre. The Project consists of One Hundred Eighty-Three (183) Dwelling Units, as that term is defined under the Covina Municipal Code[1], sited upon Thirty (30) acres, for a total density of 6.09 Dwelling Units per acre. For the reasons set forth below, the Parties agree that the Project nonetheless remains consistent with the General Plan and Municipal Code.

4.4.1 PCD/Exception to General Plan and Zoning Code Density Caps. The Parties understand that, notwithstanding the fact that the Project exceeds the General Plan and Zoning Code residential density caps, both the General Plan and Zoning Code permit CITY, under special circumstances, to grant exceptions to General Plan and Zoning Code development standards. General Plan Land Use Element, Sections III(C)(2)(a)(2) (at page A-12) and III(D)(2)(a)(18) (at page A-19), require the CITY to:

> "Develop, ... maximum future net densities as follows: low, 6.0 dwelling units per acre; medium, 14.0 dwelling units per acre; and high, 22.0 dwelling units per acre. . . . The above standards shall be followed, except where community goals, objectives, and policies are best furthered."

Further, General Plan Land Use Element, Section III(E)(1)(ff) (at page A-23) states that:

> "The City shall . . . .[P]ermit exceptions in development standards and design guidelines only where appropriate, such as in a Planned Community Development (PCD) project and/or where community goals, objectives, and policies are best furthered."

Finally, the General Plan Land Use Element, Executive Summary (at page A-X) states that:

> "The City's Planned Community Development (PCD) process, which facilitates all types of development to best reach community goals and objectives, is to be maintained as well."

The above quoted language authorizes CITY, through adoption of a Planned Community Development ("PCD") ordinance, to grant exceptions to the General Plan development standards, including the density cap, where CITY finds that community goals, objectives and policies are best furthered.

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[1] Covina Municipal Code, Section 17.04.222 defines a "Dwelling Unit" as ". . .two or more rooms in a dwelling, apartment house or apartment hotel designed for or occupied by one family for living or sleeping purposes and having only one kitchen."

Additionally, Covina Municipal Code, Section 17.58.030 states:

> "When a proposal for a new development is made and it is desirable to apply regulations more flexible than those applicable to other zones in this title, a planned community development district shall be established. Such districts may provide diversification in location of structure, uses and other site qualities while ensuring compatibility with uses and future development on the surrounding areas as indicated within the general plan."

The above quoted language further authorizes CITY, through adoption of a PCD ordinance, to grant exceptions to Zoning Code development standards, including the density cap, where CITY finds that it is desirable to apply specialized and more flexible regulations unique to a particular project or property.

The Parties understand that CITY has adopted, concurrently with this Agreement, a PCD Ordinance, which is incorporated into the Existing Land Use Regulations (Exhibit "D"), and which establishes specialized zoning regulations unique to the Property, pursuant to Covina Municipal Code, Chapter 17.58.

By entry into this Agreement and adoption of the PCD ordinance, CITY hereby represents and determines that the Project is a unique gated, private and full-service continuing care community, which provides for clustered design and large amounts of open space. As such, CITY determines that it is desirable to apply more flexible density standards to the Project and that community goals, objectives and policies are best furthered by development of the Project at the proposed density. Therefore, the Project shall be deemed to be in compliance with the General Plan and Zoning Code, notwithstanding the fact that Dwelling Unit density at the Project amounts to 6.09 Dwelling Units per acre.

4.4.2 PCD/Reclassification of Rooms In Existing Assisted Living Facility in Northeast Portion of Parcel C. There currently exists on the northeast portion of "Parcel C" (as that parcel is designated under the Lot Line Adjustment for the Project, submitted March 15, 2007 (Lot Line Adjustment #43), a State-licensed senior assisted living facility, as that term is defined in California Health and Safety Code, Section 1771(a)(5). ("Existing Assisted Living Facility"), which consists of three (3) buildings containing fifty-six (56) rooms. Under the Covina Municipal Code, the fifty-six apartment rooms contained therein may each be deemed as self-contained Dwelling Units.[2] However, OWNER expressly represents that these rooms will not be sold, leased or used by residents as self-contained Dwelling units, but rather all rooms will be a part of a collective assisted living arrangement throughout the entire Facility, including a common dining facility. As such, the Parties agree that the Existing Assisted Living Facility may be better characterized as a group home, dormitory, or group quarters (collectively, a "Group Home"). This distinction is legally significant because a Group Home is counted as only one Dwelling Unit per building, giving the Existing Assisted Living Facility a residential density of only three (3) Dwelling Units, as opposed to fifty-six (56) Dwelling Units.

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[2] See Covina Municipal Code, Sections 17.04.222 and 17.04.336 for the definition of what constitutes a "Dwelling Unit"

Pursuant to Covina Municipal Code, Chapter Section 17.58, the City Council is authorized to adopt a PCD ordinance in order to establish specialized zoning regulations unique to the Property. Based upon OWNER'S representations, the fact that the Existing Assisted Living Facility is a State-licensed facility that serves a special senior population, and pursuant to CITY'S PCD zoning authority, CITY hereby determines that the buildings composing the Existing Assisted Living Facility shall count as three (3) Group Homes, and therefore count as three (3) Dwelling Units for purposes of calculating residential density for the Project.

Due to the unique nature of the Project and the specialized PCD zoning regulations governing it, CITY and OWNER declare that the determination above with respect to Dwelling Unit density for the Existing Assisted Living Facility is hereby limited to the Project and shall not be deemed to constitute any amendment to the Covina Municipal Code with regard to this issue, nor shall said determination be deemed to have CITY-wide application. Further, this determination shall remain effective only as long as the Existing Assisted Living Facility remains in operation as an "assisted living facility, as that term is defined in California Health and Safety Code, Section 1771(a)(5). Upon the termination, conversion, reconstruction or redevelopment of the Existing Assisted Living Facility, or any portion thereof, this determination shall no longer be in effect and the number of Dwelling Units shall be recalculated based upon the density of the converted, reconstructed or redeveloped facility.

4.4.3 Formula for Maximum Density per Parcel: The Property consists of four (4) separately subdivided lots (formerly known as Lots 5, 6, 7 and 8; and redesignated Parcels A, B, C and D under the Lot Line Adjustment submitted March 15, 2007 (Lot Line Adjustment #43) and OWNER desires to develop the Property in such a way that the residential density limitations under the Code and General Plan may be exceeded on certain lots. As more particularly stated in the Existing Land Use Regulations (Exhibit "D"), and notwithstanding the residential density limitations set forth above, CITY and OWNER agree that OWNER may develop each lot within the Property at the following residential densities:

4.4.3.1 Parcel A may be developed with a maximum of 112 Dwelling Units, consisting of 112 Dwelling Units and no (0) Group Homes for seniors or children;

4.4.3.2 Parcel B may be developed with a maximum of 59 Dwelling Units, consisting of 59 Dwelling Units and no (0) Group Homes for seniors or children;

4.4.3.3 Parcel C may be developed with a maximum of 11 Dwelling Units, consisting of eight (8) Group Homes for children and three (3) Group Homes for seniors (the Existing Assisted Living Facility);

4.4.3.4 Parcel D may be developed with a maximum of one (1) Dwelling Unit, consisting of one (1) assisted living/memory care Group Home (counted as a single Group Home/Dwelling Unit) and one (1) skilled nursing medical facility (counted as a hospital/medical facility, and not as a Group Home or Dwelling Unit toward density);

4.4.4 Minor Adjustments to Density Among Lots. Notwithstanding the above, OWNER may request a minor modification to the above maximums, so long as 1) the total maximum number of Dwelling Units on the Property does not exceed One Hundred Eight-Three (183); and 2) the maximum number of residential units on any of the four legal lots does not exceed the above maximums by more than 10%. However, neither Group Homes nor skilled nursing facilities may be relocated to any other lot without the express written consent of the City. In order to memorialize this provision and to ensure that additional residential development is not added to the Property in the future, prior to the approval of the Lot Line Adjustment for the Project, OWNER shall record a covenant containing these density maximums on each legal lot of the Property.

4.5 Property Tax In-Lieu Fee. The Parties acknowledge that OWNER is a registered 501(c)(3) organization that intends to utilize the Property and Project for tax exempt purposes. As such, OWNER will own and operate a very large facility that will be exempt from the payment of property taxes. The Parties further acknowledge that, as a result of allowing the development of such a large charitable facility, CITY will be deprived of substantial property tax revenue that might have otherwise been generated by the Property and Project were they not exempt from property taxation. In order to offset the loss of property tax revenue to CITY due to the development of the Property and Project for tax exempt purposes, OWNER shall pay a "Property Tax In-Lieu Fee" to CITY on the terms and conditions set forth herein.

The Property Tax In-Lieu Fee shall be equal to Three Hundred Ninety Five Dollars ($395) per Developed Dwelling Unit, per Fiscal Year, beginning with Fiscal Year 2007-2008. A "Developed Dwelling Unit" means any Dwelling Unit for which a building permit was issued on or before May 1 preceding the Fiscal Year for which the Property Tax In-Lieu Fee is being charged. For each subsequent Fiscal Year following Fiscal Year 2007-2008, the Property Tax In-Lieu Fee for each Developed Dwelling Unit shall increase by an Annual Escalation Factor. The term "Annual Escalation Factor" shall mean the greater of (i) Two Percent (2%) or (ii) the percentage increase in the Consumer Price Index, all urban consumers, for the Los Angeles-Orange-Riverside County Area, as determined by the United States Department of Labor Statistics, or its successor, for the prior Fiscal Year. The Property Tax In-Lieu Fee shall be paid to CITY not later than April 10 of each Fiscal Year. In years when April 10 falls on a Saturday, Sunday or legal holiday, the Property Tax In-Lieu Fee shall be due and payable the next business day. The obligations contained in this Section 4.5 shall remain in effect in perpetuity.

The Parties acknowledge that the fees due and payable pursuant to this Section 4.5 are payments in lieu of property tax and are not, in themselves, property taxes or any other local tax or assessment. Nothing in this Section 4.5 shall be construed to eliminate or otherwise limit OWNER'S, the Property's, or the Project's property tax exempt status under Federal, State or local law. Further, nothing in this Section 4.5 shall be deemed to constitute the imposition of or an increase in property taxes or any local taxes or assessments for purposes of California Constitution, Articles XIIIA, XIIIC and XIIID. It is expressly understood by the Parties that payment by OWNER to CITY of the Property Tax In-Lieu Fee is not a function of CITY'S power to tax or assess OWNER or the Property, but rather constitutes consideration paid by OWNER, negotiated in good faith, in exchange for CITY'S granting of the vested land use entitlements pursuant to this Agreement.

All payments made pursuant to this Section 4.5 shall be made directly to CITY and shall not be paid to the Los Angeles County Auditor-Assessor or any other State or local authority that otherwise collects property taxes or other local taxes or assessments.

5. [RESERVED]

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report, in a form acceptable to the City Manager, within ten (10) working days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) working days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) working day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the Parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special review of this Agreement to the OWNER. Such notice shall be given at least ten (10) calendar days in advance of the time at which the matter will be considered by the Planning Commission.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the OWNER.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the OWNER has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with the CITY's rule for consideration of appeals in zoning matters generally.

6.4 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1(b), the CITY determines to proceed with modification or termination of this Agreement, the CITY shall give notice to the OWNER of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.5 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.6 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound

by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its original condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other

liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsection 6.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 calendar days after the effective date of such notice or, in the event that such default cannot be cured within such 60 calendar day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 calendar day period and to diligently proceed to complete such actions and cure such default.

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 calendar days after the effective date of such notice or, in the event that such default cannot be cured within such 60 calendar day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 calendar day period and to diligently proceed to complete such actions and cure such default.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

9.3 Indemnity. In addition to the provisions of 9.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

9.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

9.5 Reservation of Rights. With respect to Sections 9.2, 9.3 and 9.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations or modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) working days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the Los Angeles County Recorder by the City Clerk within the ten (10) calendar days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the City terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the Los Angeles County Recorder.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be

affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. If at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one OWNER, all obligations of such OWNERS under this Agreement shall be joint and several, and the default of any such OWNER shall be the default of all such OWNERS.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

11.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or

joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO STATUTORY DEVELOPMENT AGREEMENT

"Owner"

Masonic Homes of California, a California not-for-profit corporation

By: _____

Name: Allen Gresham

Title: President

Date: _____

"City"

CITY OF COVINA

By: _____
John C. King, Mayor

Date: 5 February 08

ATTEST:

_____
Rosie Fabian, City Clerk

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

_____
Edward W. Lee, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF STATE)
) ss.
COUNTY OF LOS ANGELES)

On _____, 200_____
before me, _____
Date — Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____
Name of Signer(s)

☒ personally known to me – **OR** – ☐ proved to me on the basis of satisfactory evidence to be t person(s) whose name(s) is/are subscribed to the with instrument and acknowledged to me that he/she/th executed the same in his/her/their authorized capacity(ies and that by his/her/their signature(s) on the instrument t person(s), or the entity upon behalf of which the person(acted, executed the instrument.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number Of Pages

_____
Date Of Document

_____
Signer(s) Other Than Named Above

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF STATE)
) ss.
COUNTY OF LOS ANGELES)

On _____, 200
Date

before me, _____
Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____
Name of Signer(s)

☒ personally known to me – **OR** – ☐ proved to me on the basis of satisfactory evidence to be th person(s) whose name(s) is/are subscribed to the withi instrument and acknowledged to me that he/she/the executed the same in his/her/their authorized capacity(ies and that by his/her/their signature(s) on the instrument th person(s), or the entity upon behalf of which the person(s acted, executed the instrument.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number Of Pages

_____
Date Of Document

_____
Signer(s) Other Than Named Above

EXHIBIT "A"
TO STATUTORY DEVELOPMENT AGREEMENT

Legal Description of Property

LOTS 5, 6 7 AND THAT PORTION OF LOT 8, LYING WESTERLY OF THE WESTERLY LINE OF REEDER STREET, DESCRIBED IN THE DEED TO THE COUNTY OF LOS ANGELES, RECORDED OCTOBER 28, 1919 AS INSTRUMENT NO. 205 IN BOOK 6975 PAGE 139 OF DEEDS, ALL IN BLOCK 2, AS SHOWN ON THE MAP OF THE PARTITION OF THE HOLLENBECK RANCH SITUATED IN THE NORTHEAST PART OF THE RANCHO LA PUENTE, IN THE CITY OF COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 2 PAGE 39 OF RECORDS OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM SAID LOTS 5 AND 8, THE SOUTH 33 FEET THEREOF INCLUDED IN PUENTE STREET.

ALSO EXCEPT FROM SAID LOTS 6 AND 7, THE NORTH 33 FEET THEREOF INCLUDED IN BADILLO STREET AND ALSO EXCEPT THAT PORTION OF SAID LOT 7 INCLUDED IN REEDER STREET.

ALSO EXCEPT THAT PORTION OF LOT 5 IN BLOCK 2, AS SHOWN ON MAP OF PARTITIONS OF THE HOLLENBECK RANCH, SITUATED IN THE NORTHEAST PART OF RANCHO LA PUENTE, IN THE CITY OF COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 2 PAGE 39 OF RECORDS OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WITHIN THE FOLLOWING DESCRIBED BOUNDARIES:

COMMENCING AT THE INTERSECTION OF THE WESTERLY LINE OF SAID LOT WITH THE NORTHERLY LINE OF THE SOUTHERLY 33 FEET OF SAID LOT; THENCE NORTH 89°31'27" EAST ALONG THE NORTHERLY LINE 39.91 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 26°10'26" EAST 106.78 FEET; THENCE NORTH 71°28'26" EAST 117.90 FEET; THENCE SOUTH 57°02'59" EAST 239.60 FEET TO SAID NORTHERLY LINE; THENCE SOUTH 89°31'27" WEST ALONG SAID NORTHERLY LINE 359.97 FEET TO THE TRUE POINT OF BEGINNING

APN: 8426-012-003 AND 8426-012-004

EXHIBIT "B"
TO STATUTORY DEVELOPMENT AGREEMENT

Map showing Property and its location

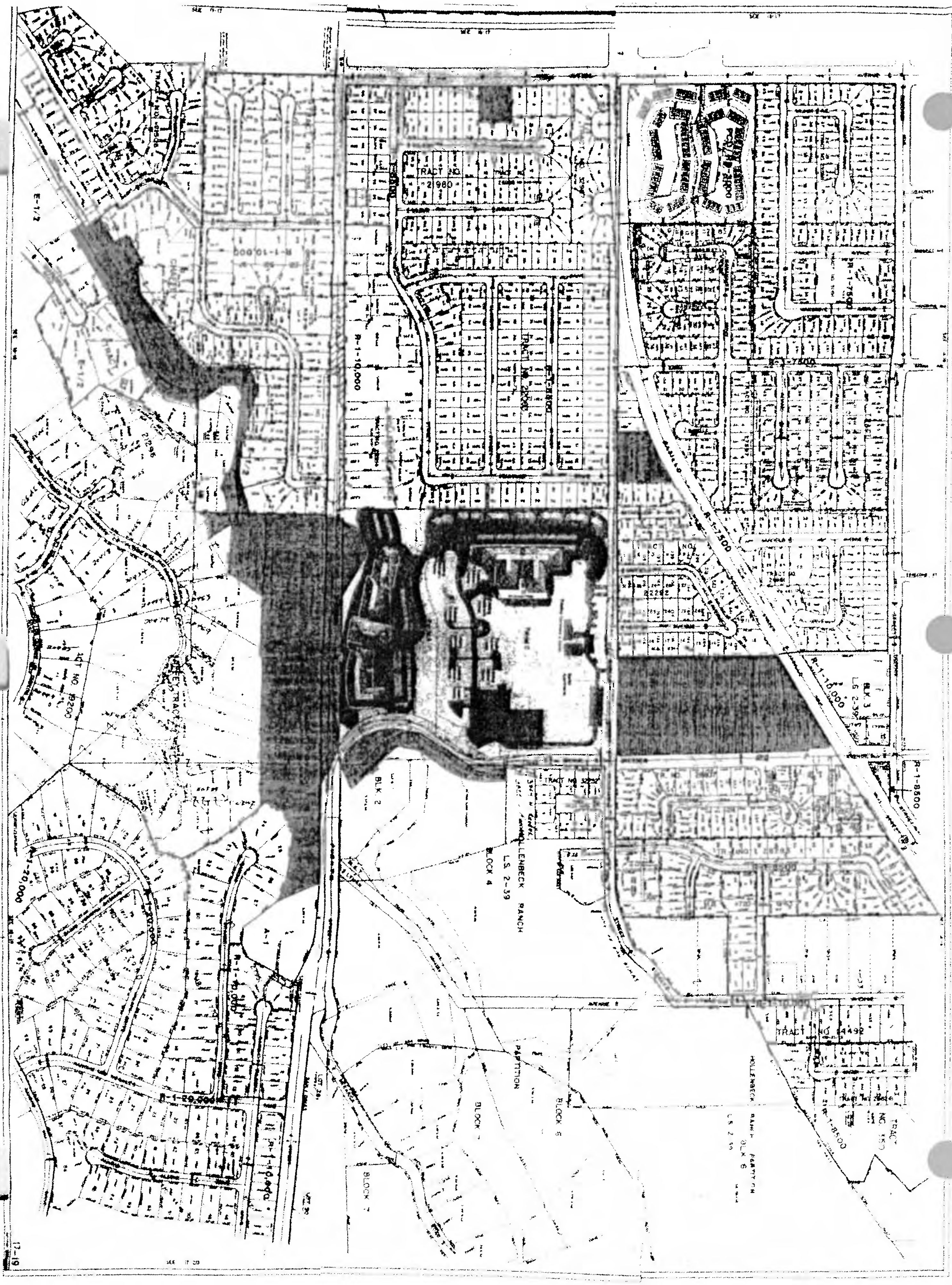
TRACT NO. 2980
R-1-10,000
R-1-7500
R-1-8500
R-1-20,000
HOLLENBECK RANCH
L.S. 2-39
BLOCK 4
BLK. 2
BLOCK 6
BLOCK 7
PARTITION
TRACT NO. 14492
E-1/2
12-19

EXHIBIT "C"
TO STATUTORY DEVELOPMENT AGREEMENT

Existing Development Approvals

Amended February 5, 2008

CITY OF COVINA
CONDITIONS OF APPROVAL FOR APPLICATIONS:

SITE PLAN REVIEW 06-016(F)
PLANNED COMMUNITY DEVELOPMENT 07-001
TREE PRESERVATION PERMIT 07-001
A DEVELOPMENT AGREEMENT
A LOT LINE ADJUSTMENT
A MITIGATED NEGATIVE DECLARATION

AS RECOMMENDED FOR APPROVAL BY THE PLANNING DIVISION ON MAY 29, 2007

Application SPR 06-016 ~~(E)~~ **(F)**, a Site Plan Review for the construction of 171 new residential units including other facilities for community activities, a two-story memory care/assisted living facility and a one story skilled nursing facility;

Application PCD 07-001, a Planned Community Development to establish a PCD overlay zone designation on the site to adopt and apply site-specific development standards;

Application TPP 07-001, a Tree Preservation Permit is required because a total of three (3) mature oak trees and 248 non-Heritage trees may be impacted. At least one mature oak tree will have to be removed for the new project;

A Development Agreement to regulate the proposed senior citizen residential development and other related buildings;

A Lot Line Adjustment to accommodate the method of financing the proposed development;

A Mitigated Negative Declaration was prepared and circulated for this project per Section 15105 of the California Environmental Quality Act guidelines.

Amended February 5, 2008

1.0 TIME LIMITS

1.1 The approval of the applications SPR 06-016~~(E)~~ **(F)**, PCD 07-001, and TTP 07-001 will expire upon expiration of the term of the Development Agreement.

1.2 Site Plan Review (SPR) 06-016~~(E)~~ **(F)** shall not take effect until the Mitigated Negative Declaration, Planned Community Development and a Development Agreement are approved by the City Council and take effect.

2.0 GENERAL REQUIREMENTS

2.1 Failure to comply with any conditions of approval noted herein or any Mitigation Measures (referring to Mitigation Monitoring and Reporting Program accompanying the Mitigated Negative Declaration) shall be deemed just cause for revocation of project approval by the Planning Commission.

2.2 The project or uses may proceed only in accordance with approved plans on file with the Community Development Department, all representations of record made by the applicant(s), the conditions contained herein, environmental-related Mitigation Measures, and the Covina Municipal Code and the Covina Design Guidelines. In addition, any future proposed changes or modifications in the design of any site component approved herein shall not proceed without City approval.

2.3 Final plans incorporating all conditions of approval and any plan changes required in the approval process shall be submitted for review and approval by the City Planner prior to building permit issuance in conjunction with the Plan Check process of the Building Division. All construction plans and documents shall conform to plans approved by the Planning Commission. Conditions listed herein shall be printed upon the face of and included as part of the plans as required by the Assistant Community Development Director.

2.4 The Project design is conceptual and shall be subject to separate design review for detailed floor plans and buildings elevations for all new buildings (A, B, C, D, E, F, G, and H). The design review shall be completed to the satisfaction of the Assistant Community Development Director or designee prior to building plan check submittal. A complete building materials and colors board shall be submitted with the detailed drawings to the Assistant Community Development Director for review and approval prior to or during the subsequent Plan Check process.

2.5 Approval of their applications will not waive compliance with the Covina Municipal Code or the Covina Design Guidelines and any other applicable ordinances, laws, statutes, or regulations applicable to development and occupancy of the subject future residential project that are in effect at the time the Ordinance approving the Development Agreement is adopted by the City Council ~~building permit issuance~~.

2.6 The location and orientation of all principal components of the future development shall conform to the approved site plan per Section 17.64.040 of the Covina Municipal Code. These components shall include, but are not limited to, buildings, yard areas, masonry walls and fences, walkways, covered parking stalls, open parking spaces, drive aisles, and landscaping or planters.

2.7 The applicant's proposal that includes skilled nursing, memory care, assisted living, buildings and services shall be approved under Planned Community Development 07-001 and will not require an approved conditional use permit per Section 17.28.030 of the Covina Municipal Code.

2.8 A Statutory Development Agreement by and between City of Covina, a California municipal corporation, and Masonic Homes of California, a California not-for-profit corporation, shall be signed and executed prior to the issuance of any building permits for the proposed project.

2.9 The City of Covina, through adoption of a Planned Community Development (PCD) ordinance, may grant exceptions to the General Plan development standards, including the density cap, where CITY finds that community goals, objectives and policies are best furthered. The Parties understand that CITY has adopted, concurrently with this Agreement, a PCD Ordinance, which is incorporated into the Existing Land Use Regulations (Exhibit "D"), and which establishes specialized zoning regulations unique to the Property, pursuant to Covina Municipal Code, Chapter 17.58.

2.10 Modified Density. For the reasons set forth below (and which are more particularly referenced in Sections 4.4.1 and 4.4.2 of that certain Development Agreement between the City of Covina and Masonic Homes of California ("Development Agreement"), the City Council finds that the Project remains classified as "Low Density Residential"/RD-8500 and remains in compliance with both the General Plan and Zoning Code, notwithstanding the fact that Dwelling Unit density at the Project amounts to 6.09 Dwelling Units per acre, (183 Dwelling Units situated on 30 acres), which exceeds the General Plan density cap for "Low Density Residential" of 6.0 Dwelling Units per acre and the Zoning Code density cap for "RD-8500" of 5.2 Dwelling Units per acre:

2.11 PCD/Exception to General Plan Density Cap. The General Plan and Zoning Code, through adoption of a PCD ordinance, authorize the City Council to grant exceptions to the General Plan and Zoning Code development standards, including their respective density caps, where the City Council finds that it is desirable to apply more flexible density standards to a particular development and that community goals, objectives and policies are best furthered. By adoption of this PCD ordinance, the City Council hereby finds that the Project is a unique gated, private and full-service continuing care community, which provides for clustered design and large amounts of open space. As such, the City Council finds that it is desirable to apply more flexible density standards to the Project and that community goals, objectives and policies are best furthered by development of the Project at the proposed density. Therefore, the Project shall be deemed to be in compliance with the General Plan and Zoning Code, notwithstanding the fact that Dwelling Unit density at the Project amounts to 6.09 Dwelling Units per acre.

2.12 PCD/Reclassification of Rooms In Existing Assisted Living Facility in Northeast Portion of Parcel C. Further, there currently exists on the northeast portion of "Parcel C" (as that parcel is designated under the Lot Line Adjustment for the Project, submitted March 15, 2007 (Lot Line Adjustment #43), a State-licensed senior assisted living facility ("Existing Assisted Living Facility"), which consists of three (3) buildings containing fifty-six (56) rooms. Based upon the fact that the Existing Assisted Living Facility is a State-licensed facility that serves a special senior population, the City Council, by adoption of this PCD ordinance, hereby determines that the buildings composing the Existing Assisted Living Facility shall count as three (3) Group Homes, and therefore count as three (3) Dwelling Units (as opposed to fifty-six (56) Dwelling Units) for purposes of calculating residential density for the Project. This determination shall remain effective only as long as the Existing Assisted Living Facility remains in operation. Upon the termination, conversion, reconstruction or redevelopment of the Existing Assisted Living Facility, this determination shall no longer be in effect and the number of Dwelling Units shall be recalculated based upon the density of the converted, reconstructed or redeveloped facility.

2.13 Formula for Maximum Density per Parcel: As more particularly set forth in Sections 4.4.3 and 4.4.4 of the Development Agreement, each lot within the Property (as designated under the Lot Line Adjustment for the Project, submitted March 15, 2007 (Lot Line Adjustment #43), may be developed at the following residential densities:

Parcel A may be developed with a maximum of 112 Dwelling Units, consisting of 112 Dwelling Units and no (0) Group Homes for seniors or children;

Parcel B may be developed with a maximum of 59 Dwelling Units, consisting of 59 Dwelling Units and no (0) Group Homes for seniors or children;

Parcel C may be developed with a maximum of 11 Dwelling Units, consisting of eight (8) Group Homes for children and three (3) Group Homes for seniors (the Existing Assisted Living Facility);

Parcel D may be developed with a maximum of one (1) Dwelling Unit, consisting of one (1) assisted living/memory care Group Home (counted as a single Group Home/Dwelling Unit) and one (1) skilled nursing medical facility (counted as a hospital/medical facility, and not as a Group Home or Dwelling Unit toward density);

Notwithstanding the above, the applicant may request a minor modification to the above maximums, so long as 1) the total maximum number of Dwelling Units on the Property does not exceed One Hundred Eight-Three (183); and 2) the maximum number of residential units on any of the four legal lots does not exceed the above maximums by more than 10%. However, neither Group Homes nor skilled nursing facilities may be relocated to any other lot without the express written consent of the City. In order to memorialize this provision and to ensure that additional residential development is not added to the Property in the future, the applicant shall record a covenant containing these density maximums on each legal lot of the Property.

2.14 Buildings A, B, & C will exceed the maximum building height of 35' 0" ***(a deviation from Section 17.28.090 (A) C.M.C.)*** as follows:

Building A: ~~53' 5"~~ **38'** maximum height;
Building B: ~~58' 4"~~ **48'** maximum height;
Building C: ~~55' 2"~~ **48'** maximum height.

2.15 ~~Reduced required side yard setbacks along the site's west property line for Buildings E and F (12' 0" to 14' 11") *(a deviation from Section 17.28.090 (B) C.MC).*~~ **Buildings E and F shall maintain a minimum side yard setback of 17'**

2.16 Reduced required rear yard setbacks along the site's south property line for Buildings ~~A~~, B, and C ~~(35' 5" to 108')~~ **(47' – 104')** ***(a deviation from Section 17.28.090 (B) C.M.C.). (Set back revised per modification to site plan 12/18/07)***

2.17 ~~Reduced required distance between buildings *(a deviation from Section 17.28.150 C.M.C.)* for Buildings E and F (10' 11" to 14' 10").~~ **Proposed distance between Buildings E and F shall meet code requirements.**

2.18 ~~No masonry wall shall be installed between the project site and the single family residential area abutting to the west *(a deviation from Section 17.28.170 C.M.C.)*. Instead an existing fence with landscaping is to be kept.~~
Prior to the issuance of a Building Permit, the Masonic Home shall have contacted all property owners abutting the western property line and shall offer to construct a masonry wall or other type of fencing as desired by the adjacent property owner. The decision of each property owner shall be in writing, and a copy shall be provided to the City Planning Division for verification. If any property owner fails to respond within a reasonable period of time as determined by the Community Development Director, the construction of a masonry wall or other type of fencing along a non-respondent owner's property line shall not be required.

2.19 Reduced required amount of parking to 419 stalls ***(a deviation from Section 17.28.260 C.M.C.)***.

2.20 Reduced required parking stall size to 9' 0" X 18' 0" and the approval of the use of carports instead of garages ***(a deviation from Sections 17.28.270 and 17.28.280 C.M.C.)***.

2.21 Parcels A and B individually will exceed the maximum land coverage of 35% ***(a deviation from Section 17.28.390 C.M.C.)***.

2.22 A reduced usable yard areas for Building B (specifically, the minimum dimension for decks of seven (7) feet) ***(a deviation from Section 17.28.410 C.M.C.)***. Building B decks with the following dimensions: 5' 0" X 12' 0" or 6' X 12'.

2.23 No storage area of 175 cubic feet will be provided in garages. Instead small storage areas will be provided for only the patio homes and duplexes (units E and F) ranging in area from 20 square feet to 29 square feet ***(deviation from Section 17.28.470 C.M.C.)***.

2.24 Buildings B, C, and D will exceed the required building length of 160 feet ***(a deviation from Section 17.28.510 (D) C.M.C.)*** as follows:

Building B: More than 167 feet in length;
Building C: More than 167 feet in length;
Building D: More than 167 feet in length.

2.25 Proposed retaining walls on Parcel A will exceed the maximum permitted wall height of six (6) feet ***(a deviation from Section 17.28.240 (A) C.M.C.)*** The proposed retaining walls on Parcel A will range from 6' 0" to ~~27' 0"~~ 15'

2.26 The City has the right of entry to inspect the premises to verify compliance with the conditions of approval and the Covina Municipal Code at any time.

2.27 Permittee shall defend, indemnify and hold harmless the City, its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this permit approval, which action is brought within the applicable time period of Government Code Section 65009. The City must promptly notify the permittee of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the permittee of any claim, action or proceeding, or if the City fails to cooperate fully in the defense, the permittee shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

2.28 The permittee shall reimburse the City for any court and attorney's fees which the City may be required to pay as a result of any claim or action brought against the City because of this grant. Although the permittee is the real party in interest in an action, the City may, at its sole discretion, participate at its own expense in the defense of the action, but such participation shall not relieve the permittee of any obligation under this condition.

2.29 If any provision of this grant is held or declared to be invalid, the entire approval shall be void and the privileges granted hereunder shall lapse.

2.30 The costs and expenses of any code enforcement activities, including, but not limited to, attorneys' fees, caused by applicant's violation of any condition imposed by this approval or any provision of the Covina Municipal Code shall be paid by the applicant.

2.31 Any site features for the disabled, including, but not limited to, property access identification, parking stall and unloading area dimensions, path of travel, and building access must comply with all applicable State Codes and must be reviewed by the Building Division (contact the Building Division for specific requirements).

2.32 The site, landscaping and all improvements shall be maintained in a sound, healthy and attractive condition free of weeds, visible deterioration, graffiti or other conditions which violate the Municipal Code.

2.33 Ordinance requirements not herein listed are still applicable.

2.34 The following requirements from the Public Works Department are applicable to this project:

2.34.1 Submit Grading/Drainage Plan, prepared by a Registered Civil Engineer for review and approval.

2.34.2 Submit a formal Hydrology Plan with calculations for City and Department of Public Works, County of Los Angeles review and approval.

2.34.3 Provide Final Soils and Geologic Study prepared by a licensed Soils Engineer or Geologist for review with recommendations for implementation with grading work.

2.34.4 Submit a sufficient Grading Bond to ensure City with funds to correct site conditions should default occur.

2.34.5 Provide Final Grading Certificate by a Registered Civil Engineer certifying that all work is completed in accordance with the Approved Grading Plan.

2.34.6 Comply with all requirements of the City Environmental Division. (See Item 17.)

2.34.7 Submit sewer plans, prepared by a Registered Civil Engineer, for City and Los Angeles County Sanitation District review and approval.

2.34.8 Submit water plans, prepared by a Registered Civil Engineer, for City and Los Angeles County Fire Department review and approval. Comply with water system requirements from Land Development Unit-Fire Prevention Division of Los Angeles County Fire Department.

2.34.9 Underground all utilities for the proposed development.

2.34.10 Access through Reeder Avenue is prohibited.

2.34.11 Submit a traffic impact study of the proposed development, particularly on Old Badillo Street and the intersection at Reeder Avenue and provide all necessary measures to remedy the impacts.

2.34.12 Enter into an agreement with the City to install sidewalk on the Westside of Reeder Avenue in the future City project.

2.34.13 Pay all necessary fees; for plan checking, permit issuance and inspection.

2.34.14 Depending on the proposed changes of subdivision, either lot line adjustment or Tract Map may be required.

2.34.15 Provide easement agreements for cross parcel drainage, ingress and egress, sewer and water.

2.34.16 Each parcel shall meet City's code requirements independently.

2.34.17 NPDES Requirements and comments: See Condition Number 2.35 below.

2.34.18 Two existing 8 inch double check detectors need to be upgraded with by-pass meters. Meet and confer with the Fire Department regarding the fire line service.

2.35 The following requirements from the Environmental Services Division are applicable to this project:

2.35.1 After reviewing the site plan (Revision D) for the subject project, it has been determined that it meets two of the criteria for a planning priority project as defined in the NPDES Development Planning model program for storm water management, i.e., it is a development with 10 or more unit

homes and it has a parking lot with 25 or more parking spaces. The architect states that the development will have a net existing building footprint of ~~163,193~~ **155,031** square feet and an additional building footprint of ~~250,895~~ **164,598** square feet. The development must comply with the general sections of the Standard Urban Storm Water Mitigation Plan (SUSMP), including mitigation (infiltration or treatment) of storm water runoff from the entire site, and comply with the specific section for parking lots. A copy of the SUSMP is available in Environmental Services.

2.35.2 Please be aware that the Los Angeles Regional Water Quality Control Board has been issuing Notices of Violation throughout Los Angeles County against developments that have not incorporated infiltration into their plans. The Board has also refused to accept Notices of Termination from sites that did not use infiltration. Although the County and many cities (including Covina) believe that the NPDES Permit and the Standard Urban Storm Water Management Plan call for either infiltration or treatment, the County has confirmed with the Board that the Board is emphasizing infiltration solutions. If this project does not use infiltration, it may receive a Notice of Violation from the Board which will adversely affect the project. In such a case, the developer will have to deal directly with the Board and defend the decision. The City of Covina will not be a party to such a Notice of Violation.

2.35.3 The developer must provide verification of maintenance provisions for any structural and treatment control best management practices selected to comply with SUSMP requirements.

2.35.4 Because the project is greater than one acre, in accordance with the Development Construction model program, the developer will have to show, prior to receiving a grading or building permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for coverage under the State General Construction Activities Storm Water Permit and a certification that a Storm Water Pollution Prevention Plan has been prepared. If soil is disturbed during the rainy season (November 1 through April 15), the developer will have to prepare and implement a Wet Weather Erosion Control Plan. The project must meet the minimum development construction requirements while under construction:

(a) Sediments generated on the project site shall be retained using adequate Treatment Control or Structural BMPs;

(b) Construction-related materials, wastes, spills, or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters, or adjacent properties by wind or runoff; and

(c) Non-storm water runoff from equipment and vehicle washing and any other activity shall be contained at the project site.

2.36 The following requirements from the Building Division are applicable to this project:

2.36.1 After you have successfully completed the Planning Division's Site Plan Review process your plans should be ready for submitting to the Building Division for review of State and local Building Code requirements. Please be prepared to submit the following:

(a) Demolition and renovations activities require an asbestos containing materials (ACM) survey. (SCAQMD RULE 1403) **The ACM report shall be prepared by an accredited testing laboratory in accordance with SCAQMD rules and regulations.** Proof of notification to the South Coast Air Quality Management District (SCAQMD), Office of Operations, shall be submitted to the Building Division with your permit application for all renovations and demolition activities. Contact the SCAQMD at the address or number below for more information. Once any demolition activity has been approved by the SCAQMD, a formal demolition plan and permit must be obtained from the Building Division.

SCAQMD Headquarters; 21865 Copley Drive, Diamond Bar, CA, (909) 396-2381

(b) Please submit six sets of complete plans; with two sets of energy and structural calculations.

(c) This project must be in full compliance with Federal ADAAG and State accessibility requirements for adaptable units.

(d) School District application and approval including any related fees must be provided before permit issuance.

(e) Provide four sets of engineered grading and drainage documents along with soils, geology and liquefaction reports to our City Engineer in our Public Works Department. (Compaction reports and pad location certifications by project civil engineer are required prior to footing and foundation inspection approval.) Los Angeles County Sanitation District approval for sewer connection.

(f) The Los Angeles County Fire Department needs to review your construction plans, to expedite this process you will need to contact one or more of their Regional plan check office(s): **Appointments to discuss Fire Department requirements may be made between 7:30 a.m. and 10:30 a.m. The main office is located at 5823**

Rickenbacker Road, Commerce, CA 90040-3027. Phone number is (323) 890-4125.

Regional plan check offices for the Los Angeles County Fire Department:

Glendora Office, Building Plan Review Only
231 W. Mountain View Avenue
Glendora, CA 91740
(626) 963-0067

Commerce Office, Sprinkler & Alarm Plan Review
5823 Rickenbacker Road
Commerce, CA 90040-3027
(323) 890-4125

Commerce Office, Land Development / Access
5823 Rickenbacker Road
Commerce, CA 90040-3027
(323) 890-4243

(g) The Building Division plan check process may address additional concerns.

2.37 The following requirements from the Los Angeles County Fire Department are applicable to this project:

2.37.1 Submit plans to the Land Development Unit of the Los Angeles County Fire Department for approval. Telephone number (323) 890-4243.

2.37.2 Submit plans to Fire Protection Engineering Section of Los Angeles County Fire Department for approval. Telephone number (626) 963-5564.

3.0 ADDITIONAL GENERAL REQUIREMENTS

3.1 Sign permits are required for all new signs and/or modification of any existing signs. The proposed signs for this project are subject to a separate plan review. Submit proposed plans to the Planning Division for plan check and approval. The Planning Division will not authorize the issuance of a building permit without an approved sign plan.

3.2 Screen from view all new roof, wall, or ground-mounted mechanical equipment, utility equipment or utility meters. Locate, identify and provide cross-sectional details of screening material in the construction documents.

3.3 Submit landscape and irrigation plans. Locate and identify all plants and provide a complete irrigation system. Provide cross-sectional details of planting method and irrigation system. Submit proposed plans to the Planning Division for plan check and approval. The Planning Division will not authorize the issuance of a building permit without an approved landscaping plan.

3.4 All plant material shall conform to the current edition of "Horticultural Standards" for number one grade nursery stock as adopted by the American Association of Nurserymen.

3.5 Sufficient trash bin enclosure(s) shall be installed in accordance with the normal requirements for the City of Covina which call for block construction with solid metal self-closing gates.

3.6 A construction noise permit is required prior to beginning construction on the site. This permit can be obtained from the Building Division or Planning Division.

3.7 All construction shall conform with City noise ordinances restricting construction prior to 7:00 a.m. and on Sundays and Holidays.

3.8 Parking lot illumination shall comply with the standards of the Covina Design Guidelines which require a minimum of 1.0 foot-candle of illumination in parking areas.

3.9 All improvements shall be constructed in good workmanlike manner consistent with the standard best practice of the subject trade and in a manner acceptable to the City.

3.10 All of the conditions of approval listed herein shall be printed upon the face of and included as part of the final plans and specifications that are submitted during the plan checking functions for which a building permit is issued.

3.11 The applicant's Lot Line Adjustment must be approved by the City Engineer prior to pulling any permits.

3.12 The applicant shall comply with the Arborist's Report for Masonic Homes – City of Covina, prepared by DUDEK, dated January 2007, specifically Section 7.0 – Conclusions, which reads:

" . . . recommends that the redeveloped landscape include 3:1 replacement ratio with 15-gallon size oak trees for the impacted oak trees and consideration of relocating one of the native oaks. The non-Heritage trees are recommended for a 1:1 replacement ratio with desirable ornamental trees. Many of the recommended mitigation trees would be accommodated within the landscaping on site with the

remaining trees offered to the City for planting within City-designated parks and open space. It is also recommended that all of the trees within the 100 foot buffer area be provided protection measures prior to, during, and following construction and any tree(s) that declines or are lost during construction or for up to one-year after construction, be mitigated on a 1:1 basis for non-Heritage trees and a 3:1 basis for native oaks and sycamores. A qualified arborist would assess the tree(s) and make recommendations for improving its health or replacing the tree with three 15-gallon mitigation trees."

3.13 **In addition to the requirements of Condition 3.12, all replacement trees planted in areas along property lines shall be 60-inch box and a minimum of 16 feet at planting. Replacement trees shall be planted as early as possible in the construction process so that they can start to grow during construction. The purpose of these larger trees is to provide greater screening for surrounding neighbors west, south and east of the Masonic Home property.**

3.14 **All retaining and other wall features shall be of a decorative block and subject to approval by the Covina Planning Division.**

3.15 **Masonic Home shall compensate any neighboring property owner who is adversely impacted by dust or other construction related impacts, for such items as car cleaning, pool cleaning, etc. Claims for compensation shall be filed by the impacted property owner to the Masonic Home. The Masonic Home shall respond to all claims within 30 days. Any disputed claims shall be submitted, in writing, by the impacted property owner to the City of Covina, Community Development Department, for final resolution.**

3.16 **Prior to the issuance of building permits, the project must obtain necessary permits and service agreements with Los Angeles County Sanitation District and/or City of Covina and/or City of San Dimas jurisdictions, and pay all applicable sewer connection charges to permit new development to connect to existing facilities. The project applicant must request and pay for all flow and other applicable tests that may be required to confirm sewer line capacity as part of the permitting/agreement process. Additionally, the project applicant shall pay for all design, construction and installation costs of any required expansion or upgrade of existing sewer lines necessitated by connection to the project.**

Amended February 5, 2008

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EXHIBIT "D"
TO STATUTORY DEVELOPMENT AGREEMENT

Existing Land Use Regulations

EXHIBIT 1
ACACIA CREEK AT COVINA

List of Project Deviations from the City of Covina
RD (Multiple Family) Residential Zone regulations

Amended January 15, 2008

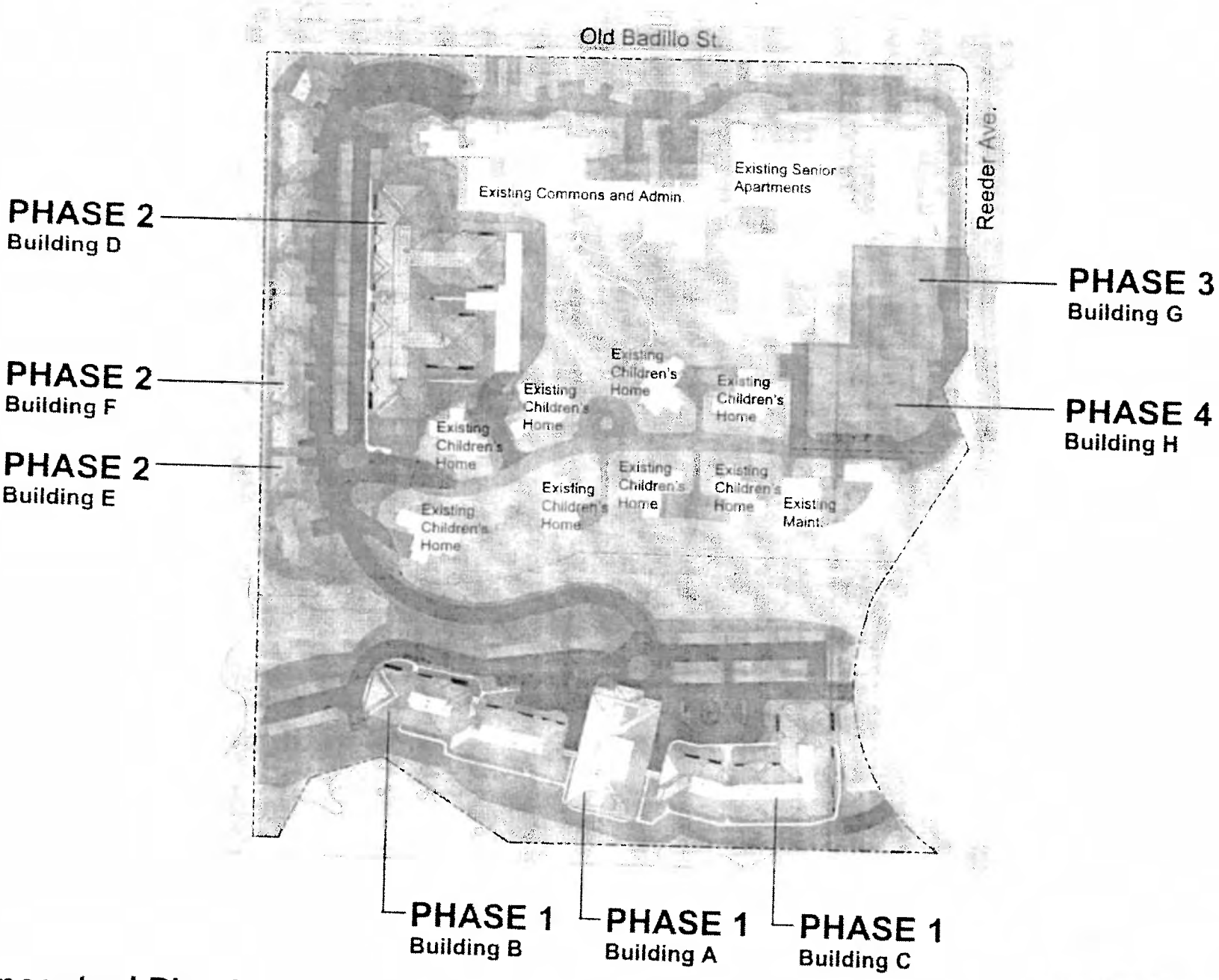
	PROJECT PROPOSAL	RD ZONE REGULATIONS
1.	The skilled nursing, memory care, assisted living buildings and services will be approved under the the Planned Community Development process	Uses permitted subject to conditional use permit Sec. 17.28.030 C.M.C.
2.	Modified Density of 6.09 dwelling units per acre Reclassification of an existing State Licensed senior assisted living facility to three (3) buildings containing 56 rooms	6.0 dwelling units per acre (PCD/RD/8500) Sec. 17.28.080 C.M.C.
3.	Buildings A, B and C will exceed the maximum building height. Building A: ~~53' 5"~~ **38'** maximum height Building B: ~~58' 4"~~ **48'** maximum height Building C: ~~55' 2"~~ **48'** maximum height	Two (2) stories or 35 feet except by conditional use permit Sec. 17.28.090(A) C.M.C. Building height of all multiple family density developments abutting an R-1 zone Sec. 17.28.090 C.M.C.
4.	~~Reduce required side yard setbacks along west property line for Buildings E and F (12' 0" to 14' 11")~~	~~1 foot of building height for each each foot of building setback along interior property lines Sec. 17.28.090 (B) (1) C.M.C.~~ ~~Buildings E and F (17' 0")~~
5.	Reduce required rear yard setbacks along south property line for Buildings ~~A~~, B and C ~~(35' 5" to 108')~~ **(47' – 104') Building A now meets code**	1 foot of building height for each two (2) feet of building setback along all rear property lines Sec. 17.28.090 (B) Buildings A, B and C ~~(110' to 116')~~ **(76' – 96')**

	PROJECT PROPOSAL	RD ZONE REGULATIONS
6.	~~Reduce required distance between buildings for Buildings E and F (10' 11" to 14' 10")~~	~~Distance between buildings shall be the sum of the minimum yard requirement for each building Sec. 17.28.150 C.M.C.~~ ~~Buildings E and F (15' 6" to 16' 6")~~
	Distance required between Buildings E and F is 10'. Project meets this requirement	
7.	~~No masonry wall installed between the project site and the single family residential area abutting to the west. Instead an existing fence with landscaping is to be kept~~	~~A solid masonry wall six (6) feet in height is required between all RD classified property and all abutting R-1 uses Sec. 17.28.170 C.M.C.~~
	Masonic Homes had agreed to provide the Code-required block wall where ever it is desired by adjoining neighbors to the west. Masonic Homes will meet with each neighbor along its western property line and will provide either the block wall, new fending or a landscape screen, as requested by each owner.	
8.	Reduce required parking to 419 stalls	Off-street parking space requirements Sec. 17.28.260 C.M.C. Approximately 480 stalls
9.	Reduce required parking stall size to 9' X 18' and not providing garages but only carport parking	Off-street parking covered spaces Sec. 17.28.270 C.M.C. Minimum interior dimension of a stall in a garage of 9' X 20' when served by fire access Off-street parking open spaces Sec. 17.28.280 C.M.C. Minimum dimension of 9' X 19'

PROJECT PROPOSAL	RD ZONE REGULATIONS
10. The project site will consist of four (4) parcels of land to be held together with a Development Agreement.	Land coverage Sec. 17.28.390 C.M.C. Parcel(s) over 7,200 sq. ft. (more than 3,000 sq. ft. per unit) 35%
Parcels A and B individually will exceed the maximum land coverage.	
11. Reduce usable yard area for Buildings B & C Building B & C Decks:	Usable yard area Sec. 17.28.410 C.M.C. 5' 5" X 12' or 6' X 12' 70 sq. ft. and a minimum dimension of seven (7) feet for decks
12. No storage area of 175 cubic feet will be provided in garages. Instead small storage areas will be provided for only the patio homes and duplexes (units E and F) ranging in area from 20 square feet to 29 square feet	Storage Sec. 17.28.470(B) C.M.C. A minimum of 175 cubic feet of storage area shall be contained within the garages.
13. Buildings B, C and D will exceed the required building length Building B More than 167 feet in length Building C: More than 167 feet in length Building D: More than 167 feet in length	Architectural features Sec. 17.28.510(D) C.M.C. Building length shall not exceed 160 feet.
14. Proposed retaining walls ranging in height from 6' 6" to ~~27' 0"~~ **15'**	Permitted fences, hedges and walls not greater than six (6) feet shall be permitted on or within all rear and side property lines on interior lots Sec. 17.28.240 (A) C.M.C.

EXHIBIT "E"
TO STATUTORY DEVELOPMENT AGREEMENT

Conceptual Phasing Plan



Conceptual Phasing Plan