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CITY OF STOCKTON

OFFICE OF THE CITY ATTORNEY

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APR 4 2002

CITY OF STOCKTON
PLANNING DIVISION

DATE: April 4, 2002

TO: KATHERINE GONG MEISSNER, City Clerk

FROM: GUY D. PETZOLD, Deputy City Attorney

RE: **DEVELOPMENT AGREEMENT BETWEEN THE CITY OF STOCKTON
AND A. G. SPANOS CONSTRUCTION, INC.--SPANOS PARK WEST**

Attached is a fully executed Development Agreement dated January 29, 2002. Said Development Agreement was authorized by City Council Ordinance No. 005-02, effective February 28, 2002. Said Development Agreement was recorded as Instrument No. 2002-041898 on March 11, 2002.

Said Development Agreement may be retained for your files.

OFFICE OF THE CITY ATTORNEY

By


GUY D. PETZOLD
DEPUTY CITY ATTORNEY

GDP:plc

Attachment

cc: Community Development (Attn: Dave Stagnaro)
Public Works (Attn: Barry O'Regan)
A. G. Spanos Construction, Inc.
Attn: Jerry Sperry
1341 W. Robinhood Dr., Suite B-5
Stockton CA 95207

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Recorded in Official Records

County of San Joaquin

Gary W. Freeman

Assessor-Recorder-County Clerk
Paid by COMPANY ON DOCUMENT



This document is recorded for the benefit of the City of Stockton and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

When recorded, mail to:

City of Stockton

451 N. El Dorado

Stockton, California 95202

Attn: City Attorney

DA 1-00

SPANOS PARK WEST DEVELOPMENT AGREEMENT

CITY: CITY OF STOCKTON, a municipal corporation of the State of California

OWNER: A. G. SPANOS CONSTRUCTION, INC.,
a California Corporation

ORIGINAL

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of this 29th day of January, 2002, by and between the CITY OF STOCKTON, a municipal corporation of the State of California ("City"), and A. G. SPANOS CONSTRUCTION, INC., a California corporation ("Owner"), pursuant to the authority of California Government Code Sections 65864-65869.5 and Stockton Municipal Code ("Code") Chapter 16, Part IX, Sections 16-180 through 16-195, inclusive.

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864-65869.5 authorizing City to enter into development agreements in connection with the development of real property within its jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property that is the subject of such development agreements.

B. As authorized by Government Code Section 65865(c), City has adopted Code Chapter 16, Part IX establishing the procedures and requirements for the consideration of development agreements within the City.

C. Owner is a corporation organized under the laws of the State of California and is in good standing thereunder.

D. Owner owns fee title to that certain parcel of land commonly referred to as Spanos Park West. Owner holds certain entitlements for the development of Spanos Park West, i.e. two (2) approved tentative maps, TM 54-89 and TM 56-89. Owner has made application to City to modify Owner's existing entitlements into two separate components of Owner's Spanos Park West Project, a residential component, commonly referred to as The Villages at Spanos Park, and an M-X, mixed use, Component, commonly referred to as A. G. Spanos Business Park (the "Business Park"). The Business Park is the subject of this Agreement and is more fully described in Exhibit "A," attached hereto and incorporated herein by reference.

E. Pursuant to the California Environmental Quality Act (Public Resources Code § 21000-21177) ("CEQA"), City prepared and circulated a draft supplemental environmental impact report ("SEIR") for the Spanos Park West Project including the Business Park component. On January 29, 2002, City certified that the SEIR was adequate; that it satisfied the requirements of CEQA, the CEQA Guidelines, and applicable City regulations; and that it fully and accurately described the Business Park component. Notices of Determination for Spanos Park West were filed on January 30, 2002 with the San Joaquin County Clerk and on January 30, 2002, with the Office of Planning and Research of the State of California.



F. The Business Park is located in an area having a general plan and zoning designation of "MX" (mixed use as described in Code Section 16-075). As required by Code Section 16-075.1, a master development plan was submitted to City on January 29, 2002. On January 29, 2002 the City approved A. G. Spanos Business Park Master Development Plan dated January 9, 2002 (the "Master Development Plan"). The Master Development Plan sets forth the distribution, location and extent of uses for the Business Park and identifies regulations and criteria for development of the site through subsequent implementing projects. Code Section 16-204.C. requires that a development agreement be completed to implement the Master Development Plan and that such development agreement be processed with the Master Development Plan. City has determined that this Agreement is appropriate for the development of the Business Park and that a development agreement will eliminate uncertainty in City's land use planning for and secure orderly development of the Business Park and otherwise achieve the goals and purposes for which the Chapter 16, Part IX of the Code was enacted by City. In exchange for these benefits to City and the public benefits of the Business Park, Owner desires to receive assurance that City shall grant permits and approvals required for the development of the Business Park in accordance with the Master Development Plan, subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the parties desire to enter into this Agreement.

G. The Master Development Plan was approved based on its stated intention to provide a comprehensive description of all land uses proposed for the Business Park, while maintaining the greatest amount of flexibility possible in the planning review process. The Master Development Plan provides for a range of land uses for each parcel within the Business Park, each of which is consistent and compatible with the overall land use concept for the Business Park and consistent with the policies, general land uses and programs of the City's general plan. The Master Development Plan and the SEIR established the criteria for consideration of, and all action upon, all future specific proposals for development of land within the Business Park.

H. On December 20, 2001, after conducting a duly noticed public hearing pursuant to Code Section 16-188.A., the City Planning Commission recommended that the City Council approve this Agreement, based on the following findings and determinations that: i) this Agreement is consistent with the objectives, policies, general land uses and programs specified in the City of Stockton General Plan and the Master Development Plan for the Business Park; and ii) the Business Park complies with the requirements of CEQA, and state and local CEQA guidelines.

I. On January 29, 2002, the City Council held a duly noticed public hearing on this Agreement pursuant to Code Section 16-188.B. and made the same findings and determinations, which are set forth in Enacting Ordinance 007-02 approving this Agreement thereafter adopted by the City Council, a copy of which is attached hereto, marked Exhibit "B".

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5 and Code Chapter 16, Part IX, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:



1. **General Provisions.**

1.1 **Incorporation of Recitals.** The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as it set forth herein in full.

1.2 **Covenants.** The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Business Campus and the burdens and benefits thereof shall bind and inure to the benefit of all estates and interests in the Business Campus, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto.

2. **Definitions.** Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

2.1 **Approvals.** Any and all permits or approvals of any kind or character required under the Master Development Plan and applicable City Laws in order to develop the Business Park, including, but not limited to, conditional use permits, tentative and final parcel or subdivision maps, building permits, site clearance, grading plans and permits, and certificates of occupancy.

2.2 **City Laws.** The Stockton Municipal Code, resolutions, codes, rules, regulations, decisions and official policies of City governing the design, improvement and construction standards and specifications applicable to the development of the Project. Specifically, but without limiting the generality of the foregoing, City Laws shall include the General Plan.

2.3 **Director.** The Director shall mean the Director of Community Development for City.

2.4 **Enacting Ordinance.** Ordinance 007-02, enacted by the City Council on January 29 2002, approving this Agreement, as described herein.

2.5 **Exactions.** All exactions, in-lieu fees or payments, dedication or reservation requirements, obligations for on-or off-site improvements or construction requirements for public improvements or services or other conditions of approval called for in connection with the development of, or construction on, the Business Park under Existing City Laws, whether such exactions constitute public improvements, mitigation measures in connection with environmental review of any project, or impositions.

2.6 **Existing City Laws.** The Planning and Zoning Code (Chapter 16 of the Stockton Municipal Code), resolutions, rules, regulations, decisions and official policies of City governing the subdivision, design and improvement standards applicable to the development of the Business Park in effect as of the Effective Date (as defined in Section 3.1 below).



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2.7 Law or Laws. The laws and constitution of the State of California, the laws and Constitution of the United States and any codes, statues or executive mandates in any court decision, state or federal, thereunder.

2.8 Mortgage. A mortgage, deed of trust, ground lease, sale and leaseback arrangement in which the Business Park or a portion thereof or an interest therein is sold by Owner and leased back concurrently therewith (which arrangement is subject to no prior contractual encumbrances securing payment of money), or other transaction in which the Business Park, or a portion thereof or an interest therein, is pledged as security, contracted in good faith and for fair value.

2.9 Mortgagee. The holder of the beneficial interest under a Mortgage.

3. Effective Date, Term.

3.1 Effective Date. This Agreement shall be dated and the obligations of the parties hereunder shall be effective as of the effective date of the Enacting Ordinance, pursuant to Government Code Section 36937, as specified herein (the "Effective Date"). Not later than ten (10) days after the Effective Date, City and Owner shall execute and acknowledge this Agreement, and thereafter the City Clerk shall cause this Agreement to be recorded in the Official Records of the County of San Joaquin, State of California.

3.2 Term. The Term of this Agreement shall commence on the Effective Date and shall terminate twenty years from said Effective Date, unless earlier terminated under the terms of this Agreement.

4. General Development of the Business Park.

4.1 Business Park. Owner shall have the right, and the obligation, to develop the Business Park in accordance with the Master Development Plan, the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement, and City shall have the right to control development of the Business Park in accordance with the provisions of the Master Development Plan, this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement. Except as otherwise specified in this Agreement, the Master Development Plan and applicable Existing City Laws (including those Code Sections concerning MX zoning and Master Development Plans) shall control the overall design, development and construction of the Business Park, and all improvements and appurtenances in connection therewith, including, without limitation, the permitted uses on the Business Park, the density and intensity of use, maximum height and maximum and minimum size of buildings, the number of parking spaces and all mitigation measures required in order to minimize or eliminate adverse environmental impacts and other adverse impacts of the Business Park. In accordance with the purpose of MX zoning as stated in Code Section 16-075, the specific land uses and specific development standards for the Business Park have been determined on a site-by-site basis by the Master Development Plan. By entering into this Agreement, Owner agrees to develop the Business Park pursuant to the following schedule: Ten years after the Effective Date, Owner shall have developed a



minimum of forty percent (40%) of the Business Park based on acreage available for development; Fifteen years after Effective Date, Owner shall have developed a minimum of sixty (60%) of the Business Park based on net acreage available for development.

4.2 Permitted Uses. The permitted uses of the Business Park, the density and intensity of use, the maximum height, bulk and size of proposed structures and location of public improvements, location of public utilities and other terms and conditions of development applicable to the Business Park shall be those set forth in the Master Development Plan, as may be modified from time to time as agreed to by City and Owner. Permitted uses shall be determined by the following:

(a) Commercial development may consist of the permitted uses provided for in Section 6.4 of the Master Development Plan.

(b) High Density Residential development may consist of the permitted uses provided for in Section 6.5 of the Master Development Plan.

(c) Office development may consist of the permitted uses provided for in Section 6.6 of the Master Development Plan.

(d) Open space permitted uses may consist of those provided for in Section 6.7 of the Master Development Plan.

(e) Neighborhood Park permitted uses may consist of the permitted uses provided for in Section 6.8 of the Master Development Plan.

(f) Utility Easement permitted uses may consist of the permitted uses provided for in Section 6.9 of the Master Development Plan.

(g) Development Standards for site development, building standards, landscaping and circulation within the Business Park shall be those provided for in Section 6.10 of the Master Development Plan.

4.3 Project Phasing. Owner presently intends to develop the Business Park in phases and the parties acknowledge that Owner cannot presently predict the timing or sequence of any such phasing. Such decisions depend upon numerous factors which are not within the control of Owner, such as market conditions and demand, interest rates, competition and other similar factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that 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 the parties' agreement, it is the parties' intent to address that issue by acknowledging and providing that Owner shall have the right to develop the Business Park in phases in such order and at such times as Owner deems appropriate within the exercise of its subjective business judgment and in accordance with Chapter 5 of the Master Development Plan and the provisions of this Agreement. All improvements required pursuant to the Master Development Plan shall be constructed by Owner congruent with the development of each phase of the Business Park, as such



improvements relate thereto and are necessary for the development and operation of such phase of the Business Park.

4.4 Applicable Laws and Standards. Notwithstanding any change in any Existing City Laws including, but not limited to, any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise provided in this Agreement, the laws, regulations, standards and policies applicable to the Business Park are set forth in the Master Development Plan, the Existing City Laws (regardless of future changes in these by City) and this Agreement. The Business Park is entitled to be built and occupied and Owner has the right to complete the Business Park, in accordance with this Agreement, provided that City may apply and enforce its codes, regulations and laws applicable under this Agreement. The Master Development Plan includes Development Standards, Design Guidelines and Regulations (the "**Development Regulations**") which provide for the location, arrangement, development and use of the parcels within the Business Park. Should the Development Regulations conflict with similar regulations contained in the Existing City Laws, the Development Regulations shall take precedence. When any issue, condition or situation arises or occurs that is not covered or provided for in the Development Regulations, those provisions in the Existing City Laws which are most similar to the issue, condition or situation as determined by the Director, or his designee, shall apply, subject to this Agreement. Notwithstanding any other language or implication to the contrary in this Agreement, all construction shall comply with all provisions of, Chapter 14, Uniform Codes, of the Stockton Municipal Code, including , but not limited to, the Uniform Building Code, and the various related mechanical, electrical, plumbing, and fire codes as the same may be applicable at the time of application for the relevant permit.

4.5 Development Review Process.

(a) This Agreement shall implement the provisions of the Master Development Plan, which provides that in any future application for development or use of any portion of the Business Park, Owner shall comply with any criteria for issuance of permits for the development other than those as established in the Master Development Plan and the certified SEIR. Development within any portion of the Business Park may not occur until the Design Review Board for A. G. Spanos Business Park (the "**Design Review Board**"), City's Community Development Director (the "**Community Development Director**") and City's Public Works Director (the "**Public Works Director**") have made the determinations provided for in Section 8.2 of the Master Development Plan.

(b) Chapter 7 of the Master Development Plan provides the design guidelines applicable to the Business Park.

(c) The development review process for all Approvals shall be as described in Section 8.2 of the Master Development Plan. This process consists, generally, of review and approval by the Design Review Board and site plan review and approval by the



Community Development Director, and infrastructure facility plan review and approval by the Public Works Director.

(d) Once approved by the Design Review Board, consistency with the Master Development Plan of a proposed development project shall be reviewed and approved by the City, as described in Section 8.2 of the Master Development Plan, by the Community Development Director, which shall be City's primary discretionary process for determining that the proposed development is consistent with the Master Development Plan, and, if such a finding is made, it shall include that the application is consistent with the City's General Plan and the application shall thereby be approved.

(e) Any proposed development project or use shall be consistent with this Agreement.

4.6 Processing and Approvals. Upon submission by Owner of any and all necessary and required applications for Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall promptly commence and diligently complete all steps necessary to approve or issue the requested Approvals including, but not limited to, (a) the holding of any and all required public hearings and notice for such public hearings, and (b) the granting of the requested Approval to the extent that it complies with applicable Law and this Agreement. Such Approvals shall include, but not be limited to:

- (a) the adoption or amendment of any tentative or final subdivision or parcel maps;
- (b) the issuance of Use Permits;
- (c) architectural and site plan reviews;
- (d) lot line adjustments;
- (e) building permits;
- (f) site clearance or demolition permits;
- (g) grading plans and permits;
- (h) landscape plans;
- (i) certificates of occupancy, or their equivalent, whether temporary or final.

4.7 Other Governmental Permits. Owner shall apply for such other permits and approvals from governmental or quasi-governmental agencies, other than City, having jurisdiction over the Business Park as may be required for the development of, or provision of services to, the Business Park, including but not limited to:



- (a) Public utility district permits or service agreements;
- (b) Army Corps of Engineers permits;
- (c) Reclamation District 2042 permits.

4.8 Additional Fees. Except as provided in this Agreement, City may impose any further or additional fees, taxes or assessments, whether through the exercise of the police power, the taxing power, or any other means, which provide a reasonable benefit (nexus) to the development and/or maintenance of the Business Park provided that:

(a) City may charge owner public facility fees and processing fees for land use approvals, building permits, plan checks and other similar permits and entitlements which are in force and effect on a City-wide basis at the time application is submitted for those permits.

(b) If state or federal laws are adopted which require cities to impose fees on existing projects and if, consequently, City adopts enabling legislation and imposes fees on existing projects on a City-wide or area-wide basis, as defined below, these fees may be imposed on the Business Park, which fees shall be consistent with the fees imposed on other properties within the City or area similarly situated.

(c) If Owner requests the creation of a community facilities district for the purpose of financing some or all of the public capital facilities and services necessary for the development of the Business Park, City may adopt a special tax pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (Government Code sections 53311 et seq), sufficient to pay for all of the public facilities and services requested by Owner.

5. Specific Criteria Applicable to Development of the Business Park.

5.1 Application of New City Laws. Nothing herein shall prevent City from applying to the Business Park new City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement, and which do not materially interfere with the development of the Business Park as contemplated herein. Any action or proceeding of City that has any of the following effects on the property within the Business Park shall be considered to be in conflict with this Agreement and the Existing City Laws:

- (a) limiting or reducing the density or intensity of all or any part of the Business Park, or otherwise requiring any reduction in the square footage or total number of buildings and other improvements, including, but not limited to, the parking spaces;
- (b) limiting the Owner's ability to transfer permitted uses, intensity of uses or maximum height of buildings between sites within the Business Park in a manner that is inconsistent with or more restrictive than limitations included in the Master Development Plan;



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(c) limiting the timing of the development of the Business Park or the number of phases of the Business Park in a manner that is inconsistent with or more restrictive than limitations included in the Master Development Plan.

(d) limiting the location of building sites, grading or other improvements on the Business Park in a manner that is inconsistent with or more restrictive than the limitations included in the Master Development Plan;

5.2 Future Growth Control Ordinances/Policies, Etc.

(a) One of the specific purposes of this Agreement is to assure Owner that no growth-control ordinance, measure, policy, regulation or development moratorium of City adopted by the City Council or by vote of the electorate after the Effective Date of this Agreement will apply to the Project, whether enacted by urgency ordinances, interim ordinances, initiatives, referendums or any other change in the laws of the City by any method or name which would alter in any way City's General Plan, Zoning Ordinance, Subdivision Ordinance, Uniform Codes or any other ordinance, enactment, resolution, approval, policy, rule, regulation, decision, or other action of City. There are currently no adopted growth control ordinances, policies or measures which would restrict the ability of Owner to complete the Project.

Therefore, the parties hereto agree that, except as otherwise expressly provided in Section 5.1 herein, or other provision of this Agreement which unambiguously and expressly authorizes City to make such pertinent changes, no ordinance, policy, rule, regulation, decision, or any other City action, or any initiative or referendum voted on by the public, which would be applicable to the Project and would affect in any way the rate of development and construction of the Project, or limit the Project's ability to receive any other City service shall be applicable to any portion of the Project during the term of this Agreement, whether such action is by ordinance, enactment, resolution, approval, policy, rule, regulation, decision or other action of City or by public initiative or referendum.

(b) City, through the exercise of either its police power or its taxing power, whether by direct City action or initiative or referendum, shall not establish, enact or impose any additional conditions, dedications, fees or other exactions, policies, standards, laws or regulations, which directly relate to the development of the Project except as provided in Section 5.1 herein or other provision of this Agreement which unambiguously and expressly allows City to make such changes. Further, City shall not approve a Mello-Roos assessment, or other type of district to cause bonded indebtedness on any portion of the Project without Owner's prior written approval, which approval may be given or withheld in Owner's sole and absolute discretion. Nothing herein prohibits the Project from being subject to a (i) City-wide bond issue, (ii) City-wide special or general tax, or (iii) special assessment for the construction or maintenance of a City-wide facility as may be voted on by the electorate or otherwise enacted; provided that such tax, assessment or measure is City-wide in nature, does not discriminate against the land within the Project and does not distinguish between developed and undeveloped parcels.



(c) This Agreement shall not be construed to limit the authority of City to charge processing fees for land use approvals, public facilities fees and building permits as they relate to plumbing, mechanical, electric or fire code permits, or other similar permits and entitlements which are in force and effect on a city-wide basis at the time those permits are applied for, except to the extent any such processing regulations would be inconsistent with this Agreement.

(d) Notwithstanding subdivision (b), the City may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

- (1) A failure to do so would place the residents of the Business Park or the immediate community, or both, in a condition dangerous to their health or safety, or both.
- (2) The condition or denial is required in order to comply with state or federal law.

5.3 Allowable Heights, Size and Bulk Within Business Park. Owner shall have the right, subject to the standards specified in this Agreement and the Master Development Plan, to alter the height, size and bulk of buildings, until such time as the maximum density of the Business Park under this Agreement has been achieved and so long as the maximum height, size and bulk for the Business Park is consistent with the Master Development Plan.

5.4 Business Park Use. Owner shall have the right to use any portion of the Business Park as provided for in Chapter 3 of the Master Development Plan. TABLE 3-1 is intended to describe a wide range of land use options that comply with the criteria established by this Agreement.

5.5 Parking Ratio. Owner shall have the right to satisfy the parking ratio requirements for any portion of the Business Park by granting parking easements for the benefit of such portion of the Business Park on any other adjacent portion of the Business Park for the amount of parking necessary to satisfy such parking ratio requirements as prescribed by the Master Development Plan subject to the review and approval of the Community Development Director.

5.6 Easements: Improvements, Abandonments. City shall cooperate with Owner in connection with the abandonment of existing utility or other easements and facilities and the relocation thereof, or the creation of any new easements within the Business Park necessary or appropriate for development of the Business Park. If any such easement is owned by City or any agency of City, City or such agency shall, at the request of Owner and at Owner's cost, take such action and execute such documents as may be necessary to abandon existing easements and relocate them, as necessary or appropriate in connection with the development of the Business Park.

5.7 Subdivision of Business Park. Owner shall have the right, from time to time or at any time, to initiate resubdivisions the Business Park, as may be necessary in order to develop a particular phase, or to sell, lease or finance a portion of the Business Park in connection with the development of any phase or portion of the Business Park. Owner shall



initiate such subdivision through an application under the Existing City Laws. Each such application shall be processed in accordance with the Laws, the Master Development Plan and Existing City Laws. Each tentative subdivision map approved under the Master Development Plan shall have a term of not less than the remaining term of this Agreement as of the date such map is approved by the City.

6. Indemnity: Insurance.

6.1 Indemnity. Owner shall indemnify, defend and hold City, and its elective and appointive boards, commissions, officers, agents, and employees, harmless from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development of the Business Park, any Approval with respect thereto, or claims for injury or death to persons, or damage to the Business Park, as a result of the operations of Owner or its employees, agents, contractors or representatives with respect to the development, operation and maintenance of the Business Park.

6.2 Insurance. Owner shall maintain insurance in order to assure Owner's ability to provide the indemnity described in Section 6.1. The amount and terms of such insurance shall be as follows:

(a) Commercial general liability and property damage insurance covering the risks of bodily injury and/or death, property damage, and personal injury liability, with total limits of not less than One Million Dollars (\$1,000,000.00)

(b) Worker's Compensation Insurance as required by law, together with a contingent employer's liability endorsement in favor of City, covering employees of Owner, employees of any contractor, subcontractor, agent of representative of Owner.

If available, each policy of insurance carried by Owner as required by this Indemnity Section, shall provide that it may not be canceled without at least thirty (30) day prior written notice to City. Upon request of City, Owner shall furnish to City a copy of each policy of insurance, or a certificate thereof, stating that such insurance is in full force and effect and, in the case of the public liability insurance, showing City named as an additional insured. Any insurance required to be maintained by Owner may be maintained under a so-called "blanket policy" insuring other parties and other locations, so long as the amount of insurance required hereunder is not thereby diminished.

7. Periodic Review of Compliance.

7.1 Annual Review. City, through the Planning Commission, shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance with the terms of this Agreement and the Master Development Plan pursuant to Government Code Section 65865.1 and Code Section 16-192.

7.2 Owner's Submission. Within thirty (30) days of Owner's receipt of the written request of the Planning Commission made not more than once each year at least



sixty (60) days prior to the anniversary date of this Agreement, Owner shall submit to the Planning Commission a letter setting forth Owner's good faith compliance with the terms and conditions of this Agreement. Such letter shall be accompanied by such documents and other information as may be reasonably necessary and available to Owner to enable the Planning Commission to undertake the review of Owner's good faith compliance with the terms of this Agreement, and shall also state that such letter is submitted to City pursuant to the requirements of Government Code Section 65865.1 and Code Section 16-192

7.3 Finding of Compliance. The Planning Commission shall review the Owner's submission to ascertain whether it contains sufficient information to determine whether Owner has complied in good faith with the terms of this Agreement. Upon receipt of the submission, the Planning Commission shall conduct a review of the good faith compliance by Owner with the terms of this Agreement. If the Planning Commission finds good faith compliance by Owner with the terms of this Agreement, the Director shall, upon request by Owner, provide to Owner written confirmation of such finding.

7.4 Finding of Noncompliance. If the Planning Commission, on the basis of substantial evidence, finds that Owner has not complied in good faith with the terms of this Agreement, the Planning Commission shall specify in writing to Owner the respects in which Owner has failed to comply and the Planning Commission may recommend that the City Council hold a public hearing and terminate or modify the Agreement. The City Council may (a) establish a reasonable time for Owner to comply with this Agreement, which time shall not be less than thirty (30) days and shall be reasonably related to the time necessary for Owner to adequately bring its performance into good faith compliance with the terms of this Agreement, or (b) may take action to terminate or modify this Agreement. No action to terminate or modify the Agreement shall be taken without a public hearing before the City Council using the same process as was used for its adoption.

8. Permitted Delays; Supersedure by Subsequent Laws.

8.1 Permitted Delays. In addition to any specific provisions of this Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties, restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations), litigation, acts or neglect of the other party, or any other cause beyond the reasonable control of a party. Each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained.

8.2 Supersedure by Subsequent Laws. Except as provided in this Agreement with respect to City Laws, if any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the parties shall meet and confer in good faith to determine the feasibility of any such



modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Owner's reasonable business judgment, then Owner shall have the right to terminate this Agreement by written notice to City. Owner shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

9. Events of Default, Remedies, Termination; Attorneys' Fees.

9.1 Events of Default. Subject to any extensions of time by mutual consent in writing, and subject to the provisions of this Agreement regarding periodic reviews, or permitted delays, any failure by either party to perform any material term or provision of this Agreement shall constitute an Event of Default, (i) if such defaulting party does not cure such failure within thirty (30) days following notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (ii) if such failure is not of a nature which can be cured within such thirty (30) day period, the defaulting party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

9.2 Remedies. Upon the occurrence of an Event of Default, the non- defaulting party may: (i) bring any proceeding in the nature of declaratory relief, specific performance, injunctive relief or mandamus, and/or (ii) the non-defaulting party shall have the right to terminate this Agreement pursuant to Government Code Section 65868. The remedies provided herein are exclusive and in no event shall either party be liable to the other for monetary damages for an event of default or any other breach of this Agreement.

9.3 Waiver, Remedies Cumulative. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of an Event of Default shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time, other than any Event of Default and/or period of time specified in such express waiver. The exclusive remedies provided in this Agreement shall be cumulative and not alternative, and invocation of any permitted remedy shall not constitute a waiver or election with respect to any other permitted remedy.

9.4 Effect of Termination. If this Agreement is terminated on account of an Event of Default, such termination shall not affect any right or duty emanating from any Exactions already satisfied, City entitlements or Approvals with respect to the Business Park that have been approved concurrently or subsequently to the approval of this Agreement, but the rights, duties and obligations of the parties hereunder shall otherwise cease as of the date of such termination.



9.5 Limitations on Actions. City and Owner hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any person or entity third party beneficiary status. If any action or proceeding is instituted by any third party challenging the validity of any provision of this Agreement, or any action or decision taken or made hereunder, the parties shall cooperate in defending such action or proceeding. Owner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in any such action or other proceeding and for any attorneys' fees and costs awarded to a party to be paid by City.

9.6 Effect of Court Action. If any court action or proceeding is brought by any third party to challenge any Approval, this Agreement, or any other permit or approval required from City or any other governmental entity for development or construction of the Business Park, or any portion thereof, and without regard to whether or not Owner is a party to or real party in interest in such action or proceeding, then Owner shall have the right, but not the obligation, (i) to defend, at Owner's expense, such action or proceeding on behalf of City and City shall fully cooperate with Owner in such defense; or (ii) to terminate this Agreement upon thirty (30) days notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination. Any such action or proceeding shall constitute a permitted delay under the provisions of this Agreement.

9.7 Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The Director shall have the right to execute on behalf of City any certificate requested by Owner hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees acting in good faith.

10. Mortgage Protection: Certain Rights of Cure.

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

10.2 Mortgagee Not Obligated. Notwithstanding the provisions of this Agreement, no Mortgagee shall have any obligation or duty under this Agreement to



construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Business Park to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement, the Master Development Plan or otherwise under City Laws.

10.3 Notice of Default to Mortgagee, Right of Mortgagee to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice of an Event of Default or determination of noncompliance given to Owner. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice. If the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Event of Default or noncompliance within ninety (90) days after obtaining possession. If any such Event of Default or noncompliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Event of Default or noncompliance if such Mortgagee commences cure during such ninety (90) day periods, and thereafter diligently pursues completion of such cure to the extent possible.

11. Assignment. Owner's rights hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of all or any portion of the Business Park at any time during the term of this Agreement upon the following terms and conditions:

11.1 Release Upon Transfer. Upon the sale, transfer or assignment of Owner's rights and interests under this Section of this Agreement, Owner shall be released from its obligations pursuant to this Agreement with respect to the Business Park or portion thereof so transferred provided such obligations are expressly assumed by the Transferee prior to the transfer and evidence is provided to the Director showing Transferee can perform Owner's obligations.

11.2 Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall constitute covenants that shall run with the land comprising the Business Park, and the burdens and benefits shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors (by merger, consolidation, or otherwise), assignees, devisees, administrators, representatives, purchasers and lessees.

12. Amendment and Termination.



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12.1 Amendment or Cancellation. Except as provided for herein with respect to City's annual review, this Agreement may be canceled, modified or amended only by mutual consent of the parties in writing, and then only in the manner provided for in government Code Section 65868 and Code Section 16-193. Pursuant to Code Section 16-193.C., any amendment to this Agreement which does not relate to the Term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservation and dedication of land, shall not require a noticed public hearing before the parties may make such amendment. Any fees paid or land dedicated pursuant to this Agreement prior to the date of cancellation shall be retained by City.

12.2 Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation with any costs of recordation to be paid by Owner. Failure to record shall not affect the validity of any amendment, termination or cancellation.

13. Notices.

13.1 Procedure. Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending the same by facsimile transmission or registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the party's mailing address. The respective mailing addresses and facsimile numbers of the parties are, until changed as hereinafter provided, the following:

CITY:

CITY OF STOCKTON
425 North El Dorado
Stockton, California 95202
Attention: City Manager
Facsimile No.: (209) 937-7149

with a copy to:

City Attorney, City of Stockton
425 North El Dorado
Stockton, California 95202
Facsimile No.: (209) 937-8898

OWNER:

A. G. SPANOS CONSTRUCTION, INC.
1341 West Robinhood Drive Suite B-5
Stockton, California 95207
Attention: Jerry Murphy
Facsimile No.: (209) 955-2562

with a copy to:

John Briscoe
Washburn, Briscoe & McCarthy
55 Francisco Street, Suite 600
San Francisco, California 94133
Facsimile No.: (415) 421-5044



Either party may change its mailing address and/or facsimile number at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed upon the expiration of five (5) days after the date of mailing, or, if sent by facsimile transmission, on the date of receipt as shown on written transmission verification.

14. Miscellaneous.

14.1 Negation of Partnership. The parties specifically acknowledge that the Business Park 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. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the business of Owner, the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

14.2 Consent(s). Unless otherwise herein provided, whenever consent or satisfaction (collectively referred to in this Section 14.2 as a "consent") is required of a party pursuant to this Agreement, such consent shall not be unreasonably withheld. Consent shall be deemed given if the party from whom the consent is sought neither approves or disapproves of the request within thirty (30) days, or such other applicable time period specified in this Agreement, after receipt of the written request for consent. If a party shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. Consent by a party to or of any act or request by the other party shall not be deemed to waive or render unnecessary consent to or of any similar or subsequent acts or requests.

14.3 Project Approvals Independent. All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by City with respect to the Business Park, constitute independent actions and approvals by City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals. In such cases, such Approvals will remain in effect pursuant to their own terms, provisions and conditions.

14.4 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Business Park, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever. Owner shall have the right to prevent or prohibit the use of the Business Park, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose inimical to the operation of a private, integrated development project as contemplated by



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this Agreement except for those areas designated in the Master Development Plan or implementing project approvals as public easements.

14.5 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.6 Exhibits. The Exhibits listed in the Table of Contents and referred to herein are deemed incorporated into this Agreement in their entirety.

14.7 Entire Agreement. This written Agreement and the Exhibits contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

14.8 Construction of Agreement. The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purpose of the parties. The captions preceding the text of each Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities. This Agreement has been reviewed and revised by legal counsel for both Owner and City, and any presumption or rule that ambiguities shall be construed against the drafting party shall not apply to the interpretation or enforcement of this Agreement.

14.9 Further Assurances; Covenant to Sign Documents. Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

14.10 Governing Law. This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of California.

14.11 Time. Time is of the essence of this Agreement and of each and every term and condition hereof.

14.12 Dispute Costs and Fees. In any legal action or proceeding brought to enforce or interpret any provision of this Agreement, or otherwise arising from or related to



this Agreement, the prevailing party shall be entitled to an award of its attorneys', investigators', expert witness' and consultants' fees and costs incurred in relation to that action or proceeding, in addition to any other relief awarded.

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

	CITY: CITY OF STOCKTON, a municipal corporation of the State of California
Attest:	

By <u><i>[Signature]</i></u> City Clerk	By <u><i>[Signature]</i></u> City Manager
--	--

Approved as to Form:	
<u><i>[Signature]</i></u> Deputy City Attorney	
	OWNER: By <u><i>William E. Barbour</i></u> Its <u><i>Vice President</i></u> By _____ Its _____



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EXHIBIT "A"

Legal Description of Business Park



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EXHIBIT "A"

Legal Description of Business Park

All that certain real property situate, lying and being in Section 1, Township 2 North, Range 5 East and Section 6, Township 2 North, Range 6 East, Mount Diablo Base and Meridian, being a portion of the 321.034 and 330.704 Acre parcels of land shown on the Map of Survey filed in Book 28 of Surveys at page 134A, San Joaquin County Records, and being more particularly described as follows:

Commencing at the southeast corner of said 321.034 acre parcel of land; thence on the following three (3) courses:

- 1) North 87°46'42" West 561.39 feet to the Southeast corner of said Section 1;
- 2) North 87°46'42" West 1983.90 feet;
- 3) North 00°16'58" East 943.34 feet to the TRUE POINT OF BEGINNING; thence from said POINT OF BEGINNING the following thirty five (35) courses:
 - 1) North 00°16'58" East 847.47 feet;
 - 2) North 71°31'52" West 85.10 feet;
 - 3) South 23°28'08" West 175.00 feet;
 - 4) South 29°28'08" West 150.00 feet;
 - 5) South 38°28'08" West 150.00 feet;
 - 6) South 50°28'08" West 150.00 feet;
 - 7) South 68°28'08" West 131.17 feet;
 - 8) North 24°55'31" East 50.25 feet;
 - 9) North 44°47'10" West 28.16 feet;
 - 10) Northwesterly along the arc of a non-tangent curve concave to the southwest, having a radius of 70.00 feet, whose radius point bears South 77°15'23" West, through a central angle of 40°47'24", an arc distance of 49.83 feet;
 - 11) on a tangent line, North 53°32'00" West 38.16 feet to the beginning of a tangent curve, concave to the northeast, having a radius of 90.00 feet and a central angle of 08°44'51";
 - 12) Northwesterly, along the arc of said curve, 13.74 feet;
 - 13) North 44°47'10" West 67.07 feet;
 - 14) North 02°26'55" West 26.94 feet to a point on a non-tangent curve concave to the northwest, having a radius of 1036.00 feet, whose radius point bears North 50°06'39" West;
 - 15) Northeasterly, along the arc of said curve, through a central angle of 17°06'00" an arc distance of 309.20 feet;
 - 16) on a non-tangent line, North 23°13'36" East 104.03 feet to



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the beginning of a non-tangent curve concave to the northwest, having a radius of 1042.00 feet, whose radius point bears North 72°56'26" West;

- 17) Northeasterly, along the arc of said curve, through a central angle of 16°46'09", an arc distance of 304.97 feet;
- 18) On a tangent line, North 00°17'25" East 2094.02 feet to the beginning of a curve concave to the southeast, having a radius of 958.00 feet and a central angle of 10°42'42";
- 19) Northeasterly, along the arc of said curve, 179.10 feet;
- 20) On a non-tangent line, North 59°51'59" East 30.13 feet;
- 21) North 18°43'50" East 72.00 feet to a point on a non-tangent curve, concave to the southwest, having a radius of 786.00 feet, whose radius point bears South 18°43'50" West;
- 22) Northwesterly, along the arc of said curve, through a central angle of 01°45'26", an arc distance of 24.11 feet;
- 23) North 71°06'14" East 60.15 feet;
- 24) North 00°21'15" East 648.56 feet;
- 25) North 89°23'43" East 1482.47 feet;
- 26) South 18°36'32" East 859.38 feet;
- 27) South 16°22'33" East 292.09 feet;
- 28) South 14°30'33" East 656.30 feet;
- 29) South 13°21'48" East 2540.46 feet;
- 30) South 12°38'50" East 400.05 feet;
- 31) South 13°21'48" East 209.44 feet;
- 32) North 89°51'03" West 570.59 feet to a point on a non-tangent curve concave to the southwest, whose radius point bears South 87°50'34" West, having a radius of 1173.00 feet;
- 33) Northwesterly, along the arc of said curve, through a central angle of 30°23'59", an arc distance of 622.36 feet;
- 34) thence, on a non-tangent line, North 84°01'53" West 995.00 feet;
- 35) South 79°28'07" West 693.47 feet to the point of beginning.

Containing 211.71 Acres, more or less.

The basis of bearings for this description is the California Coordinate System-83, Zone 3, using the bearing of North 11°10'39" West between City of Stockton Monuments "4N-17" and "HARTE", as calculated from the data shown on City of Stockton Traverse Control Monument Survey, filed for record in Book 33 of Surveys, at Page 20, San Joaquin County Records. All distances are ground level distances.



EXHIBIT "B"

City Council Findings and Determinations

A. The provisions of the Development Agreement are consistent with the General and specific plans for this area; and

B. The proposed development complies with the requirements of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.



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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

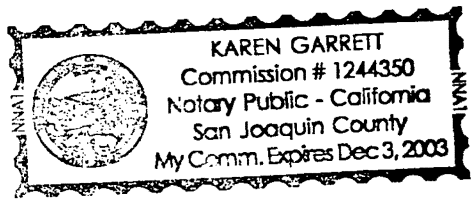
County of San Joaquin } ss.

On Jan. 29, 2002, before me, Karen Garrett, Notary Public

personally appeared William E. Barbour

- personally known to me
- proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.
Karen Garrett
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

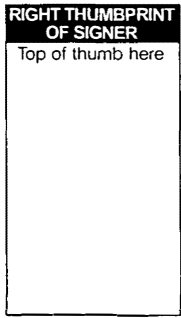
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

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

Signer Is Representing: _____



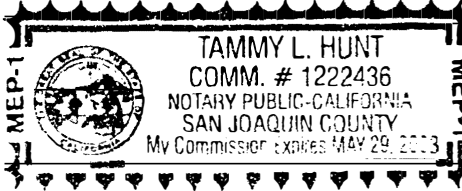
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA
County of SAN JOAQUIN

On February 5, 2002 before me, TAMMY L. HUNT, NOTARY PUBLIC
DATE NAME, TITLE OF OFFICER - E.G. "JANE DOE, NOTARY PUBLIC"

personally appeared MARK LEWIS, ESQ.
NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Tammy L. Hunt
SIGNATURE OF NOTARY

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)
CITY MANAGER
TITLE(S)
- PARTNER(S) LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
CITY OF STOCKTON

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

TITLE OR TYPE OF DOCUMENT SPANOS PARK WEST DENSITY
TRANSFER DEVELOPMENT AGREEMENT

NUMBER OF PAGES 26 DATE OF DOCUMENT January 29, 2002

SIGNER(S) OTHER THAN NAMED ABOVE As attached



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DOC # 2002-041899

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Recorded in Official Records

County of San Joaquin

Gary W. Freeman

Assessor-Recorder-County Clerk

Paid by COMPANY ON DOCUMENT



This document is recorded for the benefit of the City of Stockton and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code. When recorded, mail to:
City of Stockton
425 N. El Dorado
Stockton, California 95202
Attn: City Attorney

DA3-01

**SPANOS PARK WEST
DENSITY TRANSFER
DEVELOPMENT AGREEMENT**

CITY: CITY OF STOCKTON, a municipal corporation of the State of California

**OWNER: A. G. SPANOS CONSTRUCTION, INC.,
a California Corporation**

Development Agreement Residential
Density Transfer GAS January 9, 2002
86173v1

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Development Agr re Residential
Density Transfer GAS January 9, 2002
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SPANOS PARK WEST
DENSITY TRANSFER
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into as of this 29th day of January, 2002, by and between the CITY OF STOCKTON, a municipal corporation of the State of California ("**City**"), and A. G. SPANOS CONSTRUCTION, INC., a California corporation ("**Owner**"), pursuant to the authority of California Government Code Sections 65864-65869.5 and Stockton Municipal Code ("**Code**") Chapter 16, Part IX, Sections 16-180 through 16-195, inclusive.

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864-65869.5 authorizing City to enter into development agreements in connection with the development of real property within its jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property that is the subject of such development agreements.

B. As authorized by Government Code Section 65865(c), City has adopted Code Chapter 16, Part IX establishing the procedures and requirements for the consideration of development agreements within the City.

C. Owner is a corporation organized under the laws of the State of California and is in good standing thereunder.

D. Owner owns fee title to that certain parcel of land commonly referred to as Spanos Park West. Owner holds certain entitlements for the development of Spanos Park West, i.e. two (2) approved tentative maps, TM 54-89 and TM 56-89. Owner has made application to City to modify Owner's existing entitlements into two separate components of Owner's Spanos Park West Project (sometimes referred to herein as the "**Project**"), a residential component, commonly referred to as The Villages at Spanos Park ("**The Villages**"), and an M-X, mixed use, component, commonly referred to as A. G. Spanos Business Campus ("**The Business Park**"). The entire Spanos Park West Project is the subject of this Agreement and is more fully described in Exhibit "A," attached hereto and incorporated herein by reference.



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E. Pursuant to the California Environmental Quality Act (Public Resources Code § 21000-21177) ("CEQA"), City prepared and circulated a draft supplemental environmental impact report ("SEIR") for the Project. On January 29, 2002, City certified that the SEIR was adequate; that it satisfied the requirements of CEQA, the CEQA Guidelines, and applicable City regulations; and that it fully and accurately described the Spanos Park West Project. Notices of Determination for Spanos Park West were filed on January 30, 2002 with the San Joaquin County Clerk and on January 30, 2002, with the Office of Planning and Research of the State of California.

F. The City of Stockton's General Plan ("**General Plan**") provides that City shall maintain an adequate supply of land designated as high-density residential to meet the requirements of General Plan's Housing Element. The General Plan policy states that 300 acres of vacant high-density residential land is necessary to promote the affordability of multi-family housing in the City. A proposed amendment to the General Plan will change the land use designation of certain lands within the Project from High-Density Residential to Low-Density Residential and Multi-Use. In order to assure that approval by City of the Project does not result in non-compliance with this policy, Owner has agreed to provide for and construct a minimum of Nine Hundred Thirty Five (935) multi-family units within the Mixed-Use component of the Project.

G. The Business Park is located in an area having a general plan and zoning designation of "M-X" (mixed use as described in Code Section 16-075). As required by Code Section 16-075.1, a master development plan for The Business Park will be submitted to and approved by the City (the "**Master Development Plan**"). The Master Development Plan will set forth the distribution, location and extent of uses for The Business Park and identify regulations and criteria for development of the site through subsequent implementing projects. Code Section 16-204.C. requires that a development agreement be completed to implement the Master Development Plan and that such development agreement be processed with the Master Development Plan. A development agreement concerning The Business Park and the Master Development Plan ("**MX Development Agreement**") is being completed between Owner and the City which will provide terms under which the Business Park will be developed. Additionally, City has determined (1) that this Agreement is appropriate to set forth the Owner's commitment to construct a minimum of Nine Hundred Thirty Five multi-family units as part of the development of The Business Park; (2) that this Agreement will eliminate uncertainty in City's land use planning for and secure orderly development of The Business Park; and (3) that this Agreement will assure compliance with the General Plan's Housing Element and otherwise achieve the goals and purposes for which Chapter 16, Part IX of the Code was enacted by City. In exchange for these benefits to the public benefits of the multi-family residential development within The Business Park, Owner desires to receive assurance that City shall grant permits and approvals required for the development of the Project. In order to effectuate these purposes, the parties desire to enter into this Agreement.



H. On December 20, 2001, after conducting a duly noticed public hearing pursuant to Code Section 16-188.A., the City Planning Commission recommended that the City Council approve this Agreement, based on the following findings and determinations that: (1) this Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan; and (2) the proposed development complies with the requirements of CEQA, and state and local CEQA guidelines.

I. On January 29, 2002, the City Council held a duly noticed public hearing on this Agreement pursuant to Code Section 16-188.B. and made the same findings and determinations, which are set forth in Enacting Ordinance 005-02 approving this Agreement thereafter adopted by the City Council, a copy of which is attached hereto, marked Exhibit "B".

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5 and Code Chapter 16, Part IX, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

1. **General Provisions.**

1.1 **Incorporation of Recitals**

The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

1.2 **Covenants**

The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project and the burdens and benefits thereof shall bind and inure to the benefit of all estates and interests in the Project, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto.

2. **Definitions.**

Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

2.1 **Approvals.** Any and all permits or approvals of any kind or character required under the applicable City Laws in order to develop the Project, including, but not limited to, conditional use permits, tentative and final parcel or subdivision maps, building permits, site clearance, grading plans and permits, and certificates of occupancy.



2.2 **City Laws.** The Stockton Municipal Code, resolutions, codes, rules, regulations, decisions and official policies of City governing the design, improvement and construction standards and specifications applicable to the development of the Project. Specifically, but without limiting the generality of the foregoing, City Laws shall include the General Plan.

2.3 **Director.** The Director shall mean the Director of Community Development for City.

2.4 **Enacting Ordinance.** Ordinance 005-02, enacted by the City Council on January 29, 2002, approving this Agreement, as described herein.

2.5 **Exactions.** All exactions, in-lieu fees or payments, dedication or reservation requirements, obligations for on-or off-site improvements or construction requirements for public improvements or services or other conditions of approval called for in connection with the development of, or construction on, the Project under Existing City Laws, whether such exactions constitute public improvements, mitigation measures in connection with environmental review of any project, or impositions.

2.6 **Existing City Laws.** The Planning and Zoning Code (Chapter 16 of the Stockton Municipal Code), resolutions, rules, regulations, decisions and official policies of City governing the subdivision, design and improvement standards applicable to the development of the Business Park in effect as of the Effective Date (as defined in Section 3.1 below).

2.7 **Law or Laws.** The laws and constitution of the State of California, the laws and Constitution of the United States and any codes, statues or executive mandates in any court decision, state or federal, thereunder.

2.8 **Mortgage.** A mortgage, deed of trust, ground lease, sale and leaseback arrangement in which the Project or a portion thereof or an interest therein is sold by Owner and leased back concurrently therewith (which arrangement is subject to no prior contractual encumbrances securing payment of money), or other transaction in which the Project, or a portion thereof or an interest therein, is pledged as security, contracted in good faith and for fair value.

2.9 **Mortgagee.** The holder of the beneficial interest under a Mortgage.

3. **Effective Date; Term.**

3.1. **Effective Date.** This Agreement shall be dated and the obligations of the parties hereunder shall be effective as of the effective date of the Enacting Ordinance, pursuant to Government Code Section 36937, as specified herein (the "Effective Date"). Not later than ten (10) days after the Effective Date, City and Owner shall execute and acknowledge this Agreement, and thereafter the City Clerk shall cause this Agreement to be recorded in the Official Records of the County of San Joaquin, State of California.

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3.2. **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate twenty (20) years from said Effective Date, unless earlier terminated under the terms of this Agreement.

4. **Density Transfer**

4.1. **Low Density Residential.** Owner shall have the right and obligation to develop Low Density Residential dwelling units within the residential component of the Project in accordance with applicable Existing City Laws, the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement

4.2. **High Density Residential.** Owner shall have the right and obligation to develop within the proposed Mixed-Use component of the Project, Nine Hundred Thirty Five (935) multi-family units in accordance with applicable Existing City Laws (including those Code Sections concerning MX zoning and Master Development Plans), the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement.

4.3. **Project Phasing.** Owner presently intends to develop the Project in phases and the parties acknowledge that Owner cannot presently predict the timing or sequence of any such phasing. Such decisions depend upon numerous factors which are not within the control of Owner, such as market conditions and demand, interest rates, competition and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that 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 the parties' agreement, it is the parties' intent to address that issue by acknowledging and providing that Owner shall have the right to develop the Project in phases in such order and at such times as Owner deems appropriate within the exercise of its subjective business judgment and in accordance with the provisions of this Agreement.

4.4. **Applicable Laws and Standards.** Notwithstanding any change in any Existing City Laws including, but not limited to any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise provided in this Agreement, the laws, regulations, standards and policies applicable to the Project are set forth in the Existing City Laws (including those Code Sections concerning MX zoning and Master Development Plans), the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement. The Project is entitled to be built and occupied and Owner has the right to complete the Project, in accordance with this Agreement, provided that City may apply and enforce its codes, regulations and laws applicable under this Agreement.



4.5. **Processing and Approvals.** Upon submission by Owner of any and all necessary and required applications for Approvals to construct the High-Density Residential units and payment of any and all appropriate processing fees as provided in the MX Development Agreement, City shall promptly commence and diligently complete all steps necessary to approve or issue the requested Approvals in accordance with the terms of the MX Development Agreement, including, but not limited to, (a) the holding of any and all required public hearings and notice for such public hearings, and (b) the processing of the request for the Approval to the extent that it complies with applicable Law, the MX Development Agreement and this Agreement.

4.6. **Additional Fees.** Except as provided in this Agreement, City may impose further or additional fees, taxes or assessments, whether through the exercise of the police power, the taxing power, or any other means, which provide a reasonable benefit (nexus) to the development and/or maintenance of the Business Park provided that:

- (a) City may charge owner public facility fees and processing fees for land use approvals, building permits, plan checks and other similar permits and entitlements which are in force and effect on a City-wide basis at the time application is submitted for those permits.
- (b) If state or federal laws are adopted which require cities to impose fees on existing projects and if, consequently, City adopts enabling legislation and imposes fees on existing projects City-wide or area-wide basis, as defined below, these fees may be imposed on the Business Park, which fees shall be consistent with the fees imposed on other properties within the City or area similarly situated.
- (c) If owner requests the creation of a community facilities district for the purpose of financing some or all of the public capital facilities and services necessary for the development of the Business Park, City may adopt a special tax pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (Government Code sections 53311 et seq), sufficient to pay all of the public facilities and services requested by Owner.

5. **Specific Criteria Applicable to Development of the Project.**

5.1. **Application of New City Laws.** Nothing herein shall prevent City from applying to the Project new City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement. Any action or proceeding of City that has any of the following effects on the property within the Project shall be considered to be in conflict with this Agreement and the Existing City Laws;

- (a) limiting or reducing the density or intensity of all or any part of the Business Park, or otherwise requiring any reduction in the square footage or



total number of buildings and other improvements, including, but not limited to, the parking spaces;

(b) limiting the Owner's ability to transfer permitted uses, intensity of buildings between sites within the Project in a manner that is inconsistent with or more restrictive than limitations included in the Existing City Laws.

(c) limiting the timing of the development of the Business Park or the number of phases of the Business Park in a manner that is inconsistent with or more restrictive than the limitations included in the Master Development Plan.

(d) limiting the location of building sites, grading or other improvements on the Business Park in a manner that is inconsistent with or more restrictive than the limitations included in the Existing City Laws;

5.2. Future Growth Control Ordinances/Policies, Etc. One of the specific purposes of this Agreement is to assure Owner that no growth-control ordinance, measure, policy, regulation or development moratorium of City adopted by the City Council or by vote of the electorate after the Effective Date of this Agreement will apply to the Project, whether enacted by urgency ordinances, interim ordinances, initiatives, referendums or any other change in the laws of the City by any method or name which would alter in any way City's General Plan, Zoning Ordinance, Subdivision Ordinance, Uniform Codes or any other ordinance, enactment, resolution, approval, policy, rule, regulation, decision, or other action of City. There are currently no adopted growth control ordinances, policies or measures which would restrict the ability of Owner to complete the Project.

Therefore, the parties hereto agree that, except as otherwise expressly provided in Section 5.1 herein, or other provision of this Agreement which unambiguously and expressly authorizes City to make such pertinent changes, no ordinance, policy, rule, regulation, decision, or any other City action, or any initiative or referendum voted on by the public, which would be applicable to the Project and would affect in any way the rate of development and construction of the Project or to limit the Project's ability to receive any other City service shall be applicable to any portion of the Project during the term of this Agreement, whether such action is by ordinance, enactment, resolution, approval, policy, rule, regulation, decision or other action of City or by public initiative or referendum.

5.3. Police Power and Taxing Power. City, through the exercise of either its police power or its taxing power, whether by direct City action or initiative or referendum, shall not establish, enact or impose any additional conditions, dedications, fees or other exactions, policies, standards, laws or regulations, which directly relate to the development of the Project except as provided in Section 5.1 herein or other provision of this Agreement which unambiguously and expressly allows City to make such changes. Further, City shall not approve a Mello-Roos assessment, or other type of district to cause bonded indebtedness on any portion of the Project without Owner's prior written approval, which approval may be given or withheld in Owner's sole and

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absolute discretion; except that Owner's approval shall not be required if the district includes and benefits the Project. Nothing herein prohibits the Project from being subject to a (a) City-wide bond issue, (b) City-wide special or general tax, or (c) special assessment for the construction or maintenance of a City-wide facility as may be voted on by the electorate or otherwise enacted; provided that such tax, assessment or measure is City-wide in nature, does not discriminate against the land within the Project and does not distinguish between developed and undeveloped parcels.

5.4. **Revision of Ministerial Fees.** This Agreement shall not be construed to limit the authority of City to charge processing fees for land use approvals, public facilities fees and building permits as they relate to plumbing, mechanical, electric or fire code permits, or other similar permits and entitlements which re in force and effect on a city-wide basis at the time those permits are applied for, except to the extent any such processing regulations would be inconsistent with this Agreement

5.5. **Health and Safety.** Notwithstanding Section 5.3, the City may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

(a). A failure to do so would place the residents of the Business Park or the immediate community, or both, in a condition dangerous to their health or safety, or both.

(b) The condition or denial is required in order to comply with state or federal law.

6. **Indemnity.**

6.1. **Indemnity.** Owner shall indemnify, defend and hold City, and its elective and appointive boards, commissions, officers, agents, and employees, harmless from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development of multi-family units within the proposed Mixed-Use component of the Project, any Approval with respect thereto, or claims for injury or death to persons, or damage to the Project, as a result of the operations of Owner or its employees, agents, contractors or representatives with respect to the development, operation and maintenance of the Project.

6.2 **Insurance.** Owner shall maintain insurance in order to assure Owner's ability to provide the indemnity described in Section 6.2. The amount and terms of such insurance shall be as follows:

(a) Commercial general liability and property damage insurance covering the risks of bodily injury and/or death, property damage, and personal injury liability, with total limits of not less than One Million Dollars (\$1,000,000.00)

(b) Worker's Compensation Insurance as required by law, together with a contingent employer's liability endorsement in favor of City, covering employees of Owner, employees of any contractor, subcontractor, agent of representative of Owner.

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(c) If available, each policy of insurance carried by Owner as required by this Indemnity Section, shall provide that it may not be canceled without at least thirty (30) day prior written notice to City. Upon request of City, Owner shall furnish to City a copy of each policy of insurance, or a certificate thereof, stating that such insurance is in full force and effect and, in the case of the public liability insurance, showing City named as an additional insured. Any insurance required to be maintained by Owner may be maintained under a so-called "blanket policy" insuring other parties and other locations, so long as the amount of insurance required hereunder is not thereby diminished. Owner shall maintain insurance in order to assure Owner's ability to provide the indemnity described in Section 6.1 in the amount and terms of such insurance as provided for in the MX Development Agreement.

7. Periodic Review of Compliance

7.1. Annual Review. City, through the Planning Commission, shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance with the terms of this Agreement pursuant to Government Code Section 65865.1 and Code Section 16-192.

7.2. Owner's Submission. Within thirty (30) days of Owner's receipt of the written request of the Planning Commission made not more than once each year at least sixty (60) days prior to the anniversary date of this Agreement, Owner shall submit to the Planning Commission a letter setting forth Owner's good faith compliance with the terms and conditions of this Agreement. Such letter shall be accompanied by such documents and other information as may be reasonably necessary and available to Owner to enable the Planning Commission to undertake the review of Owner's good faith compliance with the terms of this Agreement, and shall also state that such letter is submitted to City pursuant to the requirements of Government Code Section 65865.1 and Code Section 16-192.

7.3. Finding of Compliance. The Planning Commission shall review the Owner's submission to ascertain whether it contains sufficient information to determine whether Owner has complied in good faith with the terms of this Agreement. Upon receipt of the submission, the Planning Commission shall conduct a review of the good faith compliance by Owner with the terms of this Agreement. If the Planning Commission finds good faith compliance by Owner with the terms of this Agreement, the Director shall, upon request by Owner, provide to Owner written confirmation of such finding.

7.4. Finding of Noncompliance. If the Planning Commission, on the basis of substantial evidence, finds that Owner has not complied in good faith with the terms of this Agreement, the Planning Commission shall specify in writing to Owner the respects in which Owner has failed to comply and the Planning Commission may recommend that the City Council hold a public hearing and terminate or modify the Agreement. The City Council may (a) establish a reasonable time for Owner to

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comply with this Agreement, which time shall not be less than thirty (30) days and shall be reasonably related to the time necessary for Owner to adequately bring its performance into good faith compliance with the terms of this Agreement, or (b) may take action to terminate or modify this Agreement. No action to terminate or modify the Agreement shall be taken without a public hearing before the City Council using the same process as was used for its adoption.

8. Permitted Delays; Supersedure by Subsequent Laws.

8.1. **Permitted Delays.** In addition to any specific provisions of this Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties, restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations), litigation, acts or neglect of the other party, or any other cause beyond the reasonable control of a party. Each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained.

8.2. **Supersedure by Subsequent Laws.** Except as provided in this Agreement with respect to City Laws, if any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Owner's reasonable business judgment, then Owner shall have the right to terminate this Agreement by written notice to City. Owner shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

9. Events of Default, Remedies, Termination; Attorneys' Fees.

9.1. **Events of Default.** Subject to any extensions of time by mutual consent in writing, and subject to the provisions of this Agreement regarding periodic reviews, or permitted delays, any failure by either party to perform any material term or provision of this Agreement shall constitute an Event of Default, (i) if such defaulting party does not cure such failure within thirty (30) days following notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (ii) if such failure is not of a nature which can be cured within such thirty (30) day period, the defaulting party does not within such

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thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

9.2. **Remedies.** Upon the occurrence of an Event of Default, the non-defaulting party may: (i) bring any proceeding in the nature of declaratory relief, specific performance, injunctive relief or mandamus, and/or (ii) the non-defaulting party shall have the right to terminate this Agreement pursuant to Government Code Section 65868. The remedies provided herein are exclusive and in no event shall either party be liable to the other for monetary damages for an event of default or any other breach of this Agreement.

9.3. **Waiver, Remedies Cumulative.** Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of an Event of Default shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time, other than any Event of Default and/or period of time specified in such express waiver. The exclusive remedies provided in this Agreement shall be cumulative and not alternative, and invocation of any permitted remedy shall not constitute a waiver or election with respect to any other permitted remedy.

9.4. **Effect of Termination.** If this Agreement is terminated on account of an Event of Default, such termination shall not affect any right or duty emanating from any Exactions already satisfied, City entitlements or Approvals with respect to the Project that have been approved concurrently or subsequently to the approval of this Agreement, but the rights, duties and obligations of the parties hereunder shall otherwise cease as of the date of such termination.

9.5. **Limitations on Actions.** City and Owner hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any person or entity third party beneficiary status. If any action or proceeding is instituted by any third party challenging the validity of any provision of this Agreement, or any action or decision taken or made hereunder, the parties shall cooperate in defending such action or proceeding. Owner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in any such action or other proceeding and for any attorneys' fees and costs awarded to a party to be paid by City.

9.6. **Effect of Court Action.** If any court action or proceeding is brought by any third party to challenge any Approval, this Agreement, or any other permit or



approval required from City or any other governmental entity for development or construction of the Project, or any portion thereof, and without regard to whether or not Owner is a party to or real party in interest in such action or proceeding, then Owner shall have the right, but not the obligation, (a) to defend, at Owner's expense, such action or proceeding on behalf of City and City shall fully cooperate with Owner in such defense; or (b) to terminate this Agreement upon thirty (30) days notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination. Any such action or proceeding shall constitute a permitted delay under the provisions of this Agreement.

9.7. **Estoppel Certificate.** Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The Director shall have the right to execute on behalf of City any certificate requested by Owner hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees acting in good faith.

10. **Mortgagee Protection: Certain Rights of Cure.**

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

10.2. **Mortgagee Not Obligated.** Notwithstanding the provisions of this Agreement, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Project to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement or otherwise under City Laws.

10.3. **Notice of Default to Mortgagee, Right of Mortgagee to Cure.** If City receives notice from a Mortgagee requesting a copy of any notice of default

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given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice of an Event of Default or determination of noncompliance given to Owner. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice. If the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Event of Default or noncompliance within ninety (90) days after obtaining possession. If any such Event of Default or noncompliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Event of Default or noncompliance if such Mortgagee commences cure during such ninety (90) day periods, and thereafter diligently pursues completion of such cure to the extent possible.

11. Assignment.

11.1 Owner's rights hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of all or any portion of the Project at any time during the term of this Agreement upon the following terms and conditions:

(a) Release Upon Transfer. Upon the sale, transfer or assignment of Owner's rights and interests under this Section of this Agreement, Owner shall be released from its obligations pursuant to this Agreement with respect to the Project or portion thereof so transferred provided such obligations are expressly assumed by the Transferee prior to the transfer and evidence is provided to the Director showing Transferee can perform Owner's obligations.

(b) Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall constitute covenants that shall run with the land comprising the Project, and the burdens and benefits shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors (by merger, consolidation, or otherwise), assignees, devisees, administrators, representatives, purchasers and lessees.

12. Amendment and Recordation.

12.1. Amendment or Cancellation. Except as provided for herein with respect to City's annual review, this Agreement may be canceled, modified or amended only by mutual consent of the parties in writing, and then only in the manner provided for in government Code Section 65868 and Code Section 16-193. Pursuant to Code Section 16-193.C., any amendment to this Agreement which does not relate to the Term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservation and dedication of land, shall not require a noticed public hearing before the



parties may make such amendment. Any fees paid or land dedicated pursuant to this Agreement prior to the date of cancellation shall be retained by City.

12.2. **Recordation.** Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation with any costs of recordation to be paid by Owner. Failure to record shall not affect the validity of any amendment, termination or cancellation.

13. **Notices.**

13.1. **Procedure.** Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending the same by facsimile transmission or registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the party's mailing address. The respective mailing addresses and facsimile numbers of the parties are, until changed as hereinafter provided, the following:

City:	City of Stockton 425 North El Dorado Stockton, California 95202 Attention: City Manager Facsimile No.: (209) 937-7149
with a copy to:	City Attorney, City of Stockton 425 North El Dorado Stockton, California 95202 Facsimile No.: (209) 937-8898
Owner:	A.G. Spanos Construction, Inc. 1341 West Robinhood Drive Suite B-5 Stockton, California 95207 Attention: Jerry Murphy Facsimile No. (209) 473-3703
with a copy to:	John Briscoe Washburn, Briscoe & McCarthy 55 Francisco Street Suit 600 San Francisco, California 94133 Facsimile No.: (415) 421-5044

Either party may change its mailing address and/or facsimile number at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be

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86173v1



deemed given, received, made or communicated on the date personal delivery is effected or, if mailed upon the expiration of five (5) days after the date of mailing, or, if sent by facsimile transmission, on the date of receipt as shown on written transmission verification.

14. Miscellaneous.

14.1. **Negation of Partnership.** The parties specifically acknowledge that 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. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the business of Owner, the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

14.2. **Consent(s).** Unless otherwise herein provided, whenever consent or satisfaction (collectively referred to in this Section 14.2 as a "**consent**") is required of a party pursuant to this Agreement, such consent shall not be unreasonably withheld. Consent shall be deemed given if the party from whom the consent is sought neither approves or disapproves of the request within thirty (30) days, or such other applicable time period specified in this Agreement, after receipt of the written request for consent. If a party shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. Consent by a party to or of any act or request by the other party shall not be deemed to waive or render unnecessary consent to or of any similar or subsequent acts or requests.

14.3. **Project Approvals Independent.** All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by City with respect to the Project, constitute independent actions and approvals by City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals. In such cases, such Approvals will remain in effect pursuant to their own terms, provisions and conditions.

14.4. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever. Owner shall have the right to prevent or prohibit the use of the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose inimical to the operation of a private, integrated development project as contemplated by this Agreement except for those areas designated as public easements.

14.5. **Severability.** Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other

Development Agr re Residential
Density Transfer GAS January 9, 2002
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person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.6. **Exhibits.** The Exhibits listed in the Table of Contents and referred to herein are deemed incorporated into this Agreement in their entirety.

14.7. **Entire Agreement.** This written Agreement and the Exhibits contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

14.8. **Construction of Agreement.** The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purpose of the parties. The captions preceding the text of each Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities. This Agreement has been reviewed and revised by legal counsel for both Owner and City, and any presumption or rule that ambiguities shall be construed against the drafting party shall not apply to the interpretation or enforcement of this Agreement.

14.9. **Further Assurances; Covenant to Sign Documents.** Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

14.10. **Governing Law.** This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of California.

14.11. **Time.** Time is of the essence of this Agreement and of each and every term and condition hereof.

14.12. **Dispute Costs and Fees.** In any legal action or proceeding brought to enforce or interpret any provision of this Agreement, or otherwise arising from or related to this Agreement, the prevailing party shall be entitled to an award of its attorneys', investigators', expert witness' and consultants' fees and costs incurred in relation to that action or proceeding, in addition to any other relief awarded.

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Density Transfer GAS January 9, 2002
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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF STOCKTON, a municipal corporation of the State of California

By: [Signature]
City Manager

Attest: [Signature]
City Clerk

Approved as to Form By:
[Signature]
Deputy City Attorney

Owner:
A.G. SPANOS CONSTRUCTION, INC.

By William E. Spanos

Its Vice President

By _____

Its _____



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Density Transfer GAS January 9, 2002
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EXHIBIT "A"

Tract No. 3103
Spanos Park West Unit No. 1
according to map recorded June 14, 2001, in Book 36 of Maps and Plats at Page 32



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86173v1

EXHIBIT "B"

City Council Findings and Determinations

A. The provisions of the Development Agreement are consistent with the General and specific plans for this area; and

B. The proposed development complies with the requirements of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.



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03/11/2002 02:49P
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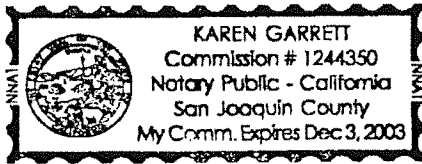
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Joaquin } ss.

On Jan. 29, 2002, before me, Karen Garrett, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared William E. Barbour
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.

Karen Garrett
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

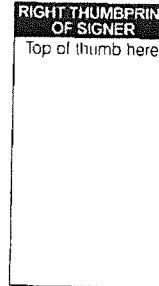
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____



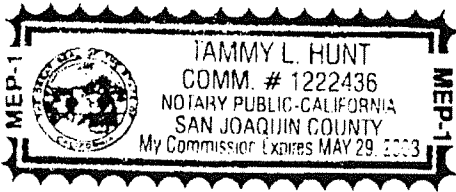
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA
County of SAN JOAQUIN

On February 5, 2002 before me, TAMMY L. HUNT, NOTARY PUBLIC
DATE NAME, TITLE OF OFFICER - E.G. "JANE DOE, NOTARY PUBLIC"

personally appeared MARK LEWIS, ESQ.
NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Tammy L. Hunt
SIGNATURE OF NOTARY

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)
CITY MANAGER
TITLE(S)
- PARTNER(S) LIMITED
 GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
CITY OF STOCKTON

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.


TITLE OR TYPE OF DOCUMENT SPANOS PARK WEST DEVELOPMENT AGREEMENT

NUMBER OF PAGES 21 DATE OF DOCUMENT January 29, 2002

SIGNER(S) OTHER THAN NAMED ABOVE As attached



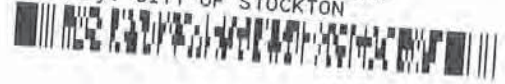
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03/11/2002 02:49P
23 of 23

This document is recorded for the benefit of the City of Stockton and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the California Government Code. When recorded, mail to:
City of Stockton
425 North El Dorado Street
Stockton, California 95202
Attn: 

CITY ATTORNEY

Doc #: 2009-007751
Fri Jan 16 11:17:13 PST 2009
Page: 1 of 10 Fee: \$0

San Joaquin County Recorders
Paid By: CITY OF STOCKTON



**FIRST AMENDMENT
TO
SPANOS PARK WEST
DENSITY TRANSFER
DEVELOPMENT AGREEMENT (DA3-01)**

CITY: CITY OF STOCKTON, a municipal corporation of the State of California

OWNER: A.G. SPANOS CONSTRUCTION, INC., a California corporation

FIRST AMENDMENT TO SPANOS PARK WEST DENSITY TRANSFER DEVELOPMENT AGREEMENT (DA3-01)

THIS FIRST AMENDMENT TO SPANOS PARK WEST DENSITY TRANSFER DEVELOPMENT AGREEMENT (DA3-01) ("**Amendment**") is made and entered into as of this 9th day of December, 2008 by and between the CITY OF STOCKTON, a municipal corporation of the State of California ("**City**") and A.G. SPANOS CONSTRUCTION, INC., a California corporation ("**Owner**").

RECITALS

A. City and Owner did enter into that certain Spanos Park West Density Transfer Development Agreement as of January 29, 2002, and effective on February 28, 2002 pursuant to City of Stockton Ordinance No. 007-02 ("**DA3-01**").

B. Owner held fee title to that certain parcel of land commonly referred to as Spanos Park West and the development rights appurtenant or applicable thereto (collectively referred to herein as the "**Project**"), more particularly described in Tentative Maps TM 54-89 and TM 56-89 which were recorded as one (1) Final Map in the Official Records of San Joaquin County, California on June 14, 2001 as Instrument Number 01092414.

C. On January 29, 2002, City and Owner entered into a Development Agreement dividing Spanos Park West into two (2) parcels (namely, The Villages at Spanos Park and an M-X, mixed use, component named "The A. G. Spanos Business Park" ("**Business Park**")) and approved a Master Development Plan for the development of the Business Park. Said Development Agreement was duly recorded in the official Records of San Joaquin County on March 11, 2002 as Document Number 2002-041899.

D. On April 30, 2002, City approved an amended Tentative Map (TM 11-00) for the Business Park containing parcels 1 through 20. Owner developed Lot 19 of TM 11-00 into the A. G. Spanos Office Building. Owner, with the consent of City, sold and transferred title to numerous other parcels to various entities for retail use.

E. On October 23, 2003, a Parcel Map re-dividing Lots 17A, 17, 10 and 7 of TM 11-00 into four (4) parcels (namely, Parcel 1, Parcel 2, Parcel 3 and Parcel 4) was duly recorded in the official Records of San Joaquin County as DOC # 2003-245479 ("**Parcel Map**").

F. Owner, with the approval of City, sold Parcels 1 and 2 of the Parcel Map for retail use and dedicated Parcel 4 of the Parcel Map as a one hundred foot (100') Public Access and Landscape Easement.

G. With the exception of the A. G. Spanos Office Building and Parcel 3 of the Parcel Map (consisting of 4.23 acres), Owner has divested itself of any ownership within the Business Park.

H. DA3-01 was entered into and adopted for the purpose, among other things, of reserving land for high-density residential development consistent with the minimum acreage requirements contained in the City's then current General Plan Housing Element. In relevant part, Recital "F" of DA3-01 reads as follows:

"The City of Stockton's General Plan ("General Plan") provides that City shall maintain an adequate supply of land designated as high-density residential to meet the requirements of General Plan's Housing Element. The General Plan policy states that 300 acres of vacant high-density residential land is necessary to promote the affordability of multi-family housing in the City. A proposed amendment to the General Plan will change the land use designation of certain lands within the Project from High-Density Residential to Low-Density Residential and Multi-Use. In order to assure that approval by City of the Project does not result in non-compliance with this policy, Owner has agreed to provide for and construct a minimum of Nine Hundred Thirty Five (935) multi-family units within the Mixed-Use component of the Project."

I. On September 14, 2004, the Stockton City Council amended the City's General Plan Housing Element. Among other things, the City eliminated the requirement that there be reserved a minimum of Three Hundred (300) acres of vacant land for high-density residential use.

J. As of the date hereof, Owner has developed and constructed (or caused to be developed and constructed) Three Hundred Eight (308) high-density residential units within the Project.

K. The Stockton metropolitan housing market has experienced a significant decline in demand for high-density residential units. Simultaneously, the commercial density within the Project has increased. Consequently, there is insufficient vacant land within the Project to accommodate the additionally required Six Hundred Twenty-Seven (627) high-density residential units specified under DA3-01.

L. In response to the insufficient vacant land within the Project, an affiliate of Owner is entitled and permitted to construct (or cause to be constructed) Three Hundred Ninety-Two (392) high-density residential units within the Crystal Bay Project (defined below) and the Ninety-Six (96) high-density units within the Atlas Tract Project (defined below) all as set forth in more detail in this Amendment and in the permitting documents.

M. In light of the foregoing, the parties hereto desire to amend DA3-01 to provide that Owner or its Affiliate may fulfill its obligation to construct (or cause to be constructed) the additional 627 high-density residential units by (i) the construction of Three Hundred Ninety-Two (392) high-density residential units in the Crystal Bay Project (defined below) by an affiliate of Owner or its successor or assigns, (ii) the construction of Ninety-Six (96) high-density residential units in the Atlas Tract Project (defined below) by an affiliate of Owner or its successor or assigns, and (iii) the construction of One Hundred Fifty-Seven (157) high-density

residential units in the greater downtown Stockton area or elsewhere, pursuant to the terms and conditions set forth below in this Amendment, which area(s) is significantly more desirable to the City than the Northwest Stockton area in which the remaining One Hundred Thirty-Nine (139) (i.e. 627-488) high-density residential units were to be built as initially required under the original terms of DA3-01. In addition, the One Hundred Fifty-Seven (157) high-density residential units to be built in the greater downtown Stockton area exceeds the remaining One Hundred Thirty-Nine (139) high-density residential units required in DA3-01 by Eighteen (18) units.

NOW THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The Recitals set forth above and all defined terms set forth in DA3-01 (not otherwise defined in this Amendment) are hereby incorporated into this Amendment as if set forth herein in full.

2. Recital "F" of DA3-01 is hereby amended in full as follows:

F. The City of Stockton's General Plan Housing Element, as amended on September 14, 2004, provides that the City shall ensure an adequate supply of land designated as high-density residential to promote the affordability of multi-family housing in the City. To that end, Owner has, to date, constructed 308 high-density residential units within the Project. Owner has agreed that Owner or its Affiliate shall develop and construct (or cause to be constructed) an additional (i) Three Hundred Ninety-Two (392) high-density residential units within the "Crystal Bay Project", as defined and specified in Planned Development PD1-08 and Vesting Tentative Map TM17-05, and (ii) Ninety-Six (96) high-density residential units within the "Atlas Tract Project", as defined and specified in Planned Development PD3-06 and Vesting Tentative Map VTM7-08 and VTM28-05 and (iii) One Hundred Fifty-seven (157) high-density market-rate residential units within such other area(s) of the City of Stockton as may be mutually agreed upon by City and Owner. Owner at its option, may satisfy in whole or in part its obligation to build the high-density residential units in the preceding sentence by paying to (or causing to be paid to) the City of Stockton or an approved non-profit charitable organization such sums as set forth in the First Amendment to Spanos Park West Density Transfer Development Agreement.

3. Section 4.2. of DA3-01 is hereby amended in full as follows:

4.2 High Density Residential.

(a) As of December 9, 2008, an affiliate of Owner, namely Dean Spanos, as Trustee of The Alex and Faye Spanos Trust U/A/D January 27, 1998 ("Trustee") is entitled and permitted to construct (or cause to be constructed) Three Hundred Ninety-two (392) high-density residential units

within the “Crystal Bay Project” and the Ninety-Six (96) high-density residential units within the “Atlas Tract Project” referenced above. Trustee or another affiliate of Owner, its successor or assigns, (the term “**affiliate of Owner**” or simply “**Affiliate**” means any entity, trust or estate that is owned and/or controlled by any of the Spanos family members) shall complete or cause completion of the construction of the 392 high-density residential units within the Crystal Bay Project and the Ninety-Six (96) high-density residential units within the Atlas Tract Project or, as to either or both Project(s), elsewhere within the City of Stockton at one or more priority locations, including, but not limited to, the greater downtown Stockton area, as may be mutually agreed upon by City (on the one hand) and Trustee or an Affiliate (on the other hand) in accordance with applicable Existing City Laws and the terms and conditions of this Amendment (and such amendments thereto and such further amendments to DA3-01) on or before December 9, 2018.

(b) Owner or its Affiliate shall construct (or cause to be constructed) One Hundred Fifty-seven (157) high-density market-rate residential units within the City of Stockton at one or more priority locations, including, but not limited to, the greater downtown Stockton area, as may be mutually agreed upon by City and such Affiliate on or before December 9, 2018.

(c) Owner or its Affiliate may fulfill the obligation to construct (or cause to be constructed) the high-density residential units referenced in Sections 4.2(a) and (b) above (collectively, the “**High-Density Units**”) by: (i) paying (or causing to be paid) to the City the sum of TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00) per High-Density Unit on or before December 9, 2018, or (ii) making a contribution on or before December 9, 2018 in an amount not less than TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00) per High-Density Unit to one or more non-profit charitable organizations (as described in Internal Revenue Code Section 170(b)(1)(A) or one having received tax-exempt status under Internal Revenue Code Section 501(c)(3)) reasonably approved by the City and having among its/their purpose(s) the objective of assisting in the provision of housing to residents within the greater downtown or other priority area(s) determined by the City, or (iii) a combination of (i) and (ii), such that the percentage performance of Affiliate under both (i) and (ii) equals one hundred percent (100%). By way of example only, Affiliate shall be deemed to have completely fulfilled its obligations under Sections 4.2(a) and (b) and (c) of this Amendment if it constructs (or causes to be constructed) 314 high-density residential units within the Crystal Bay Project (i.e., 80% performance), 72 high density residential units within the Atlas Tract Project (i.e., 75% performance), 110 high-density market-rate residential units within the City of Stockton (or elsewhere, as provided in Section 4.2(b) above) (i.e., 70% performance) and makes payment to (or causes such payment to be made to) the City of

Stockton or an above-referenced type of non-profit charitable organization in an amount of \$298,000.00 (i.e., \$2,000 per High-Residential Unit multiplied by 149, which is the number of high-density residential units not built within the Crystal Bay Project, the Atlas Tract Project, and City of Stockton in this example). In the event of the failure of (i) the construction of all 392 high-density residential units within the Crystal Bay Project (or elsewhere, as provided by Section 4.2(a) above), or (ii) the construction of all Ninety-Six (96) high-density residential units within the Atlas Tract Project (or elsewhere, as provided by Section 4.2(a) above, or (iii) the construction of all One Hundred Fifty-seven (157) high-density residential units within the City of Stockton (or elsewhere, as provided in Section 4.2(b) above), or (iv) the payment to the City in the sum of ONE MILLION TWO HUNDRED NINETY THOUSAND AND 00/100 DOLLARS (\$1,290,000.00) or contribution in an amount not less than ONE MILLION TWO HUNDRED NINETY THOUSAND AND 00/100 DOLLARS (\$1,290,000.00) to the non-profit charitable organization(s) described above, or (v) some combination of (i), (ii), (iii) and (iv) such that Affiliate's cumulative percentage performance of (i), (ii), (iii) and (iv) does not equal one hundred percent (100%), then Affiliate shall be required, on or before December 9, 2018 and within thirty (30) days of receipt of City's written demand to pay (or caused to be paid) to City or contribute (or cause a contribution) to such non-profit charitable organization, an amount equal to the number of High-Density Units not constructed within the Crystal Bay Project or the Atlas Tract Project or the City of Stockton (or elsewhere, as provided in Section 4.2(a) and Section 4.2(b) above), or some combination thereof, as required pursuant to this Amendment, multiplied by the sum of TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00) per High-Density Unit, unless already paid as provided for herein.

5. All terms of DA3-01 not otherwise modified herein shall remain in full force and effect.


“CITY”:

City of Stockton,
a municipal corporation
of the State of California

By:


J. Gordon Palmer, Jr. City Manager

Attest:



Katherine Meissner, City Clerk



“OWNER”:

A.G. Spanos Construction, Inc.
a California corporation

By:


Jeremiah T. Murphy
Executive Vice President

Approved as to form and content:


Richard E. Nosky, Jr., City Attorney

“TRUSTEE”



Dean Spanos, Trustee of
The Alex and Faye Spanos Trust
U/A/D January 27, 1998

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Joaquin }

On Jan. 14, 2009 before me, Karen A. Costa, Notary Public
Date Here Insert Name and Title of the Officer

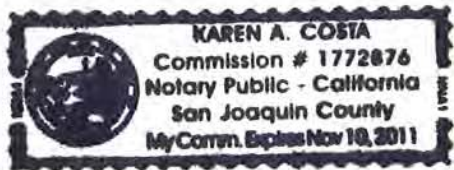
personally appeared J. Gordon Palmer, Jr.
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature Karen A. Costa
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: First Amendment to Sponos Park West Density Transfer Development Agreement
 Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Diego } SS.

On Dec. 16th 2008 before me, Lesley M. Fisher, **Notary Public**,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Dean Spanos
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Place Notary Seal Above

Lesley M. Fisher
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: First Amendment to Spanos Park West Density Transfer Dev. Agmt.

Document Date: 12/9/08 Number of Pages: 7

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed By Signer(s)

Signer's Name: DEAN SPANOS

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

Signer is Representing: The Alex and Faye Spanos Trust

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Joaquin } SS.

On December 15, 2008 before me, Nannette P. Hatch, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jeremiah T. Murphy
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Place Notary Seal Above

Nannette P. Hatch
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: First Amendment to Spanos Park West Density Transfer

Development Agreement (DA3-01)

Document Date: 12/9/08 Number of Pages: 7

Signer(s) Other Than Named Above: None Yet / To be Signed by J. Gordon Palmer, Jr., City Mgr., Katherine Meissner, City Clerk, Edward E. Nosky, Jr., City Attorney, and Dean Spanos, Trustee

Capacity(ies) Claimed By Signer(s)

Signer's Name: Jeremiah T. Murphy

- Individual
- Corporate Officer – Title(s): Executive Vice President
- Partner - Limited General
- Attorney-In-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: A. G. Spanos Construction, Inc.



GARY W. FREEMAN

SAN JOAQUIN COUNTY
ASSESSOR-RECORDER-COUNTY CLERK
6 SOUTH EL DORADO STREET
POST OFFICE BOX 1968
STOCKTON, CALIFORNIA 95201-1968

RETURN SERVICE REQUESTED

**PRESORTED
FIRST CLASS**



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CITY OF STOCKTON

OFFICE OF THE CITY ATTORNEY

City Hall • 425 N. El Dorado Street • Stockton, CA 95202-1997 • 209/937-8333 • Fax 209/937-8898

www.stockton.gov

REPLY TO: _____

APR 4 2002

DATE: April 4, 2002

TO: KATHERINE GONG MEISSNER, City Clerk

FROM: GUY D. PETZOLD, Deputy City Attorney

RE: **DENSITY TRANSFER DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF STOCKTON AND A. G. SPANOS
CONSTRUCTION, INC.--SPANOS PARK WEST**

Attached is a fully executed Density Transfer Development Agreement dated January 29, 2002. Said Development Agreement was authorized by City Council Ordinance No. 006-02, effective February 28, 2002. Said Development Agreement was recorded as Instrument No. 2002-041899 on March 11, 2002.

Said Development Agreement may be retained for your files.

OFFICE OF THE CITY ATTORNEY

By


GUY D. PETZOLD
DEPUTY CITY ATTORNEY

GDP:plc

Attachment

cc: Community Development (Attn: Dave Stagnaro)
Public Works (Attn: Barry O'Regan)
A. G. Spanos Construction, Inc.
Attn: Jerry Sperry
1341 W. Robinhood Dr., Suite B-5
Stockton CA 95207



DOC # 2002-041899

03/11/2002 02:49P Fee:73.00

Page 1 of 23

Recorded in Official Records

County of San Joaquin

Gary W. Freeman

Assessor-Recorder-County Clerk

Paid by COMPANY ON DOCUMENT



This document is recorded for the benefit of the City of Stockton and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

When recorded, mail to:

City of Stockton

425 N. El Dorado

Stockton, California 95202

Attn: City Attorney

DA3-01

**SPANOS PARK WEST
DENSITY TRANSFER
DEVELOPMENT AGREEMENT**

CITY: CITY OF STOCKTON, a municipal corporation of the State of California

**OWNER: A. G. SPANOS CONSTRUCTION, INC.,
a California Corporation**

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SPANOS PARK WEST
DENSITY TRANSFER
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into as of this 29th day of January, 2002, by and between the CITY OF STOCKTON, a municipal corporation of the State of California ("**City**"), and A. G. SPANOS CONSTRUCTION, INC., a California corporation ("**Owner**"), pursuant to the authority of California Government Code Sections 65864-65869.5 and Stockton Municipal Code ("**Code**") Chapter 16, Part IX, Sections 16-180 through 16-195, inclusive.

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864-65869.5 authorizing City to enter into development agreements in connection with the development of real property within its jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property that is the subject of such development agreements.

B. As authorized by Government Code Section 65865(c), City has adopted Code Chapter 16, Part IX establishing the procedures and requirements for the consideration of development agreements within the City.

C. Owner is a corporation organized under the laws of the State of California and is in good standing thereunder.

D. Owner owns fee title to that certain parcel of land commonly referred to as Spanos Park West. Owner holds certain entitlements for the development of Spanos Park West, i.e. two (2) approved tentative maps, TM 54-89 and TM 56-89. Owner has made application to City to modify Owner's existing entitlements into two separate components of Owner's Spanos Park West Project (sometimes referred to herein as the "**Project**"), a residential component, commonly referred to as The Villages at Spanos Park ("**The Villages**"), and an M-X, mixed use, component, commonly referred to as A. G. Spanos Business Campus ("**The Business Park**"). The entire Spanos Park West Project is the subject of this Agreement and is more fully described in Exhibit "A," attached hereto and incorporated herein by reference.



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E. Pursuant to the California Environmental Quality Act (Public Resources Code § 21000-21177) ("CEQA"), City prepared and circulated a draft supplemental environmental impact report ("SEIR") for the Project. On January 29, 2002, City certified that the SEIR was adequate; that it satisfied the requirements of CEQA, the CEQA Guidelines, and applicable City regulations; and that it fully and accurately described the Spanos Park West Project. Notices of Determination for Spanos Park West were filed on January 30, 2002 with the San Joaquin County Clerk and on January 30, 2002, with the Office of Planning and Research of the State of California.

F. The City of Stockton's General Plan ("**General Plan**") provides that City shall maintain an adequate supply of land designated as high-density residential to meet the requirements of General Plan's Housing Element. The General Plan policy states that 300 acres of vacant high-density residential land is necessary to promote the affordability of multi-family housing in the City. A proposed amendment to the General Plan will change the land use designation of certain lands within the Project from High-Density Residential to Low-Density Residential and Multi-Use. In order to assure that approval by City of the Project does not result in non-compliance with this policy, Owner has agreed to provide for and construct a minimum of Nine Hundred Thirty Five (935) multi-family units within the Mixed-Use component of the Project.

G. The Business Park is located in an area having a general plan and zoning designation of "M-X" (mixed use as described in Code Section 16-075). As required by Code Section 16-075:1, a master development plan for The Business Park will be submitted to and approved by the City (the "**Master Development Plan**"). The Master Development Plan will set forth the distribution, location and extent of uses for The Business Park and identify regulations and criteria for development of the site through subsequent implementing projects. Code Section 16-204.C. requires that a development agreement be completed to implement the Master Development Plan and that such development agreement be processed with the Master Development Plan. A development agreement concerning The Business Park and the Master Development Plan ("**MX Development Agreement**") is being completed between Owner and the City which will provide terms under which the Business Park will be developed. Additionally, City has determined (1) that this Agreement is appropriate to set forth the Owner's commitment to construct a minimum of Nine Hundred Thirty Five multi-family units as part of the development of The Business Park; (2) that this Agreement will eliminate uncertainty in City's land use planning for and secure orderly development of The Business Park; and (3) that this Agreement will assure compliance with the General Plan's Housing Element and otherwise achieve the goals and purposes for which Chapter 16, Part IX of the Code was enacted by City. In exchange for these benefits to the public benefits of the multi-family residential development within The Business Park, Owner desires to receive assurance that City shall grant permits and approvals required for the development of the Project. In order to effectuate these purposes, the parties desire to enter into this Agreement.



H. On December 20, 2001, after conducting a duly noticed public hearing pursuant to Code Section 16-188.A., the City Planning Commission recommended that the City Council approve this Agreement, based on the following findings and determinations that: (1) this Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan; and (2) the proposed development complies with the requirements of CEQA, and state and local CEQA guidelines.

I. On January 29, 2002, the City Council held a duly noticed public hearing on this Agreement pursuant to Code Section 16-188.B. and made the same findings and determinations, which are set forth in Enacting Ordinance 005-02 approving this Agreement thereafter adopted by the City Council, a copy of which is attached hereto, marked Exhibit "B".

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5 and Code Chapter 16, Part IX, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

1. General Provisions.

1.1 Incorporation of Recitals

The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

1.2 Covenants

The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project and the burdens and benefits thereof shall bind and inure to the benefit of all estates and interests in the Project, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto.

2. Definitions.

Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

2.1 **Approvals.** Any and all permits or approvals of any kind or character required under the applicable City Laws in order to develop the Project, including, but not limited to, conditional use permits, tentative and final parcel or subdivision maps, building permits, site clearance, grading plans and permits, and certificates of occupancy.



2.2 **City Laws.** The Stockton Municipal Code, resolutions, codes, rules, regulations, decisions and official policies of City governing the design, improvement and construction standards and specifications applicable to the development of the Project. Specifically, but without limiting the generality of the foregoing, City Laws shall include the General Plan.

2.3 **Director.** The Director shall mean the Director of Community Development for City.

2.4 **Enacting Ordinance.** Ordinance 005-02, enacted by the City Council on January 29, 2002, approving this Agreement, as described herein.

2.5 **Exactions.** All exactions, in-lieu fees or payments, dedication or reservation requirements, obligations for on-or off-site improvements or construction requirements for public improvements or services or other conditions of approval called for in connection with the development of, or construction on, the Project under Existing City Laws, whether such exactions constitute public improvements, mitigation measures in connection with environmental review of any project, or impositions.

2.6 **Existing City Laws.** The Planning and Zoning Code (Chapter 16 of the Stockton Municipal Code), resolutions, rules, regulations, decisions and official policies of City governing the subdivision, design and improvement standards applicable to the development of the Business Park in effect as of the Effective Date (as defined in Section 3.1 below).

2.7 **Law or Laws.** The laws and constitution of the State of California, the laws and Constitution of the United States and any codes, statues or executive mandates in any court decision, state or federal, thereunder.

2.8 **Mortgage.** A mortgage, deed of trust, ground lease, sale and leaseback arrangement in which the Project or a portion thereof or an interest therein is sold by Owner and leased back concurrently therewith (which arrangement is subject to no prior contractual encumbrances securing payment of money), or other transaction in which the Project, or a portion thereof or an interest therein, is pledged as security, contracted in good faith and for fair value.

2.9 **Mortgagee.** The holder of the beneficial interest under a Mortgage.

3. **Effective Date; Term.**

3.1. **Effective Date.** This Agreement shall be dated and the obligations of the parties hereunder shall be effective as of the effective date of the Enacting Ordinance, pursuant to Government Code Section 36937, as specified herein (the "**Effective Date**"). Not later than ten (10) days after the Effective Date, City and Owner shall execute and acknowledge this Agreement, and thereafter the City Clerk shall cause this Agreement to be recorded in the Official Records of the County of San Joaquin, State of California.



3.2. **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate twenty (20) years from said Effective Date, unless earlier terminated under the terms of this Agreement.

4. **Density Transfer**

4.1. **Low Density Residential.** Owner shall have the right and obligation to develop Low Density Residential dwelling units within the residential component of the Project in accordance with applicable Existing City Laws, the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement

4.2. **High Density Residential.** Owner shall have the right and obligation to develop within the proposed Mixed-Use component of the Project, Nine Hundred Thirty Five (935) multi-family units in accordance with applicable Existing City Laws (including those Code Sections concerning MX zoning and Master Development Plans), the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement.

4.3. **Project Phasing.** Owner presently intends to develop the Project in phases and the parties acknowledge that Owner cannot presently predict the timing or sequence of any such phasing. Such decisions depend upon numerous factors which are not within the control of Owner, such as market conditions and demand, interest rates, competition and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that 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 the parties' agreement, it is the parties' intent to address that issue by acknowledging and providing that Owner shall have the right to develop the Project in phases in such order and at such times as Owner deems appropriate within the exercise of its subjective business judgment and in accordance with the provisions of this Agreement.

4.4. **Applicable Laws and Standards.** Notwithstanding any change in any Existing City Laws including, but not limited to any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise provided in this Agreement, the laws, regulations, standards and policies applicable to the Project are set forth in the Existing City Laws (including those Code Sections concerning MX zoning and Master Development Plans), the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement. The Project is entitled to be built and occupied and Owner has the right to complete the Project, in accordance with this Agreement, provided that City may apply and enforce its codes, regulations and laws applicable under this Agreement.



4.5. **Processing and Approvals.** Upon submission by Owner of any and all necessary and required applications for Approvals to construct the High-Density Residential units and payment of any and all appropriate processing fees as provided in the MX Development Agreement, City shall promptly commence and diligently complete all steps necessary to approve or issue the requested Approvals in accordance with the terms of the MX Development Agreement, including, but not limited to, (a) the holding of any and all required public hearings and notice for such public hearings, and (b) the processing of the request for the Approval to the extent that it complies with applicable Law, the MX Development Agreement and this Agreement.

4.6. **Additional Fees.** Except as provided in this Agreement, City may impose further or additional fees, taxes or assessments, whether through the exercise of the police power, the taxing power, or any other means, which provide a reasonable benefit (nexus) to the development and/or maintenance of the Business Park provided that:

- (a) City may charge owner public facility fees and processing fees for land use approvals, building permits, plan checks and other similar permits and entitlements which are in force and effect on a City-wide basis at the time application is submitted for those permits.
- (b) If state or federal laws are adopted which require cities to impose fees on existing projects and if, consequently, City adopts enabling legislation and imposes fees on existing projects City-wide or area-wide basis, as defined below, these fees may be imposed on the Business Park, which fees shall be consistent with the fees imposed on other properties within the City or area similarly situated.
- (c) If owner requests the creation of a community facilities district for the purpose of financing some or all of the public capital facilities and services necessary for the development of the Business Park, City may adopt a special tax pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (Government Code sections 53311 et seq), sufficient to pay all of the public facilities and services requested by Owner.

5. Specific Criteria Applicable to Development of the Project.

5.1. **Application of New City Laws.** Nothing herein shall prevent City from applying to the Project new City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement. Any action or proceeding of City that has any of the following effects on the property within the Project shall be considered to be in conflict with this Agreement and the Existing City Laws;

- (a) limiting or reducing the density or intensity of all or any part of the Business Park, or otherwise requiring any reduction in the square footage or



total number of buildings and other improvements, including, but not limited to, the parking spaces;

(b) limiting the Owner's ability to transfer permitted uses, intensity of buildings between sites within the Project in a manner that is inconsistent with or more restrictive than limitations included in the Existing City Laws.

(c) limiting the timing of the development of the Business Park or the number of phases of the Business Park in a manner that is inconsistent with or more restrictive than the limitations included in the Master Development Plan.

(d) limiting the location of building sites, grading or other improvements on the Business Park in a manner that is inconsistent with or more restrictive than the limitations included in the Existing City Laws;

5.2. Future Growth Control Ordinances/Policies, Etc. One of the specific purposes of this Agreement is to assure Owner that no growth-control ordinance, measure, policy, regulation or development moratorium of City adopted by the City Council or by vote of the electorate after the Effective Date of this Agreement will apply to the Project, whether enacted by urgency ordinances, interim ordinances, initiatives, referendums or any other change in the laws of the City by any method or name which would alter in any way City's General Plan, Zoning Ordinance, Subdivision Ordinance, Uniform Codes or any other ordinance, enactment, resolution, approval, policy, rule, regulation, decision, or other action of City. There are currently no adopted growth control ordinances, policies or measures which would restrict the ability of Owner to complete the Project.

Therefore, the parties hereto agree that, except as otherwise expressly provided in Section 5.1 herein, or other provision of this Agreement which unambiguously and expressly authorizes City to make such pertinent changes, no ordinance, policy, rule, regulation, decision, or any other City action, or any initiative or referendum voted on by the public, which would be applicable to the Project and would affect in any way the rate of development and construction of the Project or to limit the Project's ability to receive any other City service shall be applicable to any portion of the Project during the term of this Agreement, whether such action is by ordinance, enactment, resolution, approval, policy, rule, regulation, decision or other action of City or by public initiative or referendum.

5.3. Police Power and Taxing Power. City, through the exercise of either its police power or its taxing power, whether by direct City action or initiative or referendum, shall not establish, enact or impose any additional conditions, dedications, fees or other exactions, policies, standards, laws or regulations, which directly relate to the development of the Project except as provided in Section 5.1 herein or other provision of this Agreement which unambiguously and expressly allows City to make such changes. Further, City shall not approve a Mello-Roos assessment, or other type of district to cause bonded indebtedness on any portion of the Project without Owner's prior written approval, which approval may be given or withheld in Owner's sole and



absolute discretion; except that Owner's approval shall not be required if the district includes and benefits the Project. Nothing herein prohibits the Project from being subject to a (a) City-wide bond issue, (b) City-wide special or general tax, or (c) special assessment for the construction or maintenance of a City-wide facility as may be voted on by the electorate or otherwise enacted; provided that such tax, assessment or measure is City-wide in nature, does not discriminate against the land within the Project and does not distinguish between developed and undeveloped parcels.

5.4. **Revision of Ministerial Fees.** This Agreement shall not be construed to limit the authority of City to charge processing fees for land use approvals, public facilities fees and building permits as they relate to plumbing, mechanical, electric or fire code permits, or other similar permits and entitlements which re in force and effect on a city-wide basis at the time those permits are applied for, except to the extent any such processing regulations would be inconsistent with this Agreement

5.5. **Health and Safety.** Notwithstanding Section 5.3, the City may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

- (a). A failure to do so would place the residents of the Business Park or the immediate community, or both, in a condition dangerous to their health or safety, or both.
- (b) The condition or denial is required in order to comply with state or federal law.

6. **Indemnity.**

6.1. **Indemnity.** Owner shall indemnify, defend and hold City, and its elective and appointive boards, commissions, officers, agents, and employees, harmless from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development of multi-family units within the proposed Mixed-Use component of the Project, any Approval with respect thereto, or claims for injury or death to persons, or damage to the Project, as a result of the operations of Owner or its employees, agents, contractors or representatives with respect to the development, operation and maintenance of the Project.

6.2 **Insurance.** Owner shall maintain insurance in order to assure Owner's ability to provide the indemnity described in Section 6.2. The amount and terms of such insurance shall be as follows:

(a) Commercial general liability and property damage insurance covering the risks of bodily injury and/or death, property damage, and personal injury liability, with total limits of not less than One Million Dollars (\$1,000,000.00)

(b) Worker's Compensation Insurance as required by law, together with a contingent employer's liability endorsement in favor of City, covering employees of Owner, employees of any contractor, subcontractor, agent of representative of Owner.



(c) If available, each policy of insurance carried by Owner as required by this Indemnity Section, shall provide that it may not be canceled without at least thirty (30) day prior written notice to City. Upon request of City, Owner shall furnish to City a copy of each policy of insurance, or a certificate thereof, stating that such insurance is in full force and effect and, in the case of the public liability insurance, showing City named as an additional insured. Any insurance required to be maintained by Owner may be maintained under a so-called "blanket policy" insuring other parties and other locations, so long as the amount of insurance required hereunder is not thereby diminished. Owner shall maintain insurance in order to assure Owner's ability to provide the indemnity described in Section 6.1 in the amount and terms of such insurance as provided for in the MX Development Agreement.

7. Periodic Review of Compliance.

7.1. Annual Review. City, through the Planning Commission, shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance with the terms of this Agreement pursuant to Government Code Section 65865.1 and Code Section 16-192.

7.2. Owner's Submission. Within thirty (30) days of Owner's receipt of the written request of the Planning Commission made not more than once each year at least sixty (60) days prior to the anniversary date of this Agreement, Owner shall submit to the Planning Commission a letter setting forth Owner's good faith compliance with the terms and conditions of this Agreement. Such letter shall be accompanied by such documents and other information as may be reasonably necessary and available to Owner to enable the Planning Commission to undertake the review of Owner's good faith compliance with the terms of this Agreement, and shall also state that such letter is submitted to City pursuant to the requirements of Government Code Section 65865.1 and Code Section 16-192.

7.3. Finding of Compliance. The Planning Commission shall review the Owner's submission to ascertain whether it contains sufficient information to determine whether Owner has complied in good faith with the terms of this Agreement. Upon receipt of the submission, the Planning Commission shall conduct a review of the good faith compliance by Owner with the terms of this Agreement. If the Planning Commission finds good faith compliance by Owner with the terms of this Agreement, the Director shall, upon request by Owner, provide to Owner written confirmation of such finding.

7.4. Finding of Noncompliance. If the Planning Commission, on the basis of substantial evidence, finds that Owner has not complied in good faith with the terms of this Agreement, the Planning Commission shall specify in writing to Owner the respects in which Owner has failed to comply and the Planning Commission may recommend that the City Council hold a public hearing and terminate or modify the Agreement. The City Council may (a) establish a reasonable time for Owner to



comply with this Agreement, which time shall not be less than thirty (30) days and shall be reasonably related to the time necessary for Owner to adequately bring its performance into good faith compliance with the terms of this Agreement, or (b) may take action to terminate or modify this Agreement. No action to terminate or modify the Agreement shall be taken without a public hearing before the City Council using the same process as was used for its adoption.

8. Permitted Delays; Supersedure by Subsequent Laws.

8.1. **Permitted Delays.** In addition to any specific provisions of this Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties, restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations), litigation, acts or neglect of the other party, or any other cause beyond the reasonable control of a party. Each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained.

8.2. **Supersedure by Subsequent Laws.** Except as provided in this Agreement with respect to City Laws, if any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Owner's reasonable business judgment, then Owner shall have the right to terminate this Agreement by written notice to City. Owner shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

9. Events of Default, Remedies, Termination; Attorneys' Fees.

9.1. **Events of Default.** Subject to any extensions of time by mutual consent in writing, and subject to the provisions of this Agreement regarding periodic reviews, or permitted delays, any failure by either party to perform any material term or provision of this Agreement shall constitute an Event of Default, (i) if such defaulting party does not cure such failure within thirty (30) days following notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (ii) if such failure is not of a nature which can be cured within such thirty (30) day period, the defaulting party does not within such



thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

9.2. **Remedies.** Upon the occurrence of an Event of Default, the non-defaulting party may: (i) bring any proceeding in the nature of declaratory relief, specific performance, injunctive relief or mandamus, and/or (ii) the non-defaulting party shall have the right to terminate this Agreement pursuant to Government Code Section 65868. The remedies provided herein are exclusive and in no event shall either party be liable to the other for monetary damages for an event of default or any other breach of this Agreement.

9.3. **Waiver, Remedies Cumulative.** Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of an Event of Default shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time, other than any Event of Default and/or period of time specified in such express waiver. The exclusive remedies provided in this Agreement shall be cumulative and not alternative, and invocation of any permitted remedy shall not constitute a waiver or election with respect to any other permitted remedy.

9.4. **Effect of Termination.** If this Agreement is terminated on account of an Event of Default, such termination shall not affect any right or duty emanating from any Exactions already satisfied, City entitlements or Approvals with respect to the Project that have been approved concurrently or subsequently to the approval of this Agreement, but the rights, duties and obligations of the parties hereunder shall otherwise cease as of the date of such termination.

9.5. **Limitations on Actions.** City and Owner hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any person or entity third party beneficiary status. If any action or proceeding is instituted by any third party challenging the validity of any provision of this Agreement, or any action or decision taken or made hereunder, the parties shall cooperate in defending such action or proceeding. Owner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in any such action or other proceeding and for any attorneys' fees and costs awarded to a party to be paid by City.

9.6. **Effect of Court Action.** If any court action or proceeding is brought by any third party to challenge any Approval, this Agreement, or any other permit or



approval required from City or any other governmental entity for development or construction of the Project, or any portion thereof, and without regard to whether or not Owner is a party to or real party in interest in such action or proceeding, then Owner shall have the right, but not the obligation, (a) to defend, at Owner's expense, such action or proceeding on behalf of City and City shall fully cooperate with Owner in such defense; or (b) to terminate this Agreement upon thirty (30) days notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination. Any such action or proceeding shall constitute a permitted delay under the provisions of this Agreement.

9.7. **Estoppel Certificate.** Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The Director shall have the right to execute on behalf of City any certificate requested by Owner hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees acting in good faith.

10. **Mortgagee Protection: Certain Rights of Cure.**

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

10.2. **Mortgagee Not Obligated.** Notwithstanding the provisions of this Agreement, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Project to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement or otherwise under City Laws.

10.3. **Notice of Default to Mortgagee, Right of Mortgagee to Cure.** If City receives notice from a Mortgagee requesting a copy of any notice of default



given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice of an Event of Default or determination of noncompliance given to Owner. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice. If the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Event of Default or noncompliance within ninety (90) days after obtaining possession. If any such Event of Default or noncompliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Event of Default or noncompliance if such Mortgagee commences cure during such ninety (90) day periods, and thereafter diligently pursues completion of such cure to the extent possible.

11. Assignment.

11.1 Owner's rights hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of all or any portion of the Project at any time during the term of this Agreement upon the following terms and conditions:

(a) Release Upon Transfer. Upon the sale, transfer or assignment of Owner's rights and interests under this Section of this Agreement, Owner shall be released from its obligations pursuant to this Agreement with respect to the Project or portion thereof so transferred provided such obligations are expressly assumed by the Transferee prior to the transfer and evidence is provided to the Director showing Transferee can perform Owner's obligations.

(b) Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall constitute covenants that shall run with the land comprising the Project, and the burdens and benefits shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors (by merger, consolidation, or otherwise), assignees, devisees, administrators, representatives, purchasers and lessees.

12. Amendment and Recordation.

12.1. Amendment or Cancellation. Except as provided for herein with respect to City's annual review, this Agreement may be canceled, modified or amended only by mutual consent of the parties in writing, and then only in the manner provided for in government Code Section 65868 and Code Section 16-193. Pursuant to Code Section 16-193.C., any amendment to this Agreement which does not relate to the Term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservation and dedication of land, shall not require a noticed public hearing before the



parties may make such amendment. Any fees paid or land dedicated pursuant to this Agreement prior to the date of cancellation shall be retained by City.

12.2. **Recordation.** Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation with any costs of recordation to be paid by Owner. Failure to record shall not affect the validity of any amendment, termination or cancellation.

13. Notices.

13.1. **Procedure.** Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending the same by facsimile transmission or registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the party's mailing address. The respective mailing addresses and facsimile numbers of the parties are, until changed as hereinafter provided, the following:

City:	City of Stockton 425 North El Dorado Stockton, California 95202 Attention: City Manager Facsimile No.: (209) 937-7149
with a copy to:	City Attorney, City of Stockton 425 North El Dorado Stockton, California 95202 Facsimile No.: (209) 937-8898
Owner:	A.G. Spanos Construction, Inc. 1341 West Robinhood Drive Suite B-5 Stockton, California 95207 Attention: Jerry Murphy Facsimile No. (209) 473-3703
with a copy to:	John Briscoe Washburn, Briscoe & McCarthy 55 Francisco Street Suit 600 San Francisco, California 94133 Facsimile No.: (415) 421-5044

Either party may change its mailing address and/or facsimile number at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be



deemed given, received, made or communicated on the date personal delivery is effected or, if mailed upon the expiration of five (5) days after the date of mailing, or, if sent by facsimile transmission, on the date of receipt as shown on written transmission verification.

14. Miscellaneous.

14.1. Negation of Partnership. The parties specifically acknowledge that 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. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the business of Owner, the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

14.2. Consent(s). Unless otherwise herein provided, whenever consent or satisfaction (collectively referred to in this Section 14.2 as a "**consent**") is required of a party pursuant to this Agreement, such consent shall not be unreasonably withheld. Consent shall be deemed given if the party from whom the consent is sought neither approves or disapproves of the request within thirty (30) days, or such other applicable time period specified in this Agreement, after receipt of the written request for consent. If a party shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. Consent by a party to or of any act or request by the other party shall not be deemed to waive or render unnecessary consent to or of any similar or subsequent acts or requests.

14.3. Project Approvals Independent. All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by City with respect to the Project, constitute independent actions and approvals by City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals. In such cases, such Approvals will remain in effect pursuant to their own terms, provisions and conditions.

14.4. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever. Owner shall have the right to prevent or prohibit the use of the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose inimical to the operation of a private, integrated development project as contemplated by this Agreement except for those areas designated as public easements.

14.5. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other



person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.6. **Exhibits.** The Exhibits listed in the Table of Contents and referred to herein are deemed incorporated into this Agreement in their entirety.

14.7. **Entire Agreement.** This written Agreement and the Exhibits contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

14.8. **Construction of Agreement.** The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purpose of the parties. The captions preceding the text of each Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities. This Agreement has been reviewed and revised by legal counsel for both Owner and City, and any presumption or rule that ambiguities shall be construed against the drafting party shall not apply to the interpretation or enforcement of this Agreement.

14.9. **Further Assurances; Covenant to Sign Documents.** Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

14.10. **Governing Law.** This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of California.

14.11. **Time.** Time is of the essence of this Agreement and of each and every term and condition hereof.

14.12. **Dispute Costs and Fees.** In any legal action or proceeding brought to enforce or interpret any provision of this Agreement, or otherwise arising from or related to this Agreement, the prevailing party shall be entitled to an award of its attorneys', investigators', expert witness' and consultants' fees and costs incurred in relation to that action or proceeding, in addition to any other relief awarded.



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

CITY OF STOCKTON, a municipal corporation of the State of California

By: [Signature]
City Manager

Attest: [Signature]
City Clerk

Approved as to Form By:
[Signature]
Deputy City Attorney

Owner:
A.G. SPANOS CONSTRUCTION, INC.

By William E. Spanos

Its Vice President

By _____

Its _____



2002-041899
03/11/2002 02:49P
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EXHIBIT "A"

Tract No. 3103
Spanos Park West Unit No. 1
according to map recorded June 14, 2001, in Book 36 of Maps and Plats at Page 32



2002-041899
03/11/2002 02:49P
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EXHIBIT "B"

City Council Findings and Determinations

A. The provisions of the Development Agreement are consistent with the General and specific plans for this area; and

B. The proposed development complies with the requirements of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.



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21 of 23

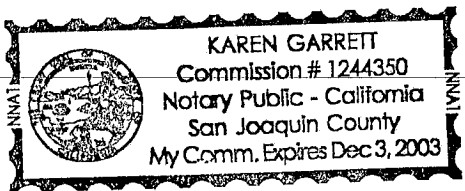
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Joaquin } ss.

On Jan. 29, 2002, before me, Karen Garrett, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared William E. Barbour
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.
Karen Garrett
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

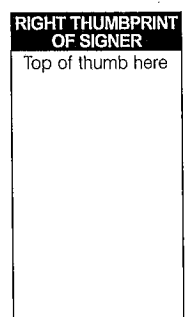
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

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

Signer Is Representing: _____



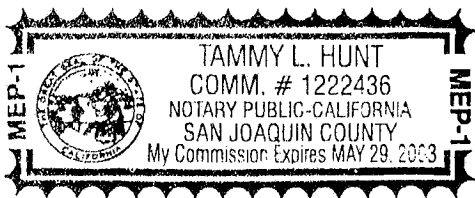
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA
County of SAN JOAQUIN

On February 5, 2002 before me, TAMMY L. HUNT, NOTARY PUBLIC
DATE NAME, TITLE OF OFFICER - E.G. "JANE DOE, NOTARY PUBLIC"

personally appeared MARK LEWIS, ESQ.
NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Tammy L. Hunt
SIGNATURE OF NOTARY

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)
CITY MANAGER
TITLE(S)
- PARTNER(S) LIMITED
 GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
CITY OF STOCKTON

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

TITLE OR TYPE OF DOCUMENT SPANOS PARK WEST DEVELOPMENT AGREEMENT

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

NUMBER OF PAGES 21 DATE OF DOCUMENT January 29, 2002

SIGNER(S) OTHER THAN NAMED ABOVE As attached



2002-041899
03/11/2002 02:49P
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CITY COUNCIL/REDEVELOPMENT AGENCY

AGENDA ITEM 9.03

December 9, 2008

TO: Mayor and City Council

FROM: Michael M. Niblock, Secretary
City Planning Commission

SUBJECT: **PUBLIC HEARING: AMENDMENT TO SPANOS PARK WEST DENSITY
TRANSFER DEVELOPMENT AGREEMENT**

RECOMMENDATION

It is recommended that the City Council adopt one resolution and one ordinance, as follows:

1. Resolution approving the Addendum (IS9-08) to Supplemental Environmental Impact Report (SEIR3-87/IS13-00); and
2. Ordinance approving the amendment to the Density Transfer Development Agreement allowing A.G. Spanos Construction, Inc. to meet its prior obligation to provide multi-family residential units in Spanos Park West by providing multi-family residential units at non-Spanos Park West planned developments and the Greater Downtown Area with an option to pay an in-lieu per unit fee (DA6-05).

Findings for each of the above-recommended actions have been incorporated into the resolution and ordinance attached to this newsletter.

Summary

The applicant is requesting approval of an amendment to the original Spanos Park West Density Transfer Agreement (DA3-01) as (DA6-05). This action will permit the applicant to fulfill its obligation to construct 627 high-density residential units within Spanos Park West at non-Spanos Park West locations or pay an in-lieu fee per unit.

DISCUSSION

Background

At its regular meeting of November 13, 2008, the City Planning Commission considered and recommended approval of the requests of A. G. Spanos Construction, Inc., for an Addendum (Initial Study IS9-08) to the Supplemental Environmental Impact Report (SEIR3-87/IS13-00) and approval of the First Amendment (DA6-05) to the Spanos Park West Project Density Transfer Development Agreement (DA3-01).

The A.G. Spanos Business Park Master Development Plan, more commonly known as the Spanos Park West Master Development Plan, was approved by the City Council on

PUBLIC HEARING: AMENDMENT TO SPANOS PARK WEST DENSITY TRANSFER DEVELOPMENT AGREEMENT

(Page 2)

January 29, 2002. The City and Applicant entered into the original Spanos Park West Density Transfer Development Agreement on that same date. The agreement was adopted by the City on February 28, 2002, pursuant to City of Stockton Ordinance No. 006-02 (DA3-01).

At the time of the agreement, the City's General Plan Housing Element reserved a minimum of 300 acres of vacant land for high-density residential use. When the property owner received approval to change the Spanos Park West project High Density Residential General Plan designation and RH, Residential High Density zoning designation to other designations, the developer and the City entered into a Development Agreement committing the owners, developers and successors-in-interest (ODS) to construct at least 935 multi-family dwelling units to conform to the City's General Plan Housing Element. Of the 935 required units, the applicant has constructed or caused to be constructed 308 units, leaving a balance of 627 units to be constructed.

Present Situation

Environmental Clearance

This project is cleared for CEQA purposes through an Addendum (IS9-08) to Supplemental EIR SEIR3-87/IS13-00 which is part of this requested project approval. The Addendum addresses the environmental impacts of transferring multi-family residential units outside of the Spanos Park West Master Development Plan area. The Planning Commission independently reviewed, considered and approved the Addendum to the SEIR as to its adequacy and compliance with the State and City CEQA Guidelines prior to recommending that the City Council approve the related discretionary authorizations. The Addendum is attached to this staff report as part of the Planning Commission Staff Report (Exhibit 1 – PC Exhibit 2).

Density Transfer Development Development Agreement

The amended Density Transfer Development Agreement (DA6-05) allows the applicant to fulfill the obligation to construct or cause to be constructed a total of 627 multi-family units by developing at alternative sites owned and entitled by the applicant. These include 392 units at the Crystal Bay residential project and 96 units on the Atlas Tract residential project (referred to as The Preserve). The applicant will also be required to develop an additional 157 multi-family market rate residential units in the Greater Downtown Stockton (Downtown) although the precise location(s) have not been defined. The applicant may also fulfill the obligation to construct the required 627 multi-family residential units by paying a fee of two thousand dollars (\$2000.00) per unit to

PUBLIC HEARING: AMENDMENT TO SPANOS PARK WEST DENSITY TRANSFER DEVELOPMENT AGREEMENT

(Page 3)

one or more non-profit organizations associated with multi-family residential uses (Exhibit 1 – PC Exhibit 4).

PUBLIC HEARING DISCUSSION

Following the staff presentation at the Planning Commission's regular meeting on November 13, 2008, the applicant's attorney presented testimony in support of the proposed project. He indicated that the existing contractual requirement to provide multi-family residential units could possibly be legally challenged since the City's General Plan Housing Element no longer requires specific numeric reservation of high-density residentially zoned acreage and felt the amendment to the agreement was a good compromise. No other persons spoke in support of or opposition to the proposed project.

PLANNING COMMISSION ACTION

Following the public hearing and their deliberation, the Planning Commission voted (6 to 0, Kontos recused) to recommend that the City Council approve the following actions, based on the findings and subject to the proposed conditions as contained in the attached Planning Commission staff report (Exhibit 1 – PC Exhibits 2 and 4 respectively):

- 1) The Addendum (IS9-08) to Supplemental Environmental Impact Report (SEIR3-87/IS13-00); and
- 2) The First Amendment to the Spanos Park West Density Transfer Development Agreement request (DA6-05).

FINANCIAL SUMMARY

There is no financial impact to the City's departments from this action.

PUBLIC NOTIFICATION

Notice in the local newspaper at least one time, 10 days prior to the public hearing and notice to owners of record as shown on the last equalized tax roll and addresses within 300 feet of the site at least 10 days prior to the public hearing [Stockton Municipal Code Section 16-420].

**PUBLIC HEARING: AMENDMENT TO SPANOS PARK WEST DENSITY TRANSFER
DEVELOPMENT AGREEMENT**

(Page 4)

VOTES REQUIRED


Four votes of the City Council are necessary to approve the noted requests.

Respectfully submitted,

APPROVED BY



MICHAEL M. NIBLOCK, SECRETARY
CITY PLANNING COMMISSION



J. GORDON PALMER, JR.
CITY MANAGER

MMN:MM:sah

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Resolution No. _____

STOCKTON CITY COUNCIL

**RESOLUTION APPROVING THE ADDENDUM/INITIAL STUDY (IS9-08) TO A
PREVIOUSLY-CERTIFIED FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT
REPORT (SEIR3-87/IS13-00) FOR THE SPANOS PARK WEST PROJECT**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS
FOLLOWS:

That the City Council of the City of Stockton, after careful review and consideration of all comments received, and after using its independent judgment, hereby approves the Addendum/Initial Study (IS9-08) to a previously-certified Final Supplemental Environmental Impact Report (FSEIR3-87/IS13-00) for the Amendment to the Density Transfer Development Agreement (DA6-05), as set forth in the report of the Planning Commission filed with the City Council on December 9, 2008, based upon the finding that the project will not have a significant effect on the environment.

PASSED, APPROVED, AND ADOPTED _____.

EDWARD J. CHAVEZ
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

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ORDINANCE NO. _____

AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE DENSITY TRANSFER DEVELOPMENT AGREEMENT FOR SPANOS PARK WEST BOUNDED BY EIGHT MILE ROAD ON THE NORTH, REGATTA LANE THE WEST, BEAR CREEK DISAPPOINTMENT SLOUGH ON THE SOUTH, AND INTERSTATE 5 ON THE EAST (A.G. SPANOS CONSTRUCTION, INC., DA6-05)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION 1. Findings.

Pursuant to Stockton Municipal Code section 16-525.080, the City Council of the City of Stockton hereby finds the Amendment to the Density Transfer Development Agreement:

- A. is in the best interests of the City;
- B. complies with the Development Code and other applicable ordinances and regulations;
- C. complies with the general land uses, objectives, policies, and programs of the General Plan and Spanos Park West Master Development Plan (MDP1-00);
- D. does not endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare;
- E. contains the mandatory elements as required by Section 16-525.060(B) of the Stockton Municipal Code (SMC);
- F. complies with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines; and
- G. the environmental consequences of this proposed amendment to the Development Agreement have been examined with IS9-08, which was considered and approved prior to approval of this amendment to the Density Transfer Development Agreement.

City Atty:

Review _____

Date December, 2008

SECTION 2. Development Agreement.

Pursuant to Stockton Municipal Code Section 16-525.070, the City Council of the City of Stockton has conducted a public hearing on December 9, 2008, and hereby approves the First Amendment to the Spanos Park West Density Transfer Development Agreement (DA6-05) based on the above findings.

SECTION 3. Effective Date.

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: _____

EFFECTIVE: _____

EDWARD J. CHAVEZ
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

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EXHIBIT 1

STAFF REPORT
P. C. Agenda
November 13, 2008

STAFF REPORT

Items E-4 (a) and (b): PUBLIC HEARING – Addendum to Subsequent Environmental Impact Report and Minor Amendment to Density Transfer Development Agreement (DA3-01) for the A.G. Spanos Business Park Master Development Plan (MDP1-00) also known as the Spanos Park West Project. Case Nos. SEIR3-87/IS9-08, DA6-05

Data: Nature of Review: A.G. Spanos Construction, Inc., is proposing a Minor Amendment to the Spanos Park West Master Development Plan Density Transfer Development Agreement (DA3-01) for the Spanos Park West Master Development Plan area (MDP1-00) located west of I-5, south of Eight Mile Road and North of Bear Creek and generally east of Regatta Lane. The Minor Amendment to the Density Transfer Development Agreement would allow the applicant to shift its obligation to construct 627 high-density residential units originally planned for Spanos Park West to non-Spanos Park West locations.

The Spanos Park West Master Development Plan (MDP) area is bounded to the:

- north across Eight Mile Road by agricultural uses zoned County AG-40 (General Agriculture, minimum 40 acres);
- west by residential uses zoned MX;
- south by Bear Creek; and
- east by Interstate 5.

General Plan: The General Plan designates the Spanos Park West MDP area for Mixed Use and Residential uses. The proposed request is consistent with applicable multi-family land use goals and policies as contained in the City's 2035 General Plan Policy Document. Further, this request specifically responds to the City's elimination from the General Plan Housing Element the requirement for reservation of 300-acres of vacant land for high-density residential use that influenced the original reservation of multi-family units within Spanos Park West.

Environmental Clearance: This project is cleared for CEQA purposes through an Addendum to Supplemental EIR SEIR3-87/IS9-08 which is part of this requested project approval. Staff has reviewed and is recommending approval of the Addendum to SEIR3-87/IS9-08. The Addendum addresses the environmental impacts of transferring multi-family residential units outside of the Spanos Park West Master Development Plan area. The Planning Commission is being asked to independently review, consider and approve the Addendum to the SEIR as to its adequacy and compliance with the State and City CEQA Guidelines prior to approving or recommending that the City Council approve any related discretionary authorizations as applicable. The Addendum is attached to this staff report (Exhibit 2).

Discussion: The A.G. Spanos Business Park Master Development Plan, more commonly known as the Spanos Park West Master Development Plan was approved by the City Council on January 29, 2002. The City and Applicant entered into the original Spanos Park West Density Transfer Development Agreement on that same date. The agreement was adopted by the City on February 28, 2002, pursuant to City of Stockton Ordinance No. 006-02 (DA3-01).

At the time of the agreement, the City's General Plan Housing Element reserved a minimum of three hundred (300) acres of vacant land for high-density residential use. On September 14, 2004, the Stockton City Council amended the City's General Plan Housing Element. Among other things, the City eliminated the requirement that there be reserved a minimum of three hundred (300) acres of vacant land for high-density residential use. The need for the original Development Agreement committing the owners, developers and successors-in-interest (ODS) to construct at least 935 multi-family dwelling units arose from the need to conform to the City's General Plan Housing Element in force when the property owner received approval to change the Spanos Park West project High Density Residential General Plan designation and RH, Residential High Density to other General Plan and zoning designations (GPA3-00, GPA8-00, Z-4-00, Z-10-00). Of the 935 required units, the applicant has constructed or caused to be constructed 308 units, leaving a balance of 627 units to be constructed.

In response to the insufficient vacant land within Spanos Park West and the remaining need for the applicant to construct an additional 627 multi-family residential units, the applicant has prepared an amendment to the original Spanos Park West Density Transfer Agreement (DA3-01) as (DA6-05). This action will permit the applicant to fulfill its obligation to construct the additional 627 high-density residential units at non-Spanos Park West locations.

Specifically, the Density Transfer Development Agreement allows the applicant to fulfill the obligation by developing at alternative sites owned and entitled by the

applicant. These include a total of 392 units at the Crystal Bay residential project and 96 units on the Atlas Tract residential project (referred to as The Preserve). The applicant will also be required to develop an additional 157 multi-family market rate residential units in the Greater Downtown Stockton (Downtown) although the precise location(s) have not been defined. The applicant may also fulfill the obligation to construct the required 157 multi-family residential units within the Greater Downtown Stockton by paying a fee of two thousand dollars (\$2000.00) per unit to one or more non-profit organizations associated with multi-family residential uses (Exhibits 3 and 4).

Table 1 – Density Transfer Summary

Original Density Transfer DA	Multi-family units
Spanos Park West (required)	935
Spanos Park West (constructed to date)	308
Spanos Park West (outstanding)	627
Proposed Density Transfer DA	
Atlas Tract/The Preserve	96
Crystal Bay	392
Greater Downtown Stockton or per unit fee	157
Total Proposed Units	645 (per amended DA)

The multi-family units being developed as part of The Preserve and Crystal Bay Projects will be constructed in accordance with each project's individual Environmental Impact Reports (EIR11-05 and EIR 6-05 respectively) and Planned Development permits. The 157 multi-family units to be developed in the Downtown area will ultimately be reviewed under a project-level environmental document. The previously approved SEIR and the Addendum therefore analyzes the Density Transfer Development Agreement on a program-level of review.

Requested Approvals: In order to approve a Minor Amendment to the Spanos Park West MDP Density Transfer Development Agreement to allow for redistribution of remaining required multi-family units to non-Spanos Park West areas, the Planning Commission is being requested to approve the following discretionary applications:

1. The Addendum to the Supplemental Environmental Impact Report (SEIR3-87/IS9-08);

2. Minor Amendment to Density Transfer Development Agreement (DA3-01) to allow applicant to construct or cause to be constructed 627 outstanding multi-family dwelling units at non-Spanos Park West locations (DA6-05).

Recommendation for Addendum to SEIR3-87/IS9-08: It is recommended that the Planning Commission recommend that the City Council approve the Addendum based on the following findings:

1. The City of Stockton has reviewed and considered the Addendum/Initial Study (IS9-08) to a previously-certified Supplemental Final Environmental Impact Report (SEIR3-87) for the Spanos Park West Master Development Plan project, which was prepared to update the environmental documentation for this project.
2. The City of Stockton, as the CEQA Lead Agency, has determined that the previously-certified Supplemental Final EIR as amended by the Addendum/Initial Study (IS9-08) for the Spanos Park West Master Development Plan project, was completed in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines and the City of Stockton Guidelines for the Implementation of CEQA.
3. Based on the review of the Addendum/Initial Study and consideration of all written and oral comments received, it has been determined that, with the exception of any unavoidable significant impacts and subject to any modifications and mitigation measures identified in the Supplemental Environmental Impact Report (SEIR3-87) and Addendum (IS9-08), the project will not have a significant effect on the environment.
4. Pursuant to Sections 15093, 15094, and 15164 State CEQA Guidelines, all applicable approvals are based on, and subject to, the adopted findings, mitigation measures and mitigation monitoring/reporting provisions, as specified in the Finding and Mitigation Monitoring/Reporting Program for the Spanos Park West Master Development Plan, as amended.

Recommendation for DA6-05: Approval based on the following findings:

1. The City of Stockton has reviewed the Addendum to the Supplemental Final Environmental Impact Report (SEIR3-87/IS9-08) for the proposed project and has certified the Addendum is complete and in compliance with the California Environmental Quality Act (CEQA) and that the final decision making body for this and/or any related discretionary approval for the project has considered the information contained in the Addendum

and previously certified Draft and Final Supplemental EIR prior to approving the project.

2. Approval of DA6-05 is in the best interests of the City.
3. DA6-05 is in compliance with the Development Code and other applicable ordinances and regulations.
4. DA6-05 is consistent with the general land uses, objectives, policies, and programs of the General Plan.
5. The approval of DA6-05 is not expected to endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare.

November 4, 2008

Note: Staff reports are prepared well in advance of the Planning Commission consideration of the proposal and reflect the staff's view based on the best available information at the time the report was formulated. Evidence submitted during the course of the public hearing may require a re-evaluation of the staff's position.

Staff report prepared by Senior Planner Mark Martin.

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ADDENDUM TO
SUPPLEMENTAL ENVIRONMENTAL
IMPACT REPORT

SPANOS PARK WEST PROJECT

STOCKTON, CALIFORNIA

SEIR3-87/IS9-08

Submitted to:

City of Stockton
Community Development Department
345 North El Dorado Street
Stockton, California 95202
(209) 937-8266

Prepared by:

LSA Associates, Inc.
4200 Rocklin Road, Suite 11B
Rocklin, California 95677
(916) 630-4600

LSA Project No. AGS437

LSA

October 2008

ADDENDUM TO SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT ON THE SPANOS PARK WEST PROJECT

BACKGROUND

In 1988, Michael Paoli and Associates prepared an EIR on the Spanos Park project, which included both Spanos Park East and Spanos Park West development areas. Project entitlements were obtained and tentative maps were approved. Development occurred on the Spanos Park East site and mass grading and infrastructure development of the entire project site was initiated in the spring of 2000. A.G. Spanos Companies (applicant) pursued additional land use changes for portions of Spanos Park West in response to changing market conditions in Stockton. In January 2002, the Stockton City Council certified the Final SEIR 3-87/IS 13-00 for the 557-acre Spanos Park West development project.

The Spanos Park West project site was divided into the "Residential Component" (west of the power lines) and the "M-X Component" (hereinafter "Spanos Business Park") (between the power lines and Interstate 5). Remaining portions of the project site (both within the Residential Component and the Spanos Business Park Component) were subject to proposed land use changes. For the Residential Component, the changes were approved in conjunction with the General Plan Amendment (GPA 3-00 and GPA 8-00) and Zone Change (Z-4-00 and Z-10-00). Land use changes for the 219-acre Spanos Business Park Component were subject to additional review and were approved as required by the Master Development Plan. The Master Development Plan proposed a broad mix of uses, including business park/office, commercial, retail, hotel and multi-family residential.

The goals and objectives of the approved Master Development Plan were to provide a mixed use development that included corporate headquarters, office space, village and campus office uses, a quality hotel, retail commercial, multifamily residential, and open space area designed to meet the needs for housing, employment opportunities, services and area for pursuit of leisure time activities. The approved Master Development Plan outlined various land use options, proposed development concepts, established development guidelines and design criteria. At the time, it was the applicant's intent to develop the 219-acre parcel in a manner consistent with the approved Master Development Plan as guided by the approved Density Transfer Development Agreement.

As the applicant began to develop the site, the Spanos Business Park Component evolved into the mix of land uses consisting of commercial/retail and 308 units of high density residential. All uses developed to date on the project site are consistent with the adopted Master Development Plan. Under Density Transfer Development Agreement DA3-01, the applicant originally agreed to provide a minimum of 935 multi-family units within the boundaries of Spanos Park West. To date, a total of 308 multi-family units have been constructed all within the Spanos Business Park component. The entire Residential Component is now built out and only 4.3± acres of vacant land remains thus eliminating any opportunity to construct multi-family units on those lands. Within the Spanos Business Park component, retail/commercial office uses have been constructed on the majority of the property, and all remaining vacant lands have previous retail/commercial commitments including

parcel 12, wherein the City of Stockton has granted entitlement for a Wal-Mart Supercenter retail store, although the entitlement has been litigated and the project is on hold. This parcel is no longer owned by the applicant and title has been acquired by Walmart. Therefore, for the Spanos Business Park component, opportunities to construct multi-family units have been impeded. In addition, the City has redefined development priority for the M-X component, placing an emphasis on developing a power center as a priority for the M-X component rather than developing multi-family residential. With this emphasis on commercial, transferring the remaining unfulfilled multi-family residential uses to an alternative location was required. In total, insufficient vacant land within Spanos Park West exists to accommodate the additionally required 627 multi-family residential units.

PROJECT MODIFICATIONS

In response to the insufficient vacant land within Spanos Park West and the corresponding need for the applicant to construct an additional 627 multi-family residential units, the applicant has prepared an amendment to the Spanos Park West Density Transfer Development Agreement (DA3-01). This action will permit the applicant to fulfill its obligation to construct the additional 627 high-density residential units at non-Spanos Park West locations. Specifically, the Density Transfer Development Agreement allows the applicant to fulfill the obligation by developing at alternative sites owned and entitled by the applicant. These include a total of 392 units at the Crystal Bay residential project and 96 units on the Atlas Tract residential project (referred to as The Preserve). The applicant will also be required to develop an additional 157 multi-family market rate residential units in the Greater Downtown Stockton (Downtown) area although the precise location(s) have not been defined. The applicant may also fulfill the obligation to construct the required multi-family residential units by paying a fee of two thousand dollars (\$2000.00) per unit to one or more non-profit charitable organizations associated with multi-family residential uses.

It should be noted that the proposed amendment to the Density Transfer Development Agreement advances the goals of the Settlement Agreement signed on September 9, 2008. The Settlement Agreement was entered into by and between the City of Stockton, the Attorney General, and the Sierra Club concerning the recently adopted 2035 General Plan. The Settlement Agreement states specifically:

“To ensure that the City’s development does not undermine the policies that support infill and downtown development, within 12 months of the Effective Date, the City staff shall submit for City Council adoption policies or programs in its General Plan that:

- a. Require at least 4400 units of Stockton’s new housing growth to be located in Greater Downtown Stockton...”

By providing 157 high-density residential units in the Downtown area, the City and applicant as parties to the Density Transfer Development Agreement will advance the goals of the Settlement Agreement.

The City has proposed the use of an Addendum to address the action associated with the Density Transfer Development Agreement. CEQA Guidelines Section 15164 outline the use of an Addendum as it pertains to an EIR as follows:

15164. Addendum to an EIR.

- a. The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.
- b. An Addendum need not be circulated for public review but can be included in or attached to the final EIR.
- c. The decision-making body shall consider the addendum with the final EIR prior to making a decision on the project.

The amendment to the Spanos Park West Density Transfer Development Agreement will have a minimal affect on environmental sections within the Supplemental Environmental Impact Report (SEIR). The multi-family units being developed as part of The Preserve and Crystal Bay Projects will be constructed in accordance with each project's individual Environmental Impact Reports (EIR File #11-05 and 6-05 respectively). The 157 multi-family units to be developed in the Downtown area will ultimately be reviewed under a project-level environmental document. The previously approved SEIR and this Addendum will therefore analyze the Density Transfer Development Agreement on a program-level of review. Since proposed multi-family units in both Crystal Bay and The Preserve have been previously evaluated for project-level impacts, the focus of this Addendum is to analyze at a program-level of review the 157 multi-family units proposed in the Downtown area due to the unknown location for development. The following describes the differences in environmental impacts regarding the amendment:

Geophysical Resources:

Geophysical resources present in Spanos Park West (soils, seismic activity, and geologic conditions) will likely be similar to the resources in the Downtown area. Accordingly, mitigation measures set forth in the SEIR will likely reduce potential geophysical impacts to a less-than-significant level.

Air Quality:

The Spanos Park West SEIR found that despite mitigation measures, construction-related impacts from the project would result in a significant, adverse impact on air quality. Therefore, it is reasonable to assume that a similar impact will occur during construction of high-density residential units in the Downtown area. Other impacts regarding air quality were reduced to a less-than-significant level with the implementation of mitigation measures. Execution of these same measures should reduce impacts for the proposed action as well.

Although global climate change was not a "CEQA-related" issue when Final SEIR 3-87/IS 13-00 was certified, the effects from land use and development decisions can cause increases in greenhouse gases and cumulatively impact global climate. For this Density Transfer Development Agreement, the multi-family unit components on the Crystal Bay and The Preserve development have been addressed in project specific EIRs. The remaining multi-family units located Downtown will be evaluated in environmental documents on a project-level basis for global climate change impacts as specific development is proposed.

Water Resources:

Stormwater impacts and water quality impacts associated with the original Spanos Park West project were mitigated to a less-than-significant level. It is anticipated that water resource impacts regarding the development of units in the Downtown area will also be mitigable. Further, it is likely that these impacts will be lessened by the fact that the Downtown area is largely urbanized and supported by existing storm drainage systems. Development of the 157 multi-family units in the Downtown area is not expected to generate a significant increase in runoff and is not expected to exceed the drainage capacity of these systems.

Biological Resources:

The original Spanos Park West project was developed in an area previously used for agricultural production and is considered a more biologically sensitive area. The Downtown area is well urbanized and has limited biological sensitivity. Therefore construction of the multi-family units in the Downtown area will be less susceptible to biological impacts. It is therefore likely that any potential impacts are insignificant or can be mitigated to a less-than-significant level.

Noise:

Like the original Spanos Park West project, short-term construction related noise impacts regarding the amendment are capable of being reduced with mitigation. Traffic noise related impacts may be greater than for the initial project due to the existing urban environment of the Downtown area. It is expected, however, that standard building materials and construction practices will reduce these potential impacts to a less-than-significant level.

Land Use:

Land use impacts are not expected with the development of 157 multi-family units in the Downtown area. The City's General Plan and Settlement Agreement facilitate development of multi-family units in the Downtown area to reduce overall environmental impacts. It is expected that development of the 157 multi-family units would occur on lands with the appropriate land use designations and zoning classifications. It should also be noted that land use impacts were, however, mitigated to less-than-significant levels in the previous SEIR and it is probable that land use impacts regarding the amended Density Transfer Development Agreement would likewise be mitigable.

Transportation and Circulation:

Existing traffic and circulation systems in Spanos Park West and the Downtown area are distinctly different and therefore impacts would be accordingly dissimilar. A project-level analysis of traffic conditions relating to the amendment will be required before development can occur. However, developing 157 multi-family units in the Downtown area is expected to reduce vehicle trips and vehicle miles travelled. Ultimately, the traffic conditions should improve by balancing residential and commercial/employment uses consistent with the Settlement Agreement.

Housing/Population/Socioeconomics:

Housing, population, and socioeconomic impacts in the previous SEIR were found to be less-than-significant due to the mixed use community proposed, where residents could live, work, and enjoy recreational opportunities in the same setting. The Downtown area offers similar opportunities for employment and recreation. Therefore, impacts regarding housing, population, and socioeconomics as a result of developing 157 multi-family units in the Downtown area will likely be less-than-significant.

Public Services:

The Spanos Park West SEIR found impacts associated with parkland and community centers to be significant and unavoidable despite the application of mitigation measures. It is uncertain whether the applicant will have the opportunity to dedicate sufficient parkland or community centers as part of the proposed project to satisfy General Plan requirements. Therefore, although public facility fees will be paid as required, the findings previously outlined in SEIR 3-87/IS 13-00 remain unchanged for parkland and community centers.

Utilities and Service Systems:

Water supply impacts were found to be significant and adverse in the Spanos Park West SEIR. However, since the certification of the SEIR, Phase 1 of the Delta Water Supply Project has assured additional sources of water for the City of Stockton. It is likely, with the addition of mitigation measures, that water supply impacts will be less-than-significant for the proposed Density Transfer Development Agreement. Water supply will need to be analyzed at a project level for the development of the proposed 157 multi-family units.

Aesthetics/Light and Glare:

Implementation of mitigation measures reduced visual impacts to less-than-significant levels for the previous Spanos Park West project. It is expected that similar measures will reduce potentially significant aesthetic impacts in conjunction with construction 157 multi-family units in the Downtown area.

Cultural Resources:

The original Spanos Park West project was constructed in an undeveloped area and therefore had a greater potential for cultural resources to be present. Known sensitive resources were present and required specific mitigation to avoid impacting the resources. The Downtown area is urban in nature and therefore less susceptible to cultural resource impacts, although the potential for impacting existing historical buildings is increased. However, it is likely that any potential impacts would be dependent on the actual site location. Both historic and/or pre-historic resources can generally be mitigated to a less-than-significant level.

ADDENDUM TO SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT

In light of the previous Supplemental Environmental Impact Report (SEIR 3-87/IS 13-00) addressing construction of multi-family units for the proposed Spanos Park West Project, the discussion of this amendment to the Density Transfer Development Agreement will not significantly change the impact analysis previously evaluated.