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Exhibit "A"
To Ord. 92-53
43 pages plus 2 pgs. legal
description

City Clerk Original Document

DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF ESCONDIDO
AND
PRIMA DEVELOPMENT COMPANY

Submitted by:

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OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
ANNETTE EVANS, COUNTY RECORDER
FEES: 0.00

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OFFICIAL RECORDS, ANNETTE J. EVANS, SAN DIEGO COUNTY RECORDER'S OFFICE

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DEVELOPMENT AGREEMENT

(PALOS VISTA SPECIFIC PLAN, NEIGHBORHOOD J)

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into between the CITY OF ESCONDIDO, a municipal corporation ("City"), and PRIMA DEVELOPMENT COMPANY ("Owner").

1. RECITALS. The Agreement is entered into with reference to the following facts:

1.1 Code Authorization. This Agreement is authorized by and in accordance with Government Code Sections 65864 through 65869.5, Chapter 93 of City's Zoning Code, and related City policies. These laws and policies allow the City to enter into binding development agreements with persons or entities having legal or equitable interest in real property for the purpose of establishing certainty in the development process for both the City and property owner.

1.2 Interest of Owner. Owner is the legal and/or equitable owner of the real property located in the City and described on Exhibit "A" (the "Property"). Owner intends to develop the Property pursuant to the Specific Plan 88-127-SP, Grading Exemption 88-127-GE, and Vesting Tentative Map No. 683R (all of which are hereinafter referred to as Development Plans).

1.3 Intent of Parties. The development of the Property as permitted by the Development Plans is intended to implement the land uses permitted pursuant to Section 6 below and to provide public infrastructure as set forth in the Development Plans (the

"Public Improvements"), all in promotion of the health, safety, and general welfare of the City.

1.4 The Development Plans.

1.4.1 Goals. The Development Plans were assessed in conformance with the California Environmental Quality Act as documented by a Final Environmental Impact Report and an addendum thereto, City Log Nos. ER-85-29, ER-85-29 Add for TM mod., and Final EIR No. 85-79. The overall goals of the Development Plans are to meet the standards set forth in the City's Planned Development Ordinance and to implement the City's General Plan in controlled and sensitive manner while providing public facilities concurrent with the need therefor.

1.4.2. Achievement of General and Development Plans Goals. The achievement of the goals of the Development Plans and the City General Plan require the cooperation of Owner and City. As a result of the development of the Property, the City will receive needed residential housing, jobs, sales tax, significant increases to the real property tax base, the preservation of scenic viewsheds, and substantial improvements to public infrastructure.

1.5 Certainty of Process. The phasing, timing, and development of the Public Improvements necessitate a significant commitment of resources, planning, and effort by Owner, thus requiring certainty in the development process. In return for Owner's participation and commitment to the significant contribution of private resources, including economic, for public

purposes, the City wishes to commit to certainty in the development process for the Property.

1.6 Planning Commission - City Council Hearings. On 11/10/92, the Planning Commission of City, after giving notice pursuant to Government Code Sections 65867, held a public hearing to consider Owner's application for this Agreement. On 12/9/92, the City Council, after providing public notice as required by law, held a public hearing to consider Owner's application for the Agreement.

1.7 City Council Findings. The City Council has found that this Agreement is consistent with the General Plan, the Development Plans, as well as all other applicable plans, policies and regulations of the City.

1.8 City Ordinance. On 12/16/92, the City Council adopted Ordinance No. 92-53 approving this Agreement (the "Adopting Ordinance"). The Adopting Ordinance became effective on 1/15/93 (the "Effective Date").

2. DEFINITIONS. The following definitions apply only to their use within this Agreement and not to any other document or agreement pertaining to the development, including the Development Plan. These definitions are intended to have substantive effect:

2.1 The "Adopting Ordinance" refers to City Ordinance No. 92-53 adopted by the City Council on 12/16/92, authorizing the City to enter into this Agreement.

2.2 "Agreement" refers to this "Development Agreement Between the City of Escondido and PRIMA DEVELOPMENT COMPANY,"

relating to the Palos Vista Specific Plan, Neighborhood 3.

2.3 The "Approval Date" refers to 12/16/92, the date upon which the City Council approved the Adopting Ordinance.

2.4 All forms of use of the verb "assign" and the nouns "assignment" and "assignee" shall include all contexts of hypothecations, sales, conveyances, transfers, leases, and assignments.

2.5 "CEQA" refers to the California Environmental Quality Act.

2.6 "City" refers to the City of Escondido, California.

2.7 "City Council" refers to the City Council of the City.

2.8 "Cure Period" refers to the period of time permitted pursuant to Section 9 below.

2.9 A "day" or "days" refers to a calendar day, unless expressly stated to be a business day.

2.10 A "Default" refers to any material default, breach, or violation of the provisions of this Agreement. A "City default" refers to a Default by the City, while an "Owner Default" refers to a Default by Owner.

2.11 The "Development Agreement Fee" refers to the fee referred to in Section 7.4 below and Exhibit "D".

2.12 The "Director" refers to the Community Development Director of the City or any successor to that title or a successor title.

2.13 The "Effective Date" refers to the effective date of

the Adopting Ordinance.

2.14 The "EIR" refers to all environmental impact reports and supplements or addenda thereto prepared and certified by the City in connection with the Development Plans.

2.15 "Entitlements" refers to all approvals and permits necessary or incidental to the development of the Development, whether discretionary or ministerial. Entitlements include conditional use permits, parcel, tentative, and final tract map approvals, whether standard or vesting, project plans, grading permits, building permits, actions pursuant to the California Environmental Quality Act, and this Agreement. "Future Entitlements" refers to all Entitlements approved or adopted by the City after the Approval Date.

2.16 An "Exaction" refers to any fee, requirement, condition, restriction, or limitation imposed by the City upon the Development of the Property at any time.

2.17 An "Exhibit" refers to an exhibit to this Agreement as listed in Section 3 below. All Exhibits are incorporated as a substantive part of this Agreement.

2.18 "Existing Standards" refers to the permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation and dedication of land, for public purposes, the design, improvement, and construction standards for the Project, all as set forth in the Specific Plan and, if not addressed in the Specific Plan, the ordinances, regulations, resolutions, rules, and official policies

of the City in effect on the Approval Date, including all Entitlements approved on or before the Approval Date.

2.19 The "Existing Vesting Map" refers to the Vesting Tentative Subdivision Map for Tract 683R approved by the City Council.

2.20 "Future Laws" refers to all laws, statutes, ordinances, codes, resolutions, policies, rules, regulations, and orders of the City enacted after the Approval Date, whether by City Council action, initiative, or otherwise. "Future Laws" include changes to the Existing Standards and amendments to the General Plan.

2.21 "Future Entitlements" refers to all Entitlements approved or adopted by the City after the Approval Date.

2.22 "General Fees" refers to all application fees, processing fees, utility connection fees, inspection fees, and development impact fees (including, but not limited to, general development fees, traffic impact fees, park fees and such other similar fees as may be enacted from time to time) generally applied throughout the City to development projects similar to the Project.

2.23 "General Plan" refers to the City's general plan in effect on the Approval Date.

2.24 "Mortgage" refers to the lien of any mortgage, deed of trust, sales-leaseback agreement, or other transaction under which all or a portion of the Property, including those portions acquired by assignees, is used as security.

2.25 "Mortgagee" refers to the holder of a beneficial

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interest under a Mortgage or the owner of any interest in all or any portion of the Property under a Mortgage, including those portions acquired by assignees.

2.26 "Notice" refers to any written notice or demand between the Parties required or permitted by this Agreement.

2.27 "Owner" refers to the

2.28 The "Parties" refers to the City and Owner and a "Party" shall refer to either of the Parties.

2.29 "Development" refers to the proposed development of the Property pursuant to the Development Plans.

2.30 "Project Plans" refers to specific residential site plans which shall include elevations, landscaping, and architectural designs consistent with the Development Plans.

2.31 The "Property" refers to the real property described on Exhibit "A" and depicted on Exhibit "B" to this Agreement.

2.32 "Private Improvements" refers to all improvements within the Development other than the "Public Improvements" shown on Exhibit "C".

2.33 "Public Improvements" refers to those public improvements and dedications listed on Exhibit "C".

2.34 The "Review Letter" refers to the letter to Owner from City authorized by Section 8.4 below.

2.35 The "Term" refers to the term of this Agreement as provided in Section 4.1 below.

2.36 "Vesting Tentative Subdivision Maps" refers to those subdivision maps approved as "vesting" subdivision maps pursuant to

California Government Code Sections 66498.1, et seq. (and any other provision of law relating to "vesting" subdivision maps), whether before, after or on the Approval Date.

3. EXHIBITS. The Exhibits to this Agreement are:
- Exhibit "A": Legal Description of the Property
 - Exhibit "B": Map of the Property.
 - Exhibit "C": Phasing of Public Improvements and Offers of Dedication.
 - Exhibit "D": Development Agreement Fee/Terms and Conditions.
 - Exhibit "E": Estoppel Certificate Form.

4. GENERAL PROVISIONS.

4.1 Term of Agreement. The term of the Agreement (the "Term") shall commence on the Effective Date and shall extend for a period of fifteen (15) years following the Effective Date unless otherwise terminated or modified pursuant to this Agreement.

4.2 Assignment. The rights and obligations of Owner under this Agreement may be assigned (see Section 2.4) as part of an assignment of all or a portion of the Property. Any assignment shall be subject to the provisions of the Agreement. During the Term, any assignee shall have all rights, benefits, and obligations of Owner under this Agreement with respect to the portion of the Property assigned. Owner shall obtain the City's prior written consent to any assignment by giving to the City a Notice at least thirty (30) days prior to the assignment. The City may review the financial stability and development capability of the proposed

assignee and, after that review, the City shall not withhold reasonably its consent. The provision of security to ensure performance of the assignee's assumed obligations with respect to completion of the Public Improvements shall satisfy the City's right to consent to any assignment. Immediately upon delivery by Owner to the City of the assignee's written assumption of Owner's rights and obligations under this Agreement, Owner shall be released from those obligations assumed.

The property may continue to be subdivided after the Effective Date. Any subdivided parcel may be assigned for development pursuant to this Agreement. Upon assignment, the obligations of Owner shall become several and not joint. As to Owner or other assignees not in Default, the Default of any assignee shall neither constitute a Default, give grounds for termination of this Agreement, nor be a basis for an enforcement action against Owner or the non-defaulting assignees. Upon issuance of the final "certificate of Occupancy" for any phase or tract of development of the Property, the City shall release that phase or tract from further obligations under this Agreement, if requested to do so by Owner.

4.3 Amendment or Cancellation of Agreement. This Agreement may be amended from time to time by the mutual consent of the Parties, but only in the matter provided by the Government Code and the City's Zoning Code. The "Agreement" shall include any amendment properly approved and executed.

4.4 Unforeseen Circumstances. If, as a result of facts,

events, or circumstances presently unknown, unforeseen, and which could not have been known or foreseen by the Parties, the City determines that the health and safety of the City require the modification, suspension, or termination of the Agreement, the City shall (i) give Notice to Owner of (a) the City's intended action, and (b) the reasons the factual basis for the City's determination; (ii) forward to Owner a minimum of fifteen (15) days prior to the public hearing, all documents relating to that determination; (iii) give Notice to Owner at least fifteen (15) days prior to the hearing date, of the time and place of the hearing; and (iv) hold a City Council hearing on the determination, at which hearing Owner shall have the right to present witnesses, reports, and oral and written testimony, and further have the right to examine witnesses, City staff, or other persons. The City shall have the obligation, based upon clear and convincing evidence, of establishing that: (i) the circumstances were unknown and unforeseen and could not have been known or foreseen; (ii) the health or safety of the community require the suspension, modification, or termination of the Agreement in contrast to any other alternative; and (iii) the City has provided Owner with an equitable program to reimburse Owner for the value of all consideration conveyed to the City for this Agreement. This provision shall neither limit nor expand the rights or liabilities of either of the Parties with respect to the enforcement of the Agreement, the reimbursement of costs related to the Development, or the development of the Property. If the City Council fails to make such findings, then the Agreement shall not

be terminated, modified, or suspended. The unforeseen circumstances which justify the suspension, modification, or termination of the Agreement shall not include changes in state or federal law. In the event of changes in state or federal law, the provisions of Section 5 below shall govern.

4.5 Enforcement. Unless amended or terminated as provided in Section 4.3 and 4.4, the Agreement is enforceable by any Party or its assigns, notwithstanding any Future Laws which alter or amend the Existing standards.

4.6 Hold Harmless. Owner shall hold the City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage which may arise from the direct or indirect operations of Owner or those of its contractors, subcontractors, agents, employees, or other persons acting on Owner's behalf which relate to the Development. Owner agrees to and shall defend the City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of Owner's activities in connection with the Development. Owner agrees to indemnify, hold harmless, and provide and pay all costs for a defense for the City in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of the Agreement. The provisions of this Section 4.6 shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of the City, its officers, agents,

employees, or representatives.

4.7 Relationship of the Parties. The contractual relationship between the City and Owner arising out of this Agreement is one of independent contractor and not agency.

4.8 Notices. All Notices between the Parties pursuant to this Agreement shall be in writing and shall be given by personal delivery (including Federal Express and other commercial express delivery services providing acknowledgements of receipt), registered, certified, or express mail, or telegram to the addresses set forth below. Receipt shall be deemed complete as follows:

- (a) For personal delivery, upon actual receipt;
- (b) For registered, certified, or express mail, upon the delivery date or attempted delivery date as shown on the return receipt; and
- (c) For telegram, upon the transmission of the telegram.

Notices shall be addressed as follows:

To the City: City Clerk
 City of Escondido
 201 North Broadway
 Escondido, CA 92025
 Attention: City Attorney
 Attention: Community Development
 Director

To Owner: Richard Circuit
 1205 Prospect, Suite 400
 La Jolla, CA 92037

With copies to:

Gerald M. Dawson
 7676 Hazard Center Drive, Suite 860
 San Diego, CA 92108

OFFICIAL RECORDS, ANNETTE J. EVANIL, SAN DIEGO PUBLIC RECORDS CLERK

The addresses to which Notices shall be sent may be changed by giving written notice of change of address in the manner set forth above.

5. CONFLICTS OF LAW.

5.1 Conflict of City and State or Federal Laws. If state or federal laws or regulations enacted after the Effective Date prevent compliance with any provision of the Agreement or require (as opposed to allow) changes in plans, maps, or permits approved by the City, the federal or state law or regulations are controlling and the Parties shall:

5.1.1 Notice and Copies. Provide the other Party with Notice and a copy of the law or regulation and a statement of the conflict between the law or regulation and the provision of the Agreement and of the proposed course of action of the Party giving the Notice; and

5.1.2 Modification Conferences. Within thirty (30) days following the Notice, meet and confer in good faith in a reasonable attempt to modify the Agreement to comply with the law or regulation.

5.2 City Council Hearings. After the conference referred to in Subsection 5.1.2 above, whether or not the Parties agree on the effect of the law or regulation upon this Agreement, the matter shall be scheduled for hearing before the City Council. Ten (10) days' written notice of the hearing shall be given pursuant to Government Code Section 65867. The written notice shall identify the proposed modification, suspension, or alternate

course of action. The City Council, at the hearing, shall determine the exact modification or suspension or alternate course of action, if any, which is necessitated by such law or regulation. At the hearing, Owner shall have the right to offer oral and written testimony. Any modification or suspension of the Agreement or alternate course of action shall be taken only by the affirmative vote of not less than a majority of the authorized number of members in conformance with Section 9 below.

5.3 Cooperation in Security Permits. The City shall assist Owner in the securing of any permits, including permits from other public agencies, which may be required as a result of the modifications, suspensions, or alternate course of action.

6. DEVELOPMENT OF THE PROPERTY.

6.1 Permitted Uses. Subject to Sections 4 and 5 above, during the Term, the rules, regulations, and official policies governing the permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement, and construction standards for the Development shall be those set forth in the Existing Standards (see Section 2.18). Provisions of the Development Plans shall prevail over all other Existing standards. All future amendments of the Development Plans which are approved by the City Council shall be deemed consistent with this Agreement unless they materially change the Existing Standards, in which event an amendment to this Agreement shall be required.

6.2 Future Laws. Future Laws (see Section 2.20) shall not apply to the Property or the Development except as expressly provided in this Agreement.

6.3 Project Plans. (Not applicable.)

6.4 Future Discretionary Reviews. The City shall retain its discretionary rights in reviewing applications for Future Entitlements. Owner's applications for Future Entitlements must comply with all applicable procedural rules and regulations, the Development Plans, and this Agreement. The City shall not impose any conditions upon any Entitlement which are more restrictive than or inconsistent with the Existing Standards, except as expressly required (as opposed to permitted) by state or federal law. In reviewing Future Entitlements, the City may impose only those conditions and require only those dedications and reservations of land which are necessary to implement the express terms of the Development Plans.

The City may conduct, in accordance with CEQA and the Existing Standards, an environmental review of Future Entitlements. The City may impose, if required by CEQA, additional mitigation measures to mitigate significant adverse environmental effects which were not previously considered or found to be infeasible to mitigate at the time of approval of the Development Plans and/or the EIR.

6.5 Reservations or Dedications of Land for Public Purposes. Except as expressly set forth in this Agreement and the Development Plans Map, no dedications or reservations of the

Property shall be required by the City or Owner in connection with the development, construction, use, or operation of the Property, other than for public utility and utility access easements customarily required by the City in connection with residential subdivisions.

6.6 Application of Subsequently Enacted Rules, Regulations, Etc. Subject to Section 6.7 below, Future Laws may be applied to the Project if they are not in conflict with the Existing Standards and will not prevent, hinder, delay, or economically impact development of the Property according to the Development Plans and in the time frame desired by Owner.

6.7 General Fees. General Fees (see Section 2.22) shall be those specified in the Existing Standards. Subject to Section 9.7 below, General Fees which become effective or are revised after the Approval Date and differ from the Existing Standards may apply to the Project, but only if they: (a) apply to all private single-family residential development projects within the City; and (b) are imposed for building permits not yet accepted for processing on the Approval Date.

6.8 Time for Construction and Completion of Project. Owner cannot predict when or the rate or the order in which the Private Improvements will be developed, if at all. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion, and other similar factors. Therefore, Owner may develop the Development in phases and time frames deemed

appropriate in Owner's subjective business analysis. Because of the California Supreme Court decision in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), the Parties emphasize that Owner shall have the right to develop the Project in such order, at such rate, and at such times as Owner deems appropriate, subject only to the provisions of this Agreement. Owner shall be entitled to apply for and receive approval of permits, maps (including Vesting Tentative Subdivision Maps), building permits, and other Entitlements for use at any time, provided that application is made in a manner consistent with this Agreement.

Pursuant to the provisions of the Subdivision Map Act, Government Code Section 66452.6, subd. g and h, Owner has a vested right to obtain building permits for private improvements on all 39 lots proposed to be created pursuant to the vesting tentative map approved for the Property for a period of one year after the recordation of a final map. City and Owner agree it is in their mutual interests and the public interest that this property not be developed as a tract in a one year time frame. Owner is concerned, however, that should Owner not obtain building permits within the one year vested period, Owner may be required to prepare and obtain approval of subarea public facilities plan. Since the preparation and approval of the specific plan for the Property constituted the functional equivalent of a public facilities plan for the property, and since it is in the interests of both parties and in the public interest that development of property as a tract within a one year time frame not be fostered or compelled, it is expressly agreed

shall have the right to obtain building permits at any time during the term of this Agreement without being required to prepare or obtain approval of a subarea public facilities plan.

6.8.1 Progress Reports Until Construction of Project is Complete. Owner shall make reports of the progress of construction of the Public Improvements in such detail and at such time as the City Manager reasonably requests.

6.8.2 City to Receive Construction Contract Documents. Owner shall furnish the City, upon written request, copies of any construction contracts and supporting documents relating to the Public Improvements.

6.8.3 Certificate of Completion. Promptly after completion of any phase or tract of development of the Development, City shall provide Owner with an instrument so certifying. The certification is a conclusive determination that the obligation of Owner under the Agreement with respect to the phase completed has been met. The certification shall be in recordable form. Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Owner to any Mortgagee or any insurer of a Mortgage securing money loaned to finance all or any part of the Public or Private Improvements. Such Certificate of Completion is not a notice of completion as referred to in California Civil Section 3093.

7. DEVELOPMENT PROGRAM.

7.1 Owner's Responsibility for Public Improvements, Facilities and Services. Owner will provide the Public

Facilities and Services. Owner will provide the Public Improvements as shown on Exhibit "C". The obligation of Owner is conditioned upon: (i) City not being in Default under the Agreement, and (ii) Owner's rights not being suspended or modified in accordance with any provisions of this Agreement, and (iii) Owner's obligations not being subject to an enforced delay pursuant to the provisions of Section 9.4.

7.2 Phasing of Public Improvements. Although Owner may determine phasing of construction for the Development as provided in Section 6.8 above, the Public Improvements shall be completed in the phases set forth on Exhibit "C".

7.3 Improvements Scheduling. Dates or times of performance by either Party may be subject to revision from time to time due to economic conditions and other causes as mutually agreed to by the Parties in writing. Such revisions are deemed to be within the framework of the Agreement and do not constitute amendments to the Agreement.

7.4 Development Agreement Fee. As additional consideration for this Agreement, Owner will pay City a fee (the "Development Agreement Fee") pursuant to terms and conditions established by the City Council and set forth on Exhibit "D".

7.5 Tentative Subdivision Maps. The City shall approve and extend through the Term (pursuant to Government Code Section 66452.6) all Tentative Subdivision Maps (whether vesting or non-vesting) approved as of the Approval Date and applied for by Owner in the future if those applications comply with the Existing Standards and the City's subdivision ordinances in effect on the Approval Date.

7.6 Cooperation in Securing Government Permit/Conflict of Laws. The City shall cooperate with Owner in securing for Owner all permits which may be required by the City or any other governmental agency for construction of the Development.

7.7 Financing Alternatives. From time to time, Owner may propose and City shall consider the use of assessment districts, community facility districts, or other financing methods to finance the Public Improvements. Upon City's acceptance and formation of such alternative(s), the obligations of Owner to construct certain facilities or, instead, pay fees, shall be modified to reflect the adopted alternative financing mechanism.

7.7.1 Changes Not Constituting Amendment. In the event that City shall consider, form, and approve an alternate financing method, pursuant to Section 7.7 above, any required adjustment to the obligations of Owner shall not constitute an amendment to the Agreement, but shall be within the scope of actions contemplated by the Parties with respect to Public Improvements financing mechanisms.

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8. ANNUAL REVIEW.

8.1 City and Owner Responsibilities. At least every twelve (12) months during the term of this Agreement, City shall review the extent of good faith substantial compliance by Owner with the terms of this Agreement (the "Annual Review"). At the conclusion of the Annual Review, the City's finding of good faith compliance by Owner with the terms of the Agreement shall be conclusive up to the date of such finding for the purposes of future Annual Reviews or legal action between the Parties. Pursuant to Government Code Section 65865.1, as amended, the City Zoning Code Sections 9315 and 9316, Owner shall have the duty to demonstrate its good faith compliance with the terms of the Agreement at the Annual Review. The Parties recognize that the Agreement could be deemed to contain thousands of requirements (i.e., construction standards, landscape standards, etc.) and that evidence of each and every requirement would be a wasteful exercise of the Parties' resources. Accordingly, Owner shall be deemed to have satisfied its duty of demonstration when it presents evidence of its good faith and substantial compliance with the major provisions of Section 6 and 7 of this Agreement, including information concerning the use, numbers, types, densities, heights and sizes of structures completed and of any reservations and dedications to City. Substantial compliance shall be defined as meeting the intent of the Parties with respect to the obligations of the Agreement. Either party may address any requirements of the Agreement during the Annual Review. However, fifteen (15) days'

written Notice of any requirement to be addressed shall be made by the requesting Party. If, at the time of review, an issue not previously identified in writing is required to be addressed, the review shall be continued at the request of either Party to afford sufficient time for analysis and preparation of a response.

8.2 Opportunity to be Heard. Owner shall be permitted an opportunity to be heard orally and in writing at any noticed public hearing regarding its performance under the Agreement. Owner shall be heard before each appropriate commission and the City Council at any required public hearing concerning a review of performance under the Agreement.

8.3 Information to be Provided to Owner. City shall mail to Owner a copy of staff reports and related exhibits concerning Agreement performance a minimum of ten (10) calendar days prior to consideration and review by the City Council in the manner set forth in Government Code Sections 65865, 65867 and 65868, as amended.

8.4 Review Letter. If Owner is found to be in compliance with the Agreement after the Annual Review, City shall issue, upon written request by Owner a letter to Owner (the "Review Letter") stating that, based upon information known or made known to the City Council, the City Planning Commission, and/or the City Manager, the Agreement remains in effect and Owner is not in Default. Owner may record the Review Letter in the Official Records of the County of San Diego.

8.5 Estoppel Certificates. Either Party may at any

time, and from time to time, deliver written Notice to the other Party requesting that the other Party certify in writing that to the knowledge of the certifying Party:

(1) The Agreement is in full force and effect and is a binding obligation of the Parties.

(2) The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.

(3) No Default in the performance of the requesting Party's obligations under the Agreement exists or, if in Default, the nature and amount of any Default.

A Party receiving a request under this provision shall execute and return a certificate within thirty (30) days following receipt of the request. The City Manager shall have the right to execute any certificate requested by Owner on behalf of City. A certificate given pursuant to this Section 8.5 may be relied on by assignees and Mortgagees. The certificate shall be substantially in the same form as Exhibit "E".

8.6 Failure of Periodic Review. City's failure to review at least annually Owner's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by City as an Owner Default.

9. ENFORCED DELAY, DEFAULT, REMEDIES AND TERMINATION.

9.1 General Provisions. In the event of a default (see Section 2.10), the party alleging a default shall give the defaulting Party a Notice of Default in writing. The Notice of

Default shall specify the nature of the alleged Default, and the manner and period of time (not less than thirty (30) days) in which the Default must be cured (the "Cure Period"). The Cure Period must provide sufficient and reasonable time for the Default to be cured. During the Cure Period, the party charged shall not be considered in Default for the purposes of termination of the Agreement or institution of legal proceedings. If the Default is cured within the Cure Period, then a Default shall be deemed not to exist.

9.1.1 Option to Institute Legal Proceedings or to Terminate. If a Default is not cured within the Cure Period, the noticing Party may institute legal proceedings pursuant to Section 9.5 and/or give to the defaulting Party a Notice of Intent to terminate the Agreement. If a Notice of Intent to terminate the Agreement is given, the City Council, within thirty (30) days after the giving of the Notice, shall hold a public hearing in the manner set forth in Government Code Sections 65865, 65867 and 65868, as amended, to consider and review the matter.

9.1.2 Notice of Termination. Following consideration of the evidence presented before the City Council, the Party alleging a Default by the other Party, at its option, may give written Notice of Termination of the Agreement to the other Party and the Agreement shall be terminated immediately upon giving the Notice. The validity of the basis for such a termination may be challenged pursuant to Section 9.5 by the party alleged to be in Default.

9.1.3 Waiver. Failure or delay in giving Notice of

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Default pursuant to Section 9.1 shall not constitute a waiver of any Default. Except as otherwise expressly provided in the Agreement, a failure or delay in asserting any rights or remedies as to any Default shall not operate as a waiver of any Default or of any rights or remedies otherwise available to a Party or deprive a Party of the right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any rights or remedies it may have.

9.2 Default by Owner. Government Code Section 65865.1, as amended, requires Owner to demonstrate its good faith compliance with the terms of the Agreement at the Annual Review. An Annual Review may result in amendment or termination of the Agreement provided a Default has been established by substantial evidence under the terms of Section 9 above.

9.3 Default by City. Upon a City Default, Owner, without limiting any of its other remedies, shall not be obligated to proceed with or complete the Project or any phase of the Project, nor to finance, construct, or dedicate any of the Public Improvements. Upon a City Default, any resulting delays in Owner's performance shall neither be an Owner Default nor constitute grounds for termination or cancellation of the Agreement by City.

9.4 Enforced Delay, Extension of Time of Performance. Neither Party shall be deemed to be in default where delays or Defaults are due to war, insurrection, strikes, walkouts, riots, flood, earthquakes, fires, casualties, acts of nature, unavailability of materials, governmental restrictions imposed or

mandated by governmental entities, suspension of rights in accordance with the existence of unforeseen circumstances, litigation, or similar bases for excused performance. If written Notice of such delay is given to the other party within thirty (30) days following the commencement of such delay, an extension of time for performance shall be granted in writing for the period of the delay, or longer as may be mutually agreed upon. An extension shall commence to run from time of commencement of the cause of the delay.

9.5 Institution of Legal Action. In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default, to enforce any provision of this Agreement, to recover damages for any Default, or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Superior Court of the County of San Diego, State of California, or in the Federal District Court in the Southern District of California.

9.6 Applicable Laws/Attorney's Fees. The Agreement shall be construed and enforced in accordance with the laws of the State of California. All statutory references are to California statutes. Should any action between the Parties be brought in any court of competent jurisdiction arising out of or in connection with the Agreement, the prevailing Party in the action shall be entitled to recover all attorney's fees, court costs, and necessary disbursements in connection with the litigation.

9.7 No Waiver of Existing Rights or Applicable Laws. This Agreement is not intended to require Owner to accept or commit to any existing or future Exaction, other than the Development Agreement Fee, which could not lawfully have been imposed by the City without entering into this Agreement. This Agreement shall neither limit nor expand:

a) General Fees: Owner's right to challenge any General Fee as being contrary to applicable law:

b) Tentative Subdivision Maps: Owner's rights under any tentative Subdivision Map, including the Existing Map.

c) Exactions: Owner's right to challenge any existing or future Exaction (other than the Development Agreement Fee) as being in excess of Exactions permitted by applicable law.)

10. ENCUMBRANCES AND RELEASES ON PROPERTY

10.1 Discretion to Encumber. The Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion of the Property or any improvement on the Property by any Mortgage. City acknowledges that lenders providing financing may require modifications to the Agreement and City agrees, upon request, from time to time, to meet with Owner and/or representatives of lenders to negotiate in good faith any lender request for modification. City agrees to not withhold unreasonably its consent to any lender requested modification to the Agreement.

10.2 Entitlement to Written Notice of Default. Any Mortgagee and its successors and assigns, upon written request to

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City, shall be entitled to receive from City written Notice of any Owner Default at the same time Owner is provided with Notice pursuant to Section 9.1 above.

10.3 Property Subject to Pro Rata Claims. Any person or entity who comes into possession of any portion of the property pursuant to foreclosure of a Mortgage or deed in lieu of foreclosure, shall take possession, on an average pro rata basis, subject to claims for payments or charges established by the Agreement against the Property and which accrue prior to the time the person or entity comes into possession.

11. MISCELLANEOUS PROVISIONS.

11.1 Rules of Construction. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

If there is more than one signer of the Agreement, their obligations are joint and several.

11.2 Severability. If any non-material provision of the Agreement or Section 7.5 shall be adjudged by a court of competent jurisdiction to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of the Agreement. In the event a material part of the Agreement other than Section 7.5 is adjudged by a court of competent jurisdiction to be invalid, void, or illegal, the entire Agreement is deemed to be unenforceable or void. For purposes of this Section 11.2, all provisions of Section 6 are deemed to be a "material part" of the agreement. If any portion of the Agreement is adjudged to be

unenforceable, that portion shall be deemed to be a statement of intention by the Parties and the Parties shall take all steps necessary to make valid the Agreement or that portion which is adjudged to be unenforceable.

11.3 Entire Agreement, Waivers, and Amendments. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all negotiations and previous agreements between the Parties with respect to that subject matter. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate agents of City or of Owner. All amendments to this Agreement must be in writing signed by the appropriate agents of City and Owner, in a form suitable for recording in the Official Records of San Diego County, California. Within ten (10) days following the Effective Date, a copy of this Agreement shall be recorded in the Official Records of San Diego County, California. Upon the completion of performance of this Agreement or its revocation or termination, a statement evidencing completion, revocation, or termination signed by the appropriate agents of Owner and City shall be recorded in the Official Records of San Diego County, California.

11.4 Development as a Private Undertaking. It is specifically understood by the Parties that: (a) the Development is a private development; (b) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property until City accepts the improvements

pursuant to the provisions of the Agreement or in connection with subdivision map approvals; and (c) Owner shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in the Agreement.

11.5 Incorporation of Recitals. The Recitals set forth in Section 1 of this Agreement are part of this Agreement.

11.6 Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of this Agreement.

11.7 Consent. Where the consent or approval of a Party is required in or necessary under this Agreement, the consent or approval shall not be unreasonably withheld.

11.8 Covenant of Good Faith and Fair Dealing. Neither Party shall do anything which shall have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement. Each Party shall refrain from doing anything which would render its performance under this Agreement impossible. Each Party shall do everything which this Agreement contemplates that such Party shall do to accomplish the objectives and purposes of this Agreement.

11.9 Covenant of Cooperation. The Parties shall cooperate with and assist each other in the performance of the provisions of this Agreement, including assistance in obtaining permits for the development of the property which may be required from public agencies other than City.

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The covenant of cooperation shall include, to the maximum extent permitted by law, that City shall use its best efforts to prevent any ordinance, measure, moratorium, or other limitation from invalidating or prevailing over any provision of this Agreement, and City shall cooperate with Owner to keep this Agreement in full force and effect. Owner reserves the right to challenge any such ordinance, measure, moratorium, or other limitation in a court of law if it becomes necessary to protect the Development rights vested in the Property pursuant to this Agreement.

11.10 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

11.11 Successors and Assigns. Subject to Section 4.2 above, the burdens of this Agreement shall be binding upon, and the benefits of the Agreement inure to, all successors-in-interest and assigns of the Parties.

11.12 Recording. The City Clerk shall cause a copy of

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the agreement to be recorded with the Office of the County Recorder of San Diego County, California within ten (10) days following the Effective Date.

This Agreement has been executed by the Parties as of the dates set forth next to their respective signatures.

CITY OF ESCONDIDO, a municipal corporation

Dated: 4/1/93

By: [Signature]
JERRY HARMON, MAYOR

ATTEST:

[Signature]
JEANNE BUNCH, CITY CLERK

PRIMA DEVELOPMENT COMPANY

Wendell Corporation Manager, Escandido
Partner of

Dated: February 25, 1993

By: Prima Development Company by
Richard K. Grant with Power of Attorney
dated January 4, 1993

I HEREBY APPROVE the form of the foregoing Agreement this 29th day of March, 1993.

[Signature]
DAVID CHAPMAN, City Attorney

Exhibit "C"

Phasing of Public Improvements and Offers of Dedication.

For the purposes of this Agreement, the "Public Improvements" shall be:

- 1) The construction of all facilities to be owned by the City or any other public agency as required by the Development Plans.
- 2) The dedication of land for public use as required by the Development Plans.
- 3) The Public Improvements shall be constructed or dedicated at the times required by the Development Plans.
- 4) The dedication of a 20-foot-wide easement and the improvement of an eight-foot-wide rural trail within the area of Lots 721 and 722 along the Mesa Rock Road frontage, as depicted on the City of Escondido Master Plan of Parks and Trails.

Exhibit "D"

Development Agreement Fee/Terms and Conditions

1. AMOUNT OF FEE. For each residential unit constructed within the Project (a "Unit"), the Development Agreement Fee will be assessed according to the following schedule:

I.	II.
<u>Year of Building Permit Issuance</u>	<u>Fee Per Building Permit</u>
1	\$ 250.00
2	\$ 250.00
3	\$ 500.00
4	\$1,000.00
5	\$1,500.00
6	\$2,250.00
7	\$3,000.00
8	\$3,750.00
9	\$4,500.00
10	\$5,250.00
11	\$6,000.00
12	\$6,750.00
13	\$7,500.00
14	\$8,250.00
15	\$9,000.00

The "Year of Building Permit Issuance" shown in Column I is based upon the Approval Date (See Section 2.3 of the Agreement). Therefore, if the Approval Date is May 18, 1988, then any building permit issued from May 18, 1988, through, and including, May 17, 1989, shall be deemed issued in Year 1, and so forth for following years.

The fee shown in Column II is the total fee to be paid for each building permit issued in the corresponding year. The table is not cumulative.

OFFICIAL RECORDS, ANNETTE J. EVANS, SAN DIEGO HIGHLAND COUNTY CLERK

There is no fee for Units permitted by the Specific Plan for which building permits are not issued during the Term.

2. PAYMENT OF FEE. Except as provided in Paragraph 3 below, the Development Agreement Fee "accrues" for each Unit at the time of the issuance of the building permit for that Unit. At the time of the issuance of the building permit, Owner may elect one of the following options for payment of the fee for the Unit:

(a) Payment in full at the time of the issuance of the building permit;

(b) The delivery to the City, at the time of the issuance of the building permit, of a promissory note and a deed of trust on the lot for which the building permit was issued securing payment of that promissory note;

(c) The delivery to the City, at the time of the issuance of the building permit, of a letter of credit from Bank of America or another financial institution reasonably satisfactory to the City Manager which will provide for payment in full of the Development Agreement Fee for the Unit; or

(d) The delivery to the City of escrow instructions in form and content satisfactory to the City Attorney providing for the payment of the Development Agreement Fee from the proceeds of the sale of the lot for which the building permit is issued.

With respect to options (b), (c) and (d) above, the Development Agreement Fee shall be collected upon the close of escrow for the sale of the lot for which the building permit is issued and the amount of the fee shall bear interest at the

prevailing national prime rate from the date of the issuance of the building permit through the date of payment.

3. PAYMENT UPON TRANSFER. Should all or any portion of the Property be transferred before the issuance of building permits for all Units within the transferred Property, the Development Agreement Fee shall be due and payable at the time of that transfer for all Units for which building permits have not been issued. The Development Agreement Fee shall be assessed according to the schedule in Paragraph 1 above on the same basis as if building permits had been issued on the date of the transfer. Additionally, when building permits are actually issued, Owner's successor shall pay the difference between the Development Agreement Fee paid at the time of the transfer and the Development Agreement Fee which would have accrued at the time of the actual issuance of the building permit.

For example, if, in Year 5, Owner transfers a portion of the Property upon which 200 Units may be built, a Development Agreement Fee of \$300,000 (200 x \$1,500) shall be paid at the time of the transfer. If, after the transfer, but also in Year 5, Owner's successor is issued building permits for 100 of those Units, no further Development Agreement Fee shall be payable for those 100 Units. However, if building permits are issued for the remaining 100 Units in Year 6, Owner's successor will pay an additional Development Agreement Fee of \$750 for each of the 100 building permits issued. This \$750 represents the difference

Date Requested: _____

Date of Certificate: _____

On _____, the City of Escondido approved the
"Development Agreement Between the City of Escondido and
(the
"Development Agreement").

This Estoppel Certificate certifies that, as of the "Date of
Certificate" set forth above:

(CHECK WHERE APPLICABLE)

- _____ 1. The Development Agreement remains binding and effective;
- _____ 2. The Development Agreement has not been amended;
- _____ 3. The Development Agreement has been amended in the following respects:

- _____ 4. Neither _____, nor any of its successors are in default under the Development Agreement;
- _____ 5. The following defaults exist under the Development Agreement:

This Estoppel Certificate may be relied upon by any transferee or mortgagee of any interest in the property which is the subject of the Development Agreement.

CITY OF ESCONDIDO

By _____
Title _____
Community Development Director

OFFICIAL RECORDS, ANNETTE J. EVANIL, SAN DIEGO RECORDING BOARD, CLERK

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EXHIBIT "C"

ORDER NO. 984306-15

92-19-DA
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF SECTIONS 31 AND 32 TOWNSHIP 11 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO U.S. GOVERNMENT SURVEY AND AS SHOWN ON RECORD SURVEY NO. 8280, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MAY 11, 1978 AS FILE NO. 78-192675 OF OFFICIAL RECORDS, AND THE REMAINDER PARCEL OF ESCONDIDO TRACT NO. 683-H, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 12615, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON APRIL 26, 1990, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID RECORD OF SURVEY MAP NO. 8280; THENCE ALONG THE BOUNDARY OF SAID R.O.S. 8280 SOUTH 86°41'47" EAST 5268.63 FEET (RECORD SOUTH 86°41'37" EAST 5269.37 FEET PER SAID R.O.S. 8280); THENCE SOUTH 89°31'13" EAST 197.08 FEET (RECORD SOUTH 89°33'00" EAST 196.73 FEET PER SAID R.O.S. 8280); THENCE SOUTH 23°07'50" EAST 86.93 FEET TO THE BEGINNING OF A TANGENT 5042.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°29'05" A DISTANCE OF 746.65 FEET; THENCE TANGENT TO SAID CURVE SOUTH 31°36'55" EAST 164.01 FEET TO THE BEGINNING OF A TANGENT 2958.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°24'52" A DISTANCE OF 486.04 FEET; THENCE NON-TANGENT TO SAID CURVE NORTH 89°11'15" WEST 887.15 FEET (RECORD NORTH 89°11'51" WEST 887.26 FEET PER SAID R.O.S. 8280); THENCE SOUTH 00°46'46" WEST 3980.68 FEET (RECORD SOUTH 00°47'13" WEST 3980.19 FEET PER SAID R.O.S. 8280); THENCE NORTH 87°27'01" WEST 1949.67 FEET (RECORD NORTH 87°27'32" WEST PER SAID RECORD OF SURVEY NO. 8280) THENCE LEAVING SAID BOUNDARY NORTH 05°15'46" WEST 788.36 FEET; THENCE NORTH 41°50'34" WEST 1658.72 FEET; THENCE SOUTH 66°32'55" WEST 1090.69 FEET; THENCE NORTH 38°36'48" WEST 181.65 FEET; THENCE NORTH 43°37'48" WEST 361.86 FEET TO THE BEGINNING OF A NONTANGENT 371.00 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 43°37'48" EAST; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°23'04" A DISTANCE OF 34.86 FEET; THENCE TANGENT TO SAID CURVE NORTH 40°59'08" EAST 189.54 FEET TO THE BEGINNING OF A TANGENT 420.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 38°23'26" A DISTANCE OF 281.42 FEET; THENCE TANGENT TO SAID CURVE NORTH 79°22'34" EAST 119.09 FEET TO THE BEGINNING OF A TANGENT 280.00 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 50°22'27" A DISTANCE OF 246.17 FEET; THENCE NON-TANGENT TO SAID CURVE NORTH 68°29'41" WEST 1132.86 FEET TO A POINT ON THE BOUNDARY OF SAID R.O.S. 8280; THENCE ALONG THE BOUNDARY THEREOF NORTH 01°42'57" EAST 1662.75 FEET; THENCE SOUTH 83°37'14" WEST 435.48 FEET (RECORD SOUTH 83°37'49"



92-19-DA

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ORDER NO. 984306-15

WEST 435.76 FEET PER SAID R.O.S. 8280); THENCE NORTH 01°42'43" EAST
1015.23 FEET (RECORD NORTH 01°42'57" EAST 1016.01 FEET PER SAID
R.O.S. 8280) TO THE POINT OF BEGINNING.

2/13/89
JK

