

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

COUNTY OF ORANGE
OC Development Services
300 N. Flower Street
Santa Ana, CA 92703-5000
Attn: Clerk of The Board

(Space Above this Line for Recorder's Use)

CLEARWATER AT NORTH TUSTIN (PA170040)
DEVELOPMENT AGREEMENT BETWEEN
THE COUNTY OF ORANGE AND
THE ROMAN CATHOLIC BISHOP OF ORANGE

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DEVELOPMENT AGREEMENT
(Govt. Code Sections 65864-65869.5)

THIS AGREEMENT (“Agreement”) is entered into this ___ day of _____, 2018, by and between, the Roman Catholic Bishop of Orange, a non-profit, section 501(c)(3) religious California corporation sole (“BISHOP”), and the COUNTY OF ORANGE, a political subdivision, organized and existing under the laws of the State of California (“COUNTY”). BISHOP and COUNTY may be referred to in this Agreement individually as a “Party” and/or collectively as the “Parties.”

RECITALS

This Agreement is entered into based upon the following facts:

- A. When used in these Recitals, each of the terms defined in Section 1 of this Agreement shall have the meaning given to it therein.
- B. Government Code Sections 65864-65869.5 authorize COUNTY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, in order to, among other things: (1) encourage and provide for the development of public facilities in order to support the development of new housing; (2) provide certainty in the approval of development projects; (3) avoid the waste of resources and the escalation of the cost of housing and other development to the consumer; (4) encourage investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; (5) provide assurance to developers that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to their conditions of approval; and (6) encourage private participation in comprehensive planning in order to reduce the economic costs of development.
- C. BISHOP is the holder of a legal interest in the Property and desires and intends to develop the Property as an assisted-care community licensed as a Residential Care Facility for the Elderly (RCFE). The Development of the Property requires substantial early and major capital expenditures and investments with respect to the construction and installation of infrastructure and facilities of sufficient capacity to serve the residents and others using the Property as anticipated by the Existing Development Approvals and this Agreement.
- D. COUNTY has determined that the Project and Existing Development Approvals implement the goals and policies of County’s General Plan and of all specific plans (as referenced in Government Code Sections 65450 et seq.) applicable to the Project and provides appropriate land uses and imposes standards and requirements with respect to land development and usage so as to maintain the overall quality of life and of the environment within the County.
- E. Pursuant to Government Code Section 65865, COUNTY has adopted Resolution No. 02-066 establishing procedures and requirements for the consideration of proposed development agreements.
- F. BISHOP has applied for, and COUNTY has approved, the Existing Development Approvals in order to protect the interests of County’s existing and anticipated citizens and the

quality of their community and environment through the development process. As part of the process of approving the Project and the Existing Development Approvals, COUNTY has undertaken, pursuant to the California Environmental Quality Act (CEQA), the required analyses of the environmental effects which would be caused by the Project. In addition to other matters which COUNTY took into consideration in its analyses of the environmental effects which would be caused by the Project, COUNTY scrutinized with particular care the adverse impacts associated with vehicular traffic; air quality and water supply conditions within the County; and the availability of adequate levels of public services and facilities within the County, including, without limitation, library, sheriff, paramedic and fire protection, flood control improvements, open space and community parks. COUNTY has imposed a series of conditions of approval and mitigation measures in connection with the development of the Project to eliminate the anticipated adverse impacts on COUNTY conditions and on levels of public services and facilities within the County.

G. In accordance with State law, COUNTY has adopted the General Plan which considers and provides for the need for residential, commercial, and industrial facilities which are necessary to meet the future needs of the population.

H. As consideration for the assurances provided by this Agreement, COUNTY has requested that BISHOP provide, and BISHOP is willing to provide additional public benefits as described in greater detail below. Those additional public benefits include that the BISHOP shall either: (1) design and build a new passive public park at the northwest corner of Crawford Canyon Road and Newport Boulevard to OC Parks' specifications and subject to their approval, which park shall be delivered to COUNTY on or before issuance of the Project's first Certificate of Occupancy; or (2) pay a \$539,000 park in-lieu fee and a \$311,000 community benefit fee to the COUNTY. The COUNTY has determined that the public benefits for which BISHOP is obligated, together with any conditions of approval and mitigation measures imposed by the COUNTY on the Project, adequately provide for the health, safety, and welfare needs of the future residents of the Property subject to the provisions of this Agreement with respect to future monitoring programs. The COUNTY Planning Commission and Board of Supervisors have found and determined that this Agreement: (1) is consistent with COUNTY'S General Plan and with all specific plans (as referenced in Government Code Section 65450 et seq.) applicable to the Project; (2) is in the best interests of the health, safety and general welfare of COUNTY, its residents and the public; (3) is entered into pursuant to and constitutes a present exercise of the police power by COUNTY; and (4) is entered into pursuant to and in compliance with the requirements of Section 65367 of the Development Agreement Legislation and COUNTY Resolution No. 02-066; and the COUNTY Board of Supervisors has adopted an ordinance authorizing the execution of this Agreement.

I. The Parties acknowledge that the Growth Management Program of the County's General Plan authorizes the Board of Supervisors to develop programs for resolving infrastructure deficiencies.

J. Based on the foregoing, BISHOP and COUNTY desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals of fact, the mutual covenants contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. SECTIONS: DEFINITIONS AND EXHIBITS.

1.1 Sections and Paragraphs. Any reference in this Agreement to a “Section” is a reference to the indicated numbered section or sub-section of this Agreement and a reference to a “Paragraph” is a reference to the indicated paragraph of a Section.

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

a. “Agreement Date” means the date first set forth hereinabove when the COUNTY’s Board of Supervisors adopts this Agreement.

b. “Annual Monitoring Review” or “Annual Review” means the annual review required pursuant to Section 5 herein below.

c. “BISHOP” means The Roman Catholic Bishop of Orange.

d. “BISHOP’S Obligations” means the obligations of BISHOP to pay the sums, build and construct the improvements, dedicate the lands and improvements and undertake and perform the other actions described in Section 3.

e. “Building and Improvement Standards” means Regulations of COUNTY which are of general application and which establish regulations and standards for the building, construction and installation of structures and associated improvements such as and including, without limitation, COUNTY’S building, plumbing, mechanical, grading, swimming pool, sign and fire codes.

f. “COUNTY” means the County of Orange, a political subdivision of the State of California.

g. “County” means the geographical area within the boundaries of COUNTY.

h. “COUNTY Development Agreement Resolution” means Resolution No. 02-066 adopted by the Board of Supervisors of COUNTY on March 19, 2002 establishing a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Legislation.

i. “Development” means the improvement of the Property for purposes of effecting the structures, improvements and facilities composing the Project, including without limitation: the construction of structures and buildings and the installation of

landscaping; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after completion of the initial construction thereof.

j. “Development Agreement Legislation” means Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.

k. “Development Approval(s)” means site specific plans, maps, permits and other entitlements to use of every kind and nature approved or granted by COUNTY in connection with the Development of the Property with the Project, including but not limited to: the Amendment to the North Tustin Specific Plan, Use Permit, Site Development Permit, feature plans, area plans and site plans, tentative and final subdivision tract maps, vesting tentative maps, conditional and special use permits and grading, building and other similar permits.

l. “Development Exactions” means the requirements of COUNTY in connection with or pursuant to any Land Use Ordinance or Development Approval to lessen, offset, mitigate or compensate for the adverse impacts of the Project on environmental or other public concerns or interests. The term shall not include assessments and taxes unless exacted as a condition of development under a Development Approval.

m. “Economic Expectations” means the reasonable, investment based economic expectations with respect to the completion of the Project in accordance with the Existing Land Use Regulations and Existing Development Approvals taking into consideration technical, financing, market and other factors.

n. “Effective Date” shall mean the latest of the following occurrences: (i) the date that is thirty (30) calendar days after the Agreement Date; (ii) if a referendum concerning any of the Development Approvals is timely qualified for the ballot and a referendum election is held concerning such Development Approvals, the date on which the referendum is certified resulting in upholding and approving the Development Approvals; or (iii) if a lawsuit is timely filed challenging the validity or legality of any of the Development Approvals, the date on which said challenge is finally resolved in favor of the validity or legality of the Development Approvals, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

o. “Existing Development Approvals” means those certain Development Approvals in effect on the Effective Date with respect to the Property, including without limitation, the “Existing Development Approvals” which are listed on Exhibit B.

p. “Existing Land Use Ordinances” means those certain Land Use Ordinances in effect on the Effective Date as shown on Exhibit C.

q. “Existing Land Use Regulations” means those certain Land Use Regulations in effect on the Effective Date.

- r. “Existing Regulations” means the Regulations in effect on the Effective Date.
- s. “General Plan” means the General Plan of COUNTY.
- t. “Land Use Ordinances” means the ordinances adopted by the Board of Supervisors of COUNTY which govern the permitted uses of land, the density and intensity of use, and the design, improvement, and construction standards and specifications applicable to the Development of Property, including, but not limited to: the General Plan, specific plans, the North Tustin Specific Plan, zoning ordinances, planned community district ordinances, development moratoria and growth management and phased development programs, ordinances establishing Development Exactions, subdivision and park codes and Building and Improvement Standards.
- u. “Land Use Regulations” means Regulations of COUNTY governing the permitted uses of land, density and intensity of use and the design, improvement, and construction standards and specifications applicable to the Development of the Property, including, but not limited to, mitigation measures required in order to lessen or compensate for the adverse impacts of the Project on the environment and other public interests and concerns. Land Use Regulations include, but are not limited to, Land Use Ordinances, Development Approvals and Development Exactions. The term Land Use Regulations does not include, however, Regulations relating to the conduct of business, professions and occupations generally; taxes and assessments other than Development Exactions; Regulations for the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; and, any exercise of the power of eminent domain.
- v. “Mortgage” means a mortgage, deed of trust or sale and leaseback arrangement or other transaction in which the Property, or a portion thereof or an interest therein, is pledged as security, contracted for in good faith and for fair value.
- w. “Mortgagee” means the holder of the beneficial interest under a Mortgage, or the owner of the Property, or interest therein, under a Mortgage.
- x. “Ordinance Number 3570” means Section 7-9-703 and 7-9-704 of the Codified Ordinances of the County of Orange, as enacted by Ordinance 3570 as in effect on the Effective Date.
- y. “Project” means the development project contemplated by the Existing Development Approvals, including but not limited to a 100-unit assisted-care community, one accessory chapel, and on-site and off-site improvements further defined, enhanced or modified pursuant to the provisions of this Agreement.
- z. “Property” means those certain lands as to which BISHOP had a legal or equitable interest on the Effective Date, as described in Exhibit A.
- aa. “Public Benefits” means the requirement that the BISHOP shall either:

(A.) Pay a \$539,000 park in-lieu fee and a \$311,000 community benefit fee to COUNTY. The BISHOP shall remit the \$539,000 park in-lieu fee prior to issuance of the Project’s building permits and the \$311,000 community benefit fee prior to the issuance of the Project’s first certificate of occupancy (“PB Option 1”).

(B.) Instead of paying the \$539,000 park in-lieu fee and the \$311,000 community benefit fee, design and build a passive public park at the northwest corner of Crawford Canyon Road and Newport Boulevard to Orange County Parks’ (“OC Parks”) specifications and subject to OC Parks’ approval, which park shall be completed and delivered to the COUNTY on or before issuance of the Project’s first certificate of occupancy (“PB Option 2”); or

bb. “Public Facilities” means those certain public lands or facilities to be improved, constructed and dedicated or conveyed to the public pursuant to Existing Development Approvals, Existing Land Use Regulations, or this Agreement.

cc. “Regulations” means laws, statutes, ordinances, and codes (including the Building and Improvement Standards, Land Use Ordinances, and Land Use Regulations), resolutions, rules, regulations and orders; approvals, denials and conditional approvals in connection with tentative, vesting tentative and final subdivision maps, parcel maps, conditional and special use permits and other permits of every kind and character; programs; and official policies and actions of COUNTY; together with amendments to all of the foregoing.

dd. “Reservations of Authority” means the rights and authority excepted from the assurances and rights provided to BISHOP in Sections 4.2 and 4.4 and reserved to COUNTY therein and in Section 4.3.

1.3 Exhibits. The reference to a specified “Exhibit” in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation, which exhibits are attached hereto and by this reference made a part hereof.

Exhibit Designation	Description
A	Legal Description of Property
B	Existing Development Approvals
C	Existing Land Use Ordinances

2. MUTUAL BENEFITS AND ASSURANCES.

2.1 Purposes of Agreement. This Agreement is entered into for the purpose of carrying out the Development of the Project in a manner that will ensure certain anticipated benefits to both COUNTY (including, without limitation, the existing and future residents and populations of COUNTY) and BISHOP, as described in the RECITALS and as follows:

a. To provide and assure to COUNTY the participation of BISHOP in the accelerated, coordinated and more economic construction, funding and dedication to the public, as provided in Section 3, of certain other public benefits;

b. To provide to BISHOP assurances regarding the Development Approvals, Development Exactions, Existing Development Approvals, Existing Land Use Ordinances, Existing Land Use Regulations, Existing Regulations, Land Use Ordinances, Land Use Regulations and Regulations that will be applicable to the Development of the Property, including but not limited to those relating to timing, density and intensity of Development and Development Exactions, that will justify the undertakings and commitments of BISHOP described above. Without limiting the generality of the foregoing, this Agreement provides for Public Benefits in excess of what would be required legally of BISHOP under Existing Land Use Regulations or otherwise required in connection with the Project and of a nature that would be justified by the Project provided for by the Existing Development Approvals.

2.2 Undertakings and Assurances Contemplated and Promoted by Development Agreement Legislation. The mutual undertakings and assurances described above and provided for in this Agreement are for the benefit of COUNTY and BISHOP and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, and the effective and efficient development of infra-structure and facilities supporting development which was contemplated and promoted by the Development Agreement Legislation.

2.3 Bargained For: Reliance by Parties. The assurances provided to BISHOP in Section 4 are provided pursuant to and as contemplated by the Development Agreement Legislation, bargained for and in consideration for the undertakings of BISHOP set forth in Section 3 of this Agreement and are intended by COUNTY to be and have been relied upon by BISHOP to its detriment in undertaking the obligations as provided in Section 3 herein below and in this Agreement generally and in expending monies and making improvements pursuant to this Agreement with respect to the public facilities and the Project.

3. BISHOP'S OBLIGATIONS AND PROVISION OF PUBLIC BENEFITS.

3.1 In General.

a. Public Benefits. It is acknowledged that a primary purpose of this Agreement is to provide for Public Benefits consisting of either (1) a passive public park or (2) specified in-lieu fees, as described in this Agreement. Accordingly, no later than six (6) months after the date that the applicable statute of limitations for legal challenges opposing, and/or referendums challenging the Existing Development Approvals have expired without litigation or a referendum, BISHOP shall produce a park design concept and cost estimate for review and approval of OC Parks, and shall thereafter inform Orange County Development Services and OC Parks whether BISHOP intends to proceed under PB Option 2 or PB Option 1. BISHOP may, if necessary, seek, from Orange County Development Services and OC Parks, additional time to make the determination whether to proceed under PB Option 2 or PB Option 1.

b. Park Design. BISHOP'S park design concept shall reflect the park program (which contains descriptions of the amenities to be offered) to be provided by OC Parks. Whether BISHOP elects to proceed under PB Option 2 or PB Option 1, BISHOP shall bear all costs of the conceptual design and cost estimate, which is separate from the \$850,000 total for park in-lieu fees (\$539,000) and community benefit fees (\$311,000) required under PB Option 1.

c. COUNTY Invoices. COUNTY shall provide official invoices to BISHOP reflecting COUNTY'S grant of a \$25,000 application fee and staff time credit to BISHOP associated with COUNTY'S consideration and processing of the Project application.

d. Existing Conditions and Undertakings. BISHOP shall continue to be obligated to, and shall, perform all of the duties and obligations provided for or required by any provisions of the existing General Plan and the Existing Development Approvals in connection with the Development of the Property.

3.2 Relationship of Parties. In performing BISHOP'S obligations, BISHOP is acting under this Agreement as an independent contractor and is not acting as the agent or employee of COUNTY nor shall anything in this Agreement be construed as creating between BISHOP and COUNTY a partnership or joint venture for any purpose.

3.3 Public Works. If BISHOP is required by this Agreement to construct the Public Benefits or any Public Facilities which will be dedicated to COUNTY or any other public agency upon completion, and if required by applicable laws to do so, BISHOP shall perform such work in the same manner and subject to the same requirements as would be applicable to COUNTY or such other public agency should it have undertaken such construction.

3.4 Park In-Lieu Fees. BISHOP acknowledges that COUNTY may impose development fees pursuant to the Existing Land Use Regulations, specifically COUNTY Ordinance Number 3570, intended to provide for orderly growth in accordance with the policies and goals set forth in the COUNTY General Plan. However, the Public Benefits provided by this Agreement, whether through PB Option 2 or PB Option 1, shall fully satisfy the Project's park in-lieu fees.

4. REGULATIONS GOVERNING THE DEVELOPMENT OF THE PROPERTY.

4.1 Existing Land Use Regulations. Except as otherwise specified in this Agreement and the Development Approvals, the rules, regulations and official policies governing the permitted uses of the Property, the density and intensity of use of the Property, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to Development of the Property are the Existing Land Use Regulations, including the General Plan.

a. Permitted Uses. The uses permitted hereunder in accordance with the Existing Land Use Ordinances, as set forth in Development Approvals, which permit a 100-unit assisted-care community licensed as a residential care facility with one accessory chapel.

b. Number of Units, Density and Intensity. The assisted-care facility shall not exceed 100-units in total number and shall be consistent with the Amendment to the North Tustin Specific Plan.

c. Maximum Height and Size. The maximum height of structures shall not exceed twenty (20) feet as measured at the highest point of the roofline. Appurtenances may reach up to twenty-eight (28) feet in height, consistent with Existing Land Use Ordinances. Such appurtenances are limited to chimneys and tower elements.

d. Timing of Development. The Parties acknowledge that the most efficient and economic Development of the Property depends upon numerous factors such as market orientation and demand, interest rates, competition and similar factors and that generally it will be most economically beneficial to the ultimate purchasers to have the rate of Development determined by BISHOP. Accordingly, the timing, sequencing and phasing of Development shall be as determined by BISHOP in its sole subjective business judgment and discretion, unless otherwise specified in this Agreement.

e. Moratoria; Phasing of Development. The Parties agree that no initiative, referendum, moratorium, ordinance, resolution, or other Land Use Regulation or limitation on the conditioning, rate, timing or sequencing of the Development of the Property or any portion thereof shall apply to or govern the Development of the Property during the term hereof whether affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building or site development plans or permits, occupancy permits, occupancy certificates or other entitlements to use to be approved, issued or granted by COUNTY. In the event of any such subsequent action, BISHOP shall continue to be entitled to apply for and receive Development Approvals in accordance with the Existing Land Use Regulations, subject only to the exercise of the Reservations of Authority set forth in Section 4.3 and the terms of this Agreement.

f. Development Exactions. In addition to and not in limitation of the foregoing, or the provisions of Section 4.2 except and subject to the Reservations of Authority, COUNTY shall not levy or require any further Development Exactions except those provided for or required by or pursuant to the Existing Land Use Regulations; including, but not limited to the existing General Plan and Existing Development Approvals, which include, but are not limited to, Development Exactions which may be required by COUNTY in accordance with its current standards and policies (including, without limitation, as to the amount, time and method of payment). However, to the extent BISHOP elects to proceed pursuant to PB Option 1, the payment of \$850,000 total for park in-lieu fees (\$539,000) and community benefit fees (\$311,000) shall fully satisfy the Project's park in-lieu fees and COUNTY Ordinance Number 3570.

g. Permits and Approvals - Cooperation. COUNTY shall accept and timely process, in the normal and legal manner for processing such matters, all applications for future Development Approvals contemplated by, required under or necessary to effect the intent of this Agreement.

4.2 Regulation of Development.

a. In General. Notwithstanding any future action of COUNTY, whether by ordinance, resolution, initiative or otherwise, during the term of this Agreement, the rules, regulations and official policies applicable to and governing the Development of the Property shall be the Existing Land Use Regulations.

b. Vested Rights. In developing the Property, BISHOP is provided and assured of the vested right to require that the Land Use Regulations of COUNTY applicable to and governing the Development of the Property during the term hereof shall be as provided in this Section 4.2.

4.3 Limitations, Reservations and Exceptions. Notwithstanding anything to the contrary set forth in Section 4.2 hereinabove, in addition to the Existing Land Use Regulations, only the following Land Use Regulations adopted by COUNTY hereafter shall apply to and govern the Development of the Property (“Reservations of Authority”):

a. Future Regulations. Future COUNTY Land Use Regulations which are not in conflict with the Existing Development Approvals or which are in conflict with the Existing Development Approvals and the application of which to the Development of the Property has been consented to in writing by BISHOP;

b. State and Federal Laws and Regulations. Existing and future State and federal laws and regulations, together with any COUNTY Land Use Regulations, programs and actions, or inaction, which are reasonably (taking into consideration, among other things, the assurances provided to BISHOP hereunder) adopted or undertaken by COUNTY in order to comply with State and federal laws and regulations; provided, that in the event that State or federal laws and regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such State and federal laws and regulations, in which event this Agreement shall remain in full force and effect to the extent that it is not inconsistent with such laws and regulations and that performance of the remaining provisions would not be inconsistent with the intent and purposes of this Agreement;

c. Public Health and Safety. Land Use Regulations which are adopted by COUNTY, which may be in conflict with the Existing Land Use Regulations which are reasonably necessary in order to protect the public health and safety;

d. Building and Improvement Standards. Present and future Building and Improvement Standards, except that (taking into consideration the assurances to BISHOP in this Section 4) any future amendment thereto which significantly reduces the amount of land within the Property which can be utilized for structures and improvements shall not be considered a provision of any of the Building and Improvement Standards included within the exception provided by this Paragraph 4.3d and shall not apply to and govern the Development of the Project unless it complies with another exception under this Section 4.3;

e. Processing Fees and Charges. Processing fees and charges of every kind and nature imposed or required by COUNTY under current or future Regulations covering the actual costs of COUNTY in (i) processing applications and requests for permits, approvals

and other actions and (ii) monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of BISHOP hereunder; and

f. Full Extent of Law. The Parties acknowledge and agree that COUNTY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to COUNTY all of its police power which cannot be so limited. Notwithstanding the foregoing, this Agreement shall be construed, contrary to its stated terms if necessary, to reserve to COUNTY all such power and authority which cannot be restricted by contract.

4.4 Further Assurances to BISHOP Regarding Exercise of Reservations of Authority.

a. Approval of Existing Development Approvals. In granting the Existing Development Approvals, COUNTY considered the health, safety and welfare of the existing and future residents and populations of the County and prepared in this regard extensive environmental review documents pursuant to CEQA as well as extensive traffic impact reports and other studies. Without limiting the generality of the foregoing, in preparing and approving the Existing Development Approvals, the COUNTY Board of Supervisors carefully considered and determined the projected needs (taking into consideration the planned development of the Project, adjacent areas and the County) for sheriff, fire, library, paramedic and similar facilities and services within the Project, the adjacent areas and the County, and the projected needs within the Project and such areas for flood control measures, the general capacity of the Property, the needs of the residents for open space and parks, the appropriateness of the number of units to be developed and the density and intensity of the development comprising the Project. The Parties acknowledge that in certain instances, the development of the Property may be restricted and adversely affected and impacted by future Land Use Regulations adopted by COUNTY as provided in Section 4.3.

b. Assurances to BISHOP. The Parties further acknowledge that the public benefits to be provided by BISHOP to COUNTY pursuant to this Agreement are in consideration for and reliance upon assurances that the Property can be developed in accordance with the Existing Land Use Regulations (subject to the terms of this Agreement). Accordingly, while recognizing that the Development of the Property may be affected by the exercise of the Reservations of Authority and the requirement that BISHOP provide the Public Benefits, BISHOP is concerned that normally the Courts extend to local agencies significant deference in the adoption of Land Use Regulations which might permit COUNTY to attempt to apply inconsistent Land Use Regulations in the future under justification of the Reservations of Authority. Accordingly, pursuant to this Agreement, the COUNTY assures the BISHOP that COUNTY will not inequitably further restrict or limit the Development of the Property in conflict with the provisions of this Agreement.

4.5 Judicial Review.

a. Burden of Proof. Based on the foregoing, in the event BISHOP judicially challenges (including the procedure pursuant to Section 10.5) the application of a

future Land Use Regulation as being in conflict with this Agreement or exceeding or violating COUNTY'S authority (as described herein), BISHOP shall bear the burden of proof in establishing that such Land Use Regulation was applied in conflict with the Existing Land Use Regulations. In the event that BISHOP, carries its burden of proof and establishes that such Land Use Regulation is in conflict with the Existing Land Use Regulations, COUNTY shall thereafter bear the burden of proof in establishing that such Land Use Regulation was adopted pursuant to and in accordance with this Agreement.

b. Considerations. Considerations, among others, in determining whether any such future COUNTY Land Use Regulation was properly applied shall include:

(A.) With respect to any future Land Use Regulation adopted by COUNTY pursuant to paragraphs 4.3c (with respect to the protection of public health and safety) or 4.3b (with respect to federal and state regulation), the extent to which such regulation substantially impairs the rights of BISHOP hereunder and is (A) to be unreasonably borne only by BISHOP and the Project (taking into consideration the obligations of BISHOP under this Agreement) rather than being also borne by other lands and interests, or (B) unreasonable taking into consideration other reasonable and practicable alternatives; and (C) with respect to any future Land Use Regulations adopted pursuant to Paragraph 4.3c. (with respect to the protection of public health and safety): (i) Whether, and the extent to which, the concerns which are the subject of the proposed Land Use Regulation were considered and/or provided for in the adoption of the Existing Land Use Regulations or this Agreement; and (ii) The greater the severity of the adverse impact of the Land Use Regulation on the reasonable investment based Economic Expectations of BISHOP (taking into consideration the extent of any mitigation of such impacts provided by COUNTY in connection with such Land Use Regulation), the greater the showing required of COUNTY that the concerns addressed are legitimate and that such Land Use Regulation is reasonable taking into consideration such concerns.

(B.) The Parties believe that the foregoing considerations are appropriate under the law and are not intended to, and shall not, limit the authority of COUNTY with respect to the police power which cannot be limited by contract. Further, said considerations shall be interpreted, supplemented and revised to reflect subsequent judicial determinations and State legislative enactments further defining the extent and nature of the authority of local agencies which must be reserved and cannot be limited by contracts such as this Agreement.

4.6 Administrative Findings and Burden of Proof.

a. COUNTY Findings and Determinations. As a condition precedent to adopting and applying any Land Use Regulation or taking any action requiring the action or approval of the COUNTY Board of Supervisors which is in conflict with the Existing Land Use Regulations, after providing BISHOP with reasonable notice and an opportunity to be heard, COUNTY shall make specific findings and determinations as to the basis for applying such Land Use Regulation to the Project in accordance with Section 4.3.

b. BISHOP'S Burden of Proof. As a condition precedent to any claim by BISHOP that a proposed Land Use Regulation does not comply with the Reservations of Authority and, therefore, cannot be applied to and govern the Development of the Property

(whether in a judicial proceeding or otherwise), BISHOP shall raise the claim at the COUNTY Board of Supervisors hearing (and may raise it earlier) at which the proposed Land Use Regulation is considered and shall present all information which, in its judgment, is relevant and upon which it intends to rely, or present in any judicial proceeding, including, but not limited to, information regarding BISHOP'S reasonable investment based Economic Expectations, and, in addition, shall provide at such time any further information regarding BISHOP'S reasonable investment based Economic Expectations reasonably-requested by COUNTY. In the event that the proposed Land Use Regulation is of a kind that is not heard by or appealable to the COUNTY Board of Supervisors and provided that BISHOP is given reasonable prior notice, as a condition precedent to any such claim, BISHOP shall raise the claim and provide the above information as a protest to the agent or representative of COUNTY promulgating or applying the proposed Land Use Regulation.

4.7 Regulation by other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of COUNTY possess authority to regulate aspects of the Development of the Property separately from or jointly with COUNTY and this Agreement does not limit the authority of such other public agencies. For example, pursuant to Government Code Section 66477, in the event that an agency (for example, a community services district), provides park and recreational services or facilities, it shall be permitted by the Parties, to participate jointly with COUNTY to determine the location of land to be dedicated or in lieu fees to be paid for local park purposes, provided that COUNTY shall exercise its authority subject to this Agreement.

5. PERIODIC REVIEWS

5.1 Annual Review. COUNTY and BISHOP shall review the performance of this Agreement, and the Development of the Project, at least once every 12-month period after the Effective Date in accordance with Government Code Section 65865.1. As part of such Annual Monitoring Review, within 30 days after each anniversary of this Agreement, BISHOP shall deliver to COUNTY all information reasonably requested by COUNTY regarding BISHOP'S performance under this Agreement demonstrating that BISHOP has complied in good faith with terms of this Agreement and as required by the Existing Land Use Ordinances. If as a result of such periodic review, COUNTY finds and determines, on the basis of substantial evidence, that BISHOP has not complied in good faith with any of-the terms or conditions of this Agreement, COUNTY may terminate this Agreement as provided in Section 10.2.

6. TRANSFERS AND ASSIGNMENTS.

6.1 Transfer and Assignments of Rights and Interests.

a. Rights and Interests Appurtenant. The rights and interests conveyed and provided herein to BISHOP benefit and are appurtenant to the Property. BISHOP has the right to sell, assign and transfer any and all of its rights and interests and to delegate any and all of its duties and obligations hereunder; provided, however, that such rights and interests may not be transferred or assigned except in strict compliance with the following conditions precedent:

(A.) Said rights and interests may be transferred or assigned only together with and as an incident of the transfer, assignment, or ground lease of the portions of the Property to which they relate, including any transfer or assignment pursuant to any foreclosure of a Mortgage or a deed in lieu of such foreclosure; and

(B.) Concurrent with any such assignment or transfer or within five (5) business days thereafter, BISHOP shall notify COUNTY in writing of such assignment or transfer, the portions of the Property to which the assignment or transfer is appurtenant, and the name and address (for purposes of notices hereunder) of the transferee or assignee, and BISHOP and the assignee or transferee shall notify COUNTY whether the assignee or transferee has assumed any of BISHOP'S Obligations under this Agreement and which of BISHOP'S Obligations have been assumed; and

(C.) Any attempt to assign or transfer any right or interest in this Agreement except in strict compliance with this Section 6 shall be null and void and of no force and effect.

COUNTY shall have no duty or obligation of any kind or nature to maintain a record of such transfers or assignments of portions of the Property or to notify or advise prospective or actual assignees or transferees or others of such assignments with respect to the Property or under this Agreement.

b. Subject to Terms of Agreement. Following any such assignment or transfer of any of the rights and interests of BISHOP under this Agreement, the exercise, use and enjoyment thereof shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were BISHOP. Without limiting the generality of the foregoing:

(A.) The further assignment or transfer of any of the rights or interests under this Agreement shall be made only in accordance with and subject to the terms of this Section 6.1; and

(B.) The rights and interests assigned or transferred are subject to termination in accordance with this Agreement.

Notwithstanding the foregoing, the assignee or transferee of any of the rights and interests of BISHOP shall take said rights and interests subject to this Agreement and shall perform the duties and obligations of BISHOP.

c. Release of BISHOP. Notwithstanding the assignment or transfer of portions or all of the Property or rights or interests under this Agreement, BISHOP shall continue to be obligated under this Agreement unless released or partially released by COUNTY with respect to BISHOP'S Obligations and the other duties and obligations of BISHOP under this Agreement which release or partial release shall be provided by COUNTY upon the full satisfaction by BISHOP of the following conditions:

(A.) BISHOP is not then in default under this Agreement;

(B.) BISHOP has provided COUNTY with the written notice required under Paragraph 6.1.a.; and

(C.) Such assignee or transferee has assumed such duties and obligations as to which BISHOP is requesting to be released and has provided COUNTY with security and other assurances equivalent to those which were provided by BISHOP assuring COUNTY that BISHOP'S Obligations and the other duties and obligations of BISHOP under this Agreement for which BISHOP is being released will be fully and strictly performed as provided in this Agreement.

d. Effect of Noncompliance. From and after the assumption of obligations under this Agreement by a transferee pursuant to this Section, noncompliance by any such transferee with the terms and conditions of this Agreement assumed by such transferee shall entitle COUNTY to pursue any and all of its rights under this Agreement so assumed against such transferee; but, such noncompliance shall not be deemed a default or grounds for termination hereof with respect to, or constitute cause for COUNTY to initiate enforcement action against, other persons then owning or holding interests in the Property or any portion thereof and not themselves in default hereunder. Similarly, noncompliance by BISHOP with respect to any terms and conditions of this Agreement not assumed by such transferee shall entitle COUNTY to pursue any and all of its rights under this Agreement retained by BISHOP against BISHOP, but, such noncompliance by BISHOP shall not be deemed a default or grounds for termination hereof with respect to, or constitute cause for COUNTY to initiate enforcement action against, such transferee or other persons then owning or holding interest in the Property or any portion thereof and not themselves in default hereunder.

e. Rights of Successors and Assigns. Any and all successors, including without limitation, those successors acquiring their interests in the Property and this Agreement by merger, consolidation, stock sale, pledge, corporate reorganization or other conveyance by business arrangement, and assigns of BISHOP shall have all of the same rights, benefits and obligations of BISHOP under this Agreement, to the extent acquired as part of the Property and/or permitted in this Section.

7. TERM OF AGREEMENT.

7.1 Stated Term. This Agreement shall become effective on the Effective Date and unless earlier terminated pursuant to the provisions of this Agreement shall continue in effect for ten (10) consecutive years therefrom. In the event that the Parties determine that a longer period is necessary to achieve the foregoing purpose, the term of this Agreement may be extended by the further written agreement of the Parties in accordance with Section 8. If BISHOP requests an extension of the term of this Agreement ("Extension Request"), the COUNTY and BISHOP shall meet and confer in good faith on the Extension Request. The COUNTY shall not unreasonably deny the Extension Request.

7.2 Rights and Duties Following Termination.

a. In General. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligations required to

have been performed prior to said termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to said termination.

b. Survival of Terms. In the event that this Agreement is terminated for any reason other than the default of BISHOP, the rights and duties of the Parties shall be as set forth in Paragraph 7.2a., except as provided in this Paragraph 7.2b.

7.3 Assurances for Completed Milestones. To the extent that certain BISHOP'S Obligations have been fully performed to the extent required at such time, this Agreement shall continue in full force and effect during the remainder of the stated term of this Agreement set forth in Section 7.1 to assure BISHOP that the Land Use Regulations applicable and governing the Development of the Property during such time shall be as provided in Section 4.

8. AMENDMENT.

Subject to the provisions of Section 6, Section 7 and Section 10, this Agreement may be amended or cancelled only by the mutual agreement of the Parties in accordance with Government Code Section 65868, in a writing executed by the Parties and recorded in the official records of COUNTY.

9. PROCESSING OF REQUESTS AND APPLICATIONS.

COUNTY shall process any applications for action pursuant to this Agreement, or for permits or approvals for Development of the Property, under the procedures for the processing of such applications which are then in effect; provided, however, as provided in Section 4, no subsequently adopted Regulation (including, without limitation, any moratorium or other phasing of development) shall be applicable to and shall delay the acceptance or processing of any such application except in strict accordance with the Existing Land Use Regulations or Land Use Regulations adopted by COUNTY pursuant to the Reservations of Authority. As provided above, the standards applied in approving or disapproving such applications shall be as set forth in the Existing Land Use Regulations, subject to the Reservations of Authority.

10. DEFAULT. REMEDIES AND ESTOPPEL CERTIFICATES.

Unless canceled as provided herein or modified or suspended pursuant to Government Code Section 65869.5 or terminated pursuant to this Section 10, this Agreement is enforceable according to its terms by either party hereto.

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

In general, each of the Parties hereto may pursue any remedy at law or equity-available for the breach of any provision of this Agreement; except that COUNTY shall not be liable in damages to BISHOP, or to any assignee, transferee of BISHOP or any other person, and BISHOP covenants not to sue for or claim any damages, for;

a. any breach of, or which arises out of, this Agreement;

b. the taking, impairment or restriction of any right or interest conveyed or provided hereunder or pursuant hereto; or

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

provided, however, that the foregoing does not limit the liability of COUNTY, if any, for damages which:

a. are not for a breach of this Agreement or which do not arise under this Agreement;

b. are not with respect to any right or interest conveyed or provided hereunder or pursuant hereto, and

c. do not arise out of or which are not connected with any dispute, controversy or issue regarding the application, interpretation or effect of the provisions of this Agreement to, on or the application of, any Regulation of COUNTY.

Without limiting the generality of the foregoing, and as an example, in the event that COUNTY refuses to issue building permits under and in accordance with the Existing Development Approvals, BISHOP would be entitled to whatever remedies at law or in equity which are available, including, if available under law, the right to monetary damages.

10.2 Termination of Agreement for Default by BISHOP. COUNTY in its discretion may terminate this Agreement for any failure of BISHOP to perform any material duty or obligation of BISHOP under, or to comply in good faith with the terms and conditions of this Agreement (hereinafter referred to as “default”); provided however, COUNTY may terminate this Agreement pursuant to this Section only after providing written notice to BISHOP of the default setting forth the nature of the default and the actions, if any, required by BISHOP to cure such default and, where the default can be cured, BISHOP has failed to take such actions and cure such default within sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time has failed to commence the actions necessary to bring itself into compliance as required and to diligently pursue such steps to completion.

10.3 Termination of Agreement for Default of COUNTY. BISHOP in its discretion may terminate this Agreement by written notice to COUNTY after the default by COUNTY in the performance of a material term of this Agreement and only after notice by BISHOP thereof to COUNTY and where the default can be cured, the failure of COUNTY to cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period, the failure of COUNTY to commence to cure such default within such 60 day period and to diligently proceed to complete such actions and to cure such default.

10.4 Specific Performance. The Parties acknowledge that monetary-damages and remedies at law generally are inadequate due, in part, to the size, nature and scope of the Project. It will not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun and specific performance is a particularly appropriate remedy for the enforcement of this Agreement and should be available to both Parties based on the following reasons and facts:

a. The unavailability of monetary damages against COUNTY provided in Section 10.1 hereinabove;

b. BISHOP'S Obligations provided for in the Agreement were bargained for by COUNTY and given in return for assurances by COUNTY to BISHOP regarding the Existing Regulations (except as specified to the contrary herein) applicable to the Development of the Property, which assurances were in turn relied upon by BISHOP in undertaking BISHOP'S Obligations;

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

d. The inability of BISHOP to recover and receive back its capital investment in the Public Facilities to be provided to COUNTY as part of BISHOP'S Obligations and to re-plan and provide for different uses of the Property once such facilities and infrastructure have been completed;

e. The use of the Property for the purposes and uses described in the Existing Development Approvals is unique; and

f. The Public Benefits to be provided by BISHOP as part of BISHOP'S Obligations as well as for the benefits that can be obtained from the long-term and comprehensive planning and stability contemplated by the Development Agreement Legislation.

Further, the Parties acknowledge that for the reasons set forth above (particularly because of the lack of monetary damages available to BISHOP), in connection with any judicial proceeding regarding the performance of this Agreement, rights, or the interests and duties of the Parties hereunder, including a proceeding pursuant to Section 10.5, it is appropriate for, and the Parties shall cooperate in requesting (whether by stipulations or otherwise) the court with jurisdiction to proceed expeditiously and to retain jurisdiction until the underlying conflict or dispute has been fully resolved.

10.5 Appointment of Referee. As an alternative procedure hereunder, a party initiating legal action hereunder may request that such action be heard by a referee from the

Orange County Superior Court pursuant to the referee procedures of California Code of Civil Procedure Sections 638, *et seq.* BISHOP and COUNTY, in such case, shall use their best efforts to agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before him. If BISHOP and COUNTY are unable to agree upon a referee within ten (10) days after a written request to do so by either party, either party may seek to have a referee appointed pursuant to Section 640 of the California Code of Civil Procedure. The cost of such proceeding (exclusive of the attorneys' fees and costs of the Parties) shall be borne equally by the Parties. Any referee selected pursuant to this Section 10.5 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. In the event that an alternative method of resolving disputes concerning the application, enforcement or interpretation of development agreements is provided by legislative or judicial action after the Effective Date, the Parties may, by mutual agreement, select such alternative method.

10.6 Estoppel Certificates. Either party may at any time deliver written notice to the other party requesting an estoppel certificate (the "Estoppel Certificate") stating:

- a. The Agreement is in full force and effect and is a binding obligation of the Parties;
- b. The Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments;
- c. That there has been no default in the performance of the requesting party's obligations under the Agreement or, if a default does exist, the nature and amount of any default. A party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting party within thirty (30) days after receipt of the request. The Director of the COUNTY'S Planning and Development Services Department or his designee may sign Estoppel Certificates on behalf of the COUNTY. Any officer of BISHOP may sign on behalf of BISHOP. An Estoppel Certificate may be relied on by assignees, transferees and mortgagees of BISHOP. In accordance with Section 10, COUNTY shall have no liability for monetary damages to BISHOP, any assignee, transferee or mortgagee or any other person in connection with, resulting from or based upon the issuance of any certificate hereunder.
- d. In the event that one party requests an Estoppel Certificate from the other, the requesting party shall reimburse the other party for all reasonable and direct costs and fees incurred by such party with respect thereto, including reasonable attorney's fees.

11. THIRD PARTY LITIGATION.

11.1 Existing Development Approvals Litigation.

a. Litigation. As set forth above, COUNTY has determined that this Agreement is consistent with the General Plan, applicable State law, the Existing Development Approvals, and Existing Regulations. BISHOP concurs with COUNTY'S determination. The Parties acknowledge that:

(A.) Presently there is no litigation challenging the legality, validity and adequacy of this Agreement or the Existing Development Approvals;

(B.) In the future there may be challenges to this Agreement or the Existing Development Approvals; and

(C.) If successful, such challenges could delay or prevent the performance of this Agreement and the Development of the Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of Section 10, COUNTY shall have no liability under this Agreement for any failure of COUNTY to perform under this Agreement or the inability of BISHOP to develop the Property as contemplated by the Existing Development Approvals or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the Existing Development Approvals are invalid or inadequate or not in compliance with law.

b. Suspension of Obligations. In the event that Development of the Property is enjoined or prevented from proceeding by any judicial order or determination, the time for performance of the obligations of the Parties hereunder shall be extended as provided in Section 15.11.

c. Option to Terminate. In the event that any judicial determination or order adversely impacts the reasonable investment based Economic Expectations of BISHOP in connection with the Project, BISHOP may terminate this Agreement by notice in writing to COUNTY and recorded in the official records of COUNTY.

d. Cooperation and Indemnification in the Event of Legal Challenge. In the event of any legal action instituted by a third party challenging the validity of any provision of this Agreement, the procedures leading to its adoption, or the issuance of Development Approvals for the Project, the Parties hereby agree to affirmatively cooperate in defending said action. BISHOP agrees that its own expense, BISHOP shall defend, indemnify and hold harmless the COUNTY, its agents, officers, and employees from and against any claim, action or proceeding brought against the COUNTY, its agents, officers, and employees to attack, set aside, void or annul any Development Approvals including any associated costs, damages, and expenses potentially including, but not limited to, costs associated with the California Public Records Act, requests submitted to the COUNTY related to the Project in anticipation of litigation concerning the Development Approvals, and an award of attorneys' fees and costs incurred or arising out of the above-referenced litigation brought against the COUNTY. The COUNTY may, at its sole discretion, participate in the defense of any litigation, at the BISHOP's expense, but such participation shall not relieve BISHOP of its obligations. Nothing contained in this Agreement, however, shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, or BISHOP, to settle, defend, appeal or to decline to settle or to terminate or forego defense or appeal of the litigation.

12. EFFECT OF AGREEMENT ON TITLE.

12.1 Covenants Run With The Land. Subject to the provisions of Sections 6 and 15:

a. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

b. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law;

c. Each covenant to do or refrain from doing some act on the Property hereunder (A) is for the benefit of and is a burden upon every portion of the Property, (B) runs with such lands and (C) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof and shall benefit each party and its lands hereunder, and each other person succeeding to an interest in such lands.

d. Notwithstanding any of the foregoing or in this Agreement to the contrary, any assignee or transferee or Mortgagee which acquires any right or interest in or with respect to the Property or any portion thereof shall take and hold such rights and interests subject to this Agreement and shall not have been deemed to have assumed the BISHOP'S Obligations of the other affirmative duties and obligations of BISHOP hereunder except:

(A.) To the extent that any of such assignees, transferees or mortgagees have expressly assumed any of the duties or obligations of BISHOP hereunder;

(B.) If any such assignee, transferee or mortgagee accepts, holds, or attempts to exercise or enjoy the rights or interests of BISHOP hereunder, it shall have assumed the obligations of BISHOP under Section 3; and

(C.) To the extent that the performance of any duty or obligation by BISHOP is a condition precedent to the performances of a covenant by COUNTY, it shall continue to be a condition to COUNTY'S performance hereunder.

12.2 No Dedication or Lien. Nothing herein shall be construed as a dedication or transfer of any right or interest in, or as creating a lien with respect to, the title to the Property.

13. MORTGAGEE PROTECTION: CERTAIN RIGHTS OF CURE.

13.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, 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 and any acquisition or acceptance of title or any right or interest in or with respect to the Property, or any portion thereof, by a Mortgagee (whether under or pursuant to a Mortgage, foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise), shall be subject to all of the terms and conditions contained in this Agreement.

13.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 13.1 above, no Mortgagee shall have an obligation or duty under this Agreement to perform BISHOP'S Obligations or other affirmative covenants of BISHOP hereunder, or to guarantee such performance; except that to the extent that any covenant to be performed by BISHOP is a condition to the performance of a covenant by COUNTY, the performance thereof shall continue to be a condition precedent to COUNTY'S performance hereunder.

13.3 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If COUNTY receives notice from a Mortgagee requesting a copy of any notice of default given BISHOP hereunder and specifying the address for service thereof, and records a copy of each request in the official records of COUNTY in the manner required under Civil Code Section 2924b with respect to Requests for Notices of Default, then COUNTY shall deliver to such Mortgagee, concurrently with service thereon to BISHOP, any notice given to BISHOP with respect to any claim by COUNTY that BISHOP has not complied in good faith with the terms of this Agreement or has committed an event of default. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from COUNTY to cure or remedy, or to commence to cure or remedy, the claim of default or noncompliance set forth in the COUNTY'S notice. If the default 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 foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the default or noncompliance within thirty (30) days after obtaining possession. If any such default or noncompliance cannot, with diligence, be remedied or cured within such thirty (30) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such Mortgagee commences the cure during such thirty (30) day period, and thereafter diligently pursues and completes such cure.

13.4 Bankruptcy. Notwithstanding the foregoing provisions of Section 13, if any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving BISHOP, the times specified in Section 13.3 for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, provided that such Mortgagee is proceeding expeditiously to terminate such prohibition and in no event for a period longer than one year.

14. ANNEXATION AND INCORPORATION. Upon the incorporation or annexation of the Property in or to any city or other county (the “Local Agency”), such Local Agency, as contemplated by and provided in Section 65865.3(a) of the Development Agreement Legislation (with respect to incorporation) shall succeed to the benefits and rights and be bound by the obligations and duties of COUNTY hereunder to the same extent as if the Local Agency were a signatory hereof, including but not limited to the obligation to issue necessary permits and approvals in accordance herewith; provided, however, and except that COUNTY shall continue to be a beneficiary with respect to BISHOP’S Obligations under this Agreement and may enforce the provisions hereof with respect thereto.

15. MISCELLANEOUS PROVISIONS.

15.1 Recordation of Agreement. This Agreement and any amendment or cancellation hereof shall be recorded in the Official Records of COUNTY by the Clerk of the Board of Supervisors within the period required by Section 65868.5 of the Government Code.

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

15.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined to be invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

15.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

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

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

15.7 Joint and Several Obligations. If any obligation of BISHOP hereunder to COUNTY is the obligation of more than one person, such obligation and any liability with respect thereto shall be joint and several among the obligees.

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

15.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights

upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

15.10 No Third-Party Beneficiaries. The only parties to this Agreement are BISHOP and COUNTY. There are no third-party beneficiaries this under Agreement

15.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations, court actions (such as restraining orders or injunctions) or other causes beyond such party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years or for a period which would cause this Agreement or any provisions hereof to be void as violating the rule against perpetuities.

15.12 Attorneys Fees. In any action or undertaking to enforce the provisions of this Agreement, each of the Parties hereto shall bear its own attorneys fees.

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

15.14 Notices. Any notice required or provided for under this Agreement shall be in writing and delivered in person to an officer of any party, or sent by Federal Express, private commercial delivery or courier service for next business day delivery, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended, as follows:

If to COUNTY:

Orange County Board of Supervisors
333 W. Santa Ana Blvd, Suite 465
P.O. Box 687
Santa Ana, CA 92701
Attn: Clerk of the Board
Phone: (714) 834-2206

Director of OC Development Services
300 N. Flower St.
P.O. Box 4048
Santa Ana, CA 92702-4048

If to BISHOP:

The Roman Catholic Bishop of Orange

13280 Chapman Ave.
Garden Grove, CA 92840
Attn: Joe Novoa, Director of Construction
Telephone: (714) 282-3012

with a copy to:

Sean Matsler, Esq.
Cox, Castle & Nicholson LLP
3121 Michelson Drive
Ste. 200
Irvine, CA 92612
Telephone: (949) 260-4652

Any party hereto may from time to time, by written notice to the other party as required herein, designate a different address which shall be substituted for the one above specified. Notice by any method shall be deemed served or delivered upon the date of receipt or refusal indicated on the return receipt or the date of personal delivery.

15.15 Successors and Assigns. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the day and year first set forth above.

COUNTY:

By: _____

Name: _____

Title:

BISHOP:

By: _____

Name: _____

Title:

ATTEST:

By: _____

Name: _____

Title: County Clerk

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