



CONTRA COSTA Co Recorder Office
JOSEPH CANCIAMILLA, Clerk-Recorder
DOC- 2013-0160932-00

RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:

Tuesday, JUN 25, 2013 15:18:07
FRE \$0.00:1

City of Orinda
22 Orinda Way
Orinda, California 94563
Attention: City Clerk

Ttl Pd \$0.00 Rcpt # 0001709838
rrc/R9/1-9

)
(Space Above This Line for Recorder's Use Only)
Exempt from recording fee per Gov. Code § 27383

**SIXTH AMENDMENT TO THE
DEVELOPMENT AND PRE-ANNEXATION AGREEMENT
FOR
GATEWAY VALLEY
BETWEEN
CITY OF ORINDA
AND
OG PROPERTY OWNER, LLC**

Effective Date: June 7, 2013

SIXTH AMENDMENT TO THE DEVELOPMENT
AND PRE-ANNEXATION AGREEMENT FOR GATEWAY VALLEY BETWEEN
CITY OF ORINDA AND OG PROPERTY OWNER, LLC

THIS SIXTH AMENDMENT TO THE DEVELOPMENT AND PRE-ANNEXATION AGREEMENT FOR GATEWAY VALLEY BETWEEN CITY OF ORINDA AND OG PROPERTY OWNER, LLC ("Sixth Amendment") is entered into as of this 7th day of June, 2013 by and between the CITY OF ORINDA, a municipal corporation of the State of California ("City"), and OG Property Owner, LLC ("OGLLC").

RECITALS:

This Sixth Amendment is entered into upon the basis of the following facts, understandings and intentions of the parties:

- A. The City Council of the City of Orinda, pursuant to Government Code Sections 65864 through 65869.5 and City Council Resolution No. 19-90 ("Development Agreement Legislation"), enacted Ordinance No. 94-27, adopting the 1994 Development Agreement and Pre-Annexation Agreement, on November 15, 1994; enacted Ordinance No. 99-02, approving the First Amendment to the Development and Pre-Annexation Agreement, on April 20, 1999; enacted Ordinance No. 05-02 at a duly noticed public hearing on March 15, 2005, effective April 16, 2005, approving the Second Amendment and Restatement of the Development and Pre-Annexation Agreement for Gateway Valley between the City of Orinda and Orinda Gateway, LLC and related Conditions of Approval ("March 2005 DA Conditions of Approval"); enacted Ordinance No. 06-05, at a duly noticed public hearing on October 18, 2006, effective immediately, approving the Third Amendment to the Development and Pre-Annexation Agreement for development of the Montanera Project in Gateway Valley; enacted enacted Ordinance No. 07-01, at a duly noticed public hearing on February 6, 2007, effective March 5, 2007, approving the Fourth Amendment to the Development and Pre-Annexation Agreement for development of the Montanera Project in Gateway Valley; and enacted Ordinance No. 10-10, at a duly noticed public hearing on April 13, 2010, approving the Fifth Amendment to the Development and Pre-Annexation Agreement for development of the Montanera Project in Gateway Valley ("Fifth Amendment") (collectively, "Restated Development Agreement").
- B. On June 17, 2008, the City Manager of the City of Orinda, pursuant to Sections 11.1 and 11.2 of the Restated Development Agreement executed a minor amendment to the Restated Development Agreement ("First Administrative Changes").

- C. The Restated Development Agreement and the First Administrative Changes are hereinafter collectively referred to as the "Development Agreement."
- E. The Community Playfields shall be referred to by the numbers set forth on Exhibit 1 to the Fifth Amendment.
- F. In light of residential market conditions, the City and OGLLC desire to amend the timing for delivery of Playfields 3, 4 and 5 and to allow OGLLC certain flexibility on the final location and design of certain improved pedestrian corridors, in exchange for OGLLC's contribution of funding to the City.
- G. On February 26, 2013, the Planning Commission considered this Sixth Amendment after duly noticed public hearing and recommended that the City Council approve this Sixth Amendment.
- H. The City of Orinda City Council, after duly noticed public hearings on April 9, 2013, and May 7, 2013, adopted this Sixth Amendment by Ordinance No. 13-01.

NOW THEREFORE, pursuant to Section 11.1 of the Development Agreement, the parties hereto agree to the following:

1. Defined Terms. All terms used herein shall have the meanings given in the Development Agreement except as expressly otherwise provided herein. As noted in the Recitals, above, all references to "Development Agreement" in this Sixth Amendment, except as otherwise expressly stated herein, shall be to the Restated Development Agreement, as modified by the First Administrative Changes.

2. Enumeration of Specific Amendments. The Development Agreement is hereby revised to incorporate the following amendments, consistent with the requirements of Section 11.1 of the Development Agreement. **In this Section 2 where the amendment revises existing text, double underline text indicates new text; strikeout text indicates a deletion.**

a. Timing of Delivery of Community Playfields. March 2005 DA Condition of Approval No. 22, as previously amended by Section 2(a) of the Fifth Amendment, is hereby amended as follows:

OGLLC shall submit plans and receive Planning Commission approval of the Community Facilities and Public Improvements, as these terms are defined in the DA. Because the Community Facilities are being constructed by OGLLC for the benefit of the City and the public, the application(s) for the Community Facilities shall be considered a joint application of OGLLC and the City, and

all City related application fees shall be waived. The Parks and Recreation Commission shall review and make recommendations to the Planning Commission regarding the plans for the community playfields, Art & Garden Center and the trails and trailheads. The construction plans for the community playfields shall be submitted prior to issuance of a building permit for the first home. Construction of the community playfields shall be completed as follows:

- Playfields 1 and 2: the earlier of the issuance of the building permit for the 100th home or June 1, 2011. Notwithstanding the foregoing sentence, OGLLC shall make best efforts to achieve completion and delivery of Playfields 1 and 2 by April 1, 2011.
- Playfields 3 (including comfort station 2) and 5: the earlier of the building permit for the 100th home or no later than June 27, 2013, subject to Permitted Delays and rain delays. Notwithstanding anything to the contrary in the Development Agreement or Final Development Plan, OGLLC shall construct comfort station 2 per the City-approved plans dated January 14, 2013, which does not include the "snack shack" element. The City may, at its sole discretion, require OGLLC to include the "snack shack" element as part of comfort station 3.
- Playfields 4 and 5 (including comfort station 3 and the nearby tot lot): the earlier of the issuance of the building permit for the 2100th home or June 1, 2018. Additionally, prior to completion June 1, 2015, OGLLC may use Playfield 4 for the purpose of temporary soil storage so long as such use complies with all applicable laws and does not interfere with the City's full use and enjoyment of Community Playfields 1, 2, and/or 3 and 5 following their completion and does not delay completion of any Community Playfield.
- In order to be considered "complete" for purposes of the above deadlines, the turf grass playing surface on Playfields 3, 4 and 5 must have been in place for at least sixty (60) days.

b. Special Pedestrian Corridors. The City and OGLLC agree that the "Special Pedestrian Corridors" and/or "Pedestrian 'Rosewalk Corridors'" depicted in Development Agreement Figures A.1, A.3, A.4, A.5, B.6d, D.7 and Final Development Plan Figures 3-1, 3-3 and 4-2 are hereby deemed modified to be consistent with this Section 2(b). The Development Agreement currently requires the construction of two parallel Special Pedestrian Corridors down the hillside on private property located between homes on Boeger Ranch, Wild Rye, Rabble, Big Leaf, Fiddleneck, and Big Rock Roads on the north side of Quarry Hill, and requires these Special Pedestrian

Corridors to be between four and six feet wide and non-paved. OGLLC shall hereby not be required to construct the easternmost of these two Special Pedestrian Corridors, but shall instead construct a series of small areas with seating, a small lawn and/or other similar amenities on the flat portions of the property previously required for a Special Pedestrian Corridor. The details of these areas are subject to the approval of the Planning Director. The City and OGLLC further agree that the final locations and design details of the "Special Pedestrian Corridors" and/or "Pedestrian 'Rosewalk Corridors'" as depicted on Development Agreement Figures A.1, A.3, A.4, A.5, B.6d, D.7 and Final Development Plan Figures 3-1, 3-3 and 4-2, and as described in Appendix A Section 3.D(2), may be modified from time to time with the approval of the Planning Director.

c. Park Amenities Payment. OGLLC shall pay TWO HUNDRED THOUSAND DOLLARS (\$200,000) to the City to be used by the City to maintain and improve the usability of the City's outdoor park amenities. OGLLC shall compensate the City for the costs it incurs up to the \$200,000 maximum, by issuing reimbursement checks to the City within thirty (30) days of receiving request(s) for reimbursement from the City.

3. Interpretation.

(a) The Development Agreement shall be construed as having been modified by this Sixth Amendment. Except as expressly modified by this Sixth Amendment, the Development Agreement remains in full force and effect.

(b) In the case of conflict between the provisions hereof and the terms of the Development Agreement, including the Final Development Plan ("FDP"), the provisions hereof shall control.

4. Effective Date and Recordation. The "Effective Date" of this Sixth Amendment shall be the later of the dates on which the City and OGLLC execute this Sixth Amendment, which shall then be recorded as provided in Section 2.1 of the Development Agreement.

IN WITNESS WHEREOF, the City and OGLLC have executed this Sixth Amendment pursuant to Section 11.1 of the Development Agreement to signify their commitment to be bound hereby as of the day and year first written above.

CITY:

CITY OF ORINDA, a Municipal Corporation of the State of California

By Amy R. Dzik
Its Mayor
[signature must be notarized]

Attest:
By Michelle L. Olsen
Its City Clerk

Approved as to form:
By Joan Wolff
Its City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa }

On 4/19/13 before me, Michele L. Olsen, Notary Public,
Date Here Insert Name and Title of the Officer

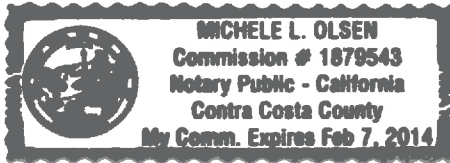
personally appeared Amy R. Worth
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature: Michele L. Olsen
Signature of Notary Public



Place Notary Seal and/or Stamp Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER
 Top of thumb here

Signer Is Representing: _____

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

RIGHT THUMBPRINT OF SIGNER
 Top of thumb here

Signer Is Representing: _____

OGLLC:

OG PROPERTY OWNER, LLC, a Delaware limited liability company

By: Orinda Gateway Holdings, LLC,
a Delaware limited liability company,
its Sole Member

By: Orinda Gateway, LLC,
a California limited liability company,
its Sole Member

By: Brookside Land Company, LLC,
a California limited liability company,
its Administrative Member

By: Scott Goldie
Name: Scott Goldie
Title: Authorized Signer
[signature must be notarized]

Approved as to form:

Holland & Knight LLP
Attorneys for OGLLC

BY: Tamsen Plume
470108.1

ACKNOWLEDGMENT

State of California
County of CONTRA COSTA

On JUNE 5, 2013 before me, Thomas F. Noon, Jr.
- Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature *Thomas F. Noon*

(Seal)

