

EXEMPT FROM RECORDER'S FEES
Pursuant to Government Code §§ 6103 and 27383

Recording requested by and when recorded return to:

City Clerk
City of Orange
300 East Chapman Avenue
Orange, CA 92866

(SPACE ABOVE FOR RECORDER'S USE)

**DEVELOPMENT AGREEMENT
(Ridgeline Equestrian Estates)**

BY AND BETWEEN

**CITY OF ORANGE,
a California municipal corporation,**

and

**MILAN REI IV, LLC,
a California limited liability company**

THIS AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS OF EXECUTION BY ALL PARTIES HERETO
PURSUANT TO THE REQUIREMENTS OF GOVERNMENT CODE §65868.5

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EXHIBITS

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Land Use Entitlements
Exhibit D	Project Development Plan
Exhibit E	Trails
Exhibit F	Arena Site

DEVELOPMENT AGREEMENT

(Ridgeline Equestrian Estates)

This Development Agreement (the “**Agreement**”) is made in Orange County, California as of _____, 2010, by and between the CITY OF ORANGE, a municipal corporation (the “**City**”), and MILAN REI IV, LLC, a California limited liability company (“**Owner**”). City and Owner are sometimes referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:

A. Owner is the owner of 51.1 acres of land located in the Orange Park Acres area of the City (“**OPA Community**”) as described on **Exhibit “A”** and shown on **Exhibit “B”** attached and made a part of this Agreement by this reference (hereinafter, the “**Property**”).

B. Owner is proposing to develop the Property with thirty-nine minimum one-acre lots for the construction of thirty-nine single-family equestrian-oriented detached homes and designate land for a ride-in-only equestrian arena on approximately 2.30 acres to be known as Ridgeline Equestrian Estates (hereinafter, the “**Project**”). Owner has filed applications with the City for development of the Project, including an environmental impact report (“**EIR**”) in compliance with the California Environmental Quality Act (“**CEQA**”), a General Plan Amendment, Zone Change, Tentative Tract Map, a Master Site Plan and this Agreement (the “**Land Use Entitlements**”). The Land Use Entitlements are more particularly described on **Exhibit “C”** attached and made a part of this Agreement by this reference.

C. Development of the Project will be guided by the Project objectives and characteristics as described on **Exhibit “D”** attached and made a part of this Agreement by this reference (hereinafter, the “**Development Plan**”).

D. The City is authorized, pursuant to California Government Code §§65864 through 65869.5 (the “**Development Agreement Statutes**”) and Chapter 17.44 of the City Municipal Code (the “**Development Agreement Ordinances**”) to enter into binding agreements with persons or entities having legal or equitable interests in real property for the development of such property in order to establish certainty in the development process.

E. Pursuant to the Development Agreement Statutes and the Development Agreement Ordinances, the City Council of City finds that: (i) this Agreement and the Land Use Entitlements for the Project implement the goals and policies of the City’s General Plan, provide balanced and diversified land uses and impose appropriate standards and requirements with respect to land development and usage in order to maintain the overall quality of life and the environment within the City; (ii) this Agreement is in the best interests of and not in detriment to the public health, safety and general welfare of the residents of the City and the surrounding region; (iii) adopting this Agreement is consistent with the City’s General Plan and constitutes a present exercise of the City’s police power; and (iv) this Agreement is being entered into

pursuant to and in compliance with the requirements of the Development Agreement Statutes and with the Development Agreement Ordinances.

F. Owner has applied for approval and the City has granted approval of this Agreement in order to create a beneficial Project and a physical environment that will conform to and compliment the planning goals of the City, create a Project sensitive to human needs and values, facilitate efficient traffic circulation as well as the other public benefits stated herein. Owner acknowledges and accepts the conditions of the City's approval.

G. Substantial public benefits (as required by Section 17.44.200 of the City Municipal Code) will be provided by Owner and by the Project as a quality large lot residential community. Those public benefits include but are not limited to the following:

- provision of approximately 2.30 acres of land and improvements within the Project to be offered for a public ride-in-only equestrian arena excluding all water and water well and mitigation rights;
- the donation to a 501(c)3 nonprofit corporation of up to a 7.6 acre parcel, currently zoned for residential, horse riding arena and adjacent land to ensure the preservation of this site for equestrian arena purposes in perpetuity;
- protections and enhancements for the equestrian heritage of Orange Park Acres;
- provision of approximately one mile of regional trails around the perimeter of the Project open to the public complete with railed fencing and an opportunity for linkage to the Orange Park Acres trail system;
- less traffic (and potentially safer streets) by replacing a commercial use of the Property;
- improved water quality through provision of water treatment basins; and
- creation of construction jobs and employment opportunities.

H. This Agreement will bind the Parties to the terms and obligations set forth in this Agreement and will limit, to the degree specified in this Agreement and under the laws of the State of California, the future exercise of the City's ability to delay, postpone, preclude or regulate development of the Project, except as provided for in this Agreement.

I. In accordance with the Development Agreement Statutes and the Development Agreement Ordinances, this Agreement eliminates uncertainty in the planning process and provides for the orderly implementation of the Project. Further, this Agreement provides for appropriate further development of the Project to replace the existing banquet, tennis and swim related improvements which currently exist on the Property or other permitted

recreational/commercial alternatives. This Agreement serves the public interest within the City and the surrounding region.

J. The following actions were taken with respect to the approval of this Agreement and the Project:

(i) An environmental review has been conducted and an EIR has been certified for the Project in accordance with CEQA.

(ii) On _____, 2009, the Planning Commission of the City held a duly noticed public hearing to consider Owner's application for this Agreement and by Resolution No. _____, recommended to the City Council approval of this Agreement.

(iii) On _____, 2009, the City Council of the City held a duly noticed public hearing and conducted the first reading to introduce Ordinance No. _____ approving the Owner's application for this Agreement and on _____, 2009, the City Council adopted Ordinance No. _____ approving this Agreement.

(iv) Owner represents to the City that, as of the Effective Date, it is the owner of the Property, subject to encumbrances, easements, covenants, conditions, restrictions, and other matters of record.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows:

1. **DEFINITIONS.**

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

1.1.1 **"Agreement"** means this Development Agreement.

1.1.2 **"Approval Date"** means the date on which the City Council conducted the public hearing and first reading and introduction of the ordinance approving this Agreement.

1.1.3 **"Arena Site"** means the approximately 7.6 acres of land located on the south side of Santiago Canyon Road improved with an equestrian riding arena and retail uses and vacant adjacent land.

1.1.4 **"CEQA"** means the California Environmental Quality Act found in Public Resources Code Sections 21000 through 21178 and the Guidelines promulgated thereunder found in California Code of Regulations Sections 15000 through 15387.

1.1.5 **"City"** means the City of Orange, a political subdivision of the State of California.

1.1.6 “County” means the County of Orange.

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

1.1.8 “Development Approvals” means all permits and other land use entitlements for use subject to approval or issuance by City in connection with development of the Project on the Property including, but not limited to:

- (a) Certification of an Environmental Impact Report and/or other CEQA compliance documentation;
- (b) General Plan and General Plan amendments; specific plan and specific plan amendments;
- (c) Change of Zone;
- (d) Major Site Plan review, including floor plans, elevations and building materials;
- (e) Design Review;
- (f) Tentative and Final Subdivision and Parcel Maps, including vesting maps;
- (g) Conditional Use Permits, Variances, Site Plot Plans;
- (h) Grading and Building Permits; and
- (i) Development Agreement.

1.1.9 “Development Exaction” means any requirement of City in connection with or pursuant to the Development Approvals for the dedication of land, the construction of public improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development of the Project on the environment or other public infrastructure systems.

1.1.10 “Development Approvals” means the Existing Approvals and the Existing Land Use Regulations applicable to development of the Project on the Property as of the Effective Date.

1.1.11 “Development Plan” means development of the Property as described in **Exhibit “D.”**

1.1.12 “EIR” means the Project Environmental Impact Report State Clearinghouse No. 2007091007 certified by the City and the Final Mitigation Monitoring Plan approved by the City in compliance with CEQA.

1.1.13 “Effective Date” means the date this Agreement is recorded with the Orange County Recorder, which date shall be thirty (30) days after the ordinance approving this Agreement was adopted. The Parties intend the Effective Date of this Agreement would be delayed by the pendency of any referendum regarding the Existing Approvals.

1.1.14 “Existing Approvals” means this Agreement and all Development Approvals approved or issued on or before the Approval Date. By signing this Agreement, Owner has consented to those Development Approvals which were approved on the Approval Date and which shall be considered part of the Existing Land Use Regulations.

1.1.15 “Existing Land Use Regulations” means all Land Use Regulations in effect on the Approval Date. By signing this Agreement, Owner has consented to those Land Use Regulations pertaining to the Property which were approved on the Approval Date and which shall be considered part of the Existing Land Use Regulations.

1.1.16 “Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, 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 and specifications applicable to the development of the Project on the Property. “Land Use Regulations” does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) Business licenses issued by the City for the conduct of businesses, professions, and occupations;
- (b) Taxes and assessments;
- (c) The control and abatement of nuisances;
- (d) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of the entry upon public property;
- (e) The exercise of the power of eminent domain.

1.1.17 “Owner” means the persons and entities listed as Owner on page 1 of this Agreement and their successors in interest to all or any part of the Property.

1.1.18 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device a lender has recorded on the Property.

1.1.19 “Project” means the development of the Project on the Property contemplated by the Development Plan as such Development Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.20 “Property” means the real property described on Exhibit “A” attached to this Agreement.

1.1.21 “Ride-In-Only Equestrian Arena” means the approximately 2.30 acres described as Lot K on Tentative Tract Map No. 17167.

1.1.22 “Subsequent Development Approvals” means all Development Approvals required subsequent to the Effective Date in connection with development of the Project on the Property.

1.1.23 “Subsequent Land Use Regulations” means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

2. **GENERAL PROVISIONS.**

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

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

2.3 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for a period of fifteen (15) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement.

2.4 **Assignment.**

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

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

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, Owner shall notify City, in writing, of such sale, transfer or assignment and shall provide City with an executed agreement by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and

unconditionally assumes all the duties and obligations of Owner under this Agreement which apply to the Property in whole or in part being sold, transferred or assigned.

(c) The provisions of this Section 2.4 shall not apply to transfers by Owner of an interest in all or a portion of the Property to any subsidiary or affiliate entity of Owner.

2.5 **Amendment or Cancellation of Agreement**. This Agreement may be amended or canceled in whole or in part only by written consent of all Parties in the manner provided for in Government Code Section 65868.

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

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

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

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

(d) Termination pursuant to Section 4 of this Agreement.

Termination of this Agreement shall not automatically invalidate the Land Use Regulations generally applicable to the Property, including but not limited to the general plan, specific plan and zoning designations. However, upon the date of termination of this Agreement, the Owner shall have no vested rights under this Agreement to build the Project in accordance with the then applicable Land Use Regulations. Owner's right to any development of the Property shall be subject to the ordinary exercise of the City's police power, including the adoption of a General Plan amendment, zoning change, or other Land Use Regulations applicable to the Property. Owner acknowledges that, following termination of this Agreement, the City may amend the general plan, specific plan and zoning designations of the Property and Owner's right to develop the Property shall be determined by then existing California law. The terms of this Section 2.6 are, by their very nature, intended to survive the termination of this Agreement.

2.7 **Notices**. All notices under this Agreement shall be in writing and shall be deemed delivered when personally received by the addressee, or within three (3) calendar days after deposit in the United States mail by registered or certified mail, postage prepaid, return receipt requested, to the following Parties and their counsel at the addresses indicated below; provided, however, if any Party to this Agreement delivers a notice or causes a notice to be delivered to any other Party to this Agreement, a duplicate of that Notice shall be concurrently delivered to each other Party and their respective counsel.

If to City: City of Orange
300 East Chapman Avenue
Orange, CA 92866
Facsimile: (714) 744-5147
Attention: City Manager

with a copy to: City of Orange
300 East Chapman Avenue
Orange, CA 92866
Facsimile: (714) 538-7157
Attention: City Attorney

If to Owner: Milan REI IV, LLC
10632 S. Meads Avenue
Orange, CA 92869
Facsimile: (714) 288-9407
Attention: John Martin

with a copy to: KTG Y Group, Inc.
17922 Fitch
Irvine, CA 92614
Facsimile: (949) 851-5156
Attention: Ken Ryan

with a copy to: O'Neil LLP
19900 MacArthur Blvd., Suite 1050
Irvine, CA 92612
Facsimile: (949) 798-0511
Attention: Dennis D. O'Neil

Notice given in any other manner shall be effective when received by the addressee. The addresses for notices may be changed by notice given in accordance with this provision.

3. **DEVELOPMENT OF THE PROPERTY.**

3.1 **Right to Develop.** Subject to the terms of this Agreement including the Reservations of Authority, Owner shall have a vested right to develop the Project on the Property in accordance with, and to the extent of, the Development Plan, the Existing Approvals and the Existing Land Use Regulations. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of dedication of land for public purposes shall

be those set forth in the Development Plan, the Existing Approvals and the Existing Land Use Regulations.

3.2 **Ride-In-Only Equestrian Arena.** As part of the Project, Owner shall donate land and improvements for the Ride-In-Only Equestrian Arena for the benefit of the OPA Community to be owned and maintained by a 501(c)3 nonprofit corporation, the City, or an agency of the County of Orange. The donation shall be made by the twentieth (20th) final inspection of the Project's single-family homes or within four years of issuance of the first building permit for the Project, whichever comes first. In the event the offer of dedication is not accepted, the Ride-In-Only Equestrian Arena shall be owned and maintained by the Ridgeline Equestrian Estates Homeowners Association.

3.3 **Trails.** Approximately one mile of perimeter and regional trails are to be developed in the Project to be offered for dedication and to be owned and maintained by either the City, the County or a 501(c)3 nonprofit agency for the benefit of the OPA Community and regional trail system. In the event the offer of dedication is not accepted, the approximately one mile of perimeter and regional trails shall be owned and maintained by the Ridgeline Equestrian Estates Homeowners Association. The trails and all linkage shall be completed by the twentieth (20th) final inspection of the Project's single-family homes or within four years of issuance of the first building permit, whichever comes first. Internal trails shall be developed within the Project as part of the right-of-way for the private roadway system to be owned and maintained by the Ridgeline Equestrian Estates Homeowners Association. All internal, perimeter and regional trails shall be open to the public and built in accordance with the Development Approvals. A map showing the perimeter and internal trails is attached as **Exhibit "E"** and made a part of this Agreement by this reference.

3.4 **Arena Site.** During the same general timeframe which Owner is seeking approval of the Land Use Approvals, an entity in which Owner has an interest is seeking approval of a project known as Rio Santiago. Additionally, Owner owns approximately 7.6 acres of land currently zoned for residential on the south side of Santiago Canyon Road which presently consists of a horse riding arena on 3.9 acres subject to a non-exclusive License Agreement (the "**License Agreement**") revocable by Owner on thirty (30) days' notice and 3.7 acres of adjacent land which has historically been used for flower stands, Christmas tree lots and other commercial uses (together, the "**Arena Site**"). A description of the Arena Site is attached as **Exhibit "F"**.

3.4.1 **Donation.** As additional consideration for entering into this Agreement, Owner agrees to offer to donate (the "Donation") the Arena Site to a not-for-profit entity in "as is" condition for future use solely as a community equestrian center to be owned, operated, and maintained by that not-for-profit entity. The Donation shall be contingent on the following acknowledgments, terms, and contingencies:

(a) The Ridgeline and Rio Santiago projects being approved by the City with entitlements satisfactory to Owner ("**Approvals for the Projects**").

(b) No notice of intent being filed for the circulation of a petition for either a referendum or an initiative (a "**Notice of Intent**") which would in any way restrict

Owner's ability to develop either of the Ridgeline or Rio Santiago projects to the full extent permitted by the Approvals for the Project, except in such case Owner shall either make the Donation or the Optional Donation, as hereinafter defined, prior to issuance of any building permits for the Project.

(c) In the event of litigation being filed by any person or entity challenging any aspect of the Approvals for the Projects, including but not limited to, their respective environmental reviews, Owner may, in lieu of making the Donation, process a parcel map subdividing the 3.9 acres and the 3.7 acres and withhold and not include the 3.7 acres of the Arena Site adjacent land and retail area in the Donation (hereafter, the "Optional Donation").

(d) Owner shall be required to make the offer of Donation prior to the issuance of any building permits for either of the Ridgeline or Rio Santiago projects, but only after receiving the Approvals for the Projects, and the timeframe in which to file a Notice of Intent for a referendum has expired. In the event of a contingency occurring under subsections 3.4.1(b) or 3.4.1(c) of this Agreement, Owner shall make the offer of the Donation or the Optional Donation prior to the issuance of any building permits for the Project.

(e) Owner shall have the option, at any time, to make the Donation, irrespective of the occurrence of any of the contingencies set forth above or make the Optional Donation prior to issuance of building permits in the event the Ridgeline project is approved by the City, but the Rio Santiago project is not approved.

(f) Future improvements to the Arena Site, if any, are unrelated to the Project and will be subject to future applications by the then-current owner of the Arena Site. The City and Owner recognize that any future improvements to the Arena Site will represent a separate and unrelated development project from the Ridgeline or Rio Santiago projects and may require the proponent of those improvements to obtain City approval and environmental review.

3.4.2 **Conveyance of Arena Site.** The legal instrument conveying the Arena Site to the not-for-profit entity shall provide that:

(a) Acceptance of the Donation must be received within forty-five (45) days of making the offer of Donation; provided that this subsection (a) shall not be deemed satisfied unless a not-for-profit has accepted the offer of Donation or the offer of Donation has been extended to the existing Arena Site licensee, but not accepted;

(b) The Donation cannot be transferred or assigned by the original not-for-profit entity accepting the Donation without the prior consent of Owner;

(c) The Arena Site shall be used continuously and exclusively for equestrian purposes consistent with the current operations and use.

(d) All naming rights of the Arena Site shall be approved by Owner.

3.5 **Application Processing.** In connection with any approval which the City is permitted or has the right to make under this Agreement relating to the Project and the Development Plan, or otherwise under its rules, regulations and official policies, the City shall exercise the City's discretion or take action in a manner which is as expeditious as reasonably possible.

3.6 **Mello-Roos Communities Facilities Districts; Other Assessment Districts or Financing Mechanisms.** Pursuant to Chapter 2.5 (commencing with section 53312) Part 1, Division 2, Title 5 of the Government Code of the State of California, commonly known as the "Mello Roos Community Facilities Act of 1982," Owner may, at its sole election, petition the City Council of the City to establish a Community Facilities District or enter into a Joint Community Facilities Agreement with another public entity ("CFD"), in accordance with the City's policies in existence on the Effective Date. Alternatively, or in addition thereto, Owner may request that the City initiate and complete proceedings under the Municipal Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, the Landscaping and Lighting Act of 1972, or any and all other available public financing mechanism, to provide public conduit financing for the construction of public infrastructure improvements on the Property ("**Alternative Financing Mechanisms**"). If so requested by Owner, the City shall cooperate with Owner (or, for matters beyond its control, shall use its best efforts) in taking all steps necessary to cause the CFD or Alternative Financing Mechanisms to issue bonds for such purposes. If the Property is included within a CFD or Alternative Funding Mechanism with other surrounding properties, the special taxes or special assessments burdening the various properties so included shall be apportioned on a fair share basis related to the benefit derived by each of such properties in accordance with City policies at the time such property is included.

3.7 **Other Governmental or Quasi-Governmental Permits.** Owner shall apply for such other permits and approvals as may be required by other governmental or quasi governmental agencies having jurisdiction over the Project (such as public utilities or special districts, or other federal or state resource agencies) to the extent required for the development of, or provision of, services and facilities to the Project as set forth in the Development Plan. The City shall cooperate with and assist Owner in obtaining such permits and approvals, and, where necessary in making application for such approvals or permits. Owner shall be solely responsible for all costs and shall be responsible for the processing of all such permits.

3.8 **Consistency Between This Agreement and Current Laws.** The City represents that as of the date of the execution of this Agreement, there are no rules, regulations, ordinances or official policies of the City that would interfere with the development of the Project in accordance with the Development Plan.

3.9 **Assessments, Fees and Mitigation.** The City shall not impose any future assessment, fee or mitigation measure on the Property, the Project or the Development Plan or any portion thereof, except (a) those assessments, fees and mitigation measures in existence on the Approval Date, (b) such other fees and assessments as may be adopted or imposed by the City in conformance with the requirements of Article XIII D of the California Constitution, (c) such other development impact fees or categories of development impact fees which are adopted on a City-wide basis or as required as a condition to obtaining County funding; (d) such

fees as are imposed and set by governmental entities not controlled by City but which are collected by City; and (e) such other development impact fees or categories of development impact fees which are imposed on other development projects in the City and are adopted and levied based on a benefit assessment. Fees payable to City shall be at rates applicable on the date the fee is due.

3.10 **Development Exactions.** All further applications for Development Approvals contemplated by this Agreement, or made in connection with the development, construction, use or operation of the Project hereunder, shall be processed in accordance with the Existing Approvals, the Existing Land Use Regulations and terms and conditions of this Agreement, and: (a) City shall not impose thereunder any further Development Exactions other than those called for under the Existing Approvals and/or as permitted under the provisions of this Agreement; and (b) such applications and Developmental Approvals thereunder shall not result in the imposition upon Owner of any additional requirements, other than those already imposed pursuant to the Existing Approvals and Existing Land Use Regulations, or otherwise permitted under the provisions of this Agreement.

3.11 **Reimbursement by the City.** Pursuant to Government Code Section 65865.2, the City hereby agrees that as future development fees, assessments and exactions are imposed on future projects which have benefited from the fees, assessments and exactions paid by Owner, the City shall promptly reimburse Owner to the extent that such fees, assessments and exactions paid by Owner benefited lands outside of the Property, but only to the extent that the City actually receives or collects such fees, assessments or exactions for a period of ten years from the date the fee was paid. City shall collect such fees, assessments or exactions prior to issuance of building permits for development of the benefited lands.

3.12 **Effect of Agreement on Land Use Regulations.** The rules, regulations and officials policies governing permitted uses for development of the Project on the Property, the density and intensity of use for development of the Project on the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Project on the Property shall be the Existing Approvals, the Existing Land Use Regulations and the Development Plan.

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

3.14 **Water Supply.** Pursuant to Government Code §65897.5(c), the tentative map prepared for any subdivision of the Property shall comply with the provisions of California

Government Code §66473.7, if applicable, relating to the availability of water supply, as enacted as of the Effective Date.

3.15 **Changes and Amendments.** The Parties acknowledge that refinement and further development of the Project could require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Approvals. In the event Owner finds that a change in the Existing Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations. Unless otherwise required by law, as determined in City’s reasonable discretion, a change to the Existing Approvals shall be deemed “minor” and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property in part or in whole; or
 - (b) Increase the density or intensity of use of the Property as a whole;
- or
- (c) Increase the maximum height and size of permitted buildings; or
 - (d) Delete a requirement for the reservation or dedication of land for public purpose within the Property as a whole; or
 - (e) Delete a requirement for the provision of any public benefit identified herein; or
 - (f) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

Such minor changes shall be set forth in an operating memorandum executed by the Owner and City Manager and approved as to form by the City Attorney.

3.16 **Reservations of Authority.**

3.16.1 **Limitations, Reservations and Exceptions.** Notwithstanding any other provision of this Agreement, the following regulations shall apply to the development of the Project on the Property.

- (a) Processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for development of the Project or for monitoring compliance with any Development Approvals granted or issued in effect at the time said approval is granted or permit is issued.
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Uniform regulations governing construction standards and specifications including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code.

(d) Regulations which may be in conflict with this Agreement, but which are objectively required (and for which there are no available reasonable alternatives) to protect the public health and safety. Such regulations must be a valid exercise of the City's police power and must be applied and construed so as to provide Owner with the rights and assurances provided under this Agreement. To apply to the Property, such regulations must be adopted after a public hearing and must be based upon findings of necessity established by substantial evidence. Any moratoria enacted by City that suspends development of the Project shall toll the Term and any time periods for performance by Owner and City set forth in this Agreement.

(e) Regulations which are in conflict with the Development Plan provided Owner has given written consent to the application of such regulations to development of the Project on the Property.

3.16.2 **Modification or Suspension by State or Federal Law.** In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.17 **Referenda and Moratorium.** It is the express intent of City and Owner that as of the date of this Agreement, this Agreement is a legally binding contract which shall, to the extent permitted by law, prevail over the provisions of any subsequently enacted moratorium, statute, ordinance, limitation or other measure, whether or not enacted by City, or by voter initiative or referendum, and whether or not such initiative, moratorium, referendum, statute, ordinance, limitation or other measure relates, in whole or in part, to the rate, timing, sequencing or phasing of the development or construction of all or part of the Project or the Development Plan or affecting Development Approvals which are issued by City or the land use development rights vested in Owner for development of the Property under the terms of this Agreement.

3.18 **Tentative Tract Map Extension.** In accordance with the provisions of Section 66452.6 of the Government Code, tentative subdivision map(s) or tentative parcel map(s), heretofore or hereafter approved in connection with development of the Property, shall be granted an extension of time for the term of this Agreement or as provided by the Subdivision Map Act, whichever period is longer.

4. **REVIEW FOR COMPLIANCE.**

4.1 **Annual Review.** The City's Director of Community Development shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the reasonable good faith compliance by Owner with the terms of the Agreement. Owner shall

submit an annual monitoring report to the City’s Director of Community Development (“Director”), within 30 days after written notice from the City’s Director of Community Development.

4.2 **Procedure.**

(a) During the annual review, Owner shall be required to demonstrate reasonable good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on Owner.

(b) Upon completion of the annual review, the Director shall submit a report to the City Council setting forth the evidence concerning good faith compliance by Owner with the terms of this Agreement and his or her finding on that issue.

(c) If the Director finds on the basis of substantial evidence that Owner has complied in good faith with the terms and conditions of this Agreement and no member of the City Council requests such finding be reviewed within fifteen (15) days of receipt of the Director’s report, the review shall be concluded.

(d) If the Director makes a finding that Owner has not reasonably complied in good faith with the terms and conditions of this Agreement, the matter shall be set for hearing before the City Council in accordance with Section 4.3 of the Agreement.

4.3 **Proceedings Upon Modifications or Termination.** If the Director makes the finding set forth in Section 4.2(d), the City shall give written notice to Owner of the hearing before the City Council to consider the Director’s finding. The notice shall be given at least thirty (30) calendar days prior to the scheduled hearing and shall contain:

(a) The time and place of the hearing;

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

(c) Such other information as is reasonably necessary to inform Owner of the nature of the proceeding including a notice of noncompliance and opportunity to cure prior to the hearing.

4.4 **Hearing on Modification or Termination.** At the time and place set for the hearing on modification or termination, Owner shall be given an opportunity to be heard. Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. If the City Council finds, based upon substantial evidence, that Owner has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City.

4.5 **Certificate of Agreement Compliance.** If, at the conclusion of the annual review, Owner is found to be in compliance with this Agreement, City shall, upon request by Owner, issue a certificate of agreement compliance (“**Certificate**”) to Owner stating that after

the most recent annual review and based upon the information known or made to the Director and/or the City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance. Owner may record the Certificate with the Orange County Recorder.

4.6 **Failure to Conduct Annual Review.** The City's failure to conduct an annual review of compliance with the terms of this Agreement shall not constitute or be asserted by either Party as a default.

5. **REMEDIES.**

5.1 **Enforcement.** The Parties retain all remedies at law or in equity to pursue enforcement of the terms and provisions of this Agreement, subject first to following procedures set forth in Section 4 of this Agreement in the case involving the annual review for compliance and prior to filing a court action following the alternative dispute resolution procedures set forth in Section 5.2 of this Agreement.

5.2 **Administration of Agreement and Resolution of Disputes.**

5.2.1 **Administration of Disputes.** All disputes involving the enforcement, interpretation or administration of this Agreement (including, but not limited to, decisions by the City staff and City Council concerning this Agreement and any of the projects or other matters concerning this Agreement which are the subject hereof) shall be subject to good faith negotiations between the Parties to resolve the dispute. Thereafter, any dispute which affects the rights and obligations under this Agreement that cannot be resolved shall be heard by, and resolved pursuant to the mandatory alternative dispute resolution procedures set forth in Section 5.2.2 below. Nothing in this Agreement shall prevent or delay Owner or City from seeking a temporary or preliminary injunction in state or federal court if either Party believes that injunctive relief is necessary or a more immediate remedy.

5.2.2 **Mandatory Alternative Dispute Resolution.** All disputes regarding the enforcement, interpretation or administration of this Agreement (including, but not limited to, appeals from decisions of the City Council) shall be heard and resolved pursuant to the alternative dispute resolution procedure set forth herein. All matters to be heard and resolved shall be heard and resolved by a single appointed referee who shall be a retired judge from either the California Superior Court, the California Court of Appeals, the California Supreme Court, the United States District Court or the United States Court of Appeals, provided that the appointed referee shall have significant and recent experience in resolving land use and real property disputes. The Parties to this Agreement who are involved in the dispute shall agree and appoint a single referee who shall then try all issues, whether of fact or law, and report in writing to the Parties to such dispute all findings of fact and issues and decisions of law and the final judgments made thereon, in sufficient detail to inform each Party as to the basis of the referee's decision. The referee shall try all issues as if he/she were a California Superior Court judge, sitting without a jury, and shall have all legal and equitable powers granted a California Superior Court judge. Prior to the hearing, the Parties shall have full discovery rights as provided by the California Code of Civil Procedure. At the hearing, the Parties shall have the right to present

evidence, examine and cross-examine lay and expert witnesses, submit briefs and have arguments of counsel heard, all in accordance with a briefing and hearing schedule reasonably established by the referee. The referee shall be required to follow and adhere to all laws, rules and regulations of the State of California in the hearing of testimony, admission of evidence, conduct of discovery, issuance of a judgment and fashioning of a remedy. The cost of any proceeding held pursuant to this Section shall initially be borne equally by the Parties involved in the dispute, and each Party shall bear its own attorneys' fees. The referee shall use his/her best efforts to finally resolve the dispute and issue a final judgment within sixty (60) calendar days from the date of concluding the proceedings. The written judgment may be appealed to the Orange County, California Superior Court.

5.2.3 **No Recourse for Damages.** The Parties hereto agree that (i) the Owner and City would not have entered into this Agreement if they were to be held liable for general, special or compensatory damages for any default with respect to this Agreement, and (ii) Owner and City have adequate remedies, other than general, special or compensatory damages, to secure Owner's and City's compliance with their obligations under this Agreement. Therefore, Owner and City agree that neither the Owner or City nor their officers, employees or agents shall be liable for any general, special or compensatory damages to the other or to any successor or assignee or transferee of the other for their respective breach or default with respect to this Agreement; and Owner and City covenant not to sue the other or their respective officers, employees or agents for, or claim against the other or their respective officers, employees or agents, any right to receive general, special or compensatory damages for the Owner's or City's breach or default under this Agreement, as the case may be. Notwithstanding the provisions of this Section, the City agrees that Owner shall have the right to seek a refund or return of any deposit made with the City or fee paid to the City in accordance with the Existing Approvals.

In the event either Party, upon conclusion of the alternative dispute resolution procedure and the rendering of the final judgment of the referee, commences a court action against the other Party which arises out of a default of, breach of, failure to perform this Agreement or otherwise related to this Agreement, then the prevailing party in the action shall be entitled to recover its attorneys' fees and litigation expenses from the other Party in addition to whatever relief to which the prevailing Party may be entitled.

5.3 **Indemnity.** Owner shall indemnify and hold City, its officers, agents, employees and independent contractors free and harmless from any liability based or asserted upon any act or omission of Owner, its officers, agents, employees, subcontractors and independent contractors for property damage, bodily injury, or death or any other element or damage, relating to or arising from the activities provided in this Agreement or any challenges that may be filed against the City arising out of the approval of this Agreement or any of the Existing Approvals. City may in its discretion participate in the defense of any such legal action including the retention of outside legal counsel acceptable to Owner. Owner shall pay all reasonable costs and fees that the City may incur, including any in-house attorney fees and costs in defense of this Agreement or the Existing Approvals. Owner's counsel shall be deemed lead counsel and counsel for the City shall avoid any duplication of legal services or other costs or expenses. The Parties shall agree to cooperate in the preparation of any required administrative record in a reasonable and cost effective manner and shall consult with each other in good faith to ensure that unnecessary costs are not incurred in defending against any legal action or challenge.

Owner may choose to not defend against such legal action or terminate a defense after that defense has been initiated. If Owner declines to defend against any legal action or challenge as hereinabove provided, the City may, in its complete discretion, continue in such defense but shall do so at its sole cost and expense. The provisions of this Section shall not be binding on Owner in the event the liability relates to the negligence or willful misconduct of the City, its officers, agents, employees and independent contractors.

6. MORTGAGEE PROTECTION.

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

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

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

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

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

7. **MISCELLANEOUS PROVISIONS.**

7.1 **Recordation of Agreement.** This Agreement and any amendment thereof shall be recorded with the Orange County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code.

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

7.3 **Severability.** If any terms, provisions, covenants or conditions of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provisions of Development of the Property set forth in Section 3 and the Public Benefits set forth in Recital G of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and City and Owner would not have entered into this Agreement but for such provisions and if determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

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

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

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

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

7.8 **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.

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

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

7.11 **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 by such benefited Party.

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

7.13 **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.

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

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

7.16 **Further Actions and Instruments.** Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required

instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

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

7.18 **Cooperation.** City agrees that it shall accept for processing and use its best efforts to expedite processing of all applications, provided they are in a proper form and acceptable for required processing, for discretionary permits, tract or parcel maps, or other land use entitlements for development of the Project in accordance with the provisions of this Agreement. Owner shall, in a timely manner, provide the City with all documents, plans and other information necessary for the City to process and expedite application. City shall cooperate with Owner in providing expeditious review of any such applications, permits or land use entitlements and, upon request and payment of any costs and/or extra fees associated therewith by Owner, City shall assign such review to Project planner(s), building inspector(s), other staff personnel and/or contract planning or engineering consultants as required to insure the review, processing and completion of the Project plan check and issuance of permits in a timely manner.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have each executed this Agreement on the date first written above.

CITY OF ORANGE

By: _____
Carolyn V. Cavecche, Mayor

ATTEST:

Mary E. Murphy, City Clerk

APPROVED AS TO FORM:

David A. DeBerry, City Attorney

OWNER:

MILAN REI IV, LLC, a California limited liability company

By: _____
John Martin

All signatures to be acknowledged by a Public Notary

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On _____, before me, _____, a Notary Public, personally appeared _____, 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.

Notary Public

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On _____, before me, _____, a Notary Public, personally appeared _____, 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.

Notary Public

EXHIBIT A

DESCRIPTION OF THE PROPERTY

The land referred to herein is situated in the State of California, County of Orange, City of , and described as follows:

PARCEL A:

PARCELS 2 AND 3, IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON LOT LINE ADJUSTMENT NO. LL-98-8, RECORDED MAY 18, 1999 AS INSTRUMENT NO. 19990366700 OF OFFICIAL RECORDS.

PARCEL B:

PARCEL 2, IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON LOT LINE ADJUSTMENT NO. 2008-04, RECORDED OCTOBER 21, 2008 AS INSTRUMENT NO. 2008000485560 OF OFFICIAL RECORDS.

(End of Legal Description)

EXHIBIT B
MAP OF PROPERTY

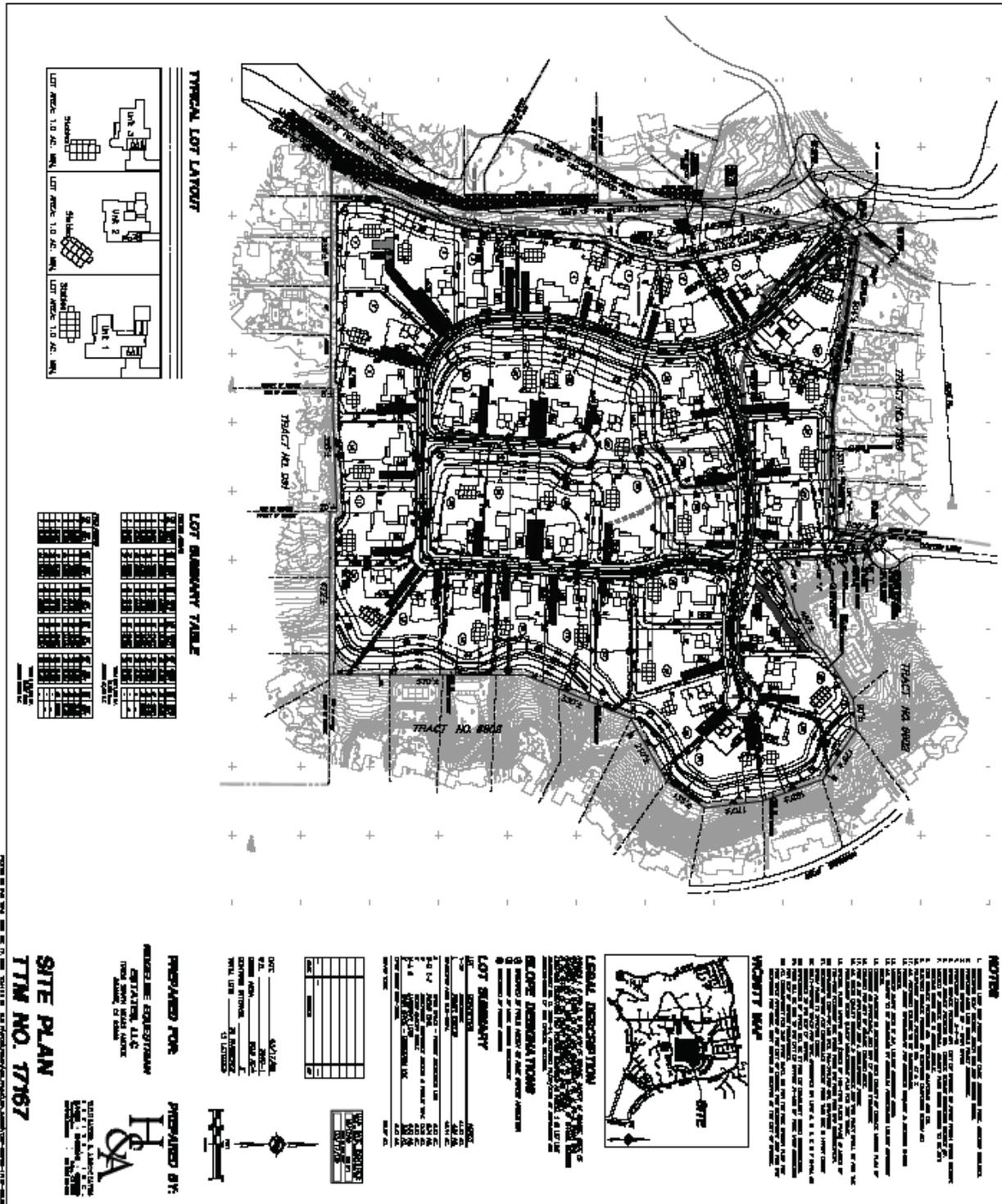


EXHIBIT C**LAND USE ENTITLEMENTS**

Implementation of the Ridgeline Equestrian Estates Project will require the following discretionary approvals and/or permits:

General Plan Amendment

In 1973, the Orange City Council adopted the Orange Park Acres Plan (the OPA Plan). The City Council's resolution adopting the OPA Plan (the Council Resolution) specifically stated that the OPA Plan was adopted as part of the City's General Plan Land Use Element. A thorough review of the City's records indicates that not only has the OPA Plan never been adopted as a specific plan, but that when adopted in 1973 it was not intended to be a specific plan. Additionally, the Council Resolution specifically incorporated the Planning Commission's proposed amendments to the draft OPA Plan. With respect to the Ridgeline site, those recommendations included allowing not only open space uses, but also low density residential uses on minimum one-acre lots. Although the Council Resolution which references these determinations (including the specific reference to the OPA Plan being part of the City's General Plan) historically has been included within copies of the OPA Plan available at the City or online, the general plan designation of the property actually established by the Council Resolution was included only by reference to the Planning Commission action. Therefore, subsequent planning documents did not necessarily reflect the actual general plan designation placed on the property by the City Council.

No action has ever been taken by the City to change the general plan open space and one-acre residential designation for the property. This General Plan Amendment, which will be adopted as part of the project's entitlement process, will, therefore, clarify and restate the original and still effective intent of the Council Resolution. It also will make necessary textual revisions to the original language of the OPA Plan primarily to implement that original intent of the Council Resolution in the context of both development within OPA relevant to the project site and the specifics of the proposed project. This amendment is intended to assure that the General Plan Land Use Element Map and the OPA Plan, which is part of that element, are consistent. Text in both the General Plan and OPA Plan will also be revised to reflect these changes. The General Plan Land Use Element Map will show Estate Density Residential over the project area and the Land Use and Circulation Plan in the OPA Plan will show Low Density (1 acre) over the project area.

Change of Zone

Conforming to the proposed General Plan Amendment, the Project would change the existing zoning district classification on the site from R-O (Recreation Open Space) back to its previous R-1-40 (Single Family Residential, 1-acre minimum). This action would return the site back to its original zoning of R-1-40 that was changed in 1985.

Tentative Tract Map

Owner requests approval of a Tentative Tract Map for the proposed project consistent with the requirements of Chapter 16 of the City Municipal Code. The approval of the Tentative Tract Map will establish 39 numbered lots, lots for circulation and access, and seven lettered lots for open space, trails, and a detention basin.

Parcel Map

Owner requests approval of a Parcel Map for the proposed Project consistent with the requirements of Chapter 16 of the City Municipal Code. The approval of the Parcel Map will establish specific parcels for financing and title purposes.

Major Site Plan Review

Owner requests approval of the overall final site design, including the Conceptual Landscape Concept Plan for the proposed Project consistent with the requirements of the City Municipal Code. The site plan review process is conducted to ensure that the proposed Project “reflects the highest quality of land planning and design.” Site plan review is the responsibility of the Community Development Director, with the involvement and comment from the Staff Review Committee as designated by the City Manager.

Design Review

Owner requests approval of the Design Review of the proposed Project floor plans and elevations consistent with the requirements of Chapter 17 of the City Municipal Code.

Environmental Review

Owner requests certification of the environmental documents in accordance with the California Environmental Quality (CEQA), the State CEQA Guidelines (CEQA Guidelines), and the City’s Guidelines adopted to comply with CEQA and the CEQA Guidelines.

Development Agreement

A Development Agreement will be entered into between the City and the Owner setting forth vesting development rights and land use entitlements, identifying project benefits, improvements and timing of improvements, as well as the responsibilities and rights of both the City and the Owner in carrying out the development of the Ridgeline Equestrian Estates Project. The Development Agreement will be adopted by ordinance.

EXHIBIT D

PROJECT DEVELOPMENT PLAN

PROJECT OBJECTIVES

The following objectives have been established by the Owner to guide the development of the Ridgeline Equestrian Estates Project:

Land Use Planning

- To develop the Ridgeline Equestrian Estates area in accordance with the goals and objectives of the City of Orange General Plan and consistent with the Orange Park Acres Specific Plan that states, "...The proposed Specific Plan achieves the ultimate goal – preservation of the rural environment without destroying the right of a property owner to have a "fair" economic return on his property."
- To develop in accordance with the R-1-40 zoning development standards that allow for new housing opportunities that permit the keeping of large animals consistent with surrounding homes in the community.

Water Quality

- To create a water quality and drainage system that minimizes the impact of runoff that originates both off-site and on-site. Currently, there is non-regulated run-off from adjacent properties to the site (on and off site).

Recreational Opportunities

- To establish an integrated system of open space and trails which is consistent with the equestrian heritage of Orange Park Acres.

Transportation/Circulation

- To provide a circulation system consistent with the City's General Plan that establishes on-site pedestrian, equestrian, and bicycle circulation and, for the first time, provide permanent public access to serve this currently privately owned property. The systems would be designed to protect the rural character, while minimizing adverse effects on local residential neighborhoods.

Open Space

- To increase public access to the property by providing open space, planting of trees and landscaping and a trails network adjacent to rural habitat, public trails with territorial views.

Rural Character/Equestrian Community

- To create an equestrian friendly estate density residential community with a master plan trails network and equestrian recreational facilities accessible for the community.

Environmental Concerns

- Improving water quality, reducing traffic, air, and noise impacts from historical operations on the project site.

PROJECT CHARACTERISTICS

The Ridgeline Equestrian Estates Project (referred to herein as the proposed Project) would result in the construction of 39 single-family detached homes on 39 lots and land for a ride-in-only equestrian arena. Access within the proposed Project would be provided by land dedicated for a private street system and an off-street equestrian trail system. Landscaping, lighting, and signage would be integrated into the proposed Project design.

Development Program

The development of the proposed Project would result in a maximum of 39 minimum one-acre lots. Figure 1, Tentative Tract Map No. 17167, provides the development program for the proposed Project. A summary of the land use statistics for the proposed Project is provided in Table A, Summary of Project Land Use Statistics. The development program and Project components are described below:

Project Phasing

Development and build-out of the proposed Project will be in phases dependent on:

- market and economic conditions
- provision and timing of adequate infrastructure systems, environmental mitigation measures and public facilities to support development
- protection of the public health, safety and general welfare

Residential Component

The proposed Project would result in the construction of 39 single-family detached homes. The minimum lot size would be 43,560 square feet, the average lot size 46,453 square feet, and the average building pad size would be 30,059 square feet.

Equestrian Component

Ownership of land for a ride-in-only equestrian arena of approximately 2.30 acres on Lot K of Tentative Tract Map No. 17167 will be offered to an entity selected by the Owner. The equestrian facility would be for use by the public and will be maintained by the entity taking ownership.

The proposed project would provide for an off-street equestrian trail that is located along the southerly, westerly and northerly property lines. Additionally, equestrian access would also be provided within the designated pedestrian and equestrian use area located in the on-street right-of-way.

Vehicular Circulation System

The circulation system for the proposed Project would have one non-gated vehicle entry into the residential development. The Project site entrance would be from North Meads Avenue. A gated emergency access with a Knox box would be provided to the Project site from Coyote Lane within a 20-foot easement.

The on-site circulation system would consist of private streets and would have rights-of-way that vary from 42 feet to 54 feet. The right-of-way would generally include a 28-foot to 40-foot curb to curb paved section. The sections would include rolled curbs, a four-foot swale and drainage area on both sides with one side having an easement ranging from ten (10) to eighteen (18) feet, designated as a pedestrian and equestrian use area.

**TABLE A
SUMMARY OF PROJECT LAND USE STATISTICS**

Land Use Statistics	Project in Total
Lots	39 residential lots
Land for a Ride-In-Only Arena	approximately 2.30 acres ride-in-only equestrian arena
Existing Project Site Area	± 50.87 acres
Density – Dwelling Units Per Gross Acre	0.76 dwelling units per gross acre
Density – Dwelling Units Per Net ¹ Acre	0.84 dwelling units per net acre
Minimum Lot Size	43,560 square feet (1 acre)
Average Lot Size	46,455 square feet
Average Pad Size	30,059 square feet
Water Quality Basin ²	0.21 acres

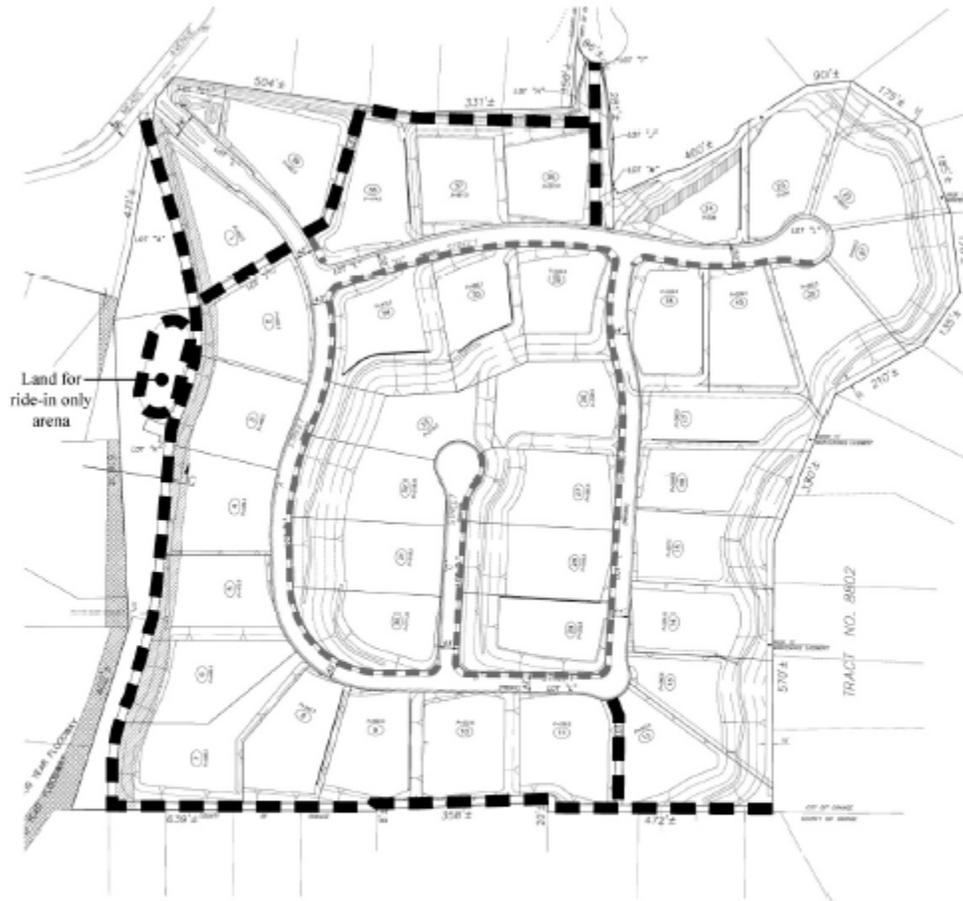
Source: HUNSAKER SITE PLAN DATED: 1/27/09

(a) ¹ Net lot area (41.592 acres).

(b) ² The basin will be based on the final Hydrology and Water Quality Management Plan.

EXHIBIT E

TRAILS



Legend

- ■ ■ ■ Perimeter and regional trails, land and improvements for ride-in only arena (Easements and Lot K)
- - - - Internal project trails (Included within private street right-of-way)

EXHIBIT F
ARENA SITE

