

DEVELOPMENT AGREEMENT BY AND BETWEEN SAN JOAQUIN COUNTY AND SHEA MOUNTAIN HOUSE, LLC (MOUNTAIN HOSUDE DEVELOPERS, LLC)

DEAL POINTS & COMPLIANCE SUMMARY

FROM SPECIFIC PLAN II ADDENDUM TO DEVELOPMENT AGREEMENT (A-05-77, APPROVED 2/8/2005)

Section 2.1 - Incorporation of Master Plan DA Provisions. Subject to the exceptions and modifications set forth in Section 2.2, below, each and every provision, term and condition in the Master Plan DA (except for the Recitals which have been dealt with in the Recitals to this Agreement) is hereby incorporated by reference into and made a part of this Agreement with full force and effect as though set forth herein in full, and said incorporated provisions of the Master Plan DA shall constitute the agreements and covenants of the Parties under this Agreement.

Status. Ongoing. Both parties are complying.

Section 2.2.2 - Term of this Agreement. The Term of this Agreement shall commence on the Effective Date and shall extend for thirty (30) years thereafter. The effective date of this Agreement shall be March 10, 2005, which is the effective date of the Enacting Ordinance.

Status. Ongoing. Both parties are complying.

Section 2.2.3. Assignment. Section 1.6.3 of Master Plan DA. For purpose of incorporation into this Agreement only, Section 1.6.3 of the Master Plan DA is modified to read as follows: "1.6.3. Until completion by Developer of the items set forth in Sections 1.11.1, 1.11.2, 1.11.3, 1.11.4, and the formation of all required Financing Mechanisms to implement Specific Plan II with respect to the Property or portion thereof proposed to be sold, assigned or transferred have been established to the reasonable satisfaction of the Community Developer Director, the Developer agrees not to sell, assign or transfer any interest under this Agreement with respect to the Property, or any part thereof, without the prior written consent of the County, which consent shall not unreasonably withheld and shall be granted (but shall be conditioned upon such sale, assignment or transfer being timely completed with the concurrent recordation of the assumption agreement referred to in Section 1.6.4.B hereof) if all of the conditions described in Sections 1.6.4.A through 1.6.4.D of Section 1.6.4 are met."

Status. Compliant.

The precondition for assignment involved the formation of the CSD, CSD approval and execution of the FSA Agreement with the Master developer and CSD approval and execution of a Master Acquisition and Reimbursement Agreement with the Developer providing for urban infrastructure urban services for the Community and the Property, in whole or in part, consistent with the PSA Agreement. All these conditions had been met before any part of the property was transferred.

Section 3.9. Adoption of Ordinances. County shall adopt a Cost Reimbursement Program to reimburse Developer for the costs related to Specific Plan II in the same manner as the County approved the Cost Reimbursement Program for the Master Plan and Specific Plan I. The Parties agree to cooperate in good faith to achieve this result.

Status. Compliant.

FROM AMENDED AND RESTATED DEVELOPMENT AGREEMENT (A-00-924, APPROVED 10/17/2000)

Section 1.1.57 - Vested Rights to Develop. The conferring of the rights granted to Developer under this Agreement and subject to all the terms, conditions and requirements of this Agreement, to proceed with the development of the Property based on the agreement of the County hereunder that certain regulations and requirements in the Existing Approvals pertaining to the development of the Property (referred to herein as the "Vested Elements") are fixed and, except as permitted by this Agreement, that they cannot be subsequently modified, changed or augmented so as to impose additional requirements or burdens on the development of the Property without Developer's consent.

Status. Ongoing. Both parties are complying.

Section 1.9 – Amendment of Agreements. This section outlines procedures for the Agreement. Allows amendments by mutual consent of the parties, with County costs payable by the Developer, and with CEQA compliance.

Status. Ongoing. Both parties are complying.

Section 1.10 – Specific Plans and Development Title. This section outlines procedures for the adoption and amendment of Specific Plans and Development Title.

Status. Ongoing. Both parties are complying.

Section 2.1 – Permitted Uses and Development Rights. This section provides that the Developer has the right to develop the property subject to the terms and conditions of the Existing Approvals, identified as the Vested Elements, such as the General Plan, Master Plan and Development Title. This provision states that the Developer acknowledges that the Existing Approvals include conditions to be satisfied prior to development of the property, including execution of a Master Acquisition and Reimbursement Agreement, and adoption of a Specific Plan and any required Special Purpose Plan which includes the property. This provision also requires that the property densities are governed by the Existing Approvals, and density bonuses are not available any despite conflicting law. This section provides that in the event of a conflict between the DA and the Existing Approvals, the language of the DA shall prevail.

Status. Ongoing. Both parties are complying.

Section 2.2 – Reserved Discretionary Approvals: This provision generally provides that development of the Property is subject to “Reserved Discretionary Approvals” listed in Section

1.2 of the DA. The intent appears to be to subject the development to any further discretionary approvals that are necessary for project implementation, while recognizing that the vested elements are not to be affected by the subsequent discretionary approvals unless consented to by the Developer. This provision also requires that and tentative map be in compliance with the Subdivision Map Act.

Status. Ongoing. Both parties are complying.

Section 2.3 – Development Phasing and Timing: Section 2.3.1 of this provision generally provides that the development shall be completed consistent with the Existing Approvals, Specific Plan, Special Purpose Plan and any Subsequent Development Agreement. Section 2.3.2 specifies that Developer is under no obligation to develop the property under any specific timeline and may use its subjective business judgement in deciding when to commence with development.

Status. Ongoing. Both parties are complying.

Section 2.5 – Rules Regulations and Official Policies:

- 2.5.1: Development of the Property shall be consistent with the rules, ordinances, and official policies applicable at the Effective Date.
- 2.5.2: Changes in Federal or State Law apply to the Vested Elements.
- 2.5.2A: County is not liable for changes in Federal or State Law apply to the Vested Elements.
- 2.5.4 and 2.5.5: General Police Powers of the County are not limited by the DA.
- 2.5.6: Building Standards applicable at the time of each building permit application shall be enforced.
- 2.5.7: The provisions of this DA control over any other vesting statute.
- 2.5.8: The DA does not limit the authority or obligation of the County to hold necessary public hearings or enforce the law.

Status. Ongoing. Both parties are complying.

Section 2.5.3 - Development Impact Fees. Notwithstanding anything herein to the contrary, all applications for Development Permits shall be subject to the development, impact, mitigation and processing fees which are lawfully enacted and in force and effect at the time the application therefor is filed, including, but not limited to, costs, charges, fees and other payments imposed by the CSD and any Financing Mechanism; provided, however, that such fees are applied to implement the Existing Approvals or Reserved Discretionary Approvals.

Status. Ongoing. Developer is complying.

Section 2.6 – Imposition of Covenant of Easement by Ordinance: The DA does not limit County authority to act pursuant to Gov. Code 65870, which allows adoption of an ordinance for the imposition of covenants.

Status. Ongoing. Both parties are complying.

Section 2.7 – Other Governmental Permits: Developer shall apply for such other permits as necessary for the development.

Status. Ongoing. Developer is complying.

Section 3.1 – Improvement Services:

- 3.1.1: Developer and MHCS D shall enter into a Master Acquisition and Reimbursement Agreement.
- 3.1.2 to 3.1.5: Developer shall comply with the Existing Approvals, Subsequent Plans and Programs, Reserved Discretionary Approvals, Special Conditions, any agreements with the MHCS D and the DA.

Status. Ongoing. Developer is complying.

Section 3.1.6 - MHCS D Funding. Developer will advance initial funding to the CS D in a sufficient amount to permit the CS D to operate until such time as it can levy and receive fees and charges to cover its costs of operations. Provisions to implement this Agreement shall be mutually agreed upon between County and Developer for inclusion in the Interim Funding Agreement.

Status – Completed.

Section 3.2 – Specific Plans: Special Purpose Plans; Williamson Act Cancellations: No part of the Property can be developed unless: (1) said part of the Property is within a Specific Plan Area and any Special Purpose Plan as required by the Master Plan; and (2) said part of the Property is not subject to an existing Williamson Act Contract.

Status. Compliant.

Section 3.4 – Dedications: The Developer shall comply with the DA, Existing Approvals and Ordinances and other applicable law for the dedication of land.

Status. Developer is Compliant.

Section 3.6 – County’s Good Faith in Processing: These subsections set forth the County’s requirement to process all required approvals in good faith, and that future approvals shall not be inconsistent with applicable existing approvals and agreements.

Status. Compliant.

Section 3.6.1 - Application Processing. Subject to compliance with CEQA, public hearings, findings and other actions involving the exercise of legislative or administrative discretion, provided that Developer is not in default under this Agreement, County agrees that it will accept, in good faith, for processing, review and action, all complete applications for Development Permits or other entitlements for use of the Property meeting the requirements of the Existing Approvals and this Agreement.

Status. Ongoing. County is complying.

Section 3.6.8 - Additional County Staff. To expedite processing of the Developer's requests, Developer may advance funds to the County for additional County staff.

Status - Ongoing

Section 3.6.9 - "Will-Serve" Letters. It is understood that the Mountain House CSD must provide "will-serve" letters for the provision of municipal services as a condition of the processing and approval of Tentative Maps and other applications. County agrees that in processing and approving Tentative Maps and other applications, it will accept will-serve letters from the Mountain House CSD which provide that services can be provided upon the satisfaction of specified conditions.

Status. Compliant.

Section 3.6.12.A.1 - MHTIF. County acknowledges that MHTIF establishes the funding obligations for transportation improvements of Community Developers within the Community. Community Developers will be responsible to fund, and may, but are not obligated to, construct the designated transportation improvements within the Mountain House Planning Area (MHPA) as defined in the Technical Report and select Regional Roadways as defined in the Technical Report. Community Developers will also be responsible for funding, and may, but are not obligated to, construct "Other jurisdiction's" proportionate share of improvements to select Regional Roadways in San Joaquin County as defined by the Technical Report.

Status. Ongoing. Developer is complying.

Section 3.6.12.A.3 Grantline Road Funding. The County acknowledges that when the dwelling unit trigger point is reached for the Grant Line Road traffic improvement described in Master Plan Table 9-2 (segment from the County line to I-580 Interchange), the Community Developer(s) shall fund this transportation improvement to the extent that the component of the CSD's reserved account for the Other Jurisdiction Fee is insufficient to fund the Grant Line traffic improvement. The funding Community Developer shall be entitled to fee credits against the Other Jurisdiction Fee, and/ or lump-sum reimbursements from any benefiting Developer(s) pursuant to oversizing/reimbursement agreements with the CSD, to be payable by the benefiting Developer(s).

Status. Completed. Developer has paid a lump sum amount to the MHCSO to satisfy this obligation.

Section 3.6.12.B. - Moratorium. The County agrees that the Community and/or Community Developers shall not be subject to any moratorium or other restriction on development permits because designated transportation improvements are not started or completed prior to a trigger point, specifically identified in the Master Plan and/or applicable Specific Plan, being reached, including those defined as Regional Roadways within the MHPA, transportation improvements within "Other Jurisdictions," or other undefined transportation improvements not covered in the Community Approvals.

Status. Ongoing. County is complying.

Section 3.7 – Financing Mechanisms for Certain Improvements:

- **3.7.1:** Developer shall have the right to request County and/or the MHCS D, upon Developer's posting a deposit or other security satisfactory to County for payment of County's costs in connection therewith, to initiate and conclude appropriate proceedings for the establishment of Financing Mechanisms under applicable Laws and Ordinances to pay for the costs and expenses associated with the construction and provision of the Exactions applicable to the development of the Property.
- **3.7.2:** In connection with bonds or other financings proposed to be undertaken by County or the MHCS D or pursuant to a Financing Mechanism, Developer understands and agrees that Developer and other affected property owners may be required to provide detailed background, financial and project information deemed necessary by County and/or the MHCS D or such Financing Mechanism in order to issue its bonds or obtain other financing.
- **3.7.3:** The failure or inability of County to establish any such Financing Mechanism or the failure of any such Financing Mechanism to carry out its obligations shall not relieve Developer of the requirements of the Existing Approvals and this Agreement to satisfy the requirements for the Exactions as a condition to the development of the Property or any phase thereof.

Status. Compliant.

Section 3.8 – Payment of Share of Cost:

- **3.8.1:** To the extent not otherwise provided for in applicable Ordinances and Laws, and subject to the provisions regarding establishment of Financing Mechanisms required to implement the Existing Approvals and this Agreement, the parties intend that the Developer shall arrange for and participate in necessary financing for construction and provision of the required Exactions applicable to the development of the Property.
- **3.8.2:** In the event that following the provision of or payment for over-sized infrastructure and utilities by Developer, County reduces the overall acreage or density of the Community in such a way as prevents Developer from receiving later anticipated reimbursements under

established Financing Mechanisms or the Cost Reimbursement Program from properties which would otherwise have benefited from the aforementioned over-sized infrastructure and utilities, County shall reimburse Developer in an amount which is commensurate with the amounts Developer would have received had the County not reduced the overall acreage or density of the Community.

Status. Compliant.

Section 3.9 – Adoption of Ordinances: In order to effectuate the Public Land Equity Program and the Cost Reimbursement Program to be developed as part of the Subsequent Plans and Programs, County will be required to adopt specific ordinances and cooperate with the MHCSO and Developer in order to acquire and utilize the public lands, on the one hand, levy and collect and disburse funds to owners entitled to reimbursement to pay for the costs thereof, on the other hand. The Parties agree to cooperate in good faith to achieve this result.

Status. Compliant.

Section 3.10 – Schools Mitigation: To the extent not prohibited by law, and consistent with the provisions of the Master Plan requiring full mitigation for school impacts, County shall ensure that future landowners and developers within Mountain House are required to fully mitigate school facilities impacts in strict compliance with the School Facilities Act, as amended in 1998, and as further amended from time to time.

Status. Compliant.

Section 3.11 - Participation in SJMSCP. The Parties acknowledge that pursuant to the Master Plan, Developer may provide mitigation for identified endangered species impacts on the Project through implementation of the Mountain House Habitat Management Plan. In the alternative, the Master Plan provides that Developer may participate in a regional habitat conservation plan. The Parties recognize and agree that the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) has been prepared as an alternative means of mitigating county-wide impacts to special status, threatened and endangered species. Therefore, Developer may, in lieu of implementation of the Mountain House Habitat Management Plan, participate in the SJMSCP for so long as the SJMSCP remains in effect, and whether or not County has elected to participate in the SJMSCP on a county-wide basis.

Status. Ongoing. Developer is complying and is an active participant in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP)

Section 4.1 – Annual Review: The County and Developer shall annually review this Agreement, and all actions taken pursuant to the terms of this Agreement with respect to the Property. Review has not been requested by the County, and per Section 4.9, non-submittal of annual reports is not a default unless the County requests a report, and none is subsequently provided. No specific request has been received, likely because construction has not commenced.

Status. Compliant.

Section 4.2 – Developer’s Submission: This Section sets forth the specific contents required in the Developer’s annual report. Largely, the requirements pertain to status of units constructed, dedications, infrastructure built and related requirements.

Status. Compliant.

Section 4.3 – Finding of Compliance: The Community Development Director shall review the Developer's submission to ascertain whether the Developer has complied in good faith with the terms of this Agreement and shall issue a certificate of compliance if warranted.

Status. Compliant.

Section 4.4 – Finding of Noncompliance: If the Community Development Director finds that the Developer has not complied in good faith with the terms of this Agreement or has failed to demonstrate such compliance to the satisfaction of the Community Development Director, the Community Development Director shall specify in writing to the Developer the respects in which the Community Development Director believes the Developer has failed to comply or has failed to demonstrate compliance. If the noncompliance is not cured within a reasonable time, the DA is subject to modification or cancellation.

Status. Compliant.

Section 4.5 – Referral to Planning Commission: The Community Development Director may refer any review to be conducted hereunder to the Planning Commission.

Status. Compliant. There have been no referrals to Planning Commission.

Section 4.6 – Appeals to Board of Supervisors: The Developer may file an appeal of a determination of noncompliance to the Board of Supervisors within ten days after such determination is made.

Status. Compliant. – no referral to PC has occurred; thus, no appeal has been necessary.

Section 4.7 – Miscellaneous Requirements in Connection with Annual Review: The Community Development Director's determination shall be made within sixty (60) days after the submission by the Developer of the material required under Section 4.2. hereof, and, if the Community Development Director refers the matter to the Planning Commission/then the determination by the Planning Commission shall be made within sixty (60) days after such referral subject to continuation of such matter by the Planning Commission for any reason.

Status. Compliant.

Section 4.8 – Cost of Annual Review: All costs incurred by the County of annual or other review shall be borne by the Developer.

Status. Compliant.

Section 4.9 – Failure to Conduct Annual Review: Failure of County to conduct an annual review shall not constitute a waiver. Failure of Developer to submit an annual report as required by Section 4.2 shall not constitute a default unless County makes a written request for such report and Developer does not comply within 30 days thereafter.

Status. Compliant - no written request has been received.

Section 5 – Default, Remedies, Termination: These are standard contract provisions governing rights and obligations of the parties upon allegation of default under the agreement. These terms are not relevant for the compliance review, as no material default has been alleged by either party to the Agreement.

Status. Compliant.

Section 6: Hold Harmless Agreement; Insurance: These provisions in Section 6.1 relate to the Developer’s obligation to hold the County harmless related to the DA and the development on the Property. Subsection 6.2 requires certain insurance when construction commences on the property; thus, those requirements are not yet applicable. Subsection 6.3 provides that the provisions in subsections 6.1 and 6.2 are not meant to supersede the requirements in the Existing Approvals, Reserved Discretionary Approvals, Ordinances or the Development Agreement.

Status. Compliant.

Section 7 – Development of Property as a Private Undertaking: The development of the property is a private undertaking, and no partnership, joint venture or other association with the County is intended. No third-party beneficiary rights are created by the DA unless otherwise set forth.

Status. Compliant.

Section 8 – Consistency with General Plan, Master Plan, Public Financing Plan: The County determines that execution of the Development Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan, Master Plan, and Public Financing Plan.

Status. Compliant.

Section 9 – Construction: These are standard contract provisions not relevant for a review of Developer compliance with the DA.

Section 12 – Incorporation or Annexation: This provision states that in the event of annexation of the Property, Government Code Section 65865.3 shall apply such that the DA shall still be valid, and the County shall use reasonable efforts to ensure that the DA shall be honored by the incorporating or annexing City for the maximum duration permitted under law, presently fifteen (15) years pursuant to Government Code Section 65865.3, or for the remaining term of this Agreement, whichever is less.

Status. Compliant.

