

ORDINANCE NO. 973

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LARKSPUR
ADOPTING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF
LARKSPUR AND LARKSPUR HOUSING PARTNERS, LLC FOR THE
DEVELOPMENT OF 85 RESIDENTIAL DWELLING UNITS AND SIX-SECOND
UNITS ON AN APPROXIMATELY 16.8-ACRE SITE (ALSO KNOWN AS THE
NIVEN NURSERY SITE) LOCATED IN THE CITY OF LARKSPUR, CALIFORNIA

- WHEREAS,** Larkspur Housing Partners, LLC ("Developer") proposes the development of 85 residential units and six-second units on the 16.8-acre property located in the City of Larkspur, County of Marin, State of California, which is more particularly described in Exhibit A to the Development Agreement ("Project"), and also known as the Niven Nursery Site; and
- WHEREAS,** Developer proposes to also include a 2.43-acre community facility/park site and certain streets, multi-use paths, landscaped areas, open space areas, and creek setback and buffer areas; and
- WHEREAS,** the Developer has requested approval of a Development Agreement which would clarify and obligate several project features and conditions such as those required for creek restoration and setbacks, school impact fees, traffic impact fees, and community facility land dedication; and
- WHEREAS,** the Development is in Subarea 3 of the Central Larkspur Specific Plan (CLASP), for which the City Council certified an Environmental Impact Report by Resolution No. 46/06 on September 20, 2006 (incorporated herein by reference). The CLASP EIR identified significant impacts from development of the CLASP area, some of which could not be mitigated to less than significant. Upon approval of the CLASP and related General Plan amendments, the City Council adopted mitigations, a mitigation monitoring program, and a Statement of Overriding Considerations (Exhibit A of Resolution No. 46/06); and
- WHEREAS,** on July 18, 2008, the City Council approved a Mitigated Negative Declaration (2007 MND) for the Preliminary Development Plan for CLASP Subarea 3, the Rose Garden Project, and approved the Preliminary Development Plan for the Project (Resolution No. 962); and
- WHEREAS,** the proposed Rose Garden development project consists of the following applications: Preliminary Development Plan amendment/exceptions, Precise Development Plan (including excavation/fill permit), tentative map, design review, use permit for senior housing, circulation assessment permit, archaeological investigation permit, heritage tree removal permit, and development agreement. These applications are in City File No. 08-54; and
- WHEREAS,** in June of 2009, the City prepared an Addendum (2009 June Addendum) to the prior EIR and 2007 MND for the CLASP Subarea 3 (Niven Property) Preliminary Development Plan to address corrections and changes to the proposed tree removals; and
- WHEREAS,** in November of 2009, the City prepared an Initial Study to determine if additional review was required pursuant to CEQA Guidelines Section 15162 for further changes from the Preliminary Development Plan related to grading in natural resource buffer areas, the removal of trees adjacent to Larkspur Creek, and potential on-site encapsulation of contaminated cultural resources. Based on the Initial Study, the City prepared an Addendum dated November 2009 (2009 November Addendum) describing the modifications and finding that the impacts

of the proposed Project have been adequately addressed in the CLASP EIR and the 2007 MND; and

WHEREAS, the CLASP EIR identified significant avoidable impacts from the development of the CLASP area, some of which would apply to the Project; therefore, approval of the Project must be supported by a Statement of Overriding Considerations; and

WHEREAS, Planning Commission staff reports dated June 23, 2009 and December 8, 2009, incorporated herein by reference, analyzed the Project and recommended adoption of the CEQA Addendums and approval of the Project subject to conditions of approval; and

WHEREAS, on June 23 and 25, July 7, and December 8, 2009, the Planning Commission held duly noticed public hearings to consider the two CEQA addendums, the Rose Garden development project applications including the Development Agreement, and all related written materials and oral comments before taking action on the applications. The Planning Commission used their independent judgment to vote to recommend approval of the two addendums and the Project applications subject to development standards and conditions of approval (Resolution 05/10); and

WHEREAS, following a duly noticed public hearing held on December 8, 2009, the Planning Commission recommended that the City Council approve the Agreement with amendments; and

WHEREAS, on January 20, 2010, the City Council held duly noticed public hearings to consider the two addendums, the applications, the Planning Commission's recommendation, and all related written materials and oral comments before taking action on the Project applications using their independent judgment.

WHEREAS, on January 20, 2010, pursuant to the California Environmental Quality Act, the City Council adopted Resolution No. 04/10, adopting two CEQA Addendums and a Statement of Overriding Considerations for the Rose Garden Project; and

WHEREAS, on February 17 and March 3, 2010, the City Council held a duly noticed public hearing on the Development Agreement.

NOW THEREFORE, the City Council of the City of Larkspur does hereby ORDAIN as follows:

SECTION 1. FINDINGS.

- A. The proposed Development Agreement for the Project is consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended and adopted. This finding is based upon all evidence in the record as a whole, including, but not limited to: the City Council's independent review of these documents. The Project provides for a development consisting of 85 residential units plus six-second units. The housing mix includes six single-family detached cottages, 29 single-family detached homes with six-second units, and 50 senior units (42 multifamily units/8 cottage units). Developer also proposes to include an approximately 2.43-acre community facility/park site and certain streets, multi-use paths, landscaped area, open space areas and creek setback and buffer areas. The Property will be located in the Planned Development (P-D) Zoning District. The proposed project, as approved, complies with all zoning, subdivision and building regulations and with the objectives, policies, general land uses and programs specified in the

General Plan.

- B. The City Council has independently reviewed the proposed Development Agreement, the General Plan, the Central Larkspur Specific Plan ("CLASP"), and the City's Zoning Code and has determined that the proposed Development Agreement for the Project complies with all applicable zoning, subdivision, and building regulations and with the General Plan. This finding is based upon all evidence in the record as a whole, including, but not limited to: the City Council's independent review of these documents, oral and written evidence submitted at the public hearings on the Project, including advice and recommendations from City staff.
- C. The proposed Development Agreement for the Project states its specific duration. This finding is based upon all evidence in the record as a whole, including, but not limited to: the City Council's independent review of the proposed Development Agreement and its determination that Section 4 of the Agreement states that the Agreement shall expire ten years from the effective date of the Agreement, which shall be concurrent with the adoption of the instant ordinance.
- D. The proposed Development Agreement incorporates the permitted uses, density and intensity of use for the property subject thereto as reflected in the Project approvals. This finding is based upon all evidence in the record as a whole, including, but not limited to: the City Council's independent review of the proposed Development Agreement and its determination that Sections 6 and 7 and Exhibit B of the Agreement set forth the development standards, conditions and documents constituting the Project.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT.

Pursuant to Government Code section 65864 *et seq.*, the City Council of the City of Larkspur hereby approves the proposed Development Agreement with Larkspur Housing Partners, LLC, attached hereto as Attachment A and incorporated herein by reference.

SECTION 3. SEVERABILITY.

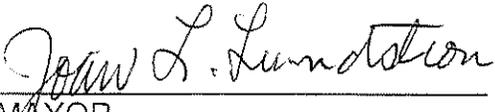
If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of this Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Larkspur hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

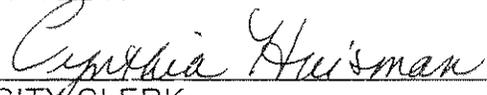
SECTION 4. EFFECTIVE DATE.

This ordinance shall be posted in three (3) public places within the City of Larkspur within fifteen (15) days after adoption and shall be effective thirty (30) days after final adoption.

IT IS HEREBY CERTIFIED that the foregoing ordinance was introduced at a regular meeting of the Larkspur City Council held on the 3rd day of March, 2010 and thereafter passed and adopted at a regular meeting of the Larkspur City Council held on the 17th day of March, 2010 by vote:

AYES: COUNCILMEMBER: Chu, Hartzell, Hillmer, Lundstrom, Rifkind
NOES: COUNCILMEMBER: None
ABSTENTIONS: COUNCILMEMBER: None
ABSENT: COUNCILMEMBER: None


MAYOR

ATTEST:

CITY CLERK

RECORDING REQUESTED BY:

CITY OF LARKSPUR

When Recorded Mail To:

City Clerk
City of Larkspur
400 Magnolia Avenue
Larkspur, CA 94939

*EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383*

Space above this line for Recorder's use

DEVELOPMENT AGREEMENT

BETWEEN THE

CITY OF LARKSPUR

AND

LARKSPUR HOUSING PARTNERS, LLC,
a California limited liability company

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered in the City of Larkspur on this ____ th day of _____, 20__, by and between the City of Larkspur, a Municipal Corporation (hereafter "City"), and Larkspur Housing Partners, LLC, a California limited liability company (hereafter "Developer"), pursuant to the authority of sections 65864 et seq. of the California Government Code. City and Developer are sometimes hereafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. California Government Code sections 65864 et seq. authorize the City to enter into an agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

B. Developer desires to develop and holds a legal or equitable interest in certain real property consisting of approximately 16.8 acres of land, located in the City of Larkspur, County of Marin, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference, and which real property is hereafter called "the Property"; and

C. Developer proposes the development of the Property with 85 residential dwelling units plus six-second units. The housing mix includes six single-family detached cottages, 29 single-family detached homes with six second units, and 50 senior units (42 multifamily units/8 cottage units). Of the total units, six single-family detached cottages, six second units, five senior multifamily housing units, and three senior cottage units are affordable units pursuant to Larkspur Municipal Code Chapter 18.31. Developer also proposes to include an approximately 2.43-acre community facility/park site and certain streets, landscaped areas, open space areas, and creek setback and buffer areas (collectively the "Project"); and

D. Developer has applied for, and CITY has approved various land use approvals in connection with the development of the Project, including (1) the Central Larkspur Specific Plan ("CLASP"), a General Plan Amendment, and the Environmental Impact Report for the CLASP certified on September 20, 2006; (2) a Preliminary Development Plan/Planned Development Permit (Ordinance No. 962) approved on July 16, 2008, together with a Mitigated Negative Declaration and Alternative Equivalent Action also approved on July 16, 2008; and (3) a Preliminary Development Plan Amendment, a Precise Development Plan, a Grading Permit, a Tentative Subdivision Map, a Senior Housing Use Permit, Design Review, a Circulation Assessment Permit, an Archeological Investigation Permit, and a Heritage Tree Removal Permit approved _____, 2010 (collectively, together with any approvals or permits now or hereafter issued with respect to the Project, the "Project Approvals"); and

E. Development of the Property by Developer may be subject to certain future discretionary approvals, which, if requested by Developer and granted by City, shall automatically become part of the Project Approvals as each such approval becomes effective; and

F. City desires the timely, efficient, orderly and proper development of said Project; and

G. The City Council has found that, among other things, this Agreement is consistent with its General Plan and the CLASP; and

H. City and Developer have reached agreement and desire to express herein a development agreement that will facilitate development of the Project subject to conditions set forth herein; and

I. On _____, 200__, the City Council of the City of Larkspur adopted Ordinance No. ___-___ approving this Agreement. The ordinance took effect on _____, 200__ ("the Approval Date").

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, City and Developer agree as follows:

AGREEMENT

1. Description of Property.

The Property that is the subject of this Agreement is described in Exhibit A attached hereto.

2. Interest of Developer.

The Developer has a legal or equitable interest in the Property in that it owns or holds a right to purchase the Property.

3. Relationship of City and Developer.

It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Developer and that the Developer is not an agent of City. The City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

4. Effective Date and Term.

4.1. Effective Date. The effective date of this Agreement shall be the Approval Date.

4.2. Term. The term ("Term") of this Agreement shall commence on the effective date and extend 10 years thereafter, unless said Term is otherwise terminated or modified by circumstances set forth in this Agreement.

4.3. Survival of Certain Provisions Following Termination of Agreement. The following provisions shall survive the termination of this Agreement:

- Subparagraph 5.3.1 (including the provisions set forth in Exhibit B)
- Subparagraph 5.3.2 (including the provisions set forth in Exhibit B)
- Subparagraph 5.3.3 (including the provisions set forth in Exhibit B)
- Subparagraph 5.3.4 (including the provisions set forth in Exhibit B)
- Subparagraph 5.3.5 (including the provisions set forth in Exhibit B)
- Subparagraph 5.3.6 (including the provisions set forth in Exhibit B)

5. Use of the Property.

5.1. Right to Develop. Developer shall have the vested right to develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved by the City and Developer pursuant to this Agreement (such amendments once effective shall become part of the law Developer is vested into without an additional amendment of this Agreement).

5.2. Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height, bulk and size of proposed buildings, provisions for reservation or dedication of land for public purposes and location and maintenance of

on-site and off-site improvements, location of public utilities (operated by City) and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Project Approvals and any amendments to this Agreement or the Project Approvals approved by the City and Developer.

5.3. Additional Conditions. Provisions for the following ("Additional Conditions") are set forth in Exhibit B attached hereto and incorporated herein by reference. The inclusion of the conditions listed below in this Agreement shall not relieve Developer of the obligation to fulfill all of the conditions of approval and requirements for the Project.

5.3.1. Subsequent Discretionary Approvals. Conditions, terms, restrictions, and requirements for subsequent discretionary actions. (These conditions do not affect Developer's responsibility to obtain all other land use approvals required by the ordinances of the City of Larkspur and any other approvals from other regulatory agencies.)

5.3.2. Mitigation Conditions. Additional or modified conditions agreed upon by the parties in order to eliminate or mitigate adverse environmental impacts of the Project or otherwise relating to development of the Project, as set forth in Exhibit B.

5.3.3. Phasing, Timing. Provisions that the Project be constructed in specified phases, that construction shall commence within a specified time, and that the Project or any phase thereof be completed within a specified time, as set forth in Exhibit B.

5.3.4. Financing Plan. Financial plans which identify necessary capital improvements such as streets and utilities and sources of funding, as set forth in Exhibit B.

5.3.5. Fees, Dedications. Terms relating to payment of fees or dedication of property, as set forth in Exhibit B.

5.3.6. Credit. Terms relating to subsequent reimbursement over time for financing of necessary public facilities, as set forth in Exhibit B.

5.3.7. Miscellaneous. Miscellaneous terms, as set forth in Exhibit B.

6. Applicable Rules, Regulations and Official Policies.

6.1. Rules Regarding Permitted Uses. For the term of this Agreement, the City's ordinances, resolutions, rules, regulations and official policies governing the permitted uses of the Property, governing density and intensity of use of the Property and the maximum height, bulk and size of proposed buildings shall be those in force and effect on the effective date of the Agreement.

6.2. Rules Regarding Design and Construction. Unless otherwise expressly provided in Section 5 and Exhibit B of this Agreement, the ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project shall be those in force and effect at the time of the applicable discretionary approval, whether the date of that approval is prior to or after the date of this Agreement. Ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to public improvements to be constructed by Developer shall be those in force and effect at the time of the applicable discretionary approval, whether date of approval is prior to or after the date of this Agreement.

6.3. Uniform Codes Applicable. Unless expressly provided in Section 5 and Exhibit B of this Agreement, the Project shall be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical and Fire Codes and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, or other construction permits for the Project.

7. Subsequently Enacted Rules and Regulations.

7.1. New Rules and Regulations. During the term of this Agreement, the City may apply new or modified ordinances, resolutions, rules, regulations and official policies of the City to the Property which were not in force and effect on the effective date of this Agreement and which are not in conflict with those applicable to the Property as set forth in this Agreement if: (a) the application of such new or modified ordinances, resolutions, rules, regulations or official policies would not prevent, impose a substantial financial burden on, or materially delay development of the Property as contemplated by this Agreement and the Project Approvals and (b) if such ordinances, resolutions, rules, regulations or official policies have general applicability.

7.2. Approval of Application. Nothing in this Agreement shall prevent the City from denying or conditionally approving any subsequent land use permit or authorization for the Project on the basis of the type of new or modified ordinances, resolutions, rules, regulations and policies described in Section 7.1, except that such subsequent actions shall be subject to any conditions, terms, restrictions, and requirements expressly set forth herein.

7.3. Moratorium Not Applicable. Notwithstanding anything to the contrary contained herein, in the event an ordinance, resolution or other measure is enacted, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development or a voter-approval requirement which affects the Project on all or any part of the Property, City agrees that such ordinance, resolution or other measure shall not apply to the Project, the Property, this Agreement or the Project Approvals unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code § 8558.

8. Subsequently Enacted or Revised Fees, Assessments and Taxes.

8.1. Fees, Exactions, Dedications. City and Developer agree that the fees payable and exactions required in connection with the development of the Project for purposes of mitigating environmental and other impacts of the Project, providing infrastructure for the Project and complying with the Specific Plan shall be those set forth in the Project Approvals and in this Agreement (including Exhibit B). The City shall not impose or require payment of any other fees, dedications of land, or construction of any public improvement or facilities, shall not increase or accelerate existing fees, dedications of land or construction of public improvements, or impose other exactions in connection with any subsequent discretionary approval for the Property, except as set forth in the Project Approvals and this Agreement (including Exhibit B, subparagraph 5.3.5).

8.2. Revised Application Fees. Any existing application, processing and inspection fees that are revised during the term of this Agreement shall apply to the Project provided that (1) such fees have general applicability; (2) the application of such fees to the Property is prospective only; and (3) the application of such fees would not prevent, impose a substantial financial burden on, or materially delay development in accordance with this Agreement. Other than agreeing that Developer has no vested right against such revised application, processing and inspection fees, Developer does not waive its right to challenge the legality of any such application, processing and/or inspection fees under the controlling law then in place.

8.3. New Taxes. Any subsequently enacted city-wide taxes shall apply to the Project provided that: (1) the application of such taxes to the Property is prospective; and (2) the application of such taxes would not prevent development in accordance with this Agreement. Other than agreeing that Developer has no vested right against such new taxes, Developer does not waive its right to challenge the legality of any such taxes under the controlling law then in place.

8.4. Assessments. Nothing herein shall be construed to relieve the Property from assessments levied against it by City pursuant to any statutory procedure for the assessment of property to pay for infrastructure and/or services which benefit the Property.

8.5. Vote on Future Taxes, Assessments, and Fees. In the event that any assessment, fee or charge which is applicable to the Property is subject to Article XIII C or XIID of the Constitution and Developer does not return its ballot, Developer agrees, on behalf of itself and its successors, that City may count Developer's ballot as affirmatively voting in favor of such tax, assessment, fee or charge.

9. Amendment or Cancellation.

9.1. Modification Because of Conflict with State or Federal Laws. 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 provisions of this Agreement or require changes in plans, maps or permits approved by the City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be effective only upon approval by Developer and by the City Council.

9.2. Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of State law.

9.3. Insubstantial Amendments. Notwithstanding the provisions of the preceding paragraph 9.2, any amendments to this Agreement which do not relate to (a) the term of the Agreement as provided in paragraph 4.2; (b) the permitted uses of the Property as provided in paragraph 5.2; (c) provisions for "significant" reservation or dedication of land as provided in Exhibit B; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Project; (f) the maximum height or size of proposed buildings; or (g) monetary contributions by Developer as provided in this Agreement, shall not, except to the extent otherwise required by law, require notice or public hearing before either the Planning Commission or the City Council before the parties may execute an amendment hereto. City's Public Works Director shall determine whether a reservation or dedication is "significant".

9.4. Amendment of Project Approvals. Any amendment of Project Approvals relating to: (a) the permitted use of the Property; (b) provision for reservation or dedication of land, including but not limited to those described in Exhibit B; (c) conditions, terms, restrictions or requirements for subsequent discretionary actions; (d) the density or intensity of use of the Project; (e) the maximum height or size of proposed buildings; (f) monetary contributions by the Developer; or (g) public improvements to be constructed by Developer shall require an amendment of this Agreement. Such amendment shall be limited to those provisions of this Agreement which are implicated by the amendment of the Project Approval. Any other amendment of the Project Approvals, or any of them, shall not require amendment of this Agreement unless the amendment of the Project Approval(s) relates specifically to some provision of this Agreement.

9.5. Cancellation by Mutual Consent. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by the mutual consent of the parties or their successors in interest. Any fees paid pursuant to Paragraph 5.3 and Exhibit B of this Agreement prior to the date of cancellation shall be retained by City.

10. Term of Project Approvals.

The term of any tentative subdivision map for the Project shall be extended automatically for the longer of the term of this Agreement or the term otherwise given the tentative subdivision map under the controlling law then in place. Notwithstanding the foregoing, the parties agree that the extension of the term of the tentative subdivision map, pursuant to this section and any other extensions under the Subdivision Map Act, shall not extend the tentative subdivision map more than 10 years from its approval or conditional approval. The term of any other Project Approval shall be extended only if so provided in Exhibit B.

11. Annual Review.

11.1 Annual Review of Compliance. City and Developer shall annually review this Agreement for compliance, and all actions taken pursuant to the terms of this Agreement with respect to the Project, pursuant to the procedures outlined herein.

11.2 Developer's Submittal. Not later than the first anniversary date of the Effective Date, and not later than each anniversary date of the Effective Date thereafter during the Term of this Agreement, Developer shall apply for annual review of this Agreement. Developer shall pay, with such application, the City Application Fee in effect, at that time, for annual review of development agreements. Developer shall submit with such application a report to the City's Planning Director describing the Developer's good faith substantial compliance with the terms of this Agreement during the preceding year. Such report shall include a statement that the report is submitted to the City pursuant to the requirements of Government Code Section 65865.1 and of this Agreement.

11.3 Finding of Compliance. Within thirty (30) days after Developer submits its report hereunder, the City's Planning Director shall review Developer's submission to ascertain whether Developer has demonstrated good faith substantial compliance with the material terms of this Agreement. If the Planning Director finds and determines, in consultation with the City Manager and the City's Public Works Director, that Developer has in good faith substantially complied with the material terms of this Agreement, or does not determine otherwise within thirty (30) days after delivery of Developer's report under Section 11.2 above, then the annual review shall be concluded. If the Planning Director initially determines that such report is inadequate in any respect, then he or she shall provide written notice to that effect to Developer, and Developer may supply such additional information or evidence as may be necessary to demonstrate good faith substantial compliance with the material terms of this Agreement. Following consultation with the City Manager and the City's Public Works Director, if the Planning Director concludes that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, then he or she shall so notify Developer within thirty (30) days after delivery of the additional information and prepare a report to the City Council with respect to the conclusions of the Planning Director and the contentions of Developer with respect thereto.

11.4 Hearing Before City Council to Determine Compliance. After submission of the staff report of the City's Planning Director, the City Council shall conduct a noticed public hearing to determine the good faith substantial compliance by Developer with the material terms of this Agreement. At least ten (10) days prior to hearing, the Planning Director shall provide to the City Council, Developer and to all interested persons requesting the same, copies of all staff reports and other information concerning Developer's good faith substantial compliance with the

material terms of this Agreement and the conclusions and recommendations of the Planning Director. At such hearing, Developer and any other interested person shall be entitled to submit evidence, orally or in writing, and address all the issues raised in the staff report on, or with respect or germane to, the issue of Developer's good faith substantial compliance with the material terms of this Agreement. If, after receipt of any written or oral response of Developer, and after considering all of the evidence at such public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not substantially complied in good faith with the material terms of this Agreement, then the City Council shall specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance, which time shall be not less than thirty (30) days after the date of the City Council's determination, and shall be reasonably related to the time necessary to adequately bring Developer's performance into good faith substantial compliance with the material terms of this Agreement.

If the areas of noncompliance specified by the City Council are not corrected within the time limits prescribed by the City Council hereunder, then the City Council may by subsequent noticed hearing extend the time for compliance for such period as the City Council may determine (with conditions, if the City Council deems appropriate), terminate, or modify this Agreement, or take such other actions as permitted under applicable law. Any notice to Developer of a determination of noncompliance by Developer hereunder, or of a failure by Developer to remedy the areas of noncompliance hereunder, shall specify in reasonable detail the grounds therefore and all facts demonstrating such noncompliance or failure, so that Developer may address the issues raised in the notice of noncompliance or failure on point-by-point basis in any hearing held by the City Council hereunder.

11.5 Meet and Confer Process. If either the City's Planning Director or the City Council makes a determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, then the City Manager and/or designated City Council representatives may initiate a meet and confer process with Developer pursuant to which the Parties shall meet and confer to determine a resolution acceptable to both Parties of the bases upon which the Planning Director or City Council has determined that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. The results and recommendations of the meet and confer process shall be presented to the City Council for review and consideration at its next regularly scheduled public meeting, including consideration of such amendments to this Agreement as may be necessary or appropriate to effectuate the resolution through such meet and confer process. Developer shall be deemed to be in good faith substantial compliance with the material terms of this Agreement, only upon the City Council's acceptance of the results and recommendation of the meet and confer process.

11.6 Certificate of Compliance. If the City's Planning Director (or the City Council, if applicable) finds good faith substantial compliance by Developer with the material terms of this Agreement, then the Planning Director shall issue a certificate of compliance within ten (10) days thereafter, certifying Developer's good faith compliance with the material terms of this Agreement through the period of the applicable review. Such certificate of compliance shall be in recordable form and shall contain such information as may be necessary in order to impart constructive record notice of the finding of good faith compliance hereunder. Developer shall have the right to record the certificate of compliance with the Marin County Recorder's Office.

11.7 Effect of City Council Finding of Noncompliance; Rights of Developer. If the City Council determines that the Developer has not substantially complied in good faith with the material terms of this Agreement and the related project

approvals pursuant to Section 11.4 above, and takes any of the actions specified in Section 11.4 above with respect to such determination of noncompliance, then Developer shall have the right to contest any such determination of noncompliance by City Council pursuant to Section 12 below.

12. Default.

12.1. Other Remedies Available. Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity which are not otherwise provided for in this Agreement, expressly including the remedy of specific performance of this Agreement.

12.2. Notice and Cure. Upon the occurrence of an event of default by either party, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days after service of such notice of default, then the nondefaulting party may then commence any legal or equitable action to enforce its rights under this Agreement; provided, however, that if the default cannot be cured within such thirty (30) day period, the nondefaulting party shall refrain from any such legal or equitable action so long as the defaulting party begins to cure such default within such thirty (30) day period and diligently pursues such cure to completion. Failure to give notice shall not constitute a waiver of any default.

12.3. No Damages Against City. In no event shall damages be awarded against City upon an event of default or upon termination of this Agreement.

13. Estoppel Certificate.

Either party may, at any reasonable time, and from time to time, request written notice from the other party requesting such party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying party the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. City Manager of City shall be authorized to execute any certificate requested by Developer. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default, provided that such party shall be deemed to have certified that the statements in clauses (a) through (c) of this section are true, and any party may rely on such deemed certification.

14. Mortgagee Protection; Certain Rights of Cure.

14.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

14.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 14.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to

guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement.

14.3. Notice of Default to Mortgagee and Extension of Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed an event of default. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed set forth in the City's notice. City, through its City Manager, may extend the thirty-day cure period provided in paragraph 12.2 for not more than an additional sixty (60) days upon request of Developer or a Mortgagee.

15. Severability.

The unenforceability, invalidity or illegality of any provisions, covenant, condition or term of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

16. Attorneys' Fees and Costs.

If City or Developer initiates any action at law or in equity to enforce or interpret the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' and experts' fees and costs in addition to any other relief to which it may otherwise be entitled. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate in defending such action. Developer shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceeding.

17. Transfers and Assignments.

17.1. Right to Assign. Developer may wish to sell, transfer or assign all or portions of its Property to other developers (each such other developer is referred to as a "Transferee"). In connection with any such sale, transfer or assignment to a Transferee, Developer may sell, transfer or assign to such Transferee any or all rights, interests and obligations of Developer arising hereunder and that pertain to the portion of the Property being sold or transferred, to such Transferee, provided, however, that: no such transfer, sale or assignment of Developer's rights, interests and obligations hereunder shall occur without prior written notice to City and approval by the City Manager, which approval shall not be unreasonably withheld or delayed.

17.2. Approval and Notice of Sale, Transfer or Assignment. The City Manager shall consider and decide on any transfer, sale or assignment within twenty (20) days after Developer's notice, provided all necessary documents, certifications and other information are provided to the City Manager to enable the City Manager to determine whether the proposed Transferee can perform the Developer's obligations hereunder. Notice of any such approved sale, transfer or assignment (which includes a description of all rights, interests and obligations that have been transferred and those which have been retained by Developer) shall be recorded in the official records of Marin County, in a form acceptable to the City Manager, concurrently with such sale, transfer or assignment.

17.3. Effect of Sale, Transfer or Assignment. Developer shall be released from any obligations hereunder sold, transferred or assigned to a Transferee pursuant to subparagraphs 17.1 and 17.2 of this Agreement, provided that: a) such sale, transfer or assignment has been approved by the City Manager pursuant to subparagraphs 17.1 and 17.2 of this Agreement; and b) such obligations are expressly assumed by Transferee and provided that such Transferee shall be subject to all the provisions hereof and shall provide all necessary documents, certifications and other necessary information prior to City Manager approval pursuant to subparagraphs 17.1 and 17.2 of this Agreement.

17.4. Permitted Transfer, Purchase or Assignment. The sale or other transfer of any interest in the Property to a purchaser ("Purchaser") pursuant to the exercise of any right or remedy under a deed of trust encumbering Developer's interest in the Property shall not require City Manager approval pursuant to the provision of subparagraphs 17.1 and 17.2. Any subsequent transfer, sale or assignment by the Purchaser to a subsequent transferee, purchaser, or assignee shall be subject to the provisions of subparagraphs 17.1 and 17.2.

17.5. Termination of Agreement Upon Sale of Individual Lots to Public. Notwithstanding any provisions of this Agreement to the contrary, the burdens of this Agreement shall terminate as to any single-family lot or separate condominium unit that has been finally subdivided and individually (and not in "bulk") leased (for a period of longer than one year) or sold to the purchaser or user thereof and thereupon and without the execution or recordation of any further document or instrument such lot or unit shall be released from and no longer be subject to or burdened by the provisions of this Agreement; provided, however, that the benefits of this Agreement shall continue to run as to any such lot or unit until a building is constructed on such lot or unit, or until the termination of this Agreement, if earlier, at which time this Agreement shall terminate as to such lot or unit.

18. Agreement Runs with the Land.

All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitude and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any owned property, (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.

19. Bankruptcy.

The obligations of this Agreement shall not be dischargeable in bankruptcy.

20. Indemnification.

Developer agrees to indemnify, defend and hold harmless City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal and expert fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by the Developer, or any actions or inactions of Developer's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the

Project, provided that Developer shall have no indemnification obligation with respect to negligence or wrongful conduct of City, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been dedicated to and accepted by the City or another public entity (except as provided in an improvement agreement or maintenance bond). If City is named as a party to any legal action, City shall cooperate with Developer, shall appear in such action and shall not unreasonably withhold approval of a settlement otherwise acceptable to Developer.

21. Insurance.

21.1. Public Liability and Property Damage Insurance. During the term of this Agreement, Developer shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than two million dollars (\$2,000,000.00) with a One Hundred Thousand Dollar (\$100,000) self insurance retention per claim and an AM Best's rating of at least B+/VI. The policy so maintained by Developer shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

21.2. Workers Compensation Insurance. During the term of this Agreement Developer shall maintain Worker's Compensation insurance for all persons employed by Developer for work at the Project site. Developer shall require each contractor and subcontractor similarly to provide Worker's Compensation insurance for its respective employees. Developer agrees to indemnify the City for any damage resulting from Developer's failure to maintain any such insurance.

21.3. Evidence of Insurance. Within 30 days of the Approval Date, Developer shall furnish City satisfactory evidence of the insurance required in Sections 21.1 and 21.2 and evidence that the carrier is required to give the City at least fifteen days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the City, its elective and appointive boards, commissions, officers, agents, employees and representatives and to Developer performing work on the Project.

22. Sewer and Water.

Developer acknowledges that it must obtain sewer permits from the Ross Valley Sanitary District and/or Central Marin Sanitation Agency, which ever is applicable, and must obtain water permits from the Marin Municipal Water District, all of which are separate public agencies not within the control of City.

23. Notices.

23.1. All notices required or provided for under this Agreement shall be in writing. Notices required to be given to City shall be addressed as follows:

City Manager
City of Larkspur
400 Magnolia Avenue
Larkspur, CA 94939

With a copy to:

City Attorney
City of Larkspur
400 Magnolia Avenue
Larkspur, CA 94939

Notices required to be given to Developer shall be addressed as follows:

Larkspur Housing Partners
100 Pasadera Drive
Monterey, CA 93940
Attn: Lee Newell
Steve Seely

With a copy to:

Miller Starr Regalia
1331 N. California Blvd, Fifth Floor
Walnut Creek, CA 94596
Attn: Karl E. Geier, Esq.

A party may change address by giving notice in writing to the other party and thereafter all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or if mailed, upon the expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following day or by facsimile transmission which shall be deemed given upon verification of receipt.

24. Recitals.

The foregoing Recitals are true and correct and are made a part hereof.

25. Agreement is Entire Understanding.

This Agreement constitutes the entire understanding and agreement of the parties.

26. Exhibits.

The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Exhibit A Legal Description of Property

Exhibit B Additional Conditions

27. Counterparts.

This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original.

28. Recordation.

City shall record a copy of this Agreement within ten days following execution by all parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

SIGNATURES ON FOLLOWING PAGE

CITY OF LARKSPUR:

Joan L. Lundstrom
Joan Lundstrom, Mayor

ATTEST:

Cynthia Huisman
Cynthia Huisman, City Clerk

APPROVED AS TO FORM:

Sky Woodruff
Sky Woodruff, City Attorney

LARKSPUR HOUSING PARTNERS, LLC

By: Sunstar Properties, Inc.,
a California corporation,
a Member

By: Stephen R. Seely
Stephen R. Seely, President

By: New Cities Land Company, Inc.,
a California corporation,
a Member

By: Lee E. Newell
Lee E. Newell, President

(NOTARIZATION ATTACHED)

Exhibit A

Legal Description of the Property

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

PARCEL ONE:

BEGINNING at a stake on the Easterly line of the right of way of the Northwestern Pacific Railroad, which point is further described as bearing North 12° 14' 30" West 370.64 feet from a fence post on the corner common to the acre piece of the Northwestern Pacific Railroad Station as the same is described in a Deed recorded in Book 184 of Deeds, at Page 136 Marin County Records, and the Lands of Coleman-Forbes Estate, said bearing and distance being measured along aforesaid Easterly line of said right of way; thence along said Easterly line, North 12° 14' 30" West 583.94 feet to the true point of beginning; thence leaving said Easterly line and running along the Northerly boundary of the parcel described in a Deed from Inez Niven to Harold Reid, et al., and recorded December 31, 1965 in Book 2013 of Official Records, at Page 170, Marin County Records, North 73° 41' 10" East 765.41 feet and thence North 76° 09' 22" West 311.31 feet to the Westerly line of the lands Deeded to the Tamalpais Union High School District by a Deed recorded in Book 422 of Official Records, at Page 218, Marin County Records, which point also lies on the Easterly boundary of Parcel Five as described In the Decree of Final Distribution No. 14511 of the Estate of George Niven, deceased, recorded June 1, 1965, Marin County Records; thence leaving said Northerly boundary and running along said Easterly boundary of said Parcel Five, North 30° 11' 00" West (called North 0° 34' 57" West in said Deed to Reid, 2013 O.R. 170) 198.392 feet to a point which bears South 3° 11' 00" East 74.463 feet from Tide Land Station 119, as referred to in a Deed to Joseph Varsi, et ux., recorded in Book 190 of Official Records, at Page 310, Marin County Records; thence leaving said Easterly boundary of said Parcel Five and running along the Easterly, Northerly and Westerly boundaries of Parcel Four of said Decree of Final Distribution No. 14511 the following courses and distances; North 3° 11' 00" West 74.463 feet to said Tide Land Station 119; thence North 3° 11' 00" West 95.90 feet; thence North 2° 05' 00" East 248.55 feet to a point on the Southerly line of a right of way 60 feet in width and presently called "Doherty Drive"; thence along said Southerly line of said "Doherty Drive" North 87° 55' 00" West 658.51 feet and thence North 89° 58' 00" West 19.70 feet to a point that bears North 19° 45' 00" West 10.76 feet from Station 96 of the Final and Official Survey of the Rancho Punta De Quentin; thence continuing along said Southerly line, due West 184.717 feet; thence leaving said Southerly line South 2° 05' 00" West 214.825 feet to the Westerly boundary of lands conveyed to George Niven, et al., by Deed recorded in Book 336 of Official Records, at Page 380, Marin County Records; thence along said Westerly boundary (336 O.R. 380) South 39° 57' 00" East 128.715 feet and thence South 49° 09' 00" East 126.60 feet to the Southeasterly corner of the lands conveyed to R.C. Doherty by Deed recorded in Book 115 of Official Records, at Page 353, Marin County Records, from which point a 2" x 2" stake bears North 49° 16' 00" West 34.48 feet and South 76° 26' 00" West 2.34 feet; thence leaving said Westerly boundary (336 O.R. 380), and also leaving said boundaries of said Parcel Four and running along the Northerly and Westerly boundary of Parcel Three of said Decree of Final Distribution No. 14511 the following courses and distances; South 76° 26' 00" West 408.12 feet to a point that lies 10.00 feet Easterly of (measured at right angles) said Easterly right of way of the Northwestern Pacific Railroad and from which a 2" x 2" stake bears North 12° 14' 30" West 28.00 feet and South 76° 26' 00" West 3.60 feet; thence South 12° 14' 30" East parallel to and 10.00 feet Easterly of (measured at right angles) said Easterly line of said right of way 326.23 feet; thence South 77° 45' 30" West 10.00 feet to a point on said Easterly line of said right of way from which the Northwesterly corner of the lands conveyed by Union Trust Company, et al., to James Niven by Deed recorded in Book 13 of Official Records, at Page 146, Marin County Records, bears North 12° 14' 30" East 326.00 feet along said Easterly line of said right of way and thence along said Easterly line of said right of way, South 12° 14' 30" West 89.63 feet to the Southwest corner of said Parcel Three, from which point a 2" x 2" stake bears North 71° 30' 00"

East 6.40 feet; thence leaving said boundaries of said Parcel Three and running along the common boundary of said Easterly right of way of the Northwestern Pacific Railroad and Parcel Six Part A, of said Decree of Final Distribution No. 14511, South 12° 14' 30" West 79.14 feet to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed in the Quitclaim Deed executed by Inez Niven, et al., to Nellie Doherty, recorded December 31, 1970 in Book 2426 of Official Records, at Page 525, Marin County Records.

ALSO EXCEPTING THEREFROM that portion thereof described In the Deed from Inez Niven, et al., to the City of Larkspur, recorded December 22, 1969 In Book 2346 of Official Records, at Page 277, Marin County Records.

ALSO EXCEPTING THEREFROM Parcels One and Two as shown upon Parcel Map entitled, "Lands of Irving Group, LLC, Larkspur, as described in Document No. 89-045986, Marin County Records," filed for record January 5, 1996 in Book 25 of Parcel Maps, at Page 97, Marin County Records.

PARCEL TWO:

THAT CERTAIN REAL PROPERTY lying Southeasterly of the courses delineated as North 73° 24' 30" East 257.912 feet and North 75° 11' 25" East 116.012 feet and Northeasterly of the course delineated as North 32° 12' 20" West 242.93 feet on that certain Map entitled, "Record of Survey of a portion of Lands of Doherty and Niven", Larkspur, Marin County, California, filed for record in Book 9 of Official Surveys, at Page 66, Marin County Records.

PARCEL THREE:

NON-EXCLUSIVE EASEMENT or right of use of drainage ditch, as described in the instrument entitled, "Grant of Drainage Easement" executed by Nellie Doherty to Inez Niven, et al., recorded December 31, 1970 in Book 2426 of Official Records, at Page 521, Marin County Records.

A.P.N.: 022-110-45

EXHIBIT B

Additional Conditions

The following Additional Conditions are hereby imposed pursuant to Paragraph 5.3 of this Agreement. All capitalized terms used but not defined in this Exhibit B shall have the meaning ascribed to them in Ordinance No. 972 and its exhibits.

Subparagraph 5.3.1 -- Subsequent Discretionary Approvals

The Parties do not currently anticipate the need for subsequent discretionary approvals for the Project. If any such approvals become necessary subsequent to the Effective Date, Developer shall apply for them and City shall process them in the same manner as any other development approval; any such approvals shall also be subject to the same conditions as the Project Approvals, unless amended by the City Council.

Subparagraph 5.3.2 -- Mitigation Conditions

Subsection a. Infrastructure Sequencing Program

The Infrastructure Sequencing Program for the Project is set forth below.

(i) Roads and Frontage Improvements.

The project-specific roadway improvements (and offers of dedication) identified in Ordinance No. 972 amending the Preliminary Development Plan Approval (Ordinance No. 962), approving the Precise Development Plan for CLASP Subarea 3, the Rose Garden Project, at 2 Ward St. (aka the Niven Nursery Site) and approving a number of related Project applications (hereafter "Precise Development Plan Ordinance") shall be completed by Developer to the satisfaction of the Public Works Director at the times and in the manner specified in the Precise Development Plan Ordinance unless otherwise provided below. All such roadway improvements shall be constructed to the satisfaction and requirements of City's Public Works Director.

(A) Phasing for Completion of Certain Improvements. As set forth and supplemental to the requirements in the Precise Development Plan Ordinance, the following improvements shall be completed prior to the below specified milestones:

1. Doherty Drive/Larkspur Plaza Drive/Camellia Circle (west). Prior to approval of Subdivision Improvement Plans and a Final Map, the improvement plans shall include provisions for the full signalization of the Doherty Drive/Larkspur Plaza Drive intersection and the re-alignment of the Boardwalk Plaza One subject to the approval of the Director of Public Works. (CLASP Policy T-3; Fehr and Peers report regarding Signal Warrant and Schematic Design of Reconfigured Doherty Drive Intersection in Larkspur, dated December 22, 2008; and Precise Development Plan Doherty Drive Schematic Improvement Exhibit, dated received May 13, 2009-Tab 9 of binder for the Precise Development Plan application dated received May 13, 2009.)

2. Doherty Drive/Piper Park/Camellia Circle (east). Prior to approval of Subdivision Improvement Plans and a Final Map, the improvement plans shall include provisions for the improvement of the Doherty Drive/Piper Park/Camellia Circle (east) intersection subject to the approval of the Director of Public Works. (CLASP Policy T-4 and Fehr and Peers report regarding Signal Warrant and Schematic Design of Reconfigured Doherty Drive Intersection in Larkspur, dated December 22, 2008, and Precise Development

Plan Doherty Drive Schematic Improvement Exhibit, dated received May 13, 2009-Tab 9 of binder for the Precise Development Plan application dated received May 13, 2009). (CLASP Mitigation Measure 4.7-13)

3. Doherty Drive Improvements. Prior to approval of Subdivision Improvement Plans and a Final Map, the improvement plans shall include provisions for the improvement of the Doherty Drive frontage consistent with Precise Development Plan Doherty Drive Schematic Improvement Exhibit, dated received May 13, 2009-Tab 9 of binder for the Precise Development Plan application dated received May 13, 2009, subject to the approval of the Director of Public Works. Improvements shall include a provision for bus stop improvements on the south side of Doherty Drive subject to approval of the Director of Public Works and the transit provider.

4. Camellia Circle (west)/Orchid Drive/Rose Lane. Prior to approval of Subdivision Improvement Plans and a Final Map, the improvement plans shall include provisions for the crosswalk improvements and signing improvements at the Camellia Circle (west)/Orchid Drive/Rose Lane intersection in accordance with Sheet C8, dated 2/6/09, of the Precise Development Plan submittal.

(ii) **Sewer**.

All sanitary sewer improvements to serve the project site (or any recorded phase of the Project) shall be completed in accordance with Ross Valley Sanitary District and/or Central Marin Sanitation Agency requirements, which ever is applicable.

(iii) **Water**.

An all weather roadway and an approved hydrant and water supply system shall be available and in service at the site in accordance with the tentative map conditions of approval to the satisfaction and requirements of the City's fire department.

All potable water system components to serve the project site shall be completed in accordance with the Marin Municipal Water District requirements.

(iv) **Storm Drainage**.

The storm drainage systems off-site, as well as on-site drainage systems for the areas to be occupied, shall be improved consistent with the environmental review for the Project, the Drainage Plan and tentative map conditions of approval, if any, and to the satisfaction and requirements of the City's Public Works Department applying City's and Marin County's standards and policies which are in force and effect at the time of issuance of the permit for the proposed improvements. Pursuant to Marin County's National Pollution Discharge Elimination Permit (NPDES) No. CAS0029831 with the California Regional Water Quality Control Board, all grading, construction, and development activities within the City of Larkspur must comply with the provisions of the Clean Water Act. Proper erosion control measures must be installed at development sites within the City during construction, and all activities shall adhere to Best Management Practices.

- v) **Other Utilities (e.g. gas, electricity, cable televisions, telephone).**

Construction shall be completed by phase prior to issuance of the first Certificate of Occupancy for any building within that specific phase of occupancy.

Subsection b. Miscellaneous

- (i) **Completion May Be Deferred.**

Notwithstanding the foregoing, City's City Manager and Public Works Director may, in their sole discretion and upon receipt of documentation in a form satisfactory to them that assures completion, allow Developer to defer completion of discrete portions of any public improvements for the Project if they determines, in consultation with the Fire Chief, that to do so would not jeopardize the public health, safety or welfare.

Subparagraph 5.3.3 -- Phasing, Timing

Subsection a. Overall Phasing Plan.

Prior to approval of a Final Map, the Phasing Plan depicted on Sheet C17 of the Precise Development Plan shall be updated to include the required improvements to the intersection at Larkspur Plaza / Boardwalk, the frontage improvements on Doherty Drive, and the intersection improvements at the Piper Park entrance within Phase 1 of the development. Notes shall be added to the phasing plan to indicate that the grading for the entire site will be done in 2 phases to precede the start of roadway and utility construction, that demolition and soil remediation will precede the start of overall site grading, and that any modifications to the Phasing Plan will require the approval of the Director of Public Works. The construction of Model and Production Homes within the subdivision may be constructed in conjunction with Phase 1 of the project (street improvements) provided that any conditions of the Fire Marshall, Planning Director, and Director of Public Works are addressed.

Subsection b. Frontage Improvements on Doherty Drive and Signal Improvements.

Subject to the provisions in (a) above, the required frontage improvements along and within Doherty Drive, as well as the signal and intersection improvements at Larkspur Plaza and the Boardwalk shall, in general, be phased based on traffic demand or as directed by the Director of Public Works. Any frontage or intersection improvements not deemed necessary for construction with the first residential unit shall be bonded in an amount acceptable to the Director of Public Works. Specifically, any intersection used for access to the subdivision shall be constructed to its ultimate design when first utilized and prior to occupation of any residential unit. If only one of the two planned entry intersections is used as the entrance to the subdivision on an interim basis, it shall be chosen with the approval of the Director of Public Works to conform with the construction schedule for adjacent and related construction projects in the immediate area.

Subsection c. Water Quality.

All storm drain detention or filtration / treatment features shall be required to be completely installed during any phase of development that contributes to their need or use.

Subsection d. Water / Sewer Facility Relocations.

Any sewer, utility, or water facility relocations or extensions required by the serving utility company, shall be installed as required by the utility.

Subsection e. Fire Access.

Any phased development shall also install any fire hydrants, sprinklers, other fire access features or circulation improvements as required by the Fire Marshall and/or the Director of Public Works.

Subsection f. Creek Work.

Any work installed in or adjacent to Larkspur Creek shall be phased in a manner that produces a smooth transition to existing grade and does not provide any obstruction or constriction of storm flows as determined by the Director of Public Works.

Subsection g. Below Market Rate Units.

(i) **Cottages.**

The Below Market Rate (BMR) cottages shall be constructed prior to or at the same time as the first single-family market-rate housing units and shall be ready for occupancy at the same time or prior to the market rate units.

(ii) **Second Units.**

The BMR second units shall be constructed at the same time as the primary unit on each of the subject parcels.

(iii) **Senior Units.**

The BMR senior units shall be constructed prior to or concurrently with the market rate senior units (Senior apartment style BMR units shall be constructed prior to or at same time as market-rate apartment style units on a per-building basis (allowing for one or more buildings and the individual BMR units therein to be completed for occupancy before the buildings with other BMR units are completed for occupancy) and BMR cottages at same time or prior to the market rate senior cottages. Developer shall spread the senior apartment style BMR units throughout the senior project.

Subsection h. Archaeological Requirements.

(i) **Archaeological Subsurface Testing.**

An archaeological subsurface testing program to delineate and define the elements of CA-MRN-68 shall be implemented before the beginning of excavation activities or other activities that may disturb the resources. The archaeologist will make a preliminary assessment of NRHP and CRHR eligibility based on the results of the testing. If CA-MRN-68 is found to be potentially eligible for listing, then destruction of this site must be avoided. (CLASP Mitigation Measure 4.11-2)

In accordance with this requirement, the archaeologist has conducted subsurface testing to the degree possible given that there are buildings or pavement over most of the site. Based on that testing, the archaeologist has not found materials that would make the site eligible under either the NRHP or the CRHR eligibility criteria. What has been found to date, however, indicates that intact deposits which may be eligible for the CRHR or NRHP, could exist elsewhere on the property.

Further, the archaeologist has found that there is not cost effective or scientifically supported method of discovering CRHR eligible cultural deposits (Ref: Letter from Holman Associates to Nancy Kaufman dated February 3, 2007 and Miley Paul Holman report dated January 2007 regarding the Results of Preliminary Archaeological Investigations at the subject sites). Therefore, prior to issuance of a Grading Permit or other ground disturbing activity, the applicant shall provide verification that all such related contracts include provisions for archaeological monitoring pursuant to Condition 2 below and the Treatment Plan (signed May of 2009), an agreement between the Federated Indians of Graton Rancheria (FIGR), the City of Larkspur, and Larkspur Housing Partners.

(ii) **Archaeological Monitoring.**

During any ground disturbing activities, a professional archaeologist, who meets the Secretary of the Interior's Standards and Guidelines, and a Native American observer (identified through the Native American Heritage Commission and the above noted Treatment Plan with the FIGR shall be present to monitor ground-disturbing activities within the Specific Plan area. In the event that any archaeological resources are uncovered within the Specific Plan area during future remediation or construction activity associated with the implementation of the Specific Plan, there shall be no further excavation or disturbance of the archaeological site or any nearby area until the archaeologist has evaluated the find and appropriate site-specific mitigation has been identified consistent with the Treatment Plan with the FIGR, CEQA §21083.2(b)(3) or (4) and CEQA Guidelines §15126.4(b)(3). (CLASP Mitigation Measure 4.11-2)

(iii) **Documentation of Historic Structures.**

Prior to issuance of a Demolition Permit, the Niven Nursery structures that appear to be eligible for listing in the CRHR shall be documented according to Historic American Buildings Survey (HABS) standards. This task shall be performed by a qualified Architectural Historian who meets the Secretary of the Interior's Standards and Guidelines, and shall be accomplished by those proposing development of Subarea 3 and approved by the City Planning Department before any demolition permit for that property is issued. (CLASP Mitigation Measure 4.11-3)

(iv) **If Human Remains are Uncovered.**

California law recognizes the need to protect Native American human burials, skeletal remains, and items associated with Native American burials from vandalism and inadvertent destruction. The procedures for the treatment of Native American human remains are contained in California Health and Safety Code §7050.5 and §7052 and CEQA §5097. In accordance with the California Health and Safety Code, if human remains are uncovered during construction at the project site, the construction contractor shall immediately halt potentially damaging excavation and notify the City or the City's designated representative. The City shall immediately notify the coroner. The California Health and Safety Code states that if human remains are found in any location other than a dedicated cemetery, excavation must to be halted in the immediate area, and the county coroner is to be notified to determine the nature of the remains. The coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or state lands (California Health and Safety Code §7050.5[b]). If the coroner determines that the remains are those of a Native American, he or she must contact the Native American Heritage Commission by phone within 24 hours of making that determination (California Health and Safety Code §7050[c]).

The responsibilities of the City for acting upon notification of a discovery of Native American human remains are identified in CEQA §5097.9. (CLASP Mitigation Measure 4.11-5)

Subsection h. Hazardous Materials.

(i) **Prior to the issuance of Demolition Permits/During Demolition.**

Site surveys for the presence of potentially hazardous building materials shall be reviewed/performed, and a demolition plan for safe demolition of existing structures in Subarea 3 shall be proposed by the developer and incorporated into the project prior to the issuance of construction permits and implemented during construction activities. The demolition plan shall address protection of onsite workers, offsite residents, and occupants in nearby schools from chemical and physical hazards. The demolition plan shall reference, and include by this reference, all provisions of the Removal Action Plan and Healthy and Safety Plan for Subarea 3 as approved by DTSC. DTSC and the City shall review the demolition plan. A demolition permit shall be obtained from the Bay Area Air Quality Management District (BAAQMD), which would review the demolition plan prior to issuance of a permit. All contaminated building materials shall be tested for contaminant concentrations and shall be disposed of at appropriate licensed landfill facilities. Before demolition, hazardous building materials such as peeling, chipping, and friable lead-based paint, window glazing, and building materials containing asbestos shall be removed in accordance with all applicable guidelines, laws, and ordinances. The Demolition Plan shall include a program of air monitoring for dust particulates and attached contaminants. Dust control and suspension of work during dry windy days shall be addressed in the Demolition Plan. Before a demolition permit is obtained from the BAAQMD, an asbestos demolition survey shall be conducted in accordance with the requirements of BAAQMD Regulation 11, Rule 2.

The California Division of Occupational Safety and Health (DOSH) and OSHA do not define threshold limit values for lead-containing paints and, therefore, paints or coatings containing any detectable amounts of lead are regulated by these agencies' standards, if construction activities covered in the scope of these standards emit lead. The DOSH standards prescribe procedures to be followed based on anticipated exposure resulting from construction activities performed. Demolition procedures may involve potential worker exposure above the DOSH action level for lead. Therefore, the requirements of Guidelines §1532.1 must be followed. These requirements include but are not limited to the following:

(A) Loose and peeling lead-containing paint and window glazing should be removed before building demolition. Workers conducting removal of lead paint and window glazing must receive training in accordance with Guidelines §1532.1.

(B) The lead paint and window glazing removal project should be designed by a lead project designer, project monitor, or supervisor certified by the DHS.

(C) A written Lead Compliance Plan that meets the requirements of the lead construction standard must be prepared by any contractor whose actions would have an impact on lead coatings.

(D) Workers conducting removal of lead paint and window glazing must be certified by DHS in accordance with Guidelines §1532.1.

(E) Workers who may be exposed above the Action Level must have blood lead levels tested before commencement of lead work and at

least quarterly thereafter for the duration of the project. Workers who are terminated from the project should have their blood lead levels tested within 24 hours of termination.

(F) A written exposure assessment must be prepared in accordance with Guidelines §1532.1. (CLASP Mitigation Measure 4.12-2)

(ii) **Lead Waste.**

Prior to issuance of Demolition Permits/During Demolition, any amount of lead waste generated, including window glazing and painted building components, shall be characterized for proper disposal in accordance with Title 22, §66261.24. In addition, compliance with BAAQMD Regulation 11, Rule 1, Lead, which contains procedures that limit daily emissions of lead and ensures "a person shall not discharge an emission of lead, or compound of lead calculated as lead, that will result in ground level concentrations in excess of 1.0 µg/m³ averaged over 24 hours." This regulation required calculations of and monitoring of lead concentrations to ensure compliance. (CLASP Mitigation Measure 4.12-2)

(iii) **Remedial Action Workplan.**

Prior to issuance of Grading, Demolition or Construction Permits/During On-Site Activities, the RAW developed for Subarea 3, under the oversight of DTSC, shall be incorporated into the project prior to the issuance of construction permits and implemented during construction activities. The workplan includes provisions for safe removal, transportation, disposal and encapsulation of selected contaminated soil from Subarea 3. In compliance with the RAW, approved by DTSC, clean fill shall also be placed over much of Subarea 3, further reducing the potential for exposure of people to residual soil contamination. A detailed Health and Safety Plan shall be prepared to address measures to protect workers, Tribal Monitors, and the community during remedial activities, and shall be reviewed and approved by DTSC. The applicant shall coordinate regularly with the City and the FIGR during finalization of the Final RAW, removal action implementation plan and health and safety plan. (CLASP Mitigation Measure 4.12-3) Any area designated for encapsulation of contaminated cultural resources shall be located below and within proposed private roadway rights-of-way and outside the public rights-of-way of Doherty Drive.

(iv) **Testing of Groundwater.**

Prior to issuance of Grading, Demolition or Construction Permits/During Excavations, provisions providing that any groundwater removed from excavations in Subarea 3 during construction shall be temporarily stored and tested to determine the appropriate method of treatment and/or disposal shall be incorporated into the project prior to the issuance of construction permits. (CLASP Mitigation Measure 4.12-5)

(v) **Hazardous Materials Remediation Plans and Actions.**

Prior to issuance of Grading, Demolition or Construction Permits/During Demolition and Remediation, the proposed hazardous materials remediation plans and actions for Subarea 3 shall be implemented to reduce the overall risk to students at the nearby Redwood High School and Hall Middle School. During the demolition and remediation process, special measures shall be taken in accordance with an approved Demolition Plan and RAW to contain and remove potentially hazardous substances and wastes under controlled conditions. The developer shall prepare and submit these plans, which shall be approved by the City prior to the issuance of construction permits. The details of approved truck routes, truck cleaning and inspection, and contingencies in case of spills or accidents shall be addressed in an Implementation Plan that is to be reviewed and approved by DTSC prior to remediation of Subarea 3. The

Implementation Plan shall include a Health and Safety Plan, Transportation Plan and Contingency Plan in accordance with Title 8 of the California Code of Regulations section 5192, California Health Safety Code Section 25160 and Title 22 of the California Code of Regulations Section 66236 to assure that all remediation activities are protective of human health and environment. (CLASP Mitigation Measure 4.12-6)

Subparagraph 5.3.4 -- Financing Plan

Developer will install all improvements necessary for the Project at its own cost (subject to credits for any improvements which qualify for credits as provided in Subparagraph 5.3.6 below).

Other infrastructure necessary to provide sewer, potable water, and if required, recycled water services to the Project will be made available by the agencies listed in Subparagraphs 5.3.2(a)(ii) and (iii) above. Developer will enter into an agreement with those agencies to pay for any costs of extending such services to the Project. Such services shall be provided as set forth in Subparagraph 5.3.2(a)(ii) and (iii) above.

Subparagraph 5.3.5 -- Fees, Dedications

Subsection a. Traffic Impact Fees.

Developer shall pay the Traffic Impact Fee ("TIF") established by Larkspur Resolution No. 39/92, including any future amendments to such fee. Developer will pay such fees, in cash or credits, no later than the time of issuance of building permits and in the amount of the TIF in effect at time of building permit issuance.

Subsection b. Park Improvement Fees.

Prior to the issuance of the first Building Permit for a residential structure, Developer shall pay Park Improvements Fees pursuant to Chapter 17.13 and Resolution No. 10/98.

Subsection c. School Impact Fees.

Developer shall provide evidence prior to issuance of the first Project building permit of payment to the applicable school districts of all school impact fees required by Government Code section 53080.

Subsection d. Road Dedications.

Prior to recordation of a Final Map, Camellia Circle, Orchid Drive, and Rose Lane shall be offered for dedication.

Subsection e. Public Access and Public Utility Easements.

Prior to recordation of a Final Map, Developer shall submit a recorded copy of the Public Access and Public Utility Easements across all proposed roadway and pedestrian paths.

Subsection f. Creek Maintenance Access.

Prior to recordation of a Final Map, Developer shall submit a recorded copy of the Maintenance Easement for the Creek Buffer Areas.

Subsection g. Specific Plan Fees.

Within 60 days of approval of Ordinance No. 972 and prior to approval of a Final Map or issuance of a Building Permit, Developer shall pay the Specific Plan fees pursuant to Resolution No. 18/07.

Subparagraph 5.3.6 -- Credit

Developer shall be eligible for a credit for any improvements described in the resolution establishing the Traffic Impact Fee if Developer constructs such improvements in their ultimate location. Developer shall be eligible for a credit for any TIF area right-of-way to be dedicated by Developer to City which is required for improvements which are described in the resolution establishing the Traffic Impact Fee. Credits may be applied only against Traffic Impact Fees and are non-transferable, except such credits may be transferred to a Transferee of all or a portion of the Property pursuant to Section 17.1 of this Agreement.

Subparagraph 5.3.7 – Miscellaneous

Subsection a. Community Benefit

(i) **Park land dedication.** As required by Condition of Approval No. 11, as set forth in Exhibit B to Ordinance No. 972, prior to approval of a Final Map or issuance of a Building Permit, Developer shall submit legal descriptions for the transfer and dedication of the park acreage (0.84 acres), which shall be filled, surcharged and soil remediated, together with the community facility site dedication noted below, to be reviewed and approved by the Director of Public Works. The Final Map shall irrevocably offer a Park Dedication of 0.84 acres pursuant to LMC Chapter 17.13, Park and Recreation Land and Fees and Resolution No. 9/98; changes in numbers or types of residential units may change the park dedication requirement accordingly. This dedication will fulfill the land dedication requirements of LMC Section 17.13.040 for the proposed development of 85 residential units.

(ii) **Community facility land dedication.** As required by Condition of Approval No. 13, as set forth in Exhibit B to Ordinance No. 972, prior to approval of a Final Map or issuance of a Building Permit, Developer shall submit legal descriptions for the transfer and dedication of the acreages and parcels specified below to be reviewed and approved by the Director of Public Works. The Final Map shall irrevocably offer the following land dedications, which shall be for purposes of park, community facility, pedestrian and multi-use paths, and/or other uses pursuant to a public purpose, as determined by the City:

(A) 1.59 acres filled and surcharged, including soil remediation pursuant to the Remedial Action Workplan approved by the Department of Toxic Substances Control (DTSC) (the "DTSC RAW") and all archaeological studies and mitigation related to grading the site, for the community facility site (with the 0.84 acre Park Dedication, the full Parcel A, as shown on Tentative Map Sheet TM 5 dated 2/6/09, is 2.43 acres and includes a portion of the multi-use path on Doherty Drive ("Parcel A")). Prior to approval of a Final Map, the subdivision improvement plans and grading plans for Community Parcel A shall depict a pad grade for Parcel A capable of being graded overland to the proposed grades for the back of walk, and

(B) 0.14 acres for the pedestrian/multi-use path along Doherty Drive (Parcel C as shown on Tentative Map Sheets TM 5 and TM 6, dated 2/6/09), and

(C) 0.22 acre entry road remnant (Parcel B as shown on the Tentative Map Sheets TM 5, dated 2/6/09). If the City does not accept Parcel

B, the acreage shall be conveyed to the Master Homeowners Association for ownership and maintenance.

(iii) **Condition of Property.** City acknowledges that the property to be offered for dedication under clauses (i) and (ii) will be in its as-is physical condition subject only to (a) Developer's obligation to implement the DTSC RAW, (b) Developer's obligation to complete the archeological studies and mitigation; and (c) Developer's obligation to complete grading and surcharge and to stub out utilities and install street, curb, and sidewalk in accordance with the approved subdivision improvement plans and grading plans for the Project. With the following two exceptions, Developer will not warrant or be responsible for the specific engineering and geotechnical stability of soils in any of the dedicated land areas or their suitability for the City's intended development activities on the community facility site. First, Developer will use the same quality fill material for Parcel A that it uses for the rest of the Project. Second, for the improvements that Developer constructs on the property to be offered for dedication and that the City accepts, Developer will provide the same warranties required for all other improvements that the City accepts.

(iv) **Utility Stub-outs.** Developer shall provide both wet and dry utility stub-outs for public facility and park lands.

Subsection b. City and Developer Use of Park and Community Facilities Land Dedicated and Donated to City

(i) Developer, at no additional cost to Developer, shall be permitted to utilize Parcel A for the purpose of construction staging, materials delivery, and equipment storage until the City accepts the offers of dedication, and thereafter to the extent and for the period of time provided in this Subsection b. City agrees not to accept the offers of dedication before the earlier of (A) five (5) years after the Effective Date, or (B) thirty (30) days after the City Council has approved a plan and funding for and gives notice of its intention to proceed with construction of a community facility and/or improved park on the site; provided, that after the City has an approved plan and funding and gives notice of intention to proceed with construction, upon six (6) months prior written notice to Developer, City may require Developer, at Developer's sole expense, to limit its continued use of the site to a single contiguous portion of the park and community facility site consisting of not less than one-half acre as designated by City (the "Developer Construction Staging Site"), and to relocate or remove all of Developer's equipment and materials from the remainder of the site. Developer's use of Parcel A or the Developer Construction Staging Site pursuant to this Subsection b shall be for five years from the Effective Date, unless the Parties agree to a different term.

(ii) Developer shall not, however, use the park and community facility land dedicated and donated to the City for the storage of archeological materials or remains found on the Property or contaminated soils.

(iii) Prior to City accepting the offers of dedication of the lands described in Subsection a, above, Developer shall fill and surcharge Parcel A, including soil remediation pursuant to the DTSC RAW and all archaeological studies and mitigation related to grading the site, the community facility site. Developer shall surcharge, grade, fill, and remediate the soil of Parcel A in conjunction with and generally at the same time that it surcharges, fills, grades, and remediates the soil of the rest of the Property. In the event that, at the time that the City accepts the park and community facility land offers of dedication, Developer has not completed the filling, surcharging, and soil remediation (according to the DTSC RAW) required for Parcel A, City and Developer shall in good faith negotiate an agreement to allow Developer continued access to and use of Parcel A for a reasonable period of time, in light of City's schedule for construction of community facilities on the property, to complete the filling,

surcharging, and soil remediation, in addition to the continued rights of use permitted under subparagraph (i) of this subsection (b), above. Security provided by Developer to ensure completion of public improvements for the Project shall be sufficient in amount and written to cover the cost of completing the filling, surcharging, and soil remediation required for Parcel A.

Subsection c. Creek Restoration and Monitoring and Maintenance

(i) **Creek Restoration.**

Prior to issuance of Demolition or Grading Permits, the Native Plant Restoration, Habitat Restoration, and Upland Habitat Buffer enhancement plans shall be revised, and approved by the City's consultant, to more clearly describe activities that would occur in the creek and measures that would improve the quality of fish habitat particularly at the upper reaches of the creek. To avoid adverse impacts on the native vegetation and creek water quality and habitat, the Native Plant Restoration Plan shall be revised to clearly describe invasive plant removal techniques and to address the phased and/or reduced removal of the invasive plant species to retain some shade and help to ensure creek stabilization. The plan also shall clearly describe native plant re-vegetation techniques within and immediately adjacent to the Larkspur Creek. The revised plan shall include descriptions of environmentally sensitive invasive plant control (i.e., control techniques that avoid adverse effects on native vegetation and water quality in Larkspur Creek) that will be used within the banks and bed of Larkspur Creek (i.e., from the top of the left creek bank to the top of the right creek bank) and immediately adjacent areas. The revised plan should also describe measures required to restore native plant communities within Larkspur Creek, including a detailed plant palette and planting plan, irrigation techniques, monitoring and success criteria, and maintenance requirements. The plants chosen for re-vegetation should be capable of stabilizing the banks of Larkspur Creek and providing shade for Larkspur Creek. The possibility for temporal reductions in fish habitat quality shall be addressed in the plan and appropriate re-vegetation measures (e.g., use of fast-growing native plants or phased removal of invasive plants to retain some shade and creek stabilization along Larkspur Creek during construction) shall be incorporated. The plan amendment shall be prepared by a qualified restoration ecologist following the same general guidelines originally specified in the CLASP Revised Draft EIR (see page 4.5-21). The implementation work shall be monitored by a qualified restoration ecologist.

Prior to issuance of a Grading Permit, the approved Native Plant Restoration, Habitat Restoration, and Upland Habitat Buffer Enhancement Plans shall be implemented through evidence of contractual agreements for the work required at time of grading. Prior to the issuance of Building Permits for single family and cottage homes located on the south side of the project site or the City may release building permits upon verification of the Developer's efforts to implement plans, an approved time schedule for implementation, and sufficient bonding to ensure implementation of the plans. Monitoring reports prepared by a qualified restoration ecologist shall be submitted to the City annually for 5 years. The first report shall be due to the City 12 months following the start of implementation of the restoration plan. (CLASP Mitigation Measure 4.5-2a)

(ii) **Permanent Fencing Installation.**

Prior to issuance of building permits/after construction, to minimize soil erosion and other secondary impacts on wildlife by pedestrians and cyclists, no bikeways or footpaths will be constructed within the Larkspur Creek buffer area. Permanent fencing designed to discourage people and their pets from entering restored habitat in the buffer area shall be installed along the outside edge of the buffer prior to the issuance of Building Permits unless the permits are for residential models located within the upper half of the project site.

Prior to issuance of Building Permits for said models, temporary cyclone shall be installed to be later replaced with the permanent fencing noted above prior to the issuance of additional building permits. (CLASP Mitigation Measure 4.5-2a) Pathways and other paving proposed within the 50' building and impervious surface setback shall be approved by the Public Works Director for permeability and durability. (CLASP Mitigation Measure 4.5-2a)

(iii) **Signage and Interpretive Displays.**

Prior to any final building inspections, signage that includes interpretive displays shall be posted on bikeways and footpaths alerting visitors to the nearby sensitive habitat and explaining the importance of protection of these areas. Signs shall also be posted requiring that all dogs be on leashes and kept out of the setback area. (CLASP Mitigation Measure 4.5-2a)

(iv) **Top of Creek Bank Marked.**

Prior to issuance of a Demolition or Grading Permit, the top of the creek bank shall be permanently delineated with metal stakes at a minimum of 100' apart, preferably also marking the side lot lines of the single-family detached lots where those lot lines intersect the creek bank. The landscape plan shall indicate how the top of creek bank is to be permanently marked.

(v) **City Assumption of Creek Monitoring and Maintenance**

The declaration of covenants, conditions, and restrictions (or similar document) for the Project shall include provisions for implementation and ongoing monitoring and reporting of the native plant restoration plan and ongoing maintenance of buffer areas and associated fencing. They shall also provide that, in the event that the homeowners association with responsibility for creek monitoring and maintenance fails to perform that obligation, the City may enter upon the Project property to perform the work and recover its costs from the homeowners association or individual property owners.

Subsection d. Affordable Housing

Prior to recordation of a parcel or final subdivision map, Developer shall enter into an Inclusionary Housing Agreement with the City consistent with Larkspur Municipal Code Chapter 18.31 for the six single-family detached cottages, six second units, five senior multifamily housing units, and three senior cottage units that are to be affordable units.

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