

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is executed this 7th day of October, 2008, by and among the CITY OF OXNARD, a municipal corporation ("City"), and Aldersgate Investment, LLC, pursuant to California Government Code Section 65864, *et seq.*, and the implementing procedures of the City, with respect to the following:

1. DEFINITIONS.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context requires:

1.1 **"Applicable Rules"** means the rules, regulations, ordinances and officially adopted policies of the City that regulate the development of land that are in force as of the Effective Date of this Agreement including the City's zoning of the Property and the General Plan designation of the Property. "Applicable Rules" do not include and the City may apply (a) amended or newly enacted fees and charges of any sort, (b) storm water pollution abatement standards mandated by the Federal Water Pollution Act of 1972, and subsequent amendments thereto, and (c) construction regulations, which regulations are currently codified in Chapter 14 of the City Code, but which may be amended from time to time.

1.2 **"Developer"** means Aldersgate Investment, LLC, and any subsequent transferees or assignees.

1.3 **"Development Agreement Act"** means Section 65864, *et seq.*, of the California Government Code.

1.4 **"Discretionary Action" or "Discretionary Approval"** means an action which requires the exercise of judgment, deliberation or a decision on the part of the City, including any board, commission or department or any officer or employee of the City, in the process of approving or disapproving a particular activity, as distinguished from an activity which merely requires the City, including any board, commission or department or any officer or employee of the City, to determine whether there has been compliance with statutes, ordinances or regulations.

1.5 **"Parties"** means Aldersgate Investment, LLC and the City.

1.6 **"Processing Fees"** means all fees required by the City including, but not limited to, fees for land use applications, project permits, building applications, building permits,

grading permits, maps and certificates of occupancy which are necessary to accomplish the intent and purpose of this Agreement

1.7. **"Project"** means the development of the Property (as defined below) into 16,000 square feet of retail use and forty condominium units in accordance with PZ No. 07-500-18 (Special Use Permit) and PZ No. 08-300-05 (Tentative Parcel Map).

1.8. **"Project Approvals"** means the following land use actions approved/certified or in the process of being approved/certified by the City: PZ No. 07-500-18 (Special Use Permit) and PZ No. 08-300-05 (Tentative Parcel Map) .

1.9. **"Property"** means certain real property located in the City of Oxnard, State of California, as more particularly described in Exhibit A attached hereto.

1.10. **"Reserved Powers"** means the rights and authority excepted from this Agreement's restrictions on the City's police powers and which are instead reserved to the City. The Reserved Powers include the powers to enact regulations or take future Discretionary Actions after the Effective Date that may be in conflict with the Applicable Rules, but: (1) are necessary to protect the public health and safety, and are generally applicable on a Citywide basis (except in the event of natural disasters as found by the Mayor or City Council, such as floods, earthquakes and similar disaster); or (2) are necessary to comply with state or federal laws and regulations (whether enacted previous or subsequent to the Effective Date).

1.11. **"Term"** means from the Effective Date of this Agreement until October 1, 2015.

2.

RECITALS OF PREMISES, PURPOSE AND INTENT.

2.1. **State Enabling Statute.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

"The Legislature finds and declares that:

"(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

“(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development.

“(c) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed overtime for financing of public facilities.”

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City: (1) accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties; and (2) to offset these restraints, seeks public benefits which go beyond those obtained by traditional City controls and conditions imposed on development project applications.

2.2. City Procedures and Actions.

2.2.1. Planning Commission Action. The Planning Commission held a duly noticed public hearing on September 4, 2008 regarding this Agreement.

2.2.2. City Council Action. The City Council on October 7, 2008, after conducting a duly noticed public hearing, adopted Ordinance No. 2786, to become effective thirty days thereafter, approving this Agreement, found that its provisions are consistent with the City's General Plan and authorized the execution of this Agreement.

2.3. Purpose of this Agreement.

2.3.1. Developer Objectives. In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurances that the Project may be developed in accordance with the Applicable Rules and with the terms of this Agreement and subject to the City's Reserved Powers. To the extent of Project development, and as provided by Section 3.1.1, Developer anticipates making capital expenditures in reliance upon this Agreement. In the absence of this Agreement, Developer would have no assurance that

it can complete the project for the uses and to the density and intensity of development set forth in this Agreement and the Project Approvals. This Agreement, therefore, is necessary to assure Developer that the Project will not be (1) reduced in density, intensity or use from what is set forth in the Project Approvals; or (2) subjected to new rules, regulations, ordinances or official policies which are not related to compliance with State or Federal mandates or health and safety conditions.

2.3.2. Mutual Objectives. Development of the Project in accordance with this Agreement will provide for the orderly development of the Property in accordance with the objectives set forth in the General Plan and the Applicable Rules. Moreover, this Agreement will eliminate uncertainty in planning for and securing orderly development of the Property, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was adopted. The parties believe that such orderly development of the Project will provide many public benefits to the City through the imposition of development standards and requirements under the provisions and conditions of this Agreement. Additionally, although development of the Project in accordance with this Agreement will restrain the City's land use or other relevant police powers, the Agreement will provide the City with sufficient reserved powers during the term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to the City, Developer will receive assurances that the Project may be developed during the term of this Agreement in accordance with the Applicable Rules and Reserved Powers, subject to the terms and conditions of this Agreement.

2.4. Applicability of this Agreement. This Agreement does not: (1) grant density or intensity in excess of that otherwise established in the Applicable Rules; (2) eliminate future Discretionary Actions relating to the Project if applications requiring Discretionary Action are initiated and submitted by the owner of a portion of the Property after the Effective Date; (3) guarantee that Developer will receive any profits from the Project; (4) prohibit the Project's participation in any benefit assessment district that is generally applicable to surrounding properties; or (5) amend the City's General Plan. This Agreement has a fixed term. Furthermore, in actions after the Effective Date applicable to the Project, the City may apply the new rules, regulations and official policies as are contained in its Reserved Powers.

3. AGREEMENT AND ASSURANCES.

3.1. Agreement and Assurance on the Part of Developer. In consideration for the City entering into this Agreement, and as an inducement for the City to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the promises, purposes and intentions set forth in Article 2 of this Agreement, Developer hereby agrees as follows:

3.1.1. Project Development. Developer agrees that it will use its commercially reasonable efforts, in accordance with its own business judgment and taking into account market conditions and economic considerations, to develop the Project in accordance with the terms and conditions of this Agreement and the Project Approvals.

3.1.2. Public Benefit. In partial consideration of the City entering into this Agreement, Developer will (a) reserve 15% of the residential units at prices affordable by moderate income families by means of a recorded document in a form approved by the City Attorney, and (b) relocate at no expense to the City an undisclosed sewer line running through the middle of the property.

3.1.3 Timing of Development. Buildout of the Project will occur incrementally and completion of construction of the Project is scheduled to occur prior to October 1, 2015. Beyond these general parameters, the Parties acknowledge that Developer cannot at this time predict when or the rate at which the Project would be developed. These decisions depend upon numerous factors that are not all within the control of Developer, such as market orientation and demand, availability of financing and competition. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), that the failure of the Parties therein to provide for the timing of development permitted a later adopted initiative restricting the timing of development and controlling the Parties' agreement, it is the intent of Developer and the City to hereby acknowledge and provide for the right of Developer to develop the Project in an order and at a rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. The City acknowledges that this right is consistent with the intent, purpose and understanding of the Parties to this Agreement. Developer will use its best efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing its business decision, to commence or to continue development, and to develop the Project in accordance with the provisions and conditions of this Agreement and with the Applicable Rules.

3.2. Agreement and Assurances on the Part of the City. In consideration for Developer entering into this Agreement, and as an inducement for Developer to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the promises, purposes and intentions set forth in Article 2 of this Agreement, the City hereby agrees as follows:

3.2.1. Entitlement to Develop. For the Term of this Agreement, Developer has the vested right to develop the Project subject to the terms and conditions of this Agreement, the Applicable Rules and the Reserved Powers.

3.2.2. Consistency with Applicable Rules. Based upon all information made available to the City up to or concurrently with the execution of this Agreement, the City finds and certifies that no Applicable Rules prohibit or prevent the full completion and occupancy of the Project in accordance with the uses, densities, designs, heights, signage regulations and other development entitlements incorporated and agreed to herein and in the Project Approvals.

3.2.3. Changes in Applicable Rules. Any change in, or addition to, the Applicable Rules, including, without limitation, any change in any applicable general plan, specific plan or zoning regulation, adopted or becoming effective after the Effective Date, including, without limitation, any of these changes by means of ordinance, City Charter amendment, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the Mayor, City Council, Planning Commission of the City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with the Applicable Rules or this Agreement, shall not be applied to the Project unless these changes represent an exercise of the City's Reserved Powers. Notwithstanding the foregoing, Developer may, in its sole discretion, consent to the application to the Project of any change in the Applicable Rules.

3.2.4. Subsequent Development Review. The City shall not require Developer to obtain any approvals or permits for the development of the Project in accordance with this Agreement other than those permits or approvals that are required by the Applicable Rules or the Reserved Powers. However, any subsequent Discretionary Action or Discretionary Approval initiated by Developer that is not otherwise permitted by the Project Approvals, which changes the uses, intensity, density, building height or timing of the Project, or decreases the lot area, setbacks, yards, parking or other entitlements permitted on the Property shall be subject to the rules, regulations, ordinances and official policies of the City then in effect.

3.2.5. Effective Development Standards. The City agrees that it is bound to permit the uses, intensity of use and density on the Property which are permitted by this Agreement, insofar as this Agreement and the Project Approvals so provide or as otherwise set forth in the Applicable Rules or the Reserved Powers. The City hereby agrees that it will not unreasonably withhold or unreasonably condition any Discretionary Action or Discretionary Approval which must be issued by the City in order for the Project to proceed, provided that Developer reasonably and satisfactorily complies with all preliminary procedures, actions, payments of Processing Fees, and criteria generally required of developers by the City for processing applications for developments and consistent with this Agreement.

3.2.6. Interim Use. The City agrees that Developer may use the Property

during the term of this Agreement for any use which is otherwise permitted by the applicable zoning regulations and the General Plan in effect at the time of the interim use or pursuant to any approvals, permits, or other entitlements previously granted and in effect as of the Effective Date.

3.2.7. **Moratoria.** In the event an ordinance, resolution or other measure is enacted, whether by action of the City, by initiative, or otherwise after the Effective Date, which relates to the rate, timing, or sequencing of the development or construction on all or any part of the Property, including, without limitation, any ordinance, resolution or other measure restricting or precluding the issuance of building permits, the City agrees that the ordinance, resolution or other measure shall not apply to the Property or this Agreement, unless the changes are both (a) found by the City to be necessary to protect the health and safety of the residents of the City, and (b) generally applicable on a Citywide basis (except in the event of natural disasters as found by the Mayor or the City Council, such as floods, earthquakes and similar disasters).

3.3. **Water Assessment.** Pursuant to Government Code section 65867.5, Developer and the City agree that any tentative map prepared for the Project shall comply with the provisions of Government Code section 66473.7.

4. PERIODIC REVIEW.

4.1. **Annual Review.** During the Term of this Agreement, the City shall review annually compliance with this Agreement by Developer. This periodic review shall be limited in scope to good faith compliance with the provisions of this Agreement as provided in the Development Agreement Act and Developer shall have the burden of demonstrating good faith compliance.

4.2. **Pre-Determination Procedure.** Submission by Developer of evidence of compliance with this Agreement, in a form which the Development Services Director may reasonably establish, shall be made in writing and transmitted to the Development Services Director not later than sixty (60) days prior to the yearly anniversary of the Effective Date. The public shall be afforded an opportunity to submit written comments regarding compliance to the Development Services Director at least sixty (60) days prior to the yearly anniversary of the Effective Date. All these public comments and final staff reports shall, upon receipt by the City, be made available as soon as possible to Developer.

4.3. **Director's Determination.** On or before the yearly anniversary of the Effective Date, the Development Services Director shall make a determination regarding whether or not Developer has complied in good faith with the provisions and conditions of this Agreement. This determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Developer in the manner prescribed in Section 6.1. Copies of the determination shall also be available to members of the public.

4.4. **Appeal by Developer.** In the event the Development Services Director makes a finding and determination of non-compliance, Developer shall be entitled to appeal that determination to the Planning Commission. After a public hearing on the appeal, the Planning Commission shall make written findings and determinations, on the basis of substantial evidence, whether or not Developer has complied in good faith with the provisions and conditions of this Agreement.

4.5. **Period to Cure Non-Compliance.** If, as a result of this Annual Review procedure, it is found and determined by the Development Services Director or the Planning Commission, on appeal, that Developer has not complied in good faith with the provisions and conditions of this Agreement, the City, after denial of any appeal or, where no appeal is taken, after the expiration of the appeal period described in Section 6.3, shall submit to Developer by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 6.15, stating with specificity those obligations of Developer which have not been performed. Upon receipt of the notice of default, Developer, and/or any transferee, as the case may be, shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of the default(s) not later than one hundred twenty (120) days after receipt of the notice of default, or any longer period as is reasonably necessary to remedy the default(s), by mutual consent of the City and Developer, provided that Developer shall continuously and diligently pursue the remedy at all times until the default(s) is cured.

4.6. **Failure to Cure Non-Compliance Procedure.** If the Development Services Director finds and determines that Developer has not cured a default pursuant to this section, and that the City intends to terminate or modify this Agreement, the Development Services Director shall make a report to the Planning Commission. The Development Services Director shall then set a date for a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after the public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that (i) Developer has not cured a default pursuant to this Section, and (ii) that the City shall terminate or modify this Agreement as the case may be, the finding and determination shall be appealable to the City Council in accordance with Section 6.3. In the event of a finding and determination of compliance, there shall be no appeal by any person or entity.

4.7. **Termination or Modification of Agreement.** The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after the final determination of the City Council or, where no appeal is taken, after the expiration of the appeal periods described in Section 6.3 relating to the defaulting parties rights and obligations hereunder. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code Sections 65867.5 and 65868, irrespective of whether

an appeal is taken as provided in Section 6.3.

4.8. **Reimbursement of Costs.** The Developer or Transferee, as the case may be, shall reimburse the City for its actual costs, reasonably and necessarily incurred, to accomplish the required annual review.

5. DEFAULT PROVISIONS.

5.1. Default by Developer.

5.1.1. **Default.** In the event Developer fails to perform its obligations under this Agreement in a timely manner, the City shall have all rights and remedies provided for in this Agreement, which shall include compelling the specific performance of the obligations of Developer under this Agreement, or modification or termination of this Agreement, provided that the City has first complied with the procedure in Section 5.1.2.

5.1.2. **Notice of Default.** The City through the Development Services Director shall submit to Developer, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 6.16, identifying with specificity those obligations of Developer that have not been performed. Upon receipt of the notice of default, Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of the default(s) not later than one hundred twenty (120) days after receipt of the notice of default, or a longer period as is reasonably necessary to remedy the default(s), provided that Developer shall continuously and diligently pursue the remedy at all times until the default(s) is cured.

5.1.3. **Failure to Cure Default Procedure.** If after the cure period has elapsed, the Development Services Director finds and determines that Developer remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Director shall make a report to the Planning Commission and then set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer, or a Transferee, as the case may be, has not cured the default pursuant to this Section, and that the City shall terminate or modify this Agreement, Developer shall be entitled to appeal that finding and determination to the City Council in accordance with Section 6.3. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity.

5.1.4. **Termination or Modification of Agreement.** The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as

the case may be, relating solely to the defaulting Developer or transferee and such defaulting party's portion of the Property after the final determination of the City Council or, where no appeal is taken, after the expiration of the appeal periods described in Section 6.3 relating to the defaulting parties rights and obligations hereunder. There shall be no termination or modification of this Agreement unless the City Council acts pursuant to Government Code section 65867.5 and 65868, irrespective of whether an appeal is taken as provided in Section 6.3.

5.2. Default by the City.

5.2.1. **Default and Notice of Default.** In the event the City does not accept, process, or render a decision on necessary development permits, entitlements, or other land use or building approvals for use as provided in this Agreement upon compliance with the requirements therefor, or as otherwise agreed to by the Parties, or the City otherwise defaults under the provisions of this Agreement, Developer shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement provided that Developer has first complied with the procedures in Section 5.2.2.

5.2.2. **Notice of Default.** Developer shall first submit to the City a written notice of default stating with specificity those obligations that have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of the default(s) not later than one hundred and twenty (120) days after receipt of the notice of default, or a longer period as is reasonably necessary to remedy the default(s), provided that the City shall continuously and diligently pursue the remedy at all times until the default(s) is cured. In the case of a dispute as to whether the City has cured the default, the Developer shall submit the matter to arbitration pursuant to Section 6.5 of this Agreement.

5.3. **No Monetary Damages.** It is acknowledged by the Parties that the City would not have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. The Parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the Parties agree that each of the Parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that the Parties shall not be liable in monetary damages and the Parties covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement.

6. GENERAL PROVISIONS.

6.1. **Effective Date.** This Agreement shall be effective thirty days after adoption of Ordinance No. 2786.

6.2. **Term.** The term of this Agreement ("Term") commenced on October 7, 2008 and shall extend until October 1, 2015, unless the Term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties hereto. This Agreement shall extend the term of the TS. Map No. 5796 approved by the City Council on 9/23/2008 for the Term of this Agreement. Following the expiration of the Term, this Agreement shall terminate and be of no further force and effect; provided, however, that this termination shall not affect any right or duty arising from entitlements or approvals, including the Project Approvals on the Property approved concurrently with, or subsequent to, the Effective Date. The Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from any enactments pursuant to the City's Reserved Powers or moratoria.

6.3. **Appeals to City Council.** Where an appeal by Developer to the City Council from a finding and/or determination of the Planning Commission is created by this Agreement, that appeal shall be taken, if at all, within twenty (20) days after the mailing of the finding and/or determination to Developer. The City Council shall act upon the finding and/or determination of the Planning Commission within eighty (80) days after the mailing, or within any additional period as may be agreed upon by Developer and the Council.

6.4. **Enforced Delay; Extension of Time of Performance.** In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which either party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which the party is prevented from, or is unreasonably interfered with, the doing or completion of the act, matter or thing because of causes beyond the reasonable control of the party to be excused, including: war; insurrection; riots; floods; earthquakes; fires; casualties; disasters; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs (*e.g.*, the annual review)); any approval required by the City (not including any period of time normally expected for the processing of the approvals in the ordinary course of affairs); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; the exercise of the City's Reserved Powers; or similar bases for excused performance which is not within the reasonable control of the party to be excused (financial inability excepted). This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of Developer or, if not dismissed within ninety (90) days, by any third Parties against Developer. If written notice of the delay is given to either party within thirty (30) days of the commencement of the delay, an extension of time for cause will be granted in writing for the

period of the enforced delay, or longer as may be mutually agreed upon.

6.5. Dispute Resolution.

6.5.1. Dispute Resolution Proceedings. The Parties may agree to dispute resolution proceedings to fairly and expeditiously resolve disputes or questions of interpretation under this Agreement. These dispute resolution proceedings may include: (a) procedures developed by the City for expeditious interpretation of questions arising under development agreements; (b) non-binding arbitration as provided below; or (c) any other manner of dispute resolution which is agreed upon by the Parties.

6.5.2. Arbitration. Any dispute between the Parties that is to be resolved by arbitration shall be settled and decided by arbitration conducted by an arbitrator who is selected by mutual agreement of the Parties.

6.5.3. Arbitration Procedures. Upon appointment of the arbitrator, the matter shall be set for arbitration at a time not less than thirty (30) nor more than ninety (90) days from the effective date of the appointment of the arbitrator. The arbitration shall be conducted under the procedures set forth in Code of Civil Procedure Section 638, *et seq.*, or under other procedures as are agreeable to both Parties, except that provisions of the California Code of Civil Procedure pertaining to discovery and the provisions of the California Evidence Code shall be applicable to the proceeding.

6.5.4. Extension of Agreement Term. The Term of this Agreement as set forth in Section 6.2 shall automatically be extended for the period of time in which the Parties are engaged in dispute resolution to the degree that an extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as the result of this dispute resolution.

6.6. Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, or enforce by specific performance the obligations and rights of the Parties hereto.

6.7. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Ventura, State of California for state actions and the Central District of California for any federal actions.

6.8. Amendments. This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any amendment to this Agreement which relates to the Term, permitted uses,

density or intensity of use, height, or size of buildings, provisions for reservation and dedication of land, conditions, restrictions, and requirements relating to subsequent Discretionary Action, or any conditions or covenants relating to the use of the Property not allowed or provided for under the Applicable Rules or the Project Approvals shall require notice and public hearing before the Parties may execute an amendment thereto. Developer shall reimburse the City for its actual costs, reasonably and necessarily incurred, to review any amendments requested by Developer including the cost of any public hearings.

6.10. Assignment and Sale of Lots. It is contemplated that certain lots with the Property will be sold by Developer over time, either prior to or subsequent to development of said lots. Developer may sell or assign all or any portion of its interests in this Agreement, in the Project, in the Property or in any portion thereof, provided that such sale or assignment conforms with this Section 6.10. The City acknowledges that Developer may sell lots either prior to or subsequent to development without the consent, approval or action of, or notice to, the City. The purchaser of such lots shall be entitled to the rights and benefits of Developer under this Agreement provided however, that Developer shall remain responsible for carrying out any remaining obligations of Developer as required by this Agreement as set forth in Section 3.1 until the last lot in the Property is sold or until Developer assigns or transfers its interests in the Project or the Property and the assignee or transferee assumes any remaining obligations of Developer under this Agreement. .

6.11. Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of the Parties hereto and all successors, transferees and assigns of the Parties, including any transferee of Developer.

6.12 Statute of Limitation and Laches. The City and Developer agree that each party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that Section 65009(c) of the Government Code, which provides for a 90 day statute of limitation to challenge the enactment or amendment of a zoning ordinance, is applicable to this Agreement, which will provide for development consistent with the zoning ordinance. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party litigation which is filed and served more than 90 days after the execution of this Agreement, the City and Developer shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses.

6.13. Cooperation and Implementation.

6.13.1. Processing. Upon satisfactory completion by Developer of all

required preliminary actions and payment of appropriate Processing Fees, including the fee for processing this Agreement, the City shall commence and diligently process all required steps necessary for the implementation of this Agreement and development of the Property in accordance with the terms of this Agreement. Developer shall, in a timely manner, provide the City with all documents, plans and other information necessary for the City to carry out its processing obligations

6.13.2. Other Governmental Permits. Developer and/or any transferee shall apply in a timely manner for other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with Developer and/or any transferee, as the case may be, in its endeavors to obtain the permits and approvals and shall, from time to time at the request of Developer, and/or any transferee, as the case may be, attempt with due diligence and in good faith to enter into binding agreements with any entity to ensure the availability of permits and approvals, or services, provided the agreements are reasonable and not detrimental to the City. These agreements may include, but are not limited to, joint powers agreements under the provisions of the Joint Exercise of Powers Act (Government Code Section 6500, *et seq.*) or the provisions of other laws to create legally binding, enforceable agreements between the Parties. To the extent allowed by law, Developer and/or any transferee, as the case may be, shall be a party to any agreement, or a third party beneficiary of the agreement, entitled to enforce for its benefit on behalf of the City, or in its own name, the rights of the City or Developer and/or any transferee, as the case may be, thereunder or the duties and obligations of the Parties thereto. Developer and/or any transferee, as the case may be, shall reimburse the City for all costs and expenses incurred in connection with seeking and entering into any agreement provided that Developer and/or any transferee, as the case may be, has requested it. Developer and/or any transferee, as the case may be, shall defend the City in any challenge by any person or entity to any agreement, and shall reimburse the City for any costs and expenses incurred by the City in enforcing any agreement. Any fees, assessments, or other amounts payable by the City thereunder shall be borne by Developer and/or any transferee, as the case may be, except where Developer and/or any transferee, as the case may be, has notified the City in writing, prior to the City entering into an agreement, that it does not desire for the City to execute an agreement.

6.13.3. Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to affirmatively cooperate in defending the action.

6.14. Relationship of the Parties. It is understood and agreed by the Parties hereto that the contractual relationship created between the Parties hereunder is that Developer is an independent contractor and not an agent of the City. Further, the City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that

nothing herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

6.15. **Hold Harmless.** Developer hereby agrees to and shall indemnify, save, hold harmless and defend the City, and its elected and appointed representatives, boards, commissions, officers, agents, and employees (collectively, "the City" in this Section), from any and all claims, costs, and liability for any damages, personal injury or death which may arise, directly or indirectly, from such Developer or such Developer's contractors, subcontractors', agents', or employees' operations in connection with the construction of the Project, whether operations be by such Developer or any of such Developer's contractors, subcontractors, by anyone or more persons directly or indirectly employed by, or acting as agent for such Developer or any of such Developer's contractors or subcontractors. Developer further agrees to and shall indemnify, save, hold harmless and, if requested by the City, such Developer shall defend the City in any action brought by a third party (1) challenging the validity of this Agreement or (2) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Nothing in this Section shall be construed to mean that each Developer of any portion of the Property shall hold the City harmless and/or defend it from any claims arising from, or alleged to arise from, the negligent acts, or negligent failure to act, on the part of the City. City agrees that it shall fully cooperate with Developer in the defense of any matter in which Developer is defending and/or holding the City harmless. City may make all reasonable decisions with respect to its representation in any legal proceeding.

6.16. **Notices.** Any notice or communication required hereunder between the City or Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing this notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days' written notice to the other party hereto, designate any other address in substitution of the address, or any additional address, to which the notice or communication shall be given. These notices or communications shall be given to the Parties at their addresses set forth below:

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If to the City:

City of Oxnard
300 West Third Street, Third Floor
Oxnard, California 93030
Attention: City Manager

with copies to:

City of Oxnard
300 West Third Street, Third Floor
Oxnard, California 93030
Attention: City Attorney

If to Aldersgate Investment, LLC

300 Esplanade Drive, Suite 430
Oxnard, California 93036

Attention: Ernie Mansie

with copies to: Schroeder, Comis,
Nelson & Kahn

300 Esplanade Drive, Suite 1170
Oxnard, California 93036

Attention: Mitchel B. Kahn

6.17. Recordation. As provided in Government Code Section 65868.5, the City Clerk of Oxnard shall record a copy of this Agreement with the Registrar-Recorder of the County of Ventura within ten (10) days following its execution by both Parties. Developer shall provide the City Clerk with the fees for recording prior to or at the time of recording.

6.18. Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title, interest in or to any portion of the Property, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which the person acquired an interest in the Property.

6.19. Successors and Assignees. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, any subsequent owner of all or any portion of the Property and their respective successors and assignees.

6.20. Severability. If any provisions, conditions, or covenants of this Agreement, or the application thereof to any circumstances of either party, shall be held invalid or unenforceable, the remainder of this Agreement or the application of that provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

6.21. **Time of the Essence.** Time is of the essence for each provision of this Agreement of which time is an element.

6.22. **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought and refers expressly to this Section. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of any right or remedy with respect to any other occurrence or event.

6.23. **No Third Party Beneficiaries.** The only Parties to this Agreement are the City and Developer and their successors-in-interest. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

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

6.25. **Legal Advice. Neutral Interpretation; Headings, Table of Contents.** Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attribution to that party as the source of the language in question. The headings and table of contents used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

6.26. **Discretion to Encumber.** This Agreement shall not prevent or limit Developer in any manner, at its sole discretion, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage, deed of trust or other security device securing financing with respect to the property or its improvements.

6.27. **Entitlement to Written Notice of Default.** The mortgagee of a mortgage or beneficiary of a deed of trust ("Mortgagee") encumbering the Property, or any part thereof, and their successors and assigns shall, upon written request to the City, be entitled to receive from the City written notification of any default by Developer of the performance of Developer's obligations under this Agreement which has not been cured within sixty (60) days following the date of default. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of thirty (30) days after receipt of such notice of default. Notwithstanding the foregoing, if such default shall be a default which can only be remedied by such Mortgagee obtaining

possession of the Property, or any portion thereof, and such Mortgagee seeks to obtain possession, such Mortgagee shall have until thirty (30) days after the date of obtaining such possession to cure such default, provided that such default is cured no later than one (1) year after Mortgagee obtains such possession. Any Mortgagee who takes title to all of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of the Developer under this Agreement as to the Property or portion thereof so acquired; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of the Developer arising prior to acquisition of title to the Property by such Mortgagee, except that the Mortgagee shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary or non-monetary obligations due under this Agreement for the Property, or portion thereof acquired by such Mortgagee, have been satisfied.

6.28. **Tentative Maps.** Pursuant to California Government Code Section 66452.6(a), the duration of tentative maps filed subsequent to the Effective Date shall automatically be extended for the Term of this Agreement.

6.29. **Counterparts.** This Agreement may be executed in duplicate originals, each of which is deemed to be an original.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

Aldersgate Investment, LLC

City of Oxnard, a municipal corporation
of the State of California

By: [Signature]
Name: _____
Title: _____

By: [Signature]
Dr. Thomas E. Holden, Mayor

ATTEST:

By: [Signature]
Daniel Martinez
City Clerk

Approved as to form:

By: Mitchel B. Kahn
Mitchel B. Kahn, Esq.
Schoeder, Comis, Nelson
& Kahn
Counsel for Developer

Approved as to form:

By: [Signature]
Alan Holmberg
City Attorney

ATTEST:

By: [Signature]
Daniel Martinez
City Clerk

EXHIBIT A

REAL PROPERTY DESCRIPTION

EXHIBIT "A"

All that certain real property situated in the County of Ventura, State of California, described as follows:

Parcel 1:

A portion of Subdivision 19, Rancho El Rio De Santa Clara O'La Colonia, in the City of Oxnard, County of Ventura, State of California, as per Partition Map filed in the Office of the County Clerk of the County of Ventura, in an action entitled "Thomas A. Scott, et al., Pliffs. vs Rafael Gonzales, et al., Defts.", described as follows:

Beginning at a point on the Westerly line of State Highway Route 60 known as Oxnard Boulevard, said point being North 60 feet from the Northeast corner of lands of Willard W. Shepherd and Helen L. Shepherd, as shown on the Licensed Surveyor's Map filed in Book 6, Page 49 of Record of Survey, in the Office of the County Recorder of said County; thence,

1st : Westerly 280 feet, more or less, parallel with the Northerly line of said land of Willard W. Shepherd and Helen L. Shepherd, in the Northerly prolongation of the East line of said "A" Street, as shown upon the last above described map; thence,

2nd : Northerly 280 feet along said Northerly prolongation of the East line of "A" Street to a point; thence,

3rd : Easterly 280 feet, more or less, parallel with the said Northerly line of said lands of Willard W. Shepherd and Helen L. Shepherd, to the Westerly line of said State Highway Route 60; thence,

4th : Southerly 280 feet along said Westerly line of State Highway Route 60 to the point of beginning.

Except that portion thereof lying within the land described in deed to Lloyd V. Dunkin, a married man, recorded September 6, 1972 as Instrument No. 63333, in Book 4005, Page 640, of Official Records.

Parcel 2:

A portion of Subdivision 19, Ranch El Rio De Santa Clara O' La Colonia, in the City of Oxnard, County of Ventura, State of California, as per Partition Map filed in the Office of the County Clerk of the County of Ventura, in an action entitled "Thomas a. Scott, et al., Pliffs. vs Rafael Gonzales, et al., Defts.", described as follows:

Beginning at a point on the Westerly line of State Highway Route 60 known as Oxnard Boulevard, said point being Northeast corner of lands of Willard W. Shepherd and Helen L. Shepherd, as shown on the Licensed Surveyor's Map filed in Book 6, Page 49 of Record of Survey, in the Office of the County Recorder of said County; thence,

1st : Westerly 280 feet, more or less, parallel with the Northerly line of said land of Willard W. Shepherd and Helen L. Shepherd, in the Northerly prolongation of the East line of said "A" Street, as shown upon the last above described map; thence,

2nd : Northerly 60 feet along said Northerly prolongation of the East line of "A" Street to a point; thence,

3rd : Easterly 280 feet, more or less, parallel with the said Northerly line of said lands of Willard W. Shepherd and Helen L. Shepherd, to the Westerly line of said State Highway Route 60; thence,

4th : Southerly 60 feet along said Westerly line of State Highway Route 60 to the point of beginning.

Parcel 3:

A portion of Subdivision 19, Ranch El Rio De Santa Clara O' La Colonia, in the City of Oxnard, County of Ventura, State of California, as per Partition Map filed in the Office of the County Clerk of the County of Ventura, in an action entitled "Thomas a. Scott, et al., Pliffs. vs Rafael Gonzales, et al., Defts.", described as follows:

Commencing at a point on the Westerly line of State Highway Route 60, known as Oxnard Boulevard, said point being North 65 feet from the Northeast corner of lands of Willard W. Shepherd and Helen L. Shepherd, as shown on Licensed Surveyor's Map filed in Book 6, Page 49 of Record of Survey, in the Office of the County Recorder of said County; thence West 280 feet, more or less, parallel with the Northerly line of said lands of Willard W. Shepherd and Helen L. Shepherd, to the Northerly prolongation of the East line of said "A" Street, as shown upon the last above described map, said point being the True Point of Beginning; thence,

1st : North 275 feet along said Northerly prolongation of the East line of "A" Street; thence,

2nd : East 280 feet, more or less, parallel with the said Northerly line of said lands of Willard W. Shepherd and Helen L. Shepherd, to the Westerly line of said State Highway Route 60; thence,

3rd : South 151 feet along said Westerly line of State Highway Route 60; thence parallel with said Northerly line of Shepherd,

4th : West 127.30 feet; thence parallel with said "A" Street,

5th : South 64 feet; thence parallel with said Northerly line of Shepherd,

6th : West 15 feet; thence parallel with said "A" Street,

7th : South 60 feet to the Intersection with a line which beard West and passes through the True Point of Beginning; thence along said line,

8th : West 130 feet to the True Point of Beginning.

Assessor's Parcel Number: **200-0-252-120**
 200-0-252-020
 200-0-252-130