

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Oxnard  
305 West Third Street  
Oxnard, California 93030  
Attn: City Clerk

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT

**THIS FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT** (the "Fourth Amendment") is made in Ventura County, California as of September 7, 2011, by and between the **CITY OF OXNARD**, a municipal corporation of the State of California (the "City"); and **KOH 12-17, LLC**, a California limited liability company, and **E.D. 2, LLC**, a California limited liability company (collectively, the "Developer").

### RECITALS

A. Developer is the owner of that certain real property located in the City and more particularly described in Exhibit 1 attached hereto ("Developer's Property"). Developer's Property is located within the boundaries of the City's RiverPark Specific Plan.

B. The City and Developer's predecessor in interest entered into that certain Development Agreement dated as of August 27, 2002, and which was recorded against Developer's Property (as well as other areas) on September 10, 2002 as Instrument No. 2002-0216450 in the Ventura County Recorder's Office (the "Original Development Agreement"), as amended by that certain First Amendment to Development Agreement dated as of December 14, 2004 and recorded against Developer's Property on December 23, 2004 as Instrument No. 2004-1223-0339920 in the Ventura County Recorder's Office and re-recorded against Developer's Property on January 24, 2005 as Instrument No. 20050124-0017504 in the Ventura County Recorder's Office (the "First Amendment to Development Agreement"), as further amended by that certain Second Amendment to Development Agreement recorded against Developer's Property on August 21, 2007 in the Ventura County Recorder's Office as Instrument No. 20070821-00163617-0 (the "Second Amendment to Development Agreement"), and as further amended by that certain Third Amendment to Development Agreement recorded against Developer's Property on October 13, 2010 in the Ventura County Recorder's Office as Instrument No. 20101013-00157737-0 and on October 28, 2010 in the Ventura County Recorder's Office as Instrument No. 20101028-00167309-0 (the "Third Amendment to Development Agreement"). The Original Development Agreement as amended by the First Amendment to Development Agreement, the Second Amendment to Development Agreement, and the Third Amendment to Development Agreement together with any extensions or amendments approved administratively, are referred to herein collectively as the "Development

Agreement.” The Development Agreement encumbers more real property than Developer’s Property. Collectively, all real property encumbered by the Development Agreement is referred to herein as the “Site.” Owners of portions of the Site (including Developer) may be referred to herein individually as a “RiverPark Developer” or collectively as the “RiverPark Developers.”

C. In conjunction with transfers of portions of the Site to the various RiverPark Developers, the parties to such transfer agreements have executed Assignment and Assumption Agreements that had the effect of the transferring party assigning and the acquiring party assuming the rights, duties and/or obligations under the Development Agreement relating to the portion of the Site being transferred and providing that no RiverPark Developer shall be obligated to meet any obligations under the Development Agreement that relate to a portion of the Site owned by another RiverPark Developer.

D. As of the date of this Fourth Amendment, Developer is in full compliance with the terms, conditions, and obligations of the Development Agreement as amended.

E. The parties hereto intend hereby to amend the Development Agreement to (i) incorporate changes made to the RiverPark Specific Plan, (ii) provide for affordable housing obligations resulting from such changes, (iii) provide for the payment of additional sewer and recycled water fees associated with such changes, and (iv) provide for contribution of funds by Developer toward construction of a new City monument sign.

F. The parties hereto each desire to obtain the agreement of one another to the provisions of the Development Agreement as amended by this Fourth Amendment.

G. On June 16, 2011, the Planning Commission held a duly noticed public hearing wherein the Planning Commission reviewed this Fourth Amendment.

H. On \_\_\_\_\_, 2012, the City Council held a duly noticed public hearing on this Fourth Amendment in accordance with Government Code Section 65868.

I. The City Council has given notice of its intention to consider this Fourth Amendment, has conducted public hearings thereon pursuant to the relevant portions of the Government Code, and has found that the provisions of this Fourth Amendment are consistent with the City’s 2020 General Plan for development within the City (the “General Plan”), City zoning ordinances, and the RiverPark Specific Plan, as amended. The City Council has also specifically considered the impacts and benefits of this Fourth Amendment upon the welfare of the residents of the City and the surrounding region. The City Council has determined that this Fourth Amendment is beneficial to the residents of the City and is consistent with the present public health, safety, and welfare needs of the residents of the City and the surrounding region.

J. The City has prepared an addendum to the Environmental Impact Report for the RiverPark Project certified on July 16, 2002 (the “RiverPark EIR”), and the City Council has determined that the actions to be taken pursuant to this Fourth Amendment will not result in environmental impacts which are new or substantially changed from those already analyzed and addressed in the RiverPark EIR, and, therefore has determined that none of the elements set forth in Public Resources Code Section 21166 or Section 15162 of the CEQA Guidelines exists and therefore has determined, in accordance Public Resources Code Section 21166 and Section

15162 of the CEQA Guidelines, that no subsequent or supplemental Environmental Impact Report, Negative Declaration or Mitigated Negative Declaration is required to be prepared prior to adopting the Ordinance approving this Fourth Amendment.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into the operative provisions of this Fourth Amendment by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the Developer agree as follows:

**Section 1.** Section 1.0.1 of the Development Agreement is added to read as follows:

“1.0.1 “Additional Dwelling Units” shall mean the Dwelling Units constructed in the RiverPark Specific Plan area on Lots 16 & 17 of Tract 5352-1, as described in Exhibit \_\_ attached hereto and incorporated by reference (“Lots 16 & 17”), in excess of an aggregate of 300 Dwelling Units.

All Additional Dwelling Units shall be subject to affordable housing requirements as set forth in Section 11(a)(iii) of the Development Agreement. Sections 11(c-e) of the Development Agreement shall not apply to any Additional Dwelling Units, and no Additional Dwelling Units shall be included in any calculations pursuant thereto.

No more than a total of 212 Additional Dwelling Units may be constructed on Lots 16 & 17. In conjunction with the application for any building permits for Dwelling Units on Lots 16 & 17, the Developer applying for such permits shall provide the City with a summary stating the number of building permits issued previously for the Lot(s) that is(are) the subject of the application.”

**Section 2.** Section 5.6 of the Development Agreement is added to read as follows:

“5.6 **Supplemental Sewer Fee.**

Notwithstanding anything to the contrary contained in Section 5.5, any Developer constructing an Additional Dwelling Unit shall pay additional sewer fees (the “Additional Sewer Fees”) in connection with the construction of such Additional Dwelling Units as set forth in this Section 5.6. The Additional Sewer Fees may be paid in advance as a lump sum payment or prior to the issuance of individual buildings permits as set forth below.

(a) Lump Sum Payment Option. The Developers constructing the Additional Dwelling Units shall have the option of prepaying the Additional Sewer Fees in the following lump sum amounts:

(i) Five Hundred Forty-Five Thousand Six Hundred Forty-Nine Dollars and Eighty-Four Cents (\$545,649.84) for the Additional Dwelling Units to be constructed on Lots 16 & 17.

The Developers shall have the options of making such lump sum payments for one or more combination of Lots 16 & 17. Such lump sum payment(s), if any, shall be made by the Developer constructing such units on or before the earlier of (i) the issuance of a building permit

for the first Additional Dwelling Unit on the Lot being prepaid or (ii) one (1) year following the effective date of the Fourth Amendment to Development Agreement.

(b) In the event that the Developers have not prepaid the Additional Sewer Fees for any of Lots 16 & 17, as provided above, then the Developers constructing the Additional Dwelling Units on such Lot(s) shall pay the Additional Sewer Fee on a per unit basis prior to the issuance of a building permit for each such Additional Dwelling Unit. During the period in which the Limitation on Increases of Fees pursuant to Section 4 of the Development Agreement is in effect, as such may be extended from time to time, the Additional Sewer Fee shall be Two Thousand Five Hundred Seventy-Three Dollars and Eighty-Two Cents (\$2,573.82) per Additional Dwelling Unit located on Lots 16 & 17. Following the expiration of the period set forth in Section 4 of the Development Agreement, then the Developer constructing any such Additional Dwelling Units shall pay to the City the sewer fee imposed on a citywide basis in effect at the time of issuance a building permit for each such Additional Dwelling Unit.

Except as modified by this Section 5.6, the waiver of payment of current and future sewer fees in Section 5.5 remains in effect for the entire Project, including without limitation the Additional Dwelling Units.”

**Section 3.** Section 5.7 of the Development Agreement is added to read as follows:

“5.7 **Recycled Water Meter Fees.**

City and Developer acknowledge that City may in the future adopt a city-wide recycled water meter fee (the “Recycled Water Meter Fee”) to be applied to water users that use recycled water for landscape irrigation purposes. Developer acknowledges that portions of the Project are expected to use recycled water for landscape irrigation purposes in the event that recycled water becomes available to the Project. Developer acknowledges and agrees that, notwithstanding anything to the contrary in this Agreement, in the event that Developer applies for the installation of a recycled water meter for landscape irrigation purposes, Developer shall be subject to the Recycled Water Meter Fee, if in effect at the time of such application. The City further agrees that, if a potable water meter is being removed and replaced with a recycled water meter, Developer shall be entitled to a credit equal to the City’s then applicable fee for the installation of a potable water meter, but in no event more than the then applicable Recycled Water Meter Fee.”

**Section 4.** Section 5.8 of the Development Agreement is added to read as follows:

“5.8 **Monument Sign Fee.**

Within one (1) year of the effective date of the Fourth Amendment to Development Agreement, the Developers constructing the Additional Dwelling Units (i.e., the owners of Lots 16 & 17) shall pay a one-time lump sum fee in the amount of Forty-Four Thousand Five Hundred Dollars (\$44,500) to the City for use by the City to establish a gateway monument sign program. The obligation under this paragraph shall be joint and several of the owners of Lots 16 & 17. In consideration for the payment of the Monument Sign Fee hereunder, the City shall not impose any other fees for a monument sign or any other City signage program on the Project or any portion thereof. This waiver of payment of any future such fees shall remain in effect for the

term of this Agreement, including any extensions of this Agreement, or until buildout of the Project occurs, whichever is longer.”

**Section 5.** The first sentence of Section 9(c) of the Development Agreement is amended to read as follows:

“(c) Except as otherwise provided in this Section 9, (i) RiverPark A, RiverPark B, KOH, E.D., and RPP shall not be required pay any Quimby Fees or any park related fees for any portion of the Project, and (ii) E.D. 2, LLC and KOH 12-17, LLC shall not be required to pay any Quimby Fees or any park related fees with respect to the construction of the Additional Dwelling Units.”

**Section 6.** Section 11(a)(iii) is added to the Development Agreement to read as follows:

“(iii) Any Developer that constructs Additional Dwelling Units on Lots 16 & 17 shall be responsible for the construction of a total of fifteen percent (15%) of the aggregate of such Additional Dwelling Units as affordable housing units, of which a minimum of six percent (6%) of the aggregate of such Additional Dwelling Units shall be at rents or sales prices that are Affordable to Very Low Income Households and the balance of which shall be at rents or sales prices Affordable to Moderate Income Households (collectively the “Additional Affordable Housing Units”). In computing the number of Additional Affordable Housing Units required under this section, fractional numbers shall be rounded off to the nearest whole number, fractions of one-half (0.5) or more being rounded up to the next whole number; provided, however, that if all 212 Additional Dwelling Units are constructed, regardless of any rounding, an aggregate total of at least 32 of the Additional Dwelling Units shall be affordable housing units as set forth herein. The quality and location of Additional Affordable Housing Units shall be reviewed and approved in conjunction with the RiverPark Specific Plan review process.”

**Section 7.** The following sentence is added to the end of Section 1.2 of the Development Agreement:

“Notwithstanding the foregoing or anything to the contrary contained herein, the term “Applicable Rules” shall also include the provisions of Ordinance No. \_\_\_\_, enacted by the City on June \_\_, 2012, which amends the Specific Plan to permit the construction of the Additional Dwelling Units on Lots 16 & 17 of Tract 5352-1 within Planning Area D of the Specific Plan.”

**Section 8.** Exhibit G of the Development Agreement is hereby deleted and replaced with the new Exhibit G attached hereto and incorporated by reference.

**Section 9. Miscellaneous Provisions.**

(a) Entire Agreement. Except for the Development Agreement, which this Fourth Amendment amends, this Fourth Amendment represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Fourth Amendment.

(b) Section Headings. The section headings contained in this Fourth Amendment are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(c) Counterparts. This Fourth Amendment and any modifications hereto may be executed in any number of counterparts with the same force and effect as if executed in the form of a single document.

(d) Waiver. No waiver of any provision of this Fourth Amendment shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

(e) Severability. If any term, covenant, condition or provision of this Fourth Amendment, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of California or the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Fourth Amendment, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby; provided that the invalidity or unenforceability of such provision does not adversely affect the benefits accruing to, or the obligations imposed upon, any party hereunder.

(f) No Reliance on Other Parties. All parties to this Fourth Amendment declare that, prior to the execution of this Fourth Amendment, they have informed themselves of sufficient relevant data, either through experts or other sources of their own selection, and have sought and obtained legal counsel, in order that they might intelligently exercise their own judgment in evaluating the contents of this Fourth Amendment and making the decision to execute it. The parties each represent and acknowledge that in executing this Fourth Amendment, they do not rely and have not relied upon any representation or statement not set forth herein made by any other party to this Fourth Amendment or their respective legal counsel with regard to the subject matter, basis or effect of this Fourth Amendment.

(g) Construction. The provisions of this Fourth Amendment shall be liberally construed to effectuate its purpose. The language of this Fourth Amendment shall be construed according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Fourth Amendment and has had its legal counsel review it. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural and vice versa.

(h) Successors and Assigns. This Fourth Amendment shall be binding on and shall inure to the benefit of the parties and their respective legal representatives, successors and assigns.

(i) Governing Law. The validity and interpretation of this Fourth Amendment shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws.

(j) Authorizations. Each party certifies and warrants that all individuals executing this Fourth Amendment and other related documents on its behalf have the capacity and have been duly authorized to do so. Each party shall also indemnify the other parties to this Fourth Amendment and hold them harmless from any and all damages, costs, attorneys' fees, and other expenses, if a signatory is not so authorized.

(k) Effective Date. After this Fourth Amendment has been signed by authorized representatives of each of the parties hereto, this Fourth Amendment shall become effective on the date on which the ordinance approving this Fourth Amendment becomes operative under Government Code section 36937.

(l) Definitions. All terms not specifically defined in this Fourth Amendment shall have the meanings ascribed to them in the Development Agreement.

(m) Impact of Fourth Amendment on Development Agreement. Unless otherwise specifically amended by this Fourth Amendment, all provisions of the Development Agreement, as previously amended, shall remain in full force.

(n) Interpretation of Developer. Each RiverPark Developer and its authorized successors and assigns shall be liable for and/or hold the rights, duties and obligations of the Development Agreement and this Fourth Amendment as they relate to the portion of the Site owned by such RiverPark Developer only. No RiverPark Developer nor its authorized successors or assigns shall be liable for the obligations under the Development Agreement or any amendments thereto as they relate to another portion of the Site not owned by such RiverPark Developer or such authorized successors or assigns, respectively.

(o) Unintended Prevailing Wage Requirements. Efforts have been made in structuring this Fourth Amendment to ensure that its terms and conditions will not require, or be construed to require, Developer to pay prevailing wages with respect to any work of construction or improvement on Developer's Property (an "Unintended Prevailing Wage Requirement"). In undertaking these efforts, the City has made no representations regarding the applicability or non-applicability of prevailing wage requirements, and these efforts are not to be construed as a representation by City of any kind pursuant to Labor Code Section 1726. But for the understanding of the parties reflected in the first sentence of this Section 9.(o), the parties would not have entered into this Fourth Amendment based upon the terms and conditions set forth herein. These efforts have been conducted in the absence of any existing applicable judicial interpretation of the recent amendments to the California prevailing wage law. If, despite such efforts, any provision of this Fourth Amendment shall be determined by any court of competent jurisdiction, pursuant to a final and non-appealable determination of such court, to result in an Unintended Prevailing Wage Requirement, such determination shall not invalidate or render unenforceable any provision hereof; provided, however, that the parties hereby agree that, in such event, this Fourth Amendment shall be reformed such that each provision that results in the Unintended Prevailing Wage Requirement will be removed as though such provisions were never a part of this Fourth Amendment, and, in lieu of such provision(s), replacement provisions shall be added as similar in terms to such removed provision(s) as may be possible and legal, valid and enforceable but without resulting in the Unintended Prevailing Wage Requirement.

To the extent that an Unintended Prevailing Wage Requirement is held by a court of competent jurisdiction to have been established, notwithstanding the requirements of this Section 9.(o), pursuant to a final and non-appealable determination of such court, then it shall be the sole responsibility of Developer to pay any "Increased costs" (as defined in Labor Code section 1781(c)(2)) resulting from the Unintended Prevailing Wage Requirement related to Developer's work of construction or improvement subject to such Unintended Prevailing Wage Requirement. Further, Developer shall indemnify and hold the City harmless for, from and against any suit, cost, attorneys' fees, claim, administrative proceeding, damage, wage award, fine, penalty or liability arising out of or relating to the payment or non-payment of prevailing wages in connection with the work of construction or improvement subject to such Unintended Prevailing Wage Requirement being undertaken by Developers, including, without limitation, any action by a contractor or subcontractor pursuant to California Labor Code Section 1781 to recover any "Increased costs" incurred by Developer's contractor or subcontractor. Nothing in this Section 9.(o) shall be deemed to require Developer to be responsible or liable in any way for any work being undertaken by another RiverPark Developer or any costs of any kind relating thereto, including without limitation any "Increased Costs" or any other costs related or unrelated to any Unintended Prevailing Wage Requirement.

(p) Recordation of this Fourth Amendment. Pursuant to Government Code section 65868.5, the City Clerk shall record a copy of this Fourth Amendment in the Official Records of the County within ten (10) days after the mutual execution of this Fourth Amendment.

**Section 10. Seventh Amendment to Agreement Containing Covenants Affecting Real Property**

As material consideration for the City to enter into this Fourth Amendment and as a condition to the City's execution of this Fourth Amendment, Developer agrees that each of them shall execute in recordable form a Seventh Amendment to the Agreement Containing Covenants in substantially the form attached hereto as Exhibit 2. The Seventh Amendment to the Agreement Containing Covenants sets forth affordable housing and other covenants. The Seventh Amendment to the Agreement Containing Covenants shall be recorded against fee title to the Developer's Property on or about the same time that this Fourth Amendment is recorded.

IN WITNESS WHEREOF, the parties to this Fourth Amendment have each executed this Fourth Amendment as of the date first written above.

*[Signatures on following pages]*

**THE CITY:**

CITY OF OXNARD, a public body,  
corporate and politic

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Dr. Thomas E. Holden,  
Mayor

**ATTEST:**

By: \_\_\_\_\_  
Daniel Martinez  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Alan Holmberg  
City Attorney

**APPROVED AS TO FORM AND CONTENT:  
KANE, BALLMER & BERKMAN**

By: \_\_\_\_\_  
Redevelopment Special Counsel

*[Signatures continue on next page]*

**DEVELOPER:**

**KOH 12-17, LLC,**  
a California limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**E.D.2, LLC,**  
a California limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2012 before me, \_\_\_\_\_ (here insert name of the officer), Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2011 before me, \_\_\_\_\_ (here insert name of the officer), Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**EXHIBIT G**

AMENDED SPECIFIC PLAN LAND USE PLAN

**EXHIBIT 1**

DEVELOPERS' PROPERTY

**EXHIBIT 2**

SEVENTH AMENDMENT TO THE AGREEMENT CONTAINING COVENANTS