June 29, 2010

TO: Mayor and City Council

FROM: Michael M. Niblock, Director
       Community Development Department

SUBJECT: WESTLAKE VILLAGES MINOR AMENDMENT TO DEVELOPMENT AGREEMENT AND SUBDIVISION AGREEMENT TIME EXTENSION (P10-190)

RECOMMENDATION

It is recommended that the City Council adopt one resolution and one ordinance for the Westlake Villages project bounded by Eight Mile Road on the north, Bishop Cut on the west, Pixley Slough and Disappointment Slough on the South, and low/medium-density residential development on the East, as follows:

1. Ordinance to amend the previously-approved Development Agreement (DA1-04); and

2. Resolution approving a time extension for the Subdivision Agreement of the map for Westlake Villages, Unit No. 1 – Tract no. 3357

SUMMARY

An application has been filed to request a minor amendment to the previously-approved Westlake Villages Development Agreement (DA1-04 [Exhibit 1]) and a time extension for the Subdivision Agreement of the map for Westlake Villages, Unit No. 1 – Tract no. 3357. Staff is requesting an Ordinance amending the Development Agreement (DA1-04) and a Resolution to approve a time extension for the Subdivision Agreement.

DISCUSSION

Background

At its regular meeting on September 14, 2004 (Ordinance No. 027-04), the City Council approved the Development Agreement (DA1-04) for the Westlake Villages project to facilitate project development and limit project intensity by restricting the type and extent of land uses permitted on the project site to those land uses, densities, and intensities as described in the Development Agreement and Master Development Plan and as analyzed in the Final EIR (EIR1-04) for the project. The Development Agreement also addresses other issues such as the applicability of new laws and/or City ordinances, fees, credits, processing of amendments, and the effective time period of the agreement, which is 15 years.

AGENDA ITEM 6.03
June 29, 2010

WESTLAKE VILLAGES MINOR AMENDMENT TO DEVELOPMENT AGREEMENT AND SUBDIVISION AGREEMENT TIME EXTENSION (P10-190)

(Page 2)

On January 31, 2006, the City Council adopted resolution that authorized the City Manager to execute the subdivision agreement and to authorize recordation of the map for Westlake Villages, Unit No. 1 (Large Lot Map) – Tract no. 3357 (TM18-04B). Westlake Villages, Unit No. 1, is located south of Eight Mile Road, and adjacent to the existing Spanos Park West development. The subdivision contains 667.86 acres divided into 45 lots for residential use and 4 lots for landscaping. The developer is Spanos Family Partnership.

Present Situation

Development Agreement

The Development Agreement (DA1-04) that was approved on September 14, 2004 was recorded with several factual omissions. Therefore, a minor amendment to the Development Agreement is proposed to complete the omissions in the document with the correct approval and filing dates, as well as to correct Code references, and reflect realistic development expectations. The following sections of the Development Agreement being amended include:

- Preamble. Inserted the date the agreement was entered into.
- Recital G. Inserted the date the City Council certified the EIR.
- Recital G. Inserted the date the NOD was "filed" with the County Clerk.
- Recital G. Inserted the date the NOD was "filed" with OPR.
- Recital H. Inserted the date the Development Plan was approved by the City Council.
- Recital H. Inserted the date the Master Plan was approved by the City Council.
- Recital K. Inserted the date the Development Agreement was approved by the PC.
- Recital L. Inserted the date the Development Agreement was approved by the City Council.
- Section 2.4 Inserted the Ordinance number and the date the Ordinance was enacted by the City Council, approving the Development Agreement.
- Section 4.1 Amended as follows: Owner shall have the right, and the obligation, to develop West Lake in accordance with the Master Development Plan, the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement, and City shall have the right to control development of West Lake in accordance with the provisions of the Master Development Plan, this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement. Except as
otherwise specified in this Agreement, the Master Development Plan and applicable Existing City Laws (including those Code Sections concerning MX zoning and Master Development Plans) shall control the overall design, development and construction of West Lake, and all improvements and appurtenances in connection there with, including, without limitation, the permitted uses within West Lake, the density and intensity of use and all mitigation measures required in order to minimize or eliminate adverse environmental impacts and other adverse impacts of West Lake. In accordance with the purpose of MX zoning as stated in Code Section 16.16.020, the specific land uses and specific development standards for West Lake have been determined on a site-by-site basis by the Master Development Plan. By entering into this Agreement, Owner agrees to develop West Lake pursuant to the following schedule: Six years after the Effective Date, Owner shall have developed a minimum of fifty percent (50%) of West Lake based on acreage available for development; twelve years after Effective Date, Owner shall have developed a minimum of seventy five (75%) of West Lake based on net acreage available for development Master Development Plan, this Agreement and such amendment thereto as shall from time to time be approved pursuant to this Agreement.

All other sections of the Development Agreement remain the same. The complete Development Agreement, including the proposed changes, is provided as Exhibit 1.

Subdivision Agreement

On January 31, 2006, the City Council adopted a resolution that authorized the City Manager to execute the subdivision agreement and authorizing recordation of the map for Westlake Villages, Unit No. 1 (Large Lot Map) – Tract no. 3357 (TM18-04B). Section 3 of the Subdivision Agreement is being amended as follows:


At least seventy-two (72) hours prior to the commencement of any work hereunder, Subdivider shall notify City Engineer in writing of the date fixed by Subdivider for commencement thereof, so that City Engineer shall be able to provide services of inspection.

Subdivider will complete, or cause to be completed, within two (2) years prior to the expiration of approval of said Map the West Lake At Spanos Park West Development Agreement, recorded October 24, 2004, by and construction plans by between the City Council of Stockton, a municipal corporation of the State of California, the Spanos Family Partnership, a California General Partnership, and A.G. Spanos Trustee of the Alex and Faye Spanos Trust U/T/A dated January 27, 1998, all improvements in accordance with the plans and specifications
on file as hereinbefore specified, including any changes required or ordered by the said Engineer.

The work shall be performed in a safe and good work-like manner, and enough workers to quickly and adequately perform the work in accordance with the normal construction standards for similar jobs shall be employed and used. All work must comply with State of California, Division of Industrial Safety Construction Orders.

Except during an emergency, as determined by the City Engineer, all work shall be performed between the hours of 7:00 a.m. and 9:00 p.m.

Any contractor not performing as required by the this agreement may, at the discretion of the City Engineer, be barred from doing any work within the City of Stockton on any subdivision or any public works project for a maximum period of two (2) years.

City may require Subdivider to furnish a licensed Soils Engineer to test and certify that all cuts, fills and trench backfill conform to the requirements of the City and State codes.

All other sections of the Subdivision Agreement remain the same. The complete Subdivision Agreement, including the proposed changes, is provided as Exhibit 2.

FINANCIAL SUMMARY

There is no financial impact to the City of Stockton with this action.

Respectfully submitted,

MICHAEL M. NIBLOCK, DIRECTOR
COMMUNITY DEVELOPMENT DEPARTMENT

APPROVED BY

KEVIN O’ROURKE
INTERIM CITY MANAGER

MMN:EMN:sis
ORDINANCE NO. __________

AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE WESTLAKE VILLAGES PROJECT BOUNDED BY EIGHT MILE ROAD ON THE NORTH, BISHOP CUT ON THE WEST, PIXLEY SLOUGH AND DISAPPOINTMENT SLOUGH ON THE SOUTH, AND LOW/MEDIUM-DENSITY RESIDENTIAL ON THE EAST (SPANOS FAMILY PARTNERSHIP, DA1-04)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION 1. Findings.

Pursuant to Stockton Municipal Code section 16.128.080, the City Council of the City of Stockton hereby finds the Amendment to the Westlake Villages Development Agreement:

A. is in the best interests of the City;

B. complies with the Development Code and other applicable ordinances and regulations;

C. complies with the general land uses, objectives, policies, and programs of the General Plan and Westlake Villages Master Development Plan (MDP1-04);

D. does not endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare;

E. complies with the conditions, requirements, restrictions, and terms of Section 16.128.060 (B) (Preparation and content—Proposed development agreement); and

F. complies with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines.

SECTION 2. Development Agreement.

Pursuant to Stockton Municipal Code section 16.128.070, the City Council of the City of Stockton has conducted a public hearing on June 29, 2010, and hereby approves the First Amendment to the Westlake Villages Development Agreement (DA1-04), attached hereto as Exhibit A in substantially the form to be executed, based on the above findings.

City Atty: 
Review
Date June 23, 2010
SECTION 3. Effective Date.

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: _____________________

EFFECTIVE: ____________________

ANN JOHNSTON
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
City Application Number: P10-190

AMENDMENT TO
WEST LAKE AT SPANOS PARK WEST
DEVELOPMENT AGREEMENT (DA 1-04)

CITY: CITY OF STOCKTON, a municipal corporation of the State of California

OWNER: THE SPANOS FAMILY PARTNERSHIP, a California General Partnership

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THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of this 9th day of September, 2004, by and between the CITY OF STOCKTON, a municipal corporation of the State of California ("City"); THE SPANOS FAMILY PARTNERSHIP, a California General Partnership ("Owner"), and A. G. SPANOS, as Trustee of the Alex and Faye Spanos Trust under agreement dated January 27, 1998 ("Spanos"), pursuant to the authority of California Government Code Sections 65864-65869.5 and Stockton Municipal Code ("Code").

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

A. 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 Government Code Sections 65864-65869.5 authorizing City to enter into development agreements in connection with the development of real property within its jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property that is the subject of such development agreements.

B. As authorized by Government Code Section 65865(c), City has adopted the procedures and requirements for the consideration of development agreements within the City.

C. Owner is a general partnership organized under the laws of the State of California and is in good standing thereunder.

D. Owner holds fee title to approximately 689.6 acres of property ("The Project") adjacent to and south of Eight Mile Road, west of Spanos Park West, north of Disappointment Slough and east of Bishop Cut (APN # 071-12-11 and 13). The Project is the subject of this Agreement and is more fully described in Exhibit "A," attached hereto and incorporated herein by reference. The Project includes the Paradise Point Marina ("Paradise Marina") (an existing marina consisting of boat docks, boat repair facilities, restaurant and miscellaneous shops) and a proposed residential development ("West Lake"). West Lake will consist of approximately 2800 detached single-family residential units, bike and pedestrian trails, community and neighborhood parks, lakes, open space, entry monuments, and land dedicated for future schools.

E. Spanos holds title to approximately 173.6 acres of property ("The Spanos Property") adjacent to and south of Eight Mile Road, west of The Project, north of Paradise Marina and east of Bishop Cut (APN # 171-20-04, 05, and 06).

F. Spanos and Owner have made application to City (1) to include The Project within City’s General Plan and designate same “MX” (mixed use as described in the Stockton Municipal Code); (2) to include The Spanos Property within City’s General Plan and designate same “Low and Medium Density Residential;” (3) to prezone The Project MX; (4) to prezone The Spanos Property “R-1;” (4) to approve The Project’s Master Development Plan; (4) to approve this Development Agreement; (5) to approve all applicable environmental documents; and (6) to request the San Joaquin County Local Agency Formation Commission (“LAFCo”) (a) to include The Project and The Spanos Property within City’s Sphere of Influence; (b) to include
The Project and The Spanos Property within City’s Urban Service Line; and (c) to approve the annexation of The Project to the City of Stockton.

G. Pursuant to the California Environmental Quality Act (Public Resources Code § 21000-21177) (“CEQA”), City prepared and circulated a draft environmental impact report (“EIR”) for annexation and development of The Project. On September 9, 2004, City certified that the EIR was adequate; that it satisfied the requirements of CEQA, the CEQA Guidelines, and applicable City regulations; and that it fully and accurately described The Project and The Spanos Property. A Notice of Determination was filed on September 15, 2004 with the San Joaquin County Clerk and on September 15, 2004, with the Office of Planning and Research of the State of California.

H. The Project is located in an area which will have a General Plan and Pre-zoning designation of MX. A Master Development Plan was submitted to City on September 14, 2004. On September 14, 2004 the City approved The Project’s Master Development Plan dated September 14, 2004 (the "Master Development Plan"). The Master Development Plan sets forth the distribution, location and extent of uses for West Lake and Paradise Marina and identifies regulations and criteria for development of the site through subsequent implementing projects. The Stockton Municipal Code requires that a Development Agreement be completed to implement the Master Development Plan and that such Development Agreement be processed with the Master Development Plan.

I. City has reviewed the Master Development Plan and EIR and determined: (1) that this Agreement is appropriate for the development of West Lake, the modernization of Paradise Marina and the future development of The Spanos Property; (2) that this Agreement will eliminate uncertainty in City’s land use planning for and secure orderly development of The Project and the future development of The Spanos Property; (3) that City has an existing waste water conveyance system immediately adjacent to The Project and adequate capacity at City’s Regional Waste Water Treatment Facility to process all wastewater generated by The Project; (4) that City has adequate potable water and potable water reserves to service the Project for twenty (20) years; (5) that Owner will construct all on-site and off-site improvements, structures, roads, sewer and water facilities required to service The Project; and (6) that this Agreement will achieve the goals and purposes of the Stockton Municipal Code. In exchange for these benefits to City and the public benefits of the development of West Lake and the modernization/upgrading of Paradise Marina, Owner desires to receive assurance that City will, in accordance with the Master Development Plan, grant those permits and approvals required for the development of West Lake, the modernization/upgrading of Paradise Marina and the future development of The Spanos Property, subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the parties desire to enter into this Agreement.

J. The Master Development Plan was approved based on its stated intention to provide a comprehensive description of all land uses proposed for The Project, while maintaining the greatest amount of flexibility possible in the planning review process. The Master Development Plan provides for a range of land uses for each parcel within The Project, each of which is consistent and compatible with the overall land use concept for The Project and consistent with the policies, general land uses and programs of the City’s general plan. The Master Development Plan and EIR established the criteria for consideration of, and all action
upon, all future specific proposals for development of land within West Lake and modernization of Paradise Marina.

K. On August 26, 2004, after conducting a duly noticed public hearing, the City Planning Commission recommended that the City Council approve this Agreement, based on the following findings and determinations that: i) this Agreement is consistent with the objectives, policies, general land uses and programs specified in the City of Stockton General Plan and the Master Development Plan for West Lake and the modernization of Paradise Marina; and ii) the Master Development Plan complies with the requirements of CEQA, and state and local CEQA guidelines.

L. On September 14, 2004, the City Council held a duly noticed public hearing on this Agreement and made the same findings and determinations, which are set forth in Enacting Ordinance No. 027-04, approving this Agreement thereafter adopted by the City Council, a copy of the City Council’s Findings and Determinations are attached hereto, marked Exhibit “C” and incorporated herein by reference.

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5 and the Stockton Municipal Code, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:


1.1 Incorporation of Recitals. The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as it set forth herein in full.

1.2 Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising The Project and The Spanos Property and the burdens and benefits thereof shall bind and inure to the benefit of all estates and interests in The Project and The Spanos Property, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto.

2. Definitions. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

2.1 Approvals. Any and all permits or approvals of any kind or character required under the Master Development Plan and applicable City Laws in order to develop The Project and to facilitate the planning and permitting required for the future development of The Spanos Property, including, but not limited to, conditional use permits, tentative and final parcel or subdivision maps, building permits, site clearance, grading plans and permits, and certificates of occupancy.

2.2 City Laws. The Stockton Municipal Code, resolutions, codes, rules, regulations, decisions and official policies of City governing the design, improvement and construction standards and specifications applicable to the development of The Project and the planning and
permitting required for the future development of The Spanos Property. Specifically, but without limiting the generality of the foregoing, City Laws shall include the General Plan.

2.3 **Director.** The Director shall mean the Director of Community Development for City.

2.4 **Enacting Ordinance.** Ordinance No. 027-04, enacted by the City Council on September 14, 2004, approving this Agreement, as described herein.

2.5 **Exactions.** All exactions, in-lieu fees or payments, dedication or reservation requirements, obligations for on-or off-site improvements or construction requirements for public improvements or services or other conditions of approval called for in connection with the development of, or construction on, The Project under Existing City Laws, whether such exactions constitute public improvements, mitigation measures in connection with environmental review of any project, or impositions.

2.6 **Existing City Laws.** The Development Code (Chapter 16 of the Stockton Municipal Code), resolutions, rules, regulations, decisions, fees and official policies of City governing the subdivision, construction design and improvement standards applicable to the development of The Project and applicable to the planning and permitting required for the future development of The Spanos Property in effect as of the Effective Date (as defined in Section 3.1 below).

2.7 **Law or Laws.** The laws and constitution of the State of California, the laws and Constitution of the United States and any codes, statues or executive mandates in any court decision, state or federal, thereunder.

2.8 **Mortgage.** A mortgage, deed of trust, ground lease, sale and leaseback arrangement in which The Project, The Spanos Property or a portion thereof or an interest therein is sold by Owner or Spanos and leased back concurrently therewith (which arrangement is subject to no prior contractual encumbrances securing payment of money), or other transaction in which The Project, The Spanos Property, or a portion thereof or an interest therein, is pledged as security, contracted in good faith and for fair value.

2.9 **Mortgagee.** The holder of the beneficial interest under a Mortgage.

3. **Effective Date, Term.**

3.1 **Effective Date.** This Agreement shall be dated and the obligations of the parties hereunder shall be effective on the 31st day following the adoption of the Enacting Ordinance or the date LAFCo records a Certificate of Completion of Annexation of The Project with the San Joaquin Recorder, which ever occurs last (the "Effective Date"). Not later than ten (10) days after the Effective Date, City, Owner and Spanos shall execute and acknowledge this Agreement, and thereafter the City Clerk shall cause this Agreement to be recorded in the Official Records of the County of San Joaquin, State of California.

3.2 **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate fifteen (15) years from said Effective Date, unless earlier terminated under the terms of this Agreement.
4. General Development of West Lake and Paradise Marina.

4.1 West Lake. Owner shall have the right, and the obligation, to develop West Lake in accordance with the Master Development Plan, the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement, and City shall have the right to control development of West Lake in accordance with the provisions of the Master Development Plan, this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement. Except as otherwise specified in this Agreement, the Master Development Plan and applicable Existing City Laws (including those Code Sections concerning MX zoning and Master Development Plans) shall control the overall design, development and construction of West Lake, and all improvements and appurtenances in connection therewith, including, without limitation, the permitted uses within West Lake, the density and intensity of use and all mitigation measures required in order to minimize or eliminate adverse environmental impacts and other adverse impacts of West Lake. In accordance with the purpose of MX zoning as stated in Code Section 16.16.020, the specific land uses and specific development standards for West Lake have been determined on a site-by-site basis by the Master Development Plan. By entering into this Agreement, Owner agrees to develop West Lake pursuant to the Master Development Plan, this Agreement and such amendment thereto as shall from time to time be approved pursuant to this Agreement.

4.2 Paradise Marina. Owner shall have the right to modernize/upgrade the Paradise Marina in accordance with the Master Development Plan, the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement, and City shall have the right to control the modernization/upgrading of West Lake in accordance with the provisions of the Master Development Plan, this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement. Except as otherwise specified in this Agreement, the Master Development Plan and applicable Existing City Laws (including those Code Sections concerning MX zoning and Master Development Plans) shall control the overall design, modernization and construction of the Paradise Marina, and all improvements and appurtenances in connection therewith, including, without limitation, the permitted uses within Paradise Marina, the density and intensity of use, the maximum and minimum size of buildings, the number of parking spaces and all mitigation measures required in order to minimize or eliminate adverse environmental impacts and other adverse impacts of the modernization of the Paradise Marina.

4.3 Permitted Uses. The permitted uses of The Project, the density and intensity of use, the maximum height, bulk and size of proposed structures and location of public improvements, location of public utilities and other terms and conditions of development applicable to The Project shall be those set forth in the Master Development Plan, as may be modified from time to time as agreed to by City and Owner. Permitted uses shall be determined by the following:

(a) Commercial development may consist of the permitted uses provided for in Section 6.4 of the Master Development Plan.
(b) Residential development may consist of the permitted uses provided for in Section 6.5 of the Master Development Plan.

(c) Open space permitted uses may consist of those provided for in Section 6.7 of the Master Development Plan.

(d) Neighborhood Park permitted uses may consist of the permitted uses provided for in Section 6.8 of the Master Development Plan.

(e) Utility Easement permitted uses may consist of the permitted uses provided for in Section 6.9 of the Master Development Plan.

(f) Development Standards for site development, building standards, landscaping and circulation within West Lake shall be those provided for in Section 6.10 of the Master Development Plan.

4.4 Phasing. Owner presently intends to develop West Lake and modernize Paradise Marina in phases and the parties acknowledge that Owner cannot presently predict the timing or sequence of any such phasing. Spanos presently intends to plan, design and obtain all permits necessary for the future development of The Spanos Property. Such decisions by Owner and Spanos depend upon numerous factors which are not within the control of Owner or Spanos, such as market conditions and demand, interest rates, competition and other similar factors. Because the California Supreme Court held in Pardue Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the parties' intent to address that issue by acknowledging and providing that Owner shall have the right to develop West Lake and modernize/upgrade Paradise Marina in phases in such order and at such times as Owner deems appropriate within the exercise of its subjective business judgment and in accordance with Chapter 5 of the Master Development Plan and the provisions of this Agreement and that Spanos shall have the right to plan, design and obtain all permits necessary for the future development of The Spanos Property in phases in such order and at such times as Spanos deems appropriate within the exercise of his subjective business judgment in accordance with the provisions of this Agreement. All improvements required pursuant to the Master Development Plan shall be constructed by Owner congruent with the development of each phase of West Lake and Paradise Marina as such improvements relate thereto and are necessary for the development and operation of each such phase.

4.5 Applicable Laws and Standards. Notwithstanding any change in any Existing City Laws including, but not limited to, any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise provided in this Agreement, the laws, regulations, standards and policies applicable to West Lake, Paradise Marina and The Spanos Property are set forth in the Master Development Plan, the Existing City Laws (regardless of future changes in these by City) and this Agreement. Spanos is entitled to plan, design and obtain all permits necessary for the future development of The Spanos Property in accordance with this agreement provided that City may apply and enforce its codes, regulations and laws applicable under this Agreement. West Lake is entitled to be built and occupied and Owner has the right to complete West Lake and Paradise Marina, in accordance with this Agreement, provided that City may apply and enforce its codes, regulations and laws applicable under this
Agreement. The Master Development Plan includes Development Standards, Design Guidelines and Regulations (the “Development Regulations”) which provide for the location, arrangement, development and use of the parcels within West Lake and for the modernization of Paradise Marina. Should the Development Regulations conflict with similar regulations contained in the Existing City Laws, the Development Regulations shall take precedence. When any issue, condition or situation arises or occurs that is not covered or provided for in the Development Regulations, those provisions in the Existing City Laws which are most similar to the issue, condition or situation as determined by the Director, or his designee, shall apply, subject to this Agreement. Notwithstanding any other language or implication to the contrary in this Agreement, all construction shall comply with all provisions of, Chapter 14, Uniform Codes, of the Stockton Municipal Code, including, but not limited to, the Uniform Building Code, and the various related mechanical, electrical, plumbing, and fire codes as the same may be applicable at the time of application for the relevant permit.

4.6 Development Review Process.

(a) This Agreement shall implement the provisions of the Master Development Plan, which provides that in any future application for development or use of any portion of The Project, Owner shall not be required to comply with any criteria for issuance of permits for the development other than those as established in the Master Development Plan and the certified EIR. Development within any portion of The Project may not occur until the Design Review Board for The Project (the “Design Review Board”), City’s Community Development Director (the “Community Development Director”) and City’s Public Works Director (the “Public Works Director”) have made the determinations provided for in Section 8.2 of the Master Development Plan.

(b) Chapter 7 of the Master Development Plan provides the design guidelines applicable to West Lake and Paradise Marina.

(c) The development review process for all Approvals shall be as described in Section 8.2 of the Master Development Plan. This process consists, generally, of review and approval by the Design Review Board and site plan review and approval by the Community Development Director, and infrastructure facility plan review and approval by the Public Works Director.

(d) Once approved by the Design Review Board, consistency with the Master Development Plan of a proposed development project shall be reviewed and approved by the Director, as described in Section 8.2 of the Master Development Plan, which shall be City’s primary discretionary process for determining that the proposed development is consistent with the Master Development Plan, and, if such a finding is made, the application shall be deemed consistent with the City’s General Plan and shall be approved.

(e) Any proposed development project or use shall be consistent with this Agreement.

4.7 Processing and Approvals. Upon submission by Owner and/or Spanos of any and all necessary and required applications for Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall promptly commence and diligently complete all steps necessary to approve or issue the requested Approvals including, but
not limited to, (a) the holding of any and all required public hearings and notice for such public hearings, and (b) the granting of the requested Approval to the extent that it complies with applicable Law and this Agreement. Such Approvals shall include, but not be limited to:

(a) the adoption or amendment of any tentative or final subdivision or parcel maps;
(b) the issuance of Use Permits;
(c) architectural and site plan reviews;
(d) lot line adjustments;
(e) building permits;
(f) site clearance or demolition permits;
(g) grading plans and permits;
(h) landscape plans;
(i) certificates of occupancy, or their equivalent, whether temporary or final.

4.8 Other Governmental Permits. Owner shall apply for such other permits and approvals from governmental or quasi-governmental agencies, other than City, having jurisdiction over The Project as may be required for the development of, or provision of services to, The Project, including but not limited to:

(a) Public utility district permits or service agreements;
(b) Army Corps of Engineers permits;
(c) Reclamation District 2042 permits.

4.9 Additional Fees. Except as provided in Existing City Laws, City may not impose any fees, taxes or assessments, whether through the exercise of the police power or any other means, provided that:

(a) City may charge public facility fees and processing fees for land use approvals, building permits, plan checks and other similar permits and entitlements which are in force and effect on a City-wide or area-wide basis at the time an application is submitted for those permits. The Project and the Spanos Property shall also be subject to any public facility fees which provide a direct benefit to the Project or the Spanos Property.

(b) If state or federal laws are adopted which require cities to impose fees on existing projects and if, consequently, City adopts enabling legislation and imposes fees on existing projects on a City-wide or area-wide basis such fees may be imposed on The Project and the Spanos Property provided such fees are consistent with the fees imposed on other properties within the City or area similarly situated.
(c) If Owner, Owner’s successors or assigns, requests the creation of a community facilities district for the purpose of financing some or all of the public capital facilities and services necessary for the development of The Project, City may adopt a special tax pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (Government Code sections 53311 et seq), sufficient to pay for all of the public facilities and services requested by Owner, Owner’s successors or assigns.

(d) Nothing herein prohibits The Project or The Spanos Property from being subject to a (i) City-wide bond issue, (ii) City-wide special or general tax, or (iii) a special assessment for the construction or maintenance of a City-wide facility provided that such tax, assessment or measure is City-wide in nature, does not discriminate against the land within The Project or the Spanos Property and does not distinguish between developed and undeveloped parcels.

5. Specific Criteria Applicable to Development of The Project.

5.1 Application of New City Laws. Nothing herein shall prevent City from applying to The Project and/or The Spanos Property new City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement, and which do not materially interfere with the development of The Project or the future planning, designing and permitting of The Spanos Property as contemplated herein. Any action or proceeding of City that has any of the following effects on the property within The Project shall be considered to be in conflict with this Agreement and the Existing City Laws:

(a) limiting or reducing the density or intensity of all or any part of The Project, or otherwise requiring any reduction in the square footage or total number of buildings and other improvements, including, but not limited to, the parking spaces;

(b) limiting the Owner’s ability to transfer permitted uses or intensity of uses between sites within The Project in a manner that is inconsistent with or more restrictive than limitations included in the Master Development Plan;

(c) limiting the timing of the development of The Project or the number of phases of The Project in a manner that is inconsistent with or more restrictive than limitations included in the Master Development Plan.

(d) limiting the location of building sites, grading or other improvements within The Project in a manner that is inconsistent with or more restrictive than the limitations included in the Master Development Plan;

5.2 Future Growth Control Ordinances/Policies, Etc.

(a) One of the specific purposes of this Agreement is to assure Owner and Spanos that no growth-control ordinance, measure, policy, regulation or development moratorium of City adopted by the City Council or by vote of the electorate after the Effective Date of this Agreement will apply to The Project or to The Spanos Property, whether enacted by urgency ordinances, interim ordinances, initiatives, referendums or any other change in the laws
of the City by any method or name which would alter in any way City’s General Plan, Zoning Ordinance, Subdivision Ordinance, Uniform Codes or any other ordinance, enactment, resolution, approval, policy, rule, regulation, decision, or other action of City. There are currently no adopted growth control ordinances, policies or measures which would restrict the ability of Owner to complete The Project and/or Spanos’ ability to design, plan and develop The Spanos Property.

Therefore, the parties hereto agree that, except as otherwise expressly provided in Section 5.1 herein, or other provision of this Agreement which unambiguously and expressly authorizes City to make such pertinent changes, no ordinance, policy, rule, regulation, decision, or any other City action, or any initiative or referendum voted on by the public, which would be applicable to The Project and/or The Spanos Property would affect in any way the rate of development and construction of The Project, or limit The Project’s ability to receive any other City service, or limit Spanos’ ability to plan, design and obtain any and all necessary permits required for the development of The Spanos Property, shall be applicable to any portion of The Project or The Spanos Property during the term of this Agreement, whether such action is by ordinance, enactment, resolution, approval, policy, rule, regulation, decision or other action of City or by public initiative or referendum.

(b) City, through the exercise of either its police power or its taxing power, whether by direct City action or initiative or referendum, shall not establish, enact or impose any additional conditions, dedications, fees or other exactions, policies, standards, laws or regulations, which directly relate to the development of The Project or to the planning, permitting and development of the Spanos Property except as provided in Section 5.1 herein or other provision of this Agreement which unambiguously and expressly allows City to make such changes. Further, City shall not approve a Mello-Roos assessment, or other type of district to cause bonded indebtedness on any portion of The Project or The Spanos Property without Owner’s and/or Spanos’ respective prior written approval, which approval may be given or withheld in Owner’s and Spanos’ sole and absolute discretion.

(c) This Agreement shall not be construed to limit the authority of City to charge processing fees for land use approvals and building permits as they relate to plumbing, mechanical, electric or fire code permits, or other similar permits and entitlements which are in force and effect on a city-wide basis at the time those permits are applied for, except to the extent any such processing regulations would be inconsistent with this Agreement.

(d) Notwithstanding subdivision (b), the City may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

1. A failure to so do would place the residents of West Lake or the immediate community, or both, in a condition dangerous to their health or safety, or both.

2. The condition or denial is required in order to comply with state or federal law.
5.3 Allowable Development Densities Within West Lake. Owner shall have the right, subject to the standards specified in this Agreement and the Master Development Plan, to alter the lot size, floor area ratio, setbacks, width and configuration of right of ways and street sections, until such time as the maximum density of West Lake under this Agreement has been achieved and so long as the overall density for West Lake is consistent with the Master Development Plan.

5.4 Use of West Lake. Owner shall have the right to use any portion of West Lake as provided for in Chapter 3 of the Master Development Plan. TABLE 3-1 is intended to describe a wide range of land use options that comply with the criteria established by this Agreement.

5.5 Easements: Improvements, Abandonments. City shall cooperate with Owner in connection with the abandonment of existing utility or other easements and facilities and the relocation thereof, or the creation of any new easements within The Project necessary or appropriate for development of the Project. If any such easement is owned by City or any agency of City, City or such agency shall, at the request of Owner and at Owner’s cost, take such action and execute such documents as may be necessary to abandon existing easements and relocate them, as necessary or appropriate in connection with the development of the Project.

5.6 Subdivision of West Lake. Owner shall have the right, from time to time or at any time, to initiate resubdivisions of all or a portion of West Lake, as may be necessary in order to develop a particular phase, or to sell, lease or finance a portion of West Lake in connection with the development of any phase or portion of West Lake. Owner shall initiate such subdivision through an application under the Existing City Laws. Each such application shall be processed in accordance with the Laws, the Master Development Plan and Existing City Laws. Each tentative subdivision map approved under the Master Development Plan shall have a term of not less than the remaining term of this Agreement as of the date such map is approved by the City.


6.1 Indemnity. Owner shall indemnify, defend and hold City, and its elective and appointive boards, commissions, officers, agents, and employees, harmless from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development of The Project, any Approval with respect thereto, this Agreement, or claims for injury or death to persons, or damage to The Project, as a result of the operations of Owner or its employees, agents, contractors or representatives with respect to the development, operation and maintenance of The Project. Owner shall also pay for all legal fees and costs incurred by City in defense of the above-mentioned claims and causes of action.

6.2 Insurance. Owner shall maintain insurance in order to assure Owner’s ability to provide the indemnity described in Section 6.1. The amount and terms of such insurance shall be as follows:
(a) Commercial general liability and property damage insurance covering the risks of bodily injury and/or death, property damage, and personal injury liability, with total limits of not less than One Million Dollars ($1,000,000.00)

(b) Worker's Compensation Insurance as required by law, together with a contingent employer's liability endorsement in favor of City, covering employees of Owner, employees of any contractor, subcontractor, agent or representative of Owner.

If available, each policy of insurance carried by Owner as required by this Insurance Section, shall provide that it may not be canceled without at least thirty (30) day prior written notice to City. Upon request of City, Owner shall furnish to City a copy of each policy of insurance, or a certificate thereof, stating that such insurance is in full force and effect and, in the case of the public liability insurance, showing City named as an additional insured. Any insurance required to be maintained by Owner may be maintained under a so-called "blanket policy" insuring other parties and other locations, so long as the amount of insurance required hereunder is not thereby diminished.


7.1 Annual Review. City, through the Planning Commission, shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance with the terms of this Agreement and the Master Development Plan pursuant to Government Code Section 65865.1 and Code Section 16-192.

7.2 Owner's Submission. Within thirty (30) days of Owner's and/or Spanos' receipt of the written request of the Planning Commission made not more than once each year at least sixty (60) days prior to the anniversary date of this Agreement, Owner and/or Spanos shall submit to the Planning Commission a letter setting forth Owner's and/or Spanos' good faith compliance with the terms and conditions of this Agreement. Such letter shall be accompanied by such documents and other information as may be reasonably necessary and available to Owner and/or Spanos to enable the Planning Commission to undertake the review of Owner's and/or Spanos' good faith compliance with the terms of this Agreement, and shall also state that such letter is submitted to City pursuant to the requirements of Government Code Section 65865.1 and Code Section 16-192.

7.3 Finding of Compliance. The Planning Commission shall review the Owner's and/or Spanos' submission to ascertain whether it contains sufficient information to determine whether Owner and/or Spanos has complied in good faith with the terms of this Agreement. Upon receipt of the submission, the Planning Commission shall conduct a review of the good faith compliance by Owner and/or Spanos with the terms of this Agreement. If the Planning Commission finds good faith compliance by Owner and/or Spanos with the terms of this Agreement, the Director shall, upon request by Owner and/or Spanos, provide to Owner and/or Spanos written confirmation of such finding.

7.4 Finding of Noncompliance. If the Planning Commission, on the basis of substantial evidence, finds that Owner and/or Spanos has not complied in good faith with the terms of this Agreement, the Planning Commission shall specify in writing to Owner and/or Spanos the respects in which Owner and/or Spanos has failed to comply and the Planning
Commission may recommend that the City Council hold a public hearing and terminate or modify the Agreement. The City Council may (a) establish a reasonable time for Owner and/or Spanos to comply with this Agreement, which time shall not be less than thirty (30) days and shall be reasonably related to the time necessary for Owner and/or Spanos to adequately bring its performance into good faith compliance with the terms of this Agreement, or (b) may take action to terminate or modify this Agreement. No action to terminate or modify this Agreement shall be taken without a public hearing before the City Council using the same process as was used for its adoption.

8. **Permitted Delays; Supersede by Subsequent Laws.**

8.1 **Permitted Delays.** In addition to any specific provisions of this Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties, restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations), litigation, acts or neglect of the other party, or any other cause beyond the reasonable control of a party. Each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained.

8.2 **Supersede by Subsequent Laws.** Except as provided in this Agreement with respect to City Laws, if any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Owner's and/or Spanos reasonable business judgment, then Owner and/or Spanos shall have the right to terminate this Agreement by written notice to City. Owner and/or Spanos shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

9. **Events of Default, Remedies, Termination; Attorneys' Fees.**

9.1 **Events of Default.** Subject to any extensions of time by mutual consent in writing, and subject to the provisions of this Agreement regarding periodic reviews, or permitted delays, any failure by any party to perform any material term or provision of this Agreement shall constitute an Event of Default, (i) if such defaulting party does not cure such failure within sixty (60) days following notice of default from any other party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting party does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

9.2 **Remedies.** Upon the occurrence of an Event of Default, any non-defaulting party may bring an action or proceeding in the nature of declaratory relief, specific performance,
injunctive relief or mandamus, and such non-defaulting party shall have the right to terminate this Agreement pursuant to Government Code Section 65868. The remedies provided herein are exclusive and in no event shall any party be liable to any other for monetary damages for an event of default or any other breach of this Agreement.

9.3 Waiver, Remedies Cumulative. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by any other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party’s right to demand strict compliance by such other party in the future. No waiver by a party of an Event of Default shall be effective or binding upon such party unless made in writing by such party and no such waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time, other than any Event of Default and/or period of time specified in such express waiver. The exclusive remedies provided in this Agreement shall be cumulative and not alternative, and invocation of any permitted remedy shall not constitute a waiver or election with respect to any other permitted remedy.

9.4 Effect of Termination. If this Agreement is terminated on account of an Event of Default, such termination shall not affect any right or duty emanating from any Exactions already satisfied, City entitlements or Approvals with respect to West Lake, Paradise Marina and/or The Spanos Property that have been approved concurrently or subsequently to the approval of this Agreement, but the rights, duties and obligations of the parties hereunder shall otherwise cease as of the date of such termination.

9.5 Limitations on Actions. City, Owner and Spanos hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any person or entity third party beneficiary status. If any action or proceeding is instituted by any third party challenging the validity of any provision of this Agreement, or any action or decision taken or made hereunder, the parties shall cooperate in defending such action or proceeding. Owner and/or Spanos shall bear their 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 any such action or other proceeding and for any attorneys’ fees and costs awarded to a party to be paid by City.

9.6 Effect of Court Action. If any court action or proceeding is brought by any third party to challenge any Approval, this Agreement, or any other permit or approval required from City or any other governmental entity for development or construction of The Project the future design, permitting and development of The Spanos Property or any portion thereof, and without regard to whether or not Owner and/or Spanos is a party to or the real party in interest in such action or proceeding, then Owner and/or Spanos shall have the right, but not the obligation, (i) to defend, at Owner’s and/or Spanos expense, such action or proceeding on behalf of City and City shall fully cooperate with Owner in such defense; or (ii) to terminate this Agreement upon thirty (30) days notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination. Any such action or proceeding shall constitute a permitted delay under the provisions of this Agreement.
9.7 **Estoppel Certificate.** Any party may, at any time, and from time to time, deliver written notice to any other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) 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. The Director shall have the right to execute on behalf of City any certificate requested by Owner and/or Spanos hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees acting in good faith.

10. **Mortgagee Protection: Certain Rights of Cure.**

10.1 **Mortgagee Protection.** This Agreement shall be superior and senior to any lien placed upon The Project and/or The Spanos Property, or any portion thereof, including the lien of any 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 of the terms and conditions contained in this Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to The Project and/or The Spanos Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

10.2 **Mortgagee Not Obligated.** Notwithstanding the provisions of this Agreement, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote The Project and/or The Spanos Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement, the Master Development Plan or otherwise under City Laws.

10.3 **Notice of Default to Mortgagee, Right of Mortgagee to Cure.** If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner and/or Spanos hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner and/or Spanos, any notice of an Event of Default or determination of noncompliance given to Owner and/or Spanos. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice. If the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Event of Default or noncompliance within ninety (90) days after obtaining possession. If any such Event of Default or noncompliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Event of Default or noncompliance if such Mortgagee commences cure during such ninety (90) day period, and thereafter diligently pursues completion of such cure to the extent possible.
11. Assignment. Owner's and/or Spanos' rights hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of all or any portion of The Project or The Spanos Property at any time during the term of this Agreement upon the following terms and conditions:

11.1 Release Upon Transfer. Upon the sale, transfer or assignment of Owner's and/or Spanos' rights and interests under this Section of this Agreement, Owner and/or Spanos shall be released from its obligations pursuant to this Agreement with respect to The Project and/or The Spanos Property or portion thereof so transferred provided such obligations are expressly assumed by the Transferee prior to the transfer and evidence is provided to the Director showing Transferee can perform Owner's and/or Spanos' obligations.

11.2 Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall constitute covenants that shall run with the land comprising The Project and/or The Spanos Property and the burdens and benefits shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors (by merger, consolidation, or otherwise), assignees, devisees, administrators, representatives, purchasers and lessees.

12. Amendment and Termination.

12.1 Amendment or Cancellation. Except as provided for herein with respect to City's annual review, this Agreement may be canceled, modified or amended only by mutual consent of the parties in writing, and then only in the manner provided for in government Code Section 65868 and Code Section 16-193. Pursuant to Code Section 16-193.C., any amendment to this Agreement which does not relate to the Term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservation and dedication of land, shall not require a noticed public hearing before the parties may make such amendment. Any fees paid or land dedicated pursuant to this Agreement prior to the date of cancellation shall be retained by City.

12.2 Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation with any costs of recordation to be paid by Owner and/or Spanos. Failure to record shall not affect the validity of any amendment, termination or cancellation.


13.1 Procedure. Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending the same by facsimile transmission or registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the party's mailing address. The respective mailing addresses and facsimile numbers of the parties are, until changed as hereinafter provided, the following:

CITY:

CITY OF STOCKTON
425 North El Dorado
Stockton, California 95202
Attention: City Manager
Facsimile No.: (209) 937-7149

with a copy to:
City Attorney, City of Stockton
425 North El Dorado
Stockton, California 95202
Facsimile No.: (209) 937-8898

OWNER:
THE SPANOS FAMILY PARTNERSHIP
10100 Trinity Parkway, 5th Floor
Stockton, California 95219
Attention: Jerry Murphy
Facsimile No.: (209) 473-3703

with a copy to:
Gerald A. Sperry
Of-Counsel
10100 Trinity Parkway, 5th Floor
Stockton, California 95219
Facsimile No.: (209) 955-2562

SPANOS:
A. G. SPANOS, as Trustee of the Alex and
Faye Spanos Trust
10100 Trinity Parkway, 5th Floor
Stockton, CA 95219
Attn: Michael A. Spanos
Facsimile No: (209) 473-3703

Any party may change its mailing address and/or facsimile number at any time by giving written
notice of such change to the other parties in the manner provided herein at least ten (10) days
prior to the date such change is effected. All notices under this Agreement shall be deemed
given, received, made or communicated on the date personal delivery is effected or, if mailed
upon the expiration of five (5) days after the date of mailing, or, if sent by facsimile
transmission, on the date of receipt as shown on written transmission verification.


14.1 Negation of Partnership. The parties specifically acknowledge that The Project
and The Spanos Property are private developments, that no party is acting as the agent of any
other party in any respect hereunder, and that each party is an independent contracting entity
with respect to the terms, covenants and conditions contained in this Agreement. None of the
terms or provisions of this Agreement shall be deemed to create a partnership between or among
the parties in the business of Owner and/or Spanos, the affairs of City, or otherwise, nor shall it
cause them to be considered joint venturers or members of any joint enterprise.
14.2 Consent(s). Unless otherwise herein provided, whenever consent or satisfaction (collectively referred to in this Section 14.2 as "consent") is required of a party pursuant to this Agreement, such consent shall not be unreasonably withheld. Consent shall be deemed given if the party from whom the consent is sought neither approves or disapproves of the request within thirty (30) days, or such other applicable time period specified in this Agreement, after receipt of the written request for consent. If a party shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. Consent by a party to or of any act or request by the other party shall not be deemed to waive or render unnecessary consent to or of any similar or subsequent acts or requests.

14.3 Project Approvals Independent. All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by City with respect to The Project and/or The Spanos Property constitute independent actions and approvals by City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals. In such cases, such Approvals will remain in effect pursuant to their own terms, provisions and conditions.

14.4 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of West Lake, Paradise Marina, The Spanos Property or any portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever. Owner shall have the right to prevent or prohibit the use of West Lake, Paradise Marina, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose inimical to the operation of a private, integrated development project as contemplated by this Agreement except for those areas designated in the Master Development Plan or implementing project approvals as public easements.

14.5 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.6 Exhibits. The Exhibits listed in the Table of Contents and referred to herein are deemed incorporated into this Agreement in their entirety.

14.7 Entire Agreement. This written Agreement and the Exhibits contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

14.8 Construction of Agreement. The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purpose of the parties. The captions preceding the text of each Section, Subsection and the Table of Contents are included only for convenience.
of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to “person” shall include, without limitation, any and all corporations, partnerships or other legal entities. This Agreement has been reviewed and revised by legal counsel for Owner, Spanos and City, and any presumption or rule that ambiguities shall be construed against the drafting party shall not apply to the interpretation or enforcement of this Agreement.

14.9 Further Assurances; Covenant to Sign Documents. Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

14.10 Governing Law. This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of California.

14.11 Time. Time is of the essence of this Agreement and of each and every term and condition hereof.

14.12 Dispute Costs and Fees. In any legal action or proceeding brought to enforce or interpret any provision of this Agreement, or otherwise arising from or related to this Agreement, the prevailing party shall be entitled to an award of its attorneys’, investigators’, expert witness’ and consultants’ fees and costs incurred in relation to that action or proceeding, in addition to any other relief awarded.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY:

CITY OF STOCKTON, a municipal corporation of the State of California

Attest:
By: ________________________________
Katherine Gong Meissner
City Clerk

By: ________________________________
City Manager

Approved as to Form:
Office of the City Attorney

By: ________________________________
Guy D. Petzold
Deputy City Attorney
<table>
<thead>
<tr>
<th>OWNER:</th>
<th>SPANOS: A.G. Spanos as Trustee for the Alex and Faye trust under an agreement dated January 27, 1998</th>
</tr>
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<tbody>
<tr>
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<td>By_________________________________________</td>
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EXHIBIT “A”

Legal description of The Project

All that certain Real Property, situate in Sections 2 and 3, Township 2 North, Range 5 East, Mount Diablo Meridian, County of San Joaquin, State of California, more particularly described as follows:

Beginning at the Northwest corner of Lot 1, TRACT NO. 3103, SPANOS PARK WEST, UNIT NO. 1, filed for record June 28, 2001, in Book 36 of Maps and Plats, at Page 22, San Joaquin County Records;

The following four (4) courses are coincident with the boundary of said TRACT NO. 3103, SPANOS PARK WEST, UNIT NO. 1
Thence S 02° 54' 08" W, 1559.40 feet;
Thence S 19° 03' 52" E, 159.30 feet;
Thence S 89° 17' 52" E, 1127.60 feet;
Thence S 10° 37' 52" E, 3132.80 feet;

Thence N 59° 56' 26" W, 249.40 feet;
Thence N 70° 15' 26" W, 136.95 feet;
Thence N 85° 25' 26" W, 329.37 feet;
Thence S 88° 51' 34" W, 1514.22 feet;
Thence N 84° 28' 26" W, 168.34 feet;
Thence N 73° 01' 26" W, 597.77 feet;
Thence N 73° 42' 26" W, 604.77 feet;
Thence N 74° 29' 26" W, 518.30 feet;
Thence N 75° 09' 26" W, 737.72 feet;
Thence N 81° 34' 26" W, 246.90 feet;
Thence N 88° 01' 26" W, 211.92 feet;
Thence S 81° 56' 34" W, 199.92 feet;
Thence S 54° 11' 34" W, 120.45 feet;
Thence S 36° 48' 34" W, 122.45 feet;
Thence S 11° 24' 34" W, 109.56 feet;
Thence S 05° 20' 26" E, 126.95 feet;
Thence S 18° 00' 26" E, 107.96 feet;
Thence S 01° 52' 34" W, 131.95 feet;
Thence S 26° 20' 34" W, 154.44 feet;
Thence S 60° 22' 34" W, 181.93 feet;
Thence S 64° 31' 34" W, 293.89 feet;
Thence S 62° 51' 34" W, 252.90 feet;
Thence S 39° 33' 34" W, 141.95 feet;
Thence S 65° 59' 34" W, 96.96 feet;
Thence S 77° 11' 34" W, 198.92 feet;
Thence S 67° 59' 34" W, 122.95 feet;
Thence S 83° 18' 34" W, 98.96 feet;
Thence N 83° 27' 26" W, 111.96 feet;
Thence N 69° 30' 26" W, 115.96 feet;
Thence N 43° 56' 26" W, 318.88 feet;
Thence N 67° 03' 26" W, 171.93 feet;
Thence S 85° 20' 34" W, 159.94 feet;
Thence S 60° 28' 34" W, 209.92 feet;
Thence S 71° 07' 34" W, 85.97 feet;
Thence N 77° 22' 26" W, 92.96 feet;
Thence N 61° 59' 26" W, 158.94 feet;
Thence N 84° 42' 26" W, 117.95 feet;
Thence S 74° 44' 34" W, 104.46 feet;
Thence S 47° 11' 34" W, 107.46 feet;
Thence S 25° 22' 34" W, 233.91 feet;
Thence N 69° 41' 26" W, 166.94 feet;
Thence N 43° 45' 26" W, 202.92 feet;
Thence N 71° 41' 26" W, 196.42 feet;
Thence N 87° 50' 26" W, 159.94 feet;
Thence N 70° 14' 26" W, 155.94 feet;
Thence N 09° 08' 34" E, 36.99 feet;
Thence S 89° 09' 26" E, 285.89 feet;
Thence N 05° 12' 34" E, 589.77 feet;
Thence N 05° 34' 34" E, 999.61 feet;
Thence N 04° 04' 34" E, 721.22 feet;
Thence N 75° 26' 34" E, 3589.32 feet;
Thence N 25° 44' 26" W, 170.49 feet;
Thence N 14° 31' 26" W, 145.49 feet;
Thence N 12° 02' 34" E, 81.50 feet;
Thence N 11° 02' 26" W, 175.99 feet;
Thence N 16° 51' 26" W, 124.49 feet;
Thence N 02° 09' 26" W, 766.46 feet;
Thence N 10° 02' 34" E, 166.99 feet;
Thence N 31° 10' 34" E, 165.68 feet;
Thence on a non-tangent curve to the right having a radius of 6942.19 feet, through a central angle of 01° 08' 27", an arc distance of 138.23 feet; whose chord bears N 85° 53' 32" W, 138.21 feet; said curve being a concentric curve with the centerline of 8 Mile Road, 67.00' Southerly of said centerline, also being the proposed Southerly Right-of-Way, of said 8 Mile Road;
Thence N 85° 19' 58" W, 14.18 feet, also being the proposed Southerly Right-of-Way, of said 8 Mile Road;
Thence N 75° 07' 01" W, 152.41 feet, being the taper of the proposed Southerly Right-of-Way, of said 8 Mile Road, to intersect the existing Southerly Right-of-Way, of said 8 Mile Road;
Thence N 02° 20' 26" W, 80.60 feet, to intersect the existing Northerly Right-of-Way, of said 8 Mile Road;
Thence N 84° 28' 23" E, 152.41 feet, being the taper of the proposed Northerly Right-of-Way, of said 8 Mile Road, to the Northerly Right-of-Way, of said 8 Mile Road, said proposed Right-of-Way being 67.00' Northerly of the existing centerline of said 8 mile Road;

The following five (5) courses are coincident with the proposed Northern Right-of-Way of 8 Mile Road, said proposed Right-of-Way being 67.00' Northerly of the existing centerline of said 8 Mile Road:

Thence S 84° 28' 23" E, 24.03 feet;
Thence on a non-tangent curve to the left having a radius of 6808.19 feet, through a central angle of 01° 03' 37", an arc distance of 125.99 feet; whose chord bears S 85° 51' 07" E, 125.97 feet;
Thence continuing on a curve to the left having a radius of 6808.19 feet, through a central angle of 03° 08' 43", an arc distance of 373.74 feet; whose chord bears S 87° 57' 17" E, 373.74 feet;
Thence S 89° 31' 39" E, 2046.28 feet;
Thence S 89° 32' 31" E, 1287.18 feet;
Thence S 02° 54' 08" E, 106.84 feet; to the Point of Beginning,

Containing 693.09 acres, more or less.

End of Description

The Basis of Bearing for this property description is the West line of said Lot 1, taken as S 02° 54' 08" W, as shown on said TRACT NO. 3103, SPANOS PARK WEST, UNIT NO. 1.

David E. Kraetli P.L.S. 6008
Expires 03/31/05

LICENSED LAND SURVEYOR
STATE OF CALIFORNIA

3of3
EXHIBIT “B”

Legal Description of The Spanos Property

Parcels 1, 2, and 3 as per Parcel Map filed June 25, 1991 in Volume 17 of Parcel Maps, page 171, San Joaquin County Records.
EXHIBIT “C”

City Council Findings and Determinations

A. The provisions of the Development Agreement are consistent with the General and specific plans for this area;
B. The proposed development complies with the requirements of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.
C. This Agreement is appropriate for the development of West Lake and the modernization of the Paradise Point Marina;
D. This Agreement is appropriate to ensure the proper future planning, permitting and development of The Sparos Property;
E. This Agreement will eliminate uncertainty in City's land use planning and secure orderly development of The Project and Paradise Point Marina;
F. City’s existing waste water conveyance system is adjacent to, has adequate capacity for, and will service West Lake and Paradise Point Marina;
G. City’s Regional Waste Water Treatment Facility has adequate capacity to process and will process all wastewater generated by West Lake and Paradise Point Marina;
H. City has adequate potable water and potable water reserves to service West Lake and Paradise Point Marina for twenty (20) years;
I. Owner is responsible for and will construct all on-site and off-site improvements, structures, roads, sewer and water facilities required to service West Lake and Paradise Point Marina; and
J. This Agreement will achieve the goals and purposes for which the Development Code (Chapter 16 of the Stockton Municipal Code) was enacted by City.
RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND A SUBDIVISION AGREEMENT AND ACCEPTING ON BEHALF OF THE PUBLIC ALL OFFERS OF DEDICATION AND AUTHORIZING RECORDATION OF THE MAP FOR WESTLAKE VILLAGES, UNIT NO.1, TRACT NO. 3357

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. On January 31, 2006, the City Council authorized the City Manager to execute the subdivision agreement and to authorize recordation of the map for Westlake Villages, Unit No. 1 (Large Lot Map) – Tract no. 3357 (TM18-04B).

2. The Applicant has requested to amend Section 3 of the subdivision agreement to reflect realistic development expectations.

3. The City Manager is hereby authorized to amend Section 3 of the Subdivision Agreement for Westlake Villages, Unit 1. Tract No. 3357 as follows:

   At least seventy-two (72) hours prior to the commencement of any work hereunder, Subdivider shall notify City Engineer in writing of the date fixed by Subdivider for commencement thereof, so that City Engineer shall be able to provide services of inspection.

   Subdivider will complete, or cause to be completed, prior to the expiration of the West Lake At Spanos Park West Development Agreement, recorded October 24, 2004, by and between the City of Stockton, a municipal corporation of the State of California, the Spanos Family Partnership, a California General Partnership, and A.G. Spanos Trustee of the Alex and Faye Spanos Trust U/T/A dated January 27, 1998, all improvements in accordance with the plans and specifications on file as hereinbefore specified, including any changes required or ordered by the said Engineer.

   The work shall be performed in a safe and good work-like manner, and enough workers to quickly and adequately perform the work in accordance with the normal construction standards for similar jobs shall be employed and used. All work must comply with State of California, Division of Industrial Safety Construction Orders.

   Except during an emergency, as determined by the City Engineer, all work shall be performed between the hours of 7:00 a.m. and 9:00 p.m.

City Atty:  
Review:  
Date:  June 23, 2010  

Any contractor not performing as required by the this agreement may, at the
discretion of the City Engineer, be barred from doing any work within the City of
Stockton on any subdivision or any public works project for a maximum period of
two (2) years.

City may require Subdivider to furnish a licensed Soils Engineer to test and
certify that all cuts, fills and trench backfill conform to the requirements of the
City and State codes.

4. All other provisions shall remain in full force and effect.

PASSED, APPROVED AND ADOPTED ____________________________

ANN JOHNSTON
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton