

CAH X
Binder

RECORDING REQUESTED BY:
AND
AFTER RECORDING RETURN TO:

PLACER, County Recorder
JIM MCCAULEY Co Recorder Office

City Clerk
City of Roseville
311 Vernon Street, #208
Roseville, CA 95678

DOC - 99-0066275
Monday, JUL 26, 1999 10:20:06
NOC \$0.00!!
Ttl Pd \$0.00

Nbr-0000213263
REC/R2/1-10

RECEIVED

SEP 27 1999

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY CITY ATTORNEY

**THIRD AMENDMENT TO DEVELOPMENT AGREEMENT
(NWRSP - Elliott Homes)**

This Third Amendment to Development Agreement ("Amendment") is entered into this 20th day of July, 1999, by and between ELLIOTT HOMES, INC., an Arizona corporation ("Landowner"), and THE CITY OF ROSEVILLE, a municipal corporation ("City"), pursuant to the authority of Sections 65864 through 65869.5 of the Government Code.

RECITALS

1. Development Agreement. Landowner and City have previously entered into that certain "Development Agreement By and Between the City of Roseville and Elliott Homes, Inc., Relative to the Northwest Roseville Specific Plan," dated October 6, 1989, and recorded October 11, 1989 in the Official Records of Placer County in Book 3732, Page 528, Series No. 56568, as amended between the parties by that certain First Amendment to Development Agreement (NWRSP - Elliott Homes), dated December 6, 1994 (the "First Amendment"), and recorded December 8, 1994 in the Official Records of Placer County, Series No. 94-084519, as further amended between the parties by that certain Second Amendment to Development Agreement (NWRSP - Elliott Homes - Silverado Oaks Units 8, 9 & 10 and Parcel 55), dated Dec. 6, 1996 (the "Second Amendment"), and recorded Dec. 13, 1996 in the Official Records of Placer County, Series No. 96-0073611-00 (collectively, the "Development Agreement"). The Development Agreement, as amended, addresses the terms and conditions for development of certain property described therein as the "subject property" and located within the Northwest Roseville Specific Plan. For the purposes of this Amendment, all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Development Agreement.

2. Silverado Oaks Unit 8. Landowner is seeking to amend its prior approval of the proposed land uses for the portion of the subject property formerly identified as Parcels 69, 70 and 73A-3 ("SO8") of the Specific Plan, to increase the number of approved units therefor by three (3) units. For purposes of this Amendment, the City approvals related to such amended development of SO8, as more particularly described in Recital 6 below, are referred to collectively herein as the "Unit 8 Approvals."

3. Hearings. On February 25, 1999, the City Planning Commission considered the Unit 8 Approvals in duly noticed public hearings, which consideration included the proposed adoption of this Amendment.

4. Environmental Compliance. The Unit 8 Approvals, including this Amendment, are substantially in compliance with the prior development approvals for the subject property and, therefore, the City has determined that the Unit 8 Approvals are exempt from further environmental review pursuant to Section 15182 of the CEQA Guidelines.

5. Entitlements. Following due review and consideration thereof, the City Council approved the following Unit 8 Approvals to permit development of SO8 as herein described:

a. NWRSP Amendment, as adopted by Resolution No. 99-110, dated April 7, 1999; and

b. This Amendment to the Development Agreement pursuant to Ordinance No. 3341, dated April 21, 1999 (the "Amending Ordinance").

6. Use of Reserved Density. Pursuant to Section 3 of the Second Amendment, the City acknowledged that 75 unused units were retained by Landowner for the purpose of potentially relocating and developing such unused units within the Northwest Roseville Specific Plan Area. Three (3) of Landowner's retained units were used to increase the number of approved units for SO8 as part of the Unit 8 Approvals, reducing Landowner's outstanding retained units to seventy-two (72). Landowner and City desire to acknowledge such reduction and to provide that the use and reversion of such units shall be in accordance with Section 3 of the "Amendments" section to the agreement.

7. Park Mitigation. In consideration of Landowner's dedication of parklands and construction of park improvements pursuant to the Development Agreement, Landowner shall receive a full credit against the neighborhood park fee and a partial credit against the city-wide park fee, currently in the amount of \$1,416.68 per unit, for each unit within SO8, including the three (3) units transferred thereto. Prior to such transfer to SO8, 27 of the 75 reserved units were

entitled to the full neighborhood park fee credit; accordingly, as a result of the transfer of three (3) of such units, the number of the remaining 72 reserved units entitled to the full neighborhood park fee credit shall be reduced to twenty-four (24), and the remaining reserved units (48) shall not be eligible for such neighborhood park fee credit. All of the remaining reserved units shall be eligible for the partial credit against the city-wide park fee referenced above and in the Development Agreement.

8. General and Specific Plans. Development of SO8 in accordance with the conditions of the Unit 8 Approvals, the mitigation measures, and the terms of the Development Agreement, as amended hereby, will provide for orderly growth and development of SO8 in accordance with the policies set forth in the General Plan and the NWRSP.

9. Development Agreement Ordinance. City and Landowner have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Ordinance of the City of Roseville, Article V, Chapter 19.84 of Ordinance 3014, in connection with the adoption and execution of this Amendment.

10. Plan Consistency. Having duly examined and considered this Amendment and having held properly noticed public hearings hereon, the City finds and declares that this Amendment is consistent with the General Plan of the City of Roseville and with the NWRSP, as amended in connection herewith.

AMENDMENT

NOW, THEREFORE, the City and Landowner, in consideration of the above recitals and the promises and covenants set forth herein, hereby agree to amend the Development Agreement as follows:

1. Revised Exhibits. Tables A and A-1 to the Development Agreement, which summarize the land use entitlements, acreages and units granted for the parcels comprising the subject property, shall be deemed amended hereby for the Parcels comprising SO8 in accordance with the changes for such Parcels reflected by the Unit 8 Approvals. Also, Exhibit "B," the Schematic Development Plan for the subject property, as revised by the prior Amendments, shall be deemed revised and supplemented for the Parcels comprising SO8 to conform to such change in the number of units.

2. Revised Land Uses. In Section 2(A) of the Development Agreement, the reference therein to the total number of dwelling units and the number of low-density residential units for the subject property is hereby increased to 2,693 and 2,290, respectively.

3. Outstanding Unused Units. Based on the use of three (3) retained units within SO8, City hereby acknowledges that the number of underutilized units retained by Landowner for potential relocation and development within the Plan Area pursuant to and in accordance with Section 2(B) of the Development Agreement is now 72 retained units. Landowner acknowledges that the use of the three (3) retained units in SO8, which will receive the full neighborhood park fee credit, shall be applied to reduce the number of retained units entitled to such credit to twenty-four (24) retained units. As, if and when the use of any additional retained units is approved, unless otherwise designated by Landowner, such units shall be deemed to be intended to receive the full neighborhood park fee credit, until the number of retained units entitled to such credit is exhausted.

Subsequent approval(s) of Landowner's use of any of the outstanding retained units shall be made in accordance with the provisions of Section 2(B), as modified hereby. Any application for the use of such retained units shall be made in connection with an application for a tentative subdivision map, or design review permit or other discretionary entitlement (such as a General Plan Amendment, Specific Plan Amendment, Rezone, etc.) for the receiving parcel. Any such proposed use of the retained units shall require approval by the City, in the City's sole and absolute discretion, and City may waive the requirement for a General Plan Amendment and/or Specific Plan Amendment as specified in Section 2(B) for the receiving parcel. The City may also waive the requirement for a Development Agreement Amendment. The required approval shall be subject to appropriate environmental review. If an amendment to this Agreement is not deemed to be required, City and Landowner shall execute a memorandum or other such instrument memorializing the approval of such retained units with reference to this Agreement.

All outstanding retained units not otherwise utilized within two (2) years from the date of execution of this agreement shall immediately revert to the City's unit pool and Landowner shall have no subsequent claim to such units. Provided, however, if an application(s) for a General Plan Amendment, Specific Plan Amendment, Rezone, Tentative Map, and/or Design Review Permit for utilization of the outstanding retained units has been accepted as complete by the City prior to the end of the two (2) year period from the date of execution of this agreement, that portion of the outstanding retained units included in such application(s) shall not immediately revert to the City. In such case, any units not approved for use by the City as a part of the action on said application(s) shall revert to the City's unit pool at the time the City takes final action on such application(s).

4. Consistency with General Plan. The City hereby finds and determines that execution of this Amendment is in the best interest of the public health, safety and general welfare and is consistent with the General Plan.

5. Amendment. This Amendment amends, but does not replace or supersede, the Development Agreement except as specified herein. As amended hereby, the Development Agreement remains in full force and effect.

6. Form of Amendment. This Amendment is executed in two duplicated originals, each of which is deemed to be an original.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Amendment in duplicate by its City Manager and the attestation to this Amendment by its City Clerk under the authority of Ordinance No. 3341, adopted by the Council of the City of Roseville on the 21st day of April, 1999, and Landowner has caused this Amendment to be executed.

CITY:

**CITY OF ROSEVILLE, a
municipal corporation**

By: 

Allen E. Johnson, City Manager

ATTEST:



Carolyn Parkinson, City Clerk

APPROVED AS TO FORM:


Mark Doane, City Attorney

LANDOWNER:

**ELLIOTT HOMES, INC., an Arizona
corporation**

By: 

Name: HARRY C. ELLIOTT, JR.

Its: PRESIDENT

By: 

Name: Stephen Hemington

Its: V. P.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of SACRAMENTO

On JUNE 25, 1999 before me, SHERI HASSELL, NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared HARRY C. ELLIOTT, III
Name(s) of Signer(s)

personally known to me – OR – ~~I 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.



WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT FOR
Title or Type of Document: NORTHWEST ROSEVILLE SPECIFIC PLAN.

Document Date: 6/25/99 Number of Pages: 5

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: HARRY C. ELLIOTT, III

- Individual
- Corporate Officer
Title(s): PRESIDENT
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:

ELLIOTT HOMES, INC.
AN ARIZONA CORPORATION

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

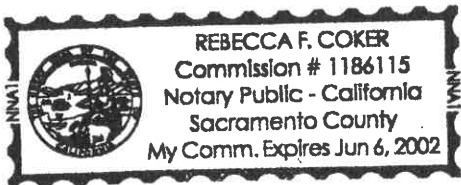
State of CALIFORNIA

County of SACRAMENTO

On JULY 14, 1999 before me, REBECCA COKER, NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared STEPHEN J. HEMINGTON
Name(s) of Signer(s)

personally known to me - OR - I proved to me on the basis of satisfactory evidence to be the person whose name is 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, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal.

Rebecca F. Coker
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT FOR
Title or Type of Document: NORTHWEST ROSEVILLE SPECIFIC PLAN

Document Date: 6/25/99 Number of Pages: 5

Signer(s) Other Than Named Above: HARRY C. ELLIOTT, III

Capacity(ies) Claimed by Signer(s)

Signer's Name: STEPHEN J. HEMINGTON

- Individual
- Corporate Officer
Title(s): VICE PRESIDENT
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:
ELLIOTT HOMES, INC.
AN ARIZONA CORPORATION

Signer's Name: HARRY C. ELLIOTT, III

- Individual
- Corporate Officer
Title(s): PRESIDENT
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:
ELLIOTT HOMES, INC.
AN ARIZONA CORPORATION

STATE OF CALIFORNIA)
)
COUNTY OF PLACER) ss.

On this 20 day of July in the year of 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared Allen E. Johnson personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose names 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.

WITNESS my hand and official seal.

Carolyn Parkinson
Notary Public in and for said State



THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AS FOLLOWS:

Title or Type of Document Third Amendment to Development Agmt.
Date of Document 7.19.99

ORDINANCE NO. 3341

ORDINANCE OF THE COUNCIL OF THE CITY OF ROSEVILLE
ADOPTING AN AMENDMENT TO DEVELOPMENT AGREEMENT REGARDING
NORTHWEST ROSEVILLE SPECIFIC PLAN, PARCEL 69 (SILVERADO OAKS UNIT 8),
AND AUTHORIZING THE CITY MANAGER TO
EXECUTE IT ON BEHALF OF THE CITY OF ROSEVILLE

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1. In accordance with Chapter 19.84 of Title 19 of the Roseville Municipal Code (the Zoning Ordinance) of the City of Roseville, the City Council has received the recommendation of the Planning Commission that the City of Roseville enter into an Amendment to Development Agreement with Elliott Homes, Inc., to alter and clarify provisions in the existing Development Agreement.

SECTION 2. The Council of the City of Roseville has reviewed the findings of the Planning Commission recommending approval of the Amendment to Development Agreement, and makes the following findings:

1. The Amendment to Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the City of Roseville General Plan and the Northwest Roseville Specific Plan;
2. The Amendment to Development Agreement is consistent with the City of Roseville Zoning Ordinance and Zoning Map;
3. The Amendment to Development Agreement is in conformance with the public healthy, safety and welfare;
4. The Amendment to Development Agreement will not adversely affect the orderly development of the property or the preservation of property values; and
5. The Amendment to Development Agreement will provide sufficient benefit to the City to justify entering into said Agreement;

SECTION 3. The Amendment to Development Agreement by and between Elliot Homes, Inc. and the City of Roseville, a copy of which is on file in the City Clerk's Department and incorporated herein by reference, is hereby approved and the City Manager is authorized to execute it on behalf of the City of Roseville.

SECTION 4. The City Clerk is directed to record the executed Amendment Development Agreement within ten (10) days of the execution of the agreement by the City Manager with the County Recorder's office of the County of Placer.

SECTION 5. This ordinance shall be effective at the expiration of thirty (30) days from the date of its adoption.

SECTION 6. The City Clerk is hereby directed to cause this ordinance to be published in full at least once within fourteen (14) days after it is adopted in a newspaper of general circulation in the City, or shall within fourteen (14) days after its adoption cause this ordinance to be posted in full in at least three public places in the City and enter in the Ordinance Book a certificate stating the time and place of said publication by posting.

PASSED AND ADOPTED by the Council of the City of Roseville this 21st day of April, 1999, by the following vote on roll call:

AYES COUNCILMEMBERS: Earl Rush, Dan Goodhall, Randolph Graham, Claudia Gamar

NOES COUNCILMEMBERS: None

ABSENT COUNCILMEMBERS: Harry Crabb


MAYOR PRO TEMPORE

ATTEST:


ASSISTANT City Clerk

The foregoing instrument is a correct copy of the original on file in this office.

ATTEST:
City Clerk of the City of Roseville, California

DEPUTY CLERK