DA 1.04
MOP 1.04
GPA 3.04
SPA 3.04
TM 18.04
@ A.04.03
Z. 4.04
ACCESS DATA ENTRY FORM

Planner D STADNARD Review (Initial) DS Sen Planner Deputy Director

(For office use only)

Date Filed 10-28-03 Fee $5,000 ALUC Fee DFG Fee
Related Case(s) MP1-04 TM19-04 GPA 3-04 Use Code(s) (see reverse side for code list)
Overlay District(s) A-04-03 SPA3-04 Z-4-04

PROPERTY OWNER SPANO FAMILY PARTNERSHIP

APPLICANT SAME

PROJECT ADDRESS NA

APN 071-120-1172 AND E District TZ BL PA

ENVIRONMENTAL CLEARANCE (Complete attached Environmental Compliance Form)

IS/ND or EIR No EIR 1-04 or previously cleared by

Categorical Exemption

Check One PUBLIC HEARING 14-DAY NOTIFICATION TEMPORARY USE PERMIT

PH Date 8-26-04 DRC Date

Comments and/or Special Instructions

Design Review Date

PART B—PROJECT DESCRIPTION (Please print, type or attach computer copy—do not use pencil)

REQUEST FOR A DEVELOPMENT AGREEMENT TO FACILITATE DEVELOPMENT AND REGULATE DEVELOPMENT INTENSITY IN THE WEST LAKE VILLAGES PROJECT LOCATED...

PARTS C AND D—TECH/ClerICAL—GRAPhICS AND NOTIFICATION INFORMATION

TECH SECTION

□ Zoning Map □ Vicinity Map □ Land Use Map □ Site Plan □ Floor Plan □ Elevation/Rendering □ Gen Plan Map

Other Maps/Exhibits D A

Notices (PH notices other than what appears on Assessor's roll)

CLERICAL SECTION

Notice prepared Notice to Techs Prepared by

Date Notice Mailed Appeal Period Ends Date Appealed (If applicable)

Notes/comments

ODMA|GRPWISE|COS CDD CDD_Library 29054 1 Revised 8-25-03
AN ORDINANCE APPROVING 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 16-525 080 the City Council of the
City of Stockton hereby finds

A The proposed Development Agreement contains the mandatory
elements as required by Section 16 525 060(B) of the Stockton Municipal Code (SMC)

B The proposed Development Agreement is consistent with and
necessary for the consideration and approval of the related discretionary General Plan
Amendment prezoning Specific Plan, Master Development Plan annexation, and Sphere
of Influence (SOI) Amendment applications (GPA3-04 Z-4-04 SPA3-04 MDP1-04 A-04-3, SOI3-04)

C On balance, the proposal conforms to the existing City of Stockton
General Plan Policies and zoning regulations for the location and suitability of the proposed
land uses subject to approval of GPA3-04, Z-4-04 SPA3-04 MDP1-04 A-04-3 and SOI3-04

D The land uses allowed under the proposed Mixed Use General Plan
designation, prezoning Development Agreement Specific Plan Master Development Plan
annexation and Sphere of Influence Amendment will be compatible with existing and
proposed land uses in the immediate vicinity of the overall project site subject to the
approval and implementation of the mitigation measures identified in EIR1-04 and
mitigation monitoring/reporting provisions of the Findings, Overriding Considerations,
Mitigation Monitoring and Reporting Program for the Westlake Villages Project, dated
August 2004

City Atty
Review
Date September 2004
E The proposed General Plan Amendment prezoning Specific Plan Development Agreement Master Development Plan annexation and Sphere of Influence (SOI) Amendment would not endanger jeopardize or otherwise constitute a hazard to the public convenience health interest safety or general welfare of persons residing or working in the City.

F The uses permitted in the proposed General Plan amendment prezoning Specific Plan Development Agreement, Master Development Plan annexation, and Sphere of Influence (SOI) Amendment are similar to and/or compatible with the existing uses to the north, south, east and west of the site.

G The environmental consequences of this proposed General Plan Amendment prezoning Specific Plan, Development Agreement Master Development Plan annexation and Sphere of Influence (SOI) Amendment have been examined in EIR1-04 which was considered and certified prior to approval of this General Plan amendment prezoning Specific Plan Development Agreement Master Development Plan annexation and Sphere of Influence (SOI) Amendment. In addition, all applicable mitigation measures identified in EIR1-04 and the related “Findings, Overriding Considerations, Mitigation Monitoring and Reporting Program for the Westlake Villages Project” have been adopted in conjunction with this General Plan Amendment prezoning Specific Plan Development Agreement Master Development Plan, annexation, and Sphere of Influence (SOI) Amendment approval EIR1-04 and related environmental documents have been prepared in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.

H The anticipated benefits of these proposals outweigh the unavoidable or unresolved adverse environmental effects for the project as supported by the “Findings, Overriding Considerations, Mitigation Monitoring and Reporting Program for the Westlake Villages Project” dated August 2004.

I Pursuant to Sections 15091 and 15093 of the State CEQA Guidelines these approvals are subject to the adopted findings and mitigation monitoring and reporting program respectively as specified in the “Findings, Overriding Considerations, Mitigation Monitoring and Reporting Program for the Westlake Villages Project” dated August 2004.

J The provisions of the Development Agreement are consistent with the General and specific plans for this area.

K 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.

L This Agreement is appropriate for the development of West Lake and the modernization of the Paradise Point Manna.
This Agreement is appropriate to ensure the proper future planning, permitting and development of The Spanos Property.

This Agreement will eliminate uncertainty in City's land use planning and secure orderly development of The Project and Paradise Point Manna.

City's existing waste water conveyance system is adjacent to has adequate capacity for and will service West Lake and Paradise Point Manna.

City's Regional Waste Water Treatment Facility has adequate capacity to process and will process all wastewater generated by West Lake and Paradise Point Manna.

City has adequate potable water and potable water reserves to service West Lake and paradise Point Manna for twenty (20) years.

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 Manna.

This Agreement will achieve the goals and purposes for which the Development Code (Chapter 16 of the Stockton Municipal Code) was enacted by City.

SECTION 2 Development Agreement

Pursuant to Stockton Municipal Code Section 16-525 070 the City Council of the City of Stockton has conducted a public hearing on September 14, 2004 and hereby approves the Westlake Villages Development Agreement (DA1-04) based on the above findings and subject to the following condition.

DA1-04 shall be subject to all applicable mitigation measures identified in EIR1-04.
SECTION 3 Effective Date

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

ADOPTED SEP 14 2004
EFFECTIVE OCT 14 2004

GARY A. PODESTO
Mayor of the City of Stockton

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

4
I, KATHERINE GONG MEISSNER, do hereby certify as follows

I am the duly appointed, qualified City Clerk of the City of Stockton, a California municipal corporation, as such City Clerk, I am the custodian of the official records of the City Council of said City. The attached Ordinance is a full, true, and correct copy of Ordinance No. 027-04 of said City Council, which was adopted by the City Council on September 14, 2004, effective October 14, 2004, on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereto affixed my hand and the seal of the City of Stockton on September 15, 2004.

KATHERINE GONG MEISSNER, CITY CLERK
CITY OF STOCKTON

By

Josephine Weber, Deputy
STATE OF CALIFORNIA  
COUNTY OF SAN JOAQUIN  

THE UNDERSIGNED SAYS  
I am a citizen of the United States and a resident of San Joaquin County. I am over the age of 18 years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer of THE RECORD, a newspaper of general publication, printed and published daily in the City of Stockton, County of San Joaquin and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Joaquin, State of California, under the date of February 26, 1952, File No. 52857, San Joaquin County Records, that the notice of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue or said newspaper and not in any supplement thereto on the following dates, to-wit:  

August 15, 2004  

all in the year 2004

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 17, 2004

At Stockton, California

Sandra Johansen
<table>
<thead>
<tr>
<th>Use Code</th>
<th>Use Description</th>
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<tbody>
<tr>
<td>ADULT</td>
<td>Adult book stores adult movie rental sales</td>
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<tr>
<td>ALC-OFFBW</td>
<td>Alcohol-off sale of beer and wine</td>
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<tr>
<td>ALC OFFGEN</td>
<td>Alcohol-off sale of general alcohol liquor store</td>
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<td>ALC ONBW</td>
<td>Alcohol-on sale beer and wine</td>
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<td>ALC-ONGEN</td>
<td>Alcohol-on sale general alcohol bar</td>
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<tr>
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<td>APT</td>
<td>Apartments four units or more</td>
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<td>AUTO</td>
<td>Automobile uses sales rental new used repair misc</td>
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<td>AW</td>
<td>Auto wrecking dismantling</td>
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<td>BED</td>
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<td>CARD</td>
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<td>CW</td>
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<td>Dancing or Live Entertainment</td>
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<td>DB</td>
<td>Density Bonus</td>
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<td>DI</td>
<td>Drive In Restaurant</td>
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<td>DLO</td>
<td>Deep Lot Ordinance</td>
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<td>Kennel for domestic animals</td>
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<td>DORM</td>
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<td>Fortune Teller</td>
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<td>Family Shelter</td>
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<td>Government Building</td>
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<td>HC</td>
<td>Health Club</td>
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<td>HO</td>
<td>Hotel</td>
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<td>Hospital</td>
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<td>MED</td>
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<td>MIX</td>
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<td>MORT</td>
<td>Mortician or Funeral Homes</td>
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<td>MP</td>
<td>Massage</td>
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<td>MSF</td>
<td>Mini Storage Facility</td>
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<td>OFFICE</td>
<td>Office Building any kind</td>
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<tr>
<td>OTHER</td>
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<td>PAWN</td>
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<td>PC</td>
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<td>PLOT</td>
<td>Parking Lot</td>
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<td>RCF</td>
<td>Residential Care Facility Guest homes Group Home Convalescent Hospital Retirement Home Assisted Living</td>
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<tr>
<td>RCY</td>
<td>Recycling</td>
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<tr>
<td>REC</td>
<td>Recreational Use Theatres bowling golf nnks pool halls, arcades parks etc</td>
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<td>SHPCTR</td>
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<td>SIGN</td>
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<td>SRO</td>
<td>Single Family Residence other than in a residential zone</td>
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<td>Service Station no alcohol no mini mart</td>
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<td>TEMP</td>
<td>Temporary uses signs produce spas misc sales</td>
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<td>TEMP-CARN</td>
<td>Temporary uses Carnivals circuses</td>
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<td>TEMP MODEL</td>
<td>Temporary Model Homes</td>
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<td>TEMP XMAS</td>
<td>Temporary Xmas Tree Sales</td>
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<td>TRANS</td>
<td>Transitional Housing</td>
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<td>Trucking</td>
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<td>USED</td>
<td>Second Hand Stores sale of used goods</td>
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<td>VET</td>
<td>Veterinarian</td>
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<td>DR</td>
<td>Doctor's Row</td>
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<td>EL</td>
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<td>EZ</td>
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<td>McKinley</td>
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<td>MH</td>
<td>Magnolia Historical</td>
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<td>MM</td>
<td>Miracle Mile</td>
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<tr>
<td>WE</td>
<td>West End</td>
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</table>
### CITY AGENCIES
- City Attorney
- City Manager/Storey
- City Clerk
- CDD/Building/Elias
- Fire Prevention/Rose
- HRD/Pinkerton
- HRD/Neighborhood Services/Daly
- MUD/Murdoch
- Parks & Rec/Machado
- Police/Praegitzer
- PW/Tech Engineering
- PW/Dev Services/Meissner (2 copies)
- PW/Corp Yard/MacKay
- Other

### COUNTY AGENCIES
- SJ/Building, Planning, Public Works
- SJ/Public Health Services
- SJ/Env Health Services
- SJ Office of Education,
- SJ Council of Governments
- SJCOG/ALUC

### SCHOOL DISTRICTS
- Lincoln Unified School District
- Lodi Unified School District
- Manteca Unified School District
- Stockton Unified School District

### STATE OF CALIFORNIA AGENCIES
- Alcoholic Beverage Control
- CalTrans Distict 10
- Reclamation District #

### SPECIAL DISTRICTS
- SJ Valley Unified APCD
- SMART
- Central Parking District
- Downtown Stockton Alliance

### OVERLAY DISTRICTS
- Airport
- Channel Area
- Channel Head
- Doctor's Row
- Eastland
- Enterprise Zone
- Gleason Park
- Limited Architectural Control District
- Magnolia Historic District
- McKinley
- West End Redevelopment
- Other

### OTHER AGENCIES

### AGENDA/STAFF REPORTS (OTHER THAN PROPERTY OWNER/APPLICANT)

### STATE OF CALIFORNIA AGENCIES

### COUNTY AGENCIES

### SCHOOL DISTRICTS

### SPECIAL DISTRICTS

### OVERLAY DISTRICTS

### OTHER AGENCIES

### AGENDA/STAFF REPORTS (OTHER THAN PROPERTY OWNER/APPLICANT)

SEE G-04 3-04
ALL APPROPRIATE AREAS OF THIS FORM SHOULD BE COMPLETED BY THE PLANNER

Environmental Information Form Completed _____ (Y/N)

CEQA Exemption Section No _________ Previous IS/ND or EIR No
New IS/EIR No

Preliminary Environmental Determination(✓)
- Neg Dec
- Mitigated Neg Dec
- Addendum to IS/ND or EIR
- Project EIR
- Program EIR
- Supplemental EIR
- Mitigation Agreement
- NEPA Dec
- DFG Fees
- Collected
- Exempt
- Previously Paid

Wildlife/Habitat Mitigation
- Exempt
- City H/OS Fee
- SJMC Fee

Other

COMMENTS

SEE GPA 3-04
DA 1-05

WEST LAKE AT SPANOS PARK WEST DEVELOPMENT AGREEMENT

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

OWNER THE SPANOS FAMILY PARTNERSHIP, a California General Partnership

SPANOS A G SPANOS as Trustee of the Alex and Faye Spanos Trust under agreement dated January 27, 1998
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   7.2 Owner's Submission
   7.3 Finding of Compliance
   7.4 Finding of Noncompliance
8 Permitted Delays, Supersedure by Subsequent Laws
   8.1 Permitted Delays
   8.2 Supersedure by Subsequent Laws
This Development Agreement ("Agreement") is made and entered into as of this _____ day of ____________, 2003, 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")

RECAPITALS

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 ________________, 2003 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 ________________, 2004 with the San Joaquin County Clerk and on ________________ 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 ________________, 2004 On ________________, 2004 the City approved The Project’s Master Development Plan dated ________________, 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’s 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 _______________ 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 _______________ 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 _______________ 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 65864-658695 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 General Provisions

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 _________, enacted by the City Council on ____________ 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 any amendments thereto as 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 any amendments thereto as 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 16-075, 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.

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 any amendments thereto as 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 any amendments thereto as 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 Pardee Construction Co v City of Camarillo (1984) 37 Cal 3d 465, that failure of the parties thereto 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 as such times as Spanos deems appropriate within the exercise of its 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.
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 do so 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 Indemnity Insurance

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.

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's 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 Periodic Review of Compliance

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, at its discretion, take such further action as it deems appropriate.
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, Supersedure 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 Supersedure 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 Marinas 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 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 Notices

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
Stockton, California 95202
Attention City Manager
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 Miscellaneous

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 thereof 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.

<table>
<thead>
<tr>
<th>CITY</th>
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<tr>
<td>CITY OF STOCKTON a municipal corporation of the State of California</td>
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Attest

By _____________________________

Katherine Gong Meissner
City Clerk

By _____________________________

Mark E Lewis, Esq
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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<tr>
<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 S 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’ 34” 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 66° 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 41° 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' feet 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 Kraeth P L S 6008
Expires 03/31/05
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 Spanos 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.
DATE November 2, 2004

TO KATHERINE GONG MEISSNER City Clerk
FROM GUY D PETZOLD, Deputy City Attorney
RE WEST LAKE AT SPANOS PARK WEST DEVELOPMENT AGREEMENT BETWEEN THE CITY OF STOCKTON AND THE SPANOS FAMILY PARTNERSHIP AND A G SPANOS


Said agreement may be retained for your files.

OFFICE OF THE CITY ATTORNEY

By

GUY D PETZOLD
DEPUTY CITY ATTORNEY

GDP plc

Attachment

cc Administrative Services Dept
Community Development (Attn: David Stagnaro)
The Spanos Family Partnership
A G Spanos, as Trustee of the Alex & Faye Spanos Trust
Attn: Jerry Sperry
10100 Trinity Parkway, 5th Floor
Stockton CA 95219
DA 1-04

WEST LAKE AT SPANOS PARK WEST
DEVELOPMENT AGREEMENT

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

OWNER       THE SPANOS FAMILY PARTNERSHIP, a California General Partnership

SPANOS      A G SPANOS as Trustee of the Alex and Faye Spanos Trust under agreement dated January 27, 1998
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   8.2 Supersede by Subsequent Laws
THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of this _____ day of __________, 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
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 [date], 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 [date], 2004 with the San Joaquin County Clerk and on [date], 2004 with the Office of Planning and Research of the State of California.

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 [date], 2004. On [date], 2004 the City approved The Project's Master Development Plan dated [date], 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.

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.

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 of 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 ____________, 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 ____________, 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 ____________, 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 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 General Provisions

11 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.

12 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.

21 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.

22 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 __________, enacted by the City Council on __________ 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, statutes 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 16-075 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.

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 Pardee 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 its 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 Spanos 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.
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.
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 do so 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 Indemnity Insurance

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 or 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 Periodic Review of Compliance

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, Supersedure 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 Supersedure 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 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 thereof 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, assigns, 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 Notices.

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
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  Miscellaneous

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.

By

Mark E. Lewis Esq
City Manager

Attest

By

Katherine Gong
City Clerk

Approved as to Form
Office of the City Attorney

By

Guy D. Petridis
Deputy City Attorney
this matter which can’t happen if it is continued to the meeting of September 9th. He added the Commission’s denial of the applications would facilitate their appeal to the City Council and would serve as evidence of the Commission’s dissatisfaction with the delay of materials and their concern to make a point to staff, while at the same time, not put an end to the whole matter by delaying it.

Commissioner Kontos agreed with Attorney Hakeem in that continuing the hearing to a Special meeting on September 2, 2004 would allow the Commission adequate time to review the documents and still allow the applicants to stay on schedule.

Chair Bruce asked if there was any other commentary in relation to the continuance.

Enc Parfrey spoke briefly and informed the Commission that LAFCo does have an October meeting scheduled as well. He expressed his opinion that the Commission was allowing the big developers to run their schedule, and not the voters who should be considered also in this matter.

MOTION E-2(a-f) It was duly moved (Kontos), seconded (Cusumano) and carried 5 to 2 (Bruce and Lau= dissenting) to continue the public hearing for the City of Stockton SOI Amendment Projects to September 2, 2004.

Item E-6 Public hearing regarding the requests of Spanos Family Partnership for the Westlake Villages Project (Paradise Villages) for.

a) Certification of the Final Environmental Impact Report for the Westlake Villages Annexation and Sphere of Influence Amendment Project and adoption of the Findings, Overriding Considerations, Mitigation Monitoring and Reporting Program for the Westlake Villages Project (EIR1-04). The project involves (1) General Plan amendment to establish M-X, Mixed Use and Low/Medium-Density Residential Designations, (2) Prezone to M-X, Mixed Use, (3) Master Development Plan specifying project land use requirements, (4) Development agreement to facilitate project development and limit development intensity, (5) Specific Road Plan amendment to allow two signalized intersections on the south side Eight Mile Road, (6) Two vesting tentative maps (small lot and large lot) to subdivide 680 acres± into approximately 2,600 lots to allow single family residential, commercial and related development and other project related approvals.
b) Master Development Plan specifying project land use requirements (MDP1-04),

c) General Plan amendment to establish M-X, Mixed Use and Low/Medium-Density Residential designations (GPA3-04),

d) Amend the Eight Mile Road Specific Plan to allow two signalized intersections on the south side of Eight Mile Road (SPA3-04),

e) Development Agreement to facilitate project development and limit project intensity for the Westlake Villages project (DA1-04),

f) Prezoning to M-X, Mixed Use (Z-4-04), and

g) Two vesting tentative maps (small lot and large lot) to subdivide 680 acres+ into approximately 2,600 lots to allow single-family residential, commercial and related development located south of Eight Mile Road, west of I-5, north of Pixley Slough and Disappointment Slough and east of Bishop Cut (TM18-04-A/B)

The public hearing was declared open and the Affidavits of Mailing and Publication were filed

Senior Planner David Stagnaro summarized the staff report and answered several questions from the Commissioners

Commissioner Cusumano requested more information on well water usage

Mark Madison Director of Municipal Utilities Department, responded that the net increase of water that is needed for this project will be supplied from groundwater but not drilled within this subdivision. He added that a water supply assessment was done for this development, in conformance with the requirements under Senate Bill 610 and Senate Bill 221. The fundamental aspect of this document is that a sufficient supply of water will be available for this development for the twenty-year period required under the two Senate Bills. The fundamental basis is we will be using an increased amount of groundwater, yet we will not be exceeding the safe yield of the groundwater basin below this project. He added that the survey is a conservative view, and he is very confident in the findings of the assessment.
Commissioner Cusumano then requested a traffic report.

Development Service Program Manager Gregg Meissner stated that as part of the Environmental Impact Report various intersections and freeway interchange operations were identified under various levels of development as were the improvements that would be necessary. Many of the improvements would be in place with the initial development phase to serve this development at its build-out.

Commissioner Kontos asked what "substantive issues" remained unresolved as stated in the staff report.

Planner Stagnaro responded that there are three conditions that are part of the Master Development Plan and the Development Agreements and staff is recommending that Condition No 3 be removed. At the time the staff report was written, staff had not seen the latest revision of the documents which did incorporate the requested changes. He added that staff had since seen the revised agreements and the noted changes had been made. Therefore, Condition No 3 was no longer necessary and should be removed.

Attorney Gerald Sperry, A G Spanos Companies spoke briefly in favor of the applications stating that the project name had changed to Westlake at Spanos Park West. It is a proposed 681-acre master planned residential, active-adult community. He requested that the tentative map request for this application be continued to September 9, 2004 in order to allow more time to bring the tentative maps into compliance with the Development Agreements.

Bruce Phillips, Pacific Advanced Civil Engineering Systems spoke in favor of the application and explained the 68-acre lake systems and how they would provide storm water conveyance, detention and water quality treatment from within the project area.

Keith Meyer, Rajappan & Meyer Consulting Engineers, Inc., spoke in favor of the application and discussed the long-range General Plan build-out with the Spanos Park West Project. The project will include widening of a portion of I-5 to the south of Eight Mile Road, one lane in each direction for a distance of about 1,500 feet on Interstate 5. It includes an expansion of Eight Mile Road to eight lanes underneath I-5. There will be a ten-foot Class I bicycle path on the south side of the interchange for continuity of bicycles east and west through the interchange. This interchange improvement project is expected to be complete by March 2005.

Development Service Program Manager Gregg Meissner then addressed the Commission and stated that, with the appropriate mitigation...
measures in place the traffic, during and after construction of this project will operate at acceptable levels of service.

Scott Shipiro, Downy Brand Law Firm, Sacramento, spoke briefly in favor of the application and explained SB610 and SB221 and how they relate to this project. These acts are designed to connect water supply to land use planning. Based on the document he reviewed regarding this project, it is estimated there will be enough water to accommodate this project.

Attorney Sperry concluded his presentation by requesting the Commission's approval of the Environmental Impact Report, the Master Development Plan, the General Plan amendment, the Eight Mile Road Specific Plan amendment, rezoning the Development Agreement, and the continuance of the tentative map request to the meeting of September 9, 2004.

Eric Parfrey, representing the Sierra Club, distributed a letter to the Commissioners which outlined the following issues they felt needed to be addressed:

- Establishment of an Agricultural Conservation Plan/Program for Stockton
- Regional Mitigation Fees for the I-5 Freeway
- Importance of enforcing Measure K fee payments,
- Water quality analysis for this project,
- Impacts of the I-5 improvements and
- Man-made lakes for this project and regulatory issues regarding their construction and operation

In closing, Mr. Parfrey requested that the Commission not certify the final EIR yet, as there are too many issues that need resolution.

Attorney Sperry provided a brief rebuttal, addressing and refuting several of the issues Mr. Parfrey had brought up.

Commissioner Kontos commented that he felt this project was well thought out and is in favor of the applicant's request. Commissioners Lowery, Brown, Lucas, and Lauron concurred with Commissioner Kontos' comments.

No one else desired to be heard, and the public hearing was closed except for the tentative map hearing which was left open in order to continue that hearing.

MOTION E-6(g) It was duly moved (Bruce) seconded (Cusumano) and carried 6 to 1 (Brown dissenting) to continue the public hearing regarding the
tentative map request of Spanos Family Partnership to the meeting of September 9, 2004.

The public hearing was then closed and the remainder of Item E-6 was voted on.

**MOTION E-6(a)** It was duly moved (Lauron), seconded (Kontos) and carried 6 to 1 (Bruce dissenting) to recommend certification of the Final Environmental Impact Report for the Westlake Villages Annexation and Sphere of Influence Amendment Project and adoption of the Findings Overriding Considerations Mitigation Monitoring and Reporting Program, and

**MOTION E-6(b)** It was duly moved (Lowery), seconded (Lauron) and carried 6 to 1 (Bruce dissenting) to approve the Master Development Plan request of Spanos Family Partnership for the Westlake Villages Project (MDP1-04), based on the findings as listed in the staff report, and

**MOTION E-6(c)** It was duly moved (Brown), seconded (Cusumano) and carried 6 to 1 (Bruce dissenting) to recommend approval of the General Plan amendment request (GPA3-04), based on the findings and subject to the conditions as listed in the staff report, and

**MOTION E-6(d)** It was duly moved (Lauron), seconded (Brown) and carried 6 to 1 (Bruce dissenting) to recommend approval of the Specific Plan amendment request (SPA3-04) based on the findings and subject to the conditions as listed in the staff report, and

**MOTION E-6(e)** It was duly moved (Lowery) seconded (Lauron) and carried 6 to 1 (Bruce dissenting) to recommend approval of the Development Agreement request (DA1-04) based on the findings and subject to the conditions as listed in the staff report, and

**MOTION E-6(f)** It was duly moved (Brown), seconded (Lauron) and carried 6 to 1 (Bruce dissenting) to recommend approval of the rezoning request of Spanos Family Partnership, based on the findings and subject to the conditions as listed in the staff report.

**Community Development Director's Report**

1. Status of Key Pending CDD/Planning Programs/Projects

Director Glaser indicated updates to the report were in bold lettering and offered to answer any questions the Commissioners might have in regard to the report.
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of [San Joaquin] ss

On August 23, 2009 before me, Karen E Garrett, Notary Public

personally appeared Michael A Speros

I, personally known to me

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

Place Notary Seal Above

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
Title or Type of Document [Warranty Deed Agreement]

Document Date ________________________________ Number of Pages ____________

Signer(s) Other Than Named Above ________________________________

Capacity(ies) Claimed by Signer

Signer's Name ________________________________

☑ Individual
☑ Corporate Officer — Title(s) ________________________________
☑ Partner — ☐ Limited ☐ General
☑ Attorney in Fact
☑ Trustee
☑ Guardian or Conservator
☑ Other ________________________________

Signer is Representing ________________________________

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<th>A G Spanos as Trustee for the Alex and Faye trust under an agreement dated January 27 1998</th>
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Joaquin } ss

On August 23, 2004 before me Karen E. Garrett, Notary Public
personally appeared Alex E. Spence

[Signature of Notary Public]

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
Title or Type of Document Waterlake Dev Agreement

Document Date Number of Pages

Signers Other Than Named Above

Capacity(ies) Claimed by Signer
Signer's Name

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

Signer Is Representing

[Top of Thumb here]
CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California
County of San Joaquin

On Oct. 5, 2004 before me personally appeared Mark Lewis personally known to me

Name(s) of Signer(s)

[] proved to me on the basis of satisfactory evidence

I, Karen A. Costa, Notary Public, do hereby acknowledge that 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

Title or Type of Document

Document Date Number of Pages

Signer(s) Other Than Named Above

Capacity(ies) Claimed by Signer

Signer's Name

[] Individual

[] Corporate Officer — Title(s)

[] Partner — Limited General

[] Attorney in Fact

[] Trustee

[] Guardian or Conservator

[] Other

SIGNER IS REPRESENTING ____________________________

[Signature of Notary Public]
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 66° 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 45 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 Kraettli P L S 6008
Expires 03/31/05

LICENSED LAND SURVEYOR
STATE OF CALIFORNIA
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 Spanos 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
NOTICE OF DETERMINATION PURSUANT TO PUBLIC RESOURCES CODE SECTION 21152 AND CAL CODE OF REGULATIONS, TITLE 14, SECTIONS 15075, 15091, 15093, 15094, AND/OR 1509601

Project Title: Westlake Villages Annexation, General Plan Amendment, Specific Plan Amendment, Master Development Plan, Development Agreement, and Prezoning Project

City of Stockton EIR and/or IS File No(s) EIR1-04 SCH No 2004052105

Discretionary Application(s) File No(s) A-04 3 GPA3 04, SPA3-04, MDP1 04, Z-4 04, DA1-04

Project Applicant: Spanos Family Partnership

PROJECT DESCRIPTION/LOCATION Requests of Spanos Family Partnership regarding Final Environmental Impact Report (EIR1-04) and CEQA Findings and Mitigation Monitoring/Reporting Program for the Westlake Villages Project. General Plan Amendment to establish Mixed Use and Low/Medium-Density Residential, add one proposed elementary school symbol and one proposed community park symbol (GPA3 04). Master Development Plan specifying project land use requirements (MDP1 04). Amendment to Eight Mile Road Specific Plan (SPA3 04), Prezoning to M X, Mixed Use District (Z-4 04). Development Agreement (DA1-04), and annexation to the City of Stockton and the Stockton East Water District, detachment from the Woodbridge Fire District and the San Joaquin County Resource Conservation District (A-04-3) and Sphere of Influence Amendment, and expansion of the City’s urban service area boundary for property located south of Eight Mile Road, west of Spanos Park West and I-S, north of Pixley Slough and Disappointment Slough, and east of Bishop Cut and Rip Blanco Road.

DETERMINATIONS

This is to advise that the City of Stockton as a Lead Agency under the California Environmental Quality Act (CEQA) approved the above described project/action September 14, 2004 and has made the following determinations regarding the project:

1. The project (☐) will (☒) will not) have a significant effect on the environment.

☐ A Negative Declaration was prepared and adopted for this project pursuant to the provisions of CEQA

2. An environmental impact report was prepared and certified for this project pursuant to the provisions of CEQA

☐ Findings (☒) were (☐) were not) made pursuant to Cal Code of Regulations Title 14 Section 15074 Neg Dec

3. Mitigation measures (☒) were (☐) were not) incorporated as part of the approval of the project.

4. Mitigation Monitoring and Reporting Program (☐) was (☒) was not adopted for this project.

5. Statement of Mitigation Considerations (☒) was (☐) was not) adopted for this project.

☐ California Department of Fish and Game (CDFG) fees are required as applicable and will be filed with this Notice of Determination (NOD) or

☐ This project is exempt from the CDFG fees and a Certificate of Fee Exemption has been prepared and will be filed with this NOD

CDFG Fees were filed with a prior NOD for this project/proposal (see attached receipt)

This is to certify that the environmental documentation and determinations for the project/action and any related mitigation measures monitoring provisions findings and statements of overriding consideration have been adopted on the basis of the whole record before the City and reflect the City’s independent judgement and analysis. The environmental review record and record of project approval may be examined at the above-noted Lead Agency address.

JAMES E GLASER DIRECTOR
COMMUNITY DEVELOPMENT DEPARTMENT

By ________________________________ Date ____________________________

Senior Planner David Stagnaro AICP

AFFIDAVIT OF FILING AND POSTING

I declare that on the date stamped above I received and posted this notice as required by California Public Resources Code Section 21152(c) and that the notice will remain posted for 30 days from the filing date.

Signature ____________________________

Posting Period Ending Date ____________

Copy mailed to applicant/SC9-16-04 cm6
PARADISE VILLAGES
DEVELOPMENT AGREEMENT

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

OWNER          THE SPANOS FAMILY PARTNERSHIP, a California General Partnership
# Table of Contents

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THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of this _____ day of __________, 2003, by and between the CITY OF STOCKTON, a municipal corporation of the State of California ("City"), and THE SPANOS FAMILY PARTNERSHIP, a California General Partnership ("Owner"), pursuant to the authority of California Government Code Sections 65864-65869.5 and Stockton Municipal Code ("Code") Chapter 16, Part IX, Sections 16-180 through 16-195, inclusive

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 Code Chapter 16, Part IX establishing 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. 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 ("Paradise Villages"). Paradise Villages 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 Owner has 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 Section 16-075), (2) to prezone The Project MX, (3) 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 within City's Sphere of Influence, (b) to include The Project within City's Urban Service Line, and (c) to approve the annexation of The Project to the City of Stockton.

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 ____________, 2003, 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. A Notice of Determination was filed on ____________, 2003 with the San Joaquin County Clerk and on ____________, 2003, with the Office of Planning and Research of the State of California.

The Project is located in an area which will have a general plan and pre-zoning designation of MX. As required by Code Section 16-0751, a master development plan was submitted to City on ____________, 2003. On ____________, 2003 the City approved The Project's Master Development Plan dated ____________, 2003 (the "Master Development Plan"). The Master Development Plan sets forth the distribution, location and extent of uses for Paradise Villages and Paradise Marina and identifies regulations and criteria for development of the site through subsequent implementing projects. Code Section 16-204C 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.

City has reviewed the Master Development Plan and EIR and determined (1) that this Agreement is appropriate for the development of Paradise Villages and the modernization of Paradise Marina, (2) that this Agreement will eliminate uncertainty in City's land use planning for and secure orderly development of The Project, (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 property 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 for which the Chapter 16, Part IX of the Code was enacted by City. In exchange for these benefits to City and the public benefits of the development of Paradise Villages 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 Paradise Villages and the modernization/upgrading of Paradise Marina, subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the parties desire to enter into this Agreement.
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 Paradise Villages and modernization of Paradise Marina.

On ____________, 2003, after conducting a duly noticed public hearing pursuant to Code Section 16-188 A, the City Planning Commission recommended that the City Council approve this Agreement, based on the following findings and determinations that 1) 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 Paradise Villages and the modernization of Paradise Marina, and 2) the Master Development Plan complies with the requirements of CEQA, and state and local CEQA guidelines.

On ______________, 2003, the City Council held a duly noticed public hearing on this Agreement pursuant to Code Section 16-188 B and made the same findings and determinations, which are set forth in Enacting Ordinance ______________, approving this Agreement thereafter adopted by the City Council, a copy of which is attached hereto, marked Exhibit “B”

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869 and Code Chapter 16, Part IX, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

1 General Provisions

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 burdens and benefits thereof shall bind and inure to the benefit of all estates and interests in The Project, 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.

Paradise Villages Development Agr
May 4 2003 GAS Draft
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, 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. 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 _________, enacted by the City Council on ___________ 2003, 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 Planning and Zoning Code (Chapter 16 of the Stockton Municipal Code), resolutions, rules, regulations, decisions and official policies of City governing the subdivision, design and improvement standards applicable to the development of The Project 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, statutes 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 or a portion thereof or an interest therein is sold by Owner 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, 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 as of the date LAFCo records a Certificate of Completion of Annexation with the San Joaquin Recorder (the "Effective Date"). Not later than ten (10) days after the Effective Date, City and Owner 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 Paradise Villages and Paradise Marina

4.1 Paradise Villages  Owner shall have the right, and the obligation, to develop Paradise Villages 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 Paradise Villages 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 Paradise Villages, and all improvements and appurtenances in connection therewith, including, without limitation, the permitted uses within Paradise Villages, 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 Paradise Villages. In accordance with the purpose of MX zoning as stated in Code Section 16-075, the specific land uses and specific development standards for Paradise Villages have been determined on a site-by-site basis by the Master Development Plan. By entering into this Agreement, Owner agrees to develop Paradise Villages pursuant to the following schedule: Six years after the Effective Date, Owner shall have developed a minimum of fifty percent (50%) of Paradise Villages based on acreage available for development; twelve years after Effective Date, Owner shall have developed a minimum of sixty (75%) of Paradise Villages based on net acreage available for development.

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 Paradise Villages 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) High Density 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 Paradise Villages shall be those provided for in
Section 6 10 of the Master Development Plan.

4.4 Project Phasing  Owner presently intends to develop Paradise Villages
and modernize Paradise Marina in phases and the parties acknowledge that Owner
cannot presently predict the timing or sequence of any such phasing. Such decisions
depend upon numerous factors which are not within the control of Owner, such as
market conditions and demand, interest rates, competition and other similar factors.
Because the California Supreme Court held in Pardee 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 Paradise Villages 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. All improvements required pursuant to the Master Development Plan shall be constructed by Owner congruent with the development of each phase of Paradise Villages 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 Paradise Villages and Paradise Marina are set forth in the Master Development Plan, the Existing City Laws (regardless of future changes in these by City) and this Agreement. Paradise Villages is entitled to be built and occupied and Owner has the right to complete Paradise Villages 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 Paradise Villages 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 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 Paradise Villages 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 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) 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, as defined below, these fees may be imposed on The Project, which fees shall be consistent with the fees imposed on other properties within the City or area similarly situated.

(b) If Owner, Owner's successor 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.

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 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 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 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, 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.

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 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 shall be applicable to any portion of The Project 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.
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 without Owner's prior written approval, which approval may be given or withheld in Owner's sole and absolute discretion. Nothing herein prohibits The Project from being subject to a (i) City-wide bond issue, (ii) City-wide special or general tax, or (iii) special assessment for the construction or maintenance of a City-wide facility as may be voted on by the electorate or otherwise enacted, provided that such tax, assessment or measure is City-wide in nature, does not discriminate against the land within The Project and does not distinguish between developed and undeveloped parcels.

(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 do so would place the residents of Paradise Villages 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 Paradise Villages. 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 Paradise Villages under this Agreement has been achieved and so long as the overall density for Paradise Villages is consistent with the Master Development Plan.

5.4 Use of Paradise Villages. Owner shall have the right to use any portion of Paradise Villages 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 Paradise Villages Owner shall have the right, from time to time or at any time, to initiate resubdivisions of all or a portion of Paradise Villages, as may be necessary in order to develop a particular phase, or to sell, lease or finance a portion of Paradise Villages in connection with the development of any phase or portion of Paradise Villages. 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 Indemnity Insurance

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, 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.

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 Indemnity 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 Periodic Review of Compliance

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 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 shall submit to the Planning Commission a letter setting forth Owner's 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 to enable the Planning Commission to undertake the review of Owner's 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 submission to ascertain whether it contains sufficient information to determine whether Owner 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 with the terms of this Agreement. If the Planning Commission finds good faith compliance by Owner with the terms of this Agreement, the Director shall, upon request by Owner, provide to Owner written confirmation of such finding.

7.4 Finding of Noncompliance. If the Planning Commission, on the basis of substantial evidence, finds that Owner has not complied in good faith with the terms of this Agreement, the Planning Commission shall specify in writing to Owner the respects in which Owner 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 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 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, Supersedure 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 progress 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 Supersedure 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 reasonable business judgment, then Owner shall have the right to terminate this Agreement by written notice to City. Owner 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 either 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 the 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, the 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 either party be liable to the 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 the 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 Paradise Villages and/or Paradise Marina 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 and Owner 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 shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys’ fees expended by City in 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, or any portion thereof, and without regard to whether or not Owner is a party to or the real party in interest in such action or proceeding, then Owner shall have the right, but not the obligation, (i) to defend, at Owner’s 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  Either party may, at any time, and from time to time, deliver written notice to the 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 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, 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, 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 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.

Paradise Villages Development Agr
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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 hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice of an Event of Default or determination of noncompliance given to Owner. 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 rights hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of all or any portion of The Project 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 rights and interests under this Section of this Agreement, Owner shall be released from its obligations pursuant to this Agreement with respect to The Project 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 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 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. Failure to record shall not affect the validity of any amendment, termination or cancellation.

13 Notices

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
1341 West Robinhood Drive Suite B-5
Stockton, California 95207
Attention Jerry Murphy
Facsimile No (209) 955-2562

with a copy to

Gerald A Sperry
Of-Counsel
1341 West Robinhood Drive Suite B-5
Stockton, California 95207
Facsimile No (209) 955-2562
Either party may change its mailing address and/or facsimile number at any time by giving written notice of such change to the other party 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 Miscellaneous

14.1 Negation of Partnership. The parties specifically acknowledge that The Project is a private development, that neither party is acting as the agent of the other 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, 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, 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 Paradise Villages, Paradise Marina, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever.

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Owner shall have the right to prevent or prohibit the use of Paradise Villages, 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 both Owner 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.

<table>
<thead>
<tr>
<th>CITY</th>
<th>CITY OF STOCKTON, a municipal corporation of the State of California</th>
</tr>
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<tbody>
<tr>
<td>Attest</td>
<td>By ___________________________</td>
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<tr>
<td>City Clerk</td>
<td>By ___________________________</td>
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</tbody>
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Approved as to Form

<table>
<thead>
<tr>
<th>City Attorney</th>
<th>Owner</th>
</tr>
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<tbody>
<tr>
<td>By ___________________________</td>
<td></td>
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<tr>
<td>Its General Partner</td>
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<td>By ___________________________</td>
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<td>Its ____________</td>
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</tbody>
</table>
EXHIBIT “A”

Legal Description of Paradise Villages

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 66° 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

[Signature]
David E Kraetli  PLS 6008
Expires 03/31/05

[License Stamp]
EXHIBIT “B”

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 Paradise Villages and the modernization of the Paradise Point Marina,
D  This Agreement will eliminate uncertainty in City’s land use planning and secure orderly development of The Project,
E  City’s existing waste water conveyance system is adjacent to, has adequate capacity, and will service The Project,
F  City’s Regional Waste Water Treatment Facility has adequate capacity to process and will process all wastewater generated by The Project,
G  City has adequate potable water and potable water reserves to service the property for twenty (20) years,
H  Owner is responsible for and will construct all on-site and off-site improvements, structures, roads, sewer and water facilities required to service The Project, and
I  This Agreement will achieve the goals and purposes for which the Chapter 16, Part IX of the Code was enacted by City
CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California
County of San Joaquin

On Nov. 13, 2003 before me personally appeared

Karen Garrett, Notary Public

Mikel A. Spears

Personally known to me 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
Title or Type of Document: Deed Agreement

Document Date ___________________________ Number of Pages ____________

Signer(s) Other Than Named Above ____________________________

Capacity(ies) Claimed by Signer

Signer's Name ____________________________

☐ Individual
☐ Corporate Officer — Title(s) ________________
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other ____________________________

Signer is Representing ____________________________
STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

Rhonda L. Walkowski, being first duly sworn, deposes and says

That she is a citizen of the United States, over the age of twenty-one (21) years, and of Joaquin, State of California

That on the 23rd DAY OF AUGUST 2004, she deposited in the United States mail facilities in the City of Stockton, County of San Joaquin, State of California, a copy of the agenda and staff report for the Special Planning Commission meeting of AUGUST 26, 2004 with the postage thereon prepaid, addressed to each of the following named persons to wit

SEE ATTACHED LIST

That said persons on the attached list are the owners, applicants, subdividers and/or engineers or representatives of the property and that this material was sent pursuant to State Code and/or City policy

Dated AUGUST 23, 2004

I certify (or declare), under penalty or perjury, that the foregoing is true and correct

Rhonda L. Walkowski

ODMA|GRPW|E|COS CDD CDD_Library 40436 1
Karen Sensley  
3241 Rutherford Drive  
Stockton, CA 95212  
(Item E-1, HOP4-04)

Waterfront Warehouse, Inc  
Attn Paul Jacobson  
445 West Weber Avenue  
Stockton, CA 95209  
(Item F-2 – AR1-04)

Spanos Family Partnership  
c/o Jim Panagopoulos  
10100 Trinity Parkway, 5th Floor  
Stockton, CA 95219  
(Items E 2 SOI & E 6 – Paradise Villages)

A G Spanos Companies  
c/o Gerald A Sperry  
10100 Trinity Parkway, 5th Floor  
Stockton, CA 95219  
(Items E 2-SOI & E 6 – Paradise Villages)

Stockton Flea Market, Inc  
c/o Tae W Oh  
P O Box 6938  
Stockton, CA 95206  
(Item F 1 – UP47 03)

St George’s Neighborhood Betterment Committee  
P O Box 6644  
Stockton, CA 95206  
(Item F 1 – UP47 03)

Massie and Company, Inc  
c/o Roy Van Noy/Mike Partington  
1801 Tribute Road  
Sacramento, CA 95815  
(Item E 3 – TM2 04)

Siegfried Engineering, Inc  
4045 Coronado Avenue  
Stockton, CA 95204  
(Item E 3 – TM2 04)

Margie Jordan Fletcher  
2609 East Silva Street  
Stockton, CA 95205  
(Item E-4 – IS17-04/TM21-04)

Gary A Edwards  
Edwards Construction, Inc  
618 San Juan Avenue  
Stockton, CA 95203  
(Item E-4 – IS17-04/TM21 04)

Earnest F Smith  
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 c/o Gerald Singer
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Sierra Club – Mother Lode Chapter
Eric Parfrey
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Items E 6(b) & (e)  PUBLIC HEARINGS - Development Agreement and Master Development Plan Case Nos. DA1-04 and MDP1-04, Spanos Family Partnership

Data The Spanos Family Partnership is requesting a Master Development Plan and Development Agreement to prescribe the type and extent of development intensity of the Westlake Villages Project on property containing approximately 680 acres located south of Eight Mile Road west of Interstate 5, north of Pixley Slough/Disappointment Slough and east of Bishop Cut and Rio Blanco Road. The request includes the following:

1. MDP1-04  Master Development Plan for a proposed 680-acre single-family residential/active adult and commercial development (Westlake Villages) and

2. DA1-04  Development Agreement to implement the Master Development Plan and limit development intensity for the entire project consisting of approximately 850 acres.

General Plan The project site is not currently within the City's General Plan boundary. A concurrent proposal (GPA3-04) has been filed to amend the General Plan by extending the boundary to the west to include the project site and to designate the Westlake Villages portion for Mixed Use and the remainder of the project site at the northwest corner (approximately 170 acres) for Low/Medium Density Residential uses (see Item E-6(c) on this same agenda). The proposed General Plan amendment also includes the addition of one Proposed Elementary School symbol and one Community Park symbol. The proposed General Plan amendment to allow mixed use and residential uses will be consistent with the City's Mixed Use and Residential Land Use Goals and Policies as contained in the City's General Plan Policy Document (last amended November 3, 1998) provided that the owners, developers and successors in interest comply with all the identified mitigation measures and conditions for the Westlake Villages Project.

Environmental Clearance The environmental consequences of developing this site are analyzed in EIR1-04, which must be considered and certified prior to approval of the Master Development Plan (MDP1-04), and Development Agreement (DA1-04). In addition all applicable mitigation measures identified in Final EIR1-04 and the mitigation monitoring/reporting provisions included in the related Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Westlake Villages Project must be adopted in conjunction with approval of the Master Development Plan (MDP1-04), and Development Agreement (DA1-04) applications.

Discussion As background in 1998 the City Council approved an amendment to the Planning and Zoning Code that allowed the use of the Master Development Plan concept by the development community and the City (Planning and Zoning Code Section 16.200 et seq.). A Master Development Plan is intended to provide a comprehensive framework for
development of property designated for Mixed Use development. Section 16-203 specifies that a Master Development Plan shall provide at a minimum the following information:

- Proposed Land Uses: Their type, distribution, location, and intensity.
- Infrastructure: Streets, utilities.
- Land Use and Development Standards: Including criteria, guidelines, and standards by which development would proceed.
- Implementation Measures: A program of implementation measures and environmental mitigation measures including regulations, programs, public works projects, and financing measures necessary to carry out the proposed land uses and infrastructure.
- Relationship of the Master Development Plan to the General Plan and
- Additional Information: Determined to be necessary by the Community Development Director. Information based on the characteristics of the area to be covered by the plan, applicable policies of the General Plan, or any other issue(s) determined by the Community Development Director to be significant.

The applicant is requesting a Master Development Plan (MDP1-04) to prescribe development of a proposed 680-acre single-family residential/active adult and commercial development (Westlake Villages). The proposed MDP specifies land use development requirements and provides a mechanism for the review, processing, and approval of development applications within the project area. The MDP is the primary land use and regulatory document for the Westlake Villages project area. The MDP, in conjunction with the requested Development Agreement (DA1-04) for the proposed MX-zoned project area, will govern the development of the residential and commercial project rather than the City's existing Development Code with the exception of when the MDP defers to requirements of the Development Code (e.g., parking requirements). Review and consideration of the proposed MDP should be given appropriate weight since, except as otherwise provided in MDP1-04 and/or DA1-04, this document will replace the City's Development Code within the project area for the next fifteen years.

The property owner has filed a concurrent request for approval of a Development Agreement (DA1-04). Section 16-74 of the Development Code requires that a Development Agreement be processed with the Master Development Plan, General Plan, and zoning amendments. Development Agreements are normally a multifaceted contractual agreement intended to address a wide variety of issues under which a particular development will occur. Customarily, each party that enters into the Development Agreement is the recipient of some type of benefit. In this case, the applicant is requesting approval of a Development Agreement to establish a contractual obligation between the City of Stockton and the property owner(s), developers, and successors-in-interest (ODS) of the project area. By entering into this Development Agreement, the City and the ODS agree that the requirements of the Master Development Plan (MDP) will be the primary land use and regulatory document for the project area rather than the Development Code. The Development Agreement also addresses other issues such as applicability of new laws and/or City ordinances, fees, processing of applications, and the effective time period of the
The applicant has requested through DA1-04 that corresponding small lot and large lot tentative maps (TM18-04 A&B) be valid for a period of 15 years in accordance with Section 66452.6 of the Government Code (Subdivision Map Act) that allows a tentative map on property subject to a development agreement to be extended for a period of time provided for in the agreement, but not beyond the duration of the agreement. TM18-04 A and B were filed concurrently and will be considered (see Item E 6(g) on this same agenda).

Planning staff has worked diligently with the applicant over the past several months to bridge philosophical substantive and procedural differences related to the content of the Master Development Plan and Development Agreements for the Spanos Park West Project. As of the writing of this staff report, the applicant's attorney and planning staff are continuing to work out issues related to the Master Development Plan and Development Agreements. The applicant's attorney and City staff have agreed that, if consensus is not reached on some or all of the remaining issues before the Planning Commission's consideration of the Master Development Plan Development Agreement and/or related discretionary applications, then the staff recommendation will include a generalized list of modifications which must be incorporated into MDP1-04 and/or DA1-04 as conditions of approval. Furthermore, since the related tentative maps (TM18-04 A and B) include conditions which specify that TM18-04 A&B are subject to the approval of GPA3-04 Z4-04, MDP1-04 and DA1-04, staff is not opposed to the approval of TM18-04 A and B in advance of final approval of the related applications.

Normally planning staff tries to resolve differences that exist prior to bringing applications to the Planning Commission. However, the applicant has requested that the Westlake Villages applications, particularly the tentative maps (TM18-04 A&B), go forward at this time. Attached to this staff report are the most recent versions of the Master Development Plan and Development Agreement. Any subsequent drafts of the noted documents will be forwarded to the Planning Commission as they become available.

As of the writing of this staff report, several substantive issues remain unresolved with the Master Development Plan (MDP1-04) and the Development Agreement for the project (DA1-04). City staff will continue to try to reach consensus on the noted issues in the time remaining prior to the scheduled Planning Commission meeting. The following is a general list of the issues to date that City staff and the applicant are trying to resolve:

- The applicability of City fees for the 15 year life of the Master Development Plan and noted Development Agreement for the project
- The applicability of new and existing City ordinances and laws related to the project

**Recommendation**: Approval based on the following general and specific findings for MDP1-04 and DA1-04 and proposed conditions for MDP1-04 and DA1-04.

**General Findings for Approval of MDP1-04 and DA1-04**

1. On balance, the proposals conform to the existing City of Stockton General Plan Policies and zoning regulations for the location and suitability of the proposed land uses subject to approval of GPA3-04 Z4-04, DA1-04 and MDP1-04.
2 The land uses allowed under the proposed Mixed Use General Plan designation, MX zoning district Master Development Plan and Development Agreement will be compatible with existing and proposed land uses in the immediate vicinity of the overall project site subject to the approval and implementation of the mitigation measures identified in FEIR1-04 and mitigation monitoring/reporting provisions of the Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Westlake Villages Project.

3 The proposed Master Development Plan and Development Agreement would not endanger, jeopardize or otherwise constitute a hazard to the public convenience, health interest, safety or general welfare of persons residing or working in the City.

4 The uses permitted in the proposed Master Development Plan and Development Agreement are similar to and/or compatible with the existing uses to the east of the site.

5 The environmental consequences of this proposed Master Development Plan and Development Agreement have been examined in FEIR1-04 which was considered and approved prior to approval of this Master Development Plan and Development Agreement. In addition, all applicable mitigation measures identified in FEIR1-04, and the related Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Westlake Villages Project, have been adopted in conjunction with this Master Development Plan and Development Agreement approval. FEIR1-04 and related environmental documents have been prepared in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.

6 The anticipated benefits of these proposals outweigh the unavoidable or unresolved adverse environmental effects for the project as supported by the Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Westlake Villages Project dated August 2004.

7 Pursuant to Sections 15091 and 15093 of the State CEQA Guidelines, these approvals are subject to the adopted findings and mitigation monitoring and reporting program respectively, as specified in the Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Westlake Villages Project.

Specific Findings for MDP1-04 (in addition to General Findings 1 through 7 above)

1 The Master Development Plan will be in compliance with all applicable requirements of the Planning and Zoning Code (Development Code), local ordinances and State law.

2 The Master Development Plan would adequately address the physical development characteristics of the subject site(s).
Specific Findings for DA1-04 (in addition to General Findings 1 through 7 above)

1. The proposed Development Agreement contains the mandatory elements as required by Section 16-74 of the Stockton Municipal Code (SMC).

2. The proposed Development Agreement is consistent with and necessary for the consideration and approval of the related discretionary General Plan amendment, Master Development Plan, annexation and Sphere of Influence amendment applications (GPA3 04 Z 1 04 MDP1-04 A-04 3 and SOI3 04).

Proposed Conditions for Approval of MDP1-04 and DA1-04

1. MDP1-04 and DA1-04 shall comply with the conditions of tentative maps TM18-04 A&B.

2. MDP1-04 and DA1-04 shall be subject to all applicable mitigation measures identified in FEIR1-04.

3. MDP1-04 and DA1-04 shall be revised as determined by the City Planning Commission. Following the Planning Commission's approval of the Draft MDP1-04 and DA1-04 the revised documents shall be submitted to the Community Development Director to coordinate the review of the revised drafts to ensure compliance with the Planning Commission's approved revisions. If said revisions are determined to be in compliance the revised MDP1 04 DA1 04 and the related applications shall be transmitted to the City Council for final consideration.

August 18 2004

Note: Staff reports are prepared well in advance of the Planning Commission consideration of the proposal and reflect the staff's view based on the best available information at the time the report was formulated. Evidence submitted during the course of the public hearing may require a re-evaluation of the staff's position.

This Staff Report has been prepared by Senior Planner David Stagnaro AICP.

40474-1
STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

Denise Karon Rucker declares
That she is at all times herein mentioned as an employee of the City of Stockton County of San Joaquin, State of California

That on the 13TH day of August 2004 she deposited in the United States mail facilities in the City of Stockton County of San Joaquin State of California a true copy of the notice hereto attached, with the postage thereon prepaid, addressed to each of the following named persons

See attached list

That said persons are the owners of the property located within a 300-foot radius of property hereby affected, the names of said owners having been secured from the last municipal equalized San Joaquin County assessment roll, and that this notice was sent pursuant to the provisions of Section 16-109 3 of the Stockton Municipal Code

That the said notices were mailed at least ten (10) days prior to the time appointed for the public hearing before the Planning Commission of the City of Stockton

Dated August 13TH, 2004

I declare that the foregoing is true and correct

(Signature)
CITY OF STOCKTON
PLANNING COMMISSION
NOTICE OF PUBLIC HEARING

DATE/TIME OF MEETING  AUGUST 26, 2004 at 7 P.M. or as soon thereafter as the matter can be heard
PLACE OF MEETING  Council Chambers Second Floor City Hall 425 North El Dorado Street Stockton
FILE NUMBER(S)  MDP1-04, GPA3-04, SPA3-04, DA1-04, Z-4-04 and TM18-04 A and B

SUBJECT  Public hearing regarding the requests of the Spanos Family Partnership for the Westlake Villages Project (Paradise Villages) for a) Certification of the Final Environmental Impact Report for the Westlake Villages Annexation and Sphere of Influence Amendment Project and adoption of the Findings, Statement of Overriding Considerations, and Mitigation Monitoring/Reporting Program for the Westlake Villages Annexation and Sphere of Influence Amendment Project. The project involves 1) General Plan Amendment to establish M-X Mixed Use and Low/Medium Density Residential Designations 2) Prezone to M-X Mixed Use 3) Master Development Plan specifying project land use requirements 4) Development Agreement to facilitate project development and limit development intensity 5) Specific Road Plan Amendment to allow two signalized intersections on the south side of Eight Mile Road 6) Two Vesting Tentative Maps (small lot and large lot) to subdivide 680 acres into approximately 2,600 lots to allow single family residential commercial and related development and other project related approvals b) Master Development Plan specifying project land use requirements (MDP1-04) c) General Plan amendment to establish M-X Mixed Use and Low/Medium Density Residential designations (GPA3-04) d) Amend the Eight Mile Road Specific Plan to allow two signalized intersections on the south side of Eight Mile Road (SPA3-04) e) Development Agreement to facilitate project development and limit project intensity for the Westlake Villages project (DA1-04) f) Prezoning to M-X Mixed Use (Z-4-04) and g) Two Vesting Tentative Maps (small lot and large lot) to subdivide 680 acres into approximately 2,600 lots to allow single family residential commercial and related development for property located south of Eight Mile Road west of I-5 north of Pixley Slough and Disappointment Slough and east of Bishop Cut (TM18-04 A and B)

Further information may be obtained by contacting SENIOR PLANNER DAVID STAGNARO at (209) 937-8598

Proceedings before the City Planning Commission are conducted in English. The City does not furnish interpreters. If one is needed it shall be the responsibility of the person needing one. Anyone wishing to be heard on the issue may appear before the Planning Commission at the time of the Public Hearing. It deserves to be noted that the legal requirement of Public Notice does not guarantee notice to all persons residing in or otherwise using property in the general vicinity of the property in question. Accordingly each recipient of this notice is respectfully requested to bring this notice promptly to the attention of others whom the recipient feels would be interested in or affected by this proposal in order that all persons may be given an opportunity to be heard on the issue. If you challenge the proposed action in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the Planning Commission at or prior to the Public Hearing. DATE OF MAILING  AUGUST 13, 2004
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WEST LAKE AT SPANOS PARK WEST DEVELOPMENT AGREEMENT

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

OWNER THE SPANOS FAMILY PARTNERSHIP, a California General Partnership

SPANOS A G SPANOS as Trustee of the Alex and Faye Spanos Trust under agreement dated January 27, 1998

City Attorney August 19, 2004 Draft
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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

21 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

22 Director The Director shall mean the Director of Community Development for City

23 Enacting Ordinance Ordinance __________, enacted by the City Council on __________ 2004, approving this Agreement, as described herein

24 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

25 Existing City Laws Notwithstanding the filing of any vesting Tentative Maps, Existing City Laws shall mean those ordinances (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 at the time of application for the specific relevant project approvals and permits. Existing City Laws shall specifically include the new Development Code (Chapter 16 of the Stockton Municipal Code), adopted by the Stockton City Council on July 27, 2004

26 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

27 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
(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...
Attached please find the transmittal for the Master Development Plan and Technical Appendix for Westlake at Spanos Park. I delivered 2 copies of the Master Development Plan to Dave this morning. The 2 copies of the Technical Appendix will be sent tonight via UPS.
TRANSMITTAL

DATE: July 12, 2004

TO: City Of Stockton
Attn: Mr. Michael Niblock
345 N El Dorado St
Stockton, CA 95202 1997

FROM: Steve Goins

TELEPHONE NO: 925-867-3380
FAX NO: 925-867-3388

PROJECT: Westlake at Spanos Park West
PROJECT NO: SPAN0000-0007

☐ AS YOU REQUESTED ☐ FOR YOUR APPROVAL ☐ RETURN REQUESTED
☐ FOR YOUR INFORMATION ☐ RECORDS MANAGEMENT ☐ FOR YOUR USE

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<td>&quot;Screen Check&quot; Master Development Plan and Technical Appendix</td>
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COMMENTS

Mike

Please review with Dave Stagnaro. Feel free to call with any questions.

Cc:
AG Spanos, Dean Plassaras, Jim Panagopoulos, Jerry Sperry, Karen Garrett, Pulte Homes, Tom Schulz, Jeff Ratto, Chris Schumunek, Frontiers Community Builders, Jim Jimison, Tom Doucette
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<tr>
<td>TO</td>
<td>Michael M. Niblock, Dave Stagnaro</td>
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<tr>
<td>FROM</td>
<td>Jeff Berberich</td>
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<td>SUBJECT</td>
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<td>FAX NO</td>
<td>(209) 937 8893</td>
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**COMMENTS**

Mike & Dave

Attached please find the transmittal for the Master Development Plan and Technical Appendix for Westlake at Spanos Park. I delivered 2 copies of the Master Development Plan to Dave this morning. The 2 copies of the Technical Appendix will be sent tonight via UPS.
TRANSMITTAL

DATE        July 12 2004  
TO          City Of Stockton  
            Attn Mr Michael Niblock  
            345 N El Dorado St  
            Stockton, CA 95202 1997  

FROM        Steve Gouns  

PROJECT      Westlake at Spanos Park West  
PROJECT NO   SPAN0000-0007  

ITEM  COPIES  DESCRIPTION
 1    2  'Screen Check" Master Development Plan and Technical Appendix

COMMENTS

Mike,

Please review with Dave Stagnaro. Feel free to call with any questions.

Cc

A G Spanos  Dean Plassaras  Jim Panagopoulos  Jerry Sperry  Karen Garrett
Pulte Homes  Tom Schulz  Jeff Ratto  Chris Schumunek
Frontiers Community Builders  Jim Jimison  Tom Doucette
January 23, 2004

Gerald A. Sperry
Of Counsel
A. G. Spanos Companies
1341 West Robinhood Drive Suite 85
Stockton, California 95207

ANTHEM LAKES – RESPONSE TO DRC COMMENTS – PUBLIC WORKS

The Public Works Department appreciates the opportunity to respond to your comments of November 24, 2003:

1. The suggestion to include roundabouts was made here in an effort to reduce/eliminate the future need for unwarranted/necessary stop signs or traffic signals similar to the situation that occurred on Iron Canyon Circle in Spanos Park.

2. The right of way for Street 2 is acceptable at 125 feet assuming that the minimum curb to curb width is 95 feet and bicycle lanes are provided in the sidewalk area.

3. Public streets other than feature streets such as major development access streets and the backbone collector street network (which exceed City Standards) shall conform to adopted City Standards. The City is not in a position to accept the liability or maintenance responsibility for local streets not constructed in strict conformance with the City Standards. General subdivision streets should be in conformance to adopted City Standards or be privately owned and maintained.

The following comments relate to the Master Development Plan. Several comments/clarifications are provided in your letter of November 24, 2003 and it is assumed these as well as those provided in Public Works October 28, 2003 memo and not addressed in your above letter will be reflected in revised Master Development Plan and therefore are not further addressed:

4. Comment 9, Comment 10, Comment 27, Comment 28 and Figures 42 through 44 inclusive – Public streets shall conform to currently adopted City Standards including vertical curb on residential streets, right of way street cross section and lane widths as well as the elimination of on street bicycle lanes and their replacement with 8 foot wide combination sidewalk and bikeway.

5. Comment 11 and Comment 19 – Bus turnouts will be located in conjunction with SJRTD subject to City Standards and the location approved by the Public Works Director.
Office of the City Attorney
425 North El Dorado Street
Stockton, California 95202
Telephone (209) 937-8333
Facsimile (209) 937-8898

FACSIMILE TRANSMISSION

DATE November 13, 2003
TO Jim Glaser and Mike Ilock
FAX (209) 937-8893
FROM GUY D PETZOLD, D City City Attorney

We are now transmitting a 3-page document, including cover page. If you do not receive all pages, please contact the City of Stockton Attorney's Office at (209) 937-8333.

MESSAGE

RE Villages Draft Agreement of May 26, 2003
November 12, 2003

Mr. Guy Petzold
Dep. City Attorney
City of Stockton

Re: The Villages Development Agreement
Draft of May 26, 2003

Guy

This will acknowledge receipt of your comments regarding the above referenced Development Agreement. Unfortunately, The Spanos Companies do not agree with those comments.

**Existing City Laws**

A basic purpose of a Development Agreement, as stated by the State Legislature:

Is to provide assurance to the applicant that upon approval of the project the applicant may proceed with the project in accordance with existing policies, rules and regulations. ($65864(b))

Consequently, the Legislature specifically provided:

That the “rules, regulations and official policies governing permitted uses of the land, governing density and governing design, improvement and construction standards and specifications applicable to the development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement.” ($95866)

Approval of a development agreement is a legislative act which shall be approved by ordinance and is subject to referendum.” ($65867.5) Consistent with the express intent of the Legislature, The Villages Development Agreement provides, in Section 2.6 that “Existing City Laws” are those in effect at the time of the approval of the Development Agreement by the City Council. To modify that language could, through the initiative process, subject such development to the whims of the electorate thus frustrating the intent of the Legislature and the purpose of a Development Agreement. Consequently, absent City Council directive, I can not and will not make the requested modification.

---

1 All references are to the Government Code.
Additional Fees

The Development Agreement for Spanos Park West addressed Additional Fees by allowing such fees so long as they provided a reasonable benefit (nexus) to the development and/or maintenance of the Business Park. A significant portion of the Business Park was subsequently sold to Kitchell Development. Kitchell’s proforma, which was the bases of Kitchell’s decision to purchase property within the Business Park, was based on the City’s existing fee structure. That fee structure was modified after Kitchell purchased the property but prior to Kitchell’s application to the City for building permits. Consequently, in spite of the severe ($600,000.00) adverse economic impact, Kitchell had no reasonable alternative but to pay the increased fees demanded by City for the issuance of the required building permits.

In an effort to provide assurances to Spanos and Pulte Development Company that they may proceed with the development of The Villages in accordance with existing policies, rules and regulations, I have redrafted Section 4.8 of The Villages Development Agreement to make it clear that only those fees in effect upon the effective date of the Agreement will be applicable to Spanos, its successors and assigns.

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) If state or federal laws are adopted which require cities to impose fees on existing projects and consequently, City adopts enabling legislation and imposes fees on existing projects or a City wide or area wide basis, as defined below, those fees may be imposed on The Project, which fees shall be consistent with the fees imposed on other properties within the City or area similarly situated.

(b) If Owner, its 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, its successors or assigns.

If you have any questions or need any further clarification, please advise.

Sincerely,

[Signature]

Gerald A. Speary
Of-Counsel
A G Spanos Companies

cc Mark Lewis, City Manager
Cary Podesto, Mayor
From: David Stagnaro
To: Conference_Room McDowell Michael Meissner Gregg Niblock Mike Petzold
Guy Stagnaro David Tovar Antonio
Date: 4/28/2004
Time: 2:00 PM 4:00 PM
Subject: Review Westlake Villages MDP/Applications
Place: Permit Center Conference_Room

Please plan to attend. Thank you.

Guy, please plan to attend the beginning of the meeting to discuss the DA. Thanks.

David Stagnaro AICP
Senior Planner
City of Stockton
345 North El Dorado Street
Stockton CA 95202
(209) 937 8598
fax 937 8893

CC: Glaser James Madison Mark Murdoch Bob O'Regan Barry