

ORDINANCE NO. 2016-08

AN ORDINANCE OF THE PLYMOUTH CITY COUNCIL APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLYMOUTH AND SHENANDOAH RIDGE LLC RELATIVE TO THE SHENANDOAH RIDGE PROJECT

THE PLYMOUTH CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

Section 1 Recitals

- A. Shenandoah Ridge LLC (“Developer”) holds a legal interest in the approximately one hundred forty-seven (147) acres of real property more particularly described as APNs: 008-030-032 (“Property”).

- B. Developer has been granted various approvals, including a development agreement, from the City of Plymouth as further described below for a project known as Shenandoah Ridge (“Project”) to be located on the Property, which will include one hundred thirty-seven (137) single-family homes, parkland, open space and a trail network; and Developer and City now desire to make necessary amendments to the development agreement.

- C. On August 17, 2011, the Planning Commission of the City of Plymouth, serving as the City’s planning agency for purposes of development agreement review pursuant to Government Code Section 65867, held a duly noticed public hearing and continued the hearing to August 31, 2011, at which time the Planning Commission considered the development agreement (“Development Agreement”) and recommended approval of the Development Agreement to the City Council.

- D. The City Council held a duly noticed hearing on October 13, 2011 and continued the hearing to October 27, 2011, at which time and upon recommendation by the Planning Commission the City Council took the actions below approving the development of the Project, which will provide orderly growth and development of the area in accordance with the policies set forth in the City of Plymouth General Plan.
 - (1) Adopted Resolution No. 2011-14, which certified the EIR for the Project, adopted findings of fact relating to significant impacts; adopted a mitigation monitoring and reporting program and adopted a Statement of Overriding Consideration;

 - (2) Approved Resolution No. 2011-15, which requested that the County Local Agency Formation Commission (“LAFCO”) initiate proceedings pursuant to the Cortese-Knox-Hertzberg Act for an amendment to the City’s Sphere of Influence, a reorganization, annexation, and any district detachments as necessary, for the Shenandoah Ridge and Zinfandel Reorganization to the City of Plymouth #271;

 - (3) Approved Ordinance No. 2011-07, which pre-zoned the Property;

- (4) Adopted Resolution No. 2011-17, which conditionally approved the tentative map, conditions of approval, Shenandoah Ridge Development Plan and Shenandoah Ridge Design Guidelines.
- E. LAFCO held a duly noticed hearing on December 15, 2011, at which time LAFCO considered the proposed amendment to City of Plymouth's sphere of influence (LAFCO project #270) and adopted Resolution No. 2011-07, which approved the sphere of influence amendment. LAFCO then continued the hearing to January 19, 2012 and subsequently to February 16, 2012, at which time LAFCO adopted Resolution No. 2012-01, which conditionally approved the reorganization to the City of Plymouth (LAFCO project #271).
- F. On March 22, 2012, following previously duly noticed public hearings before the Planning Commission and City Council, the City Council considered the adopted Ordinance 2012-02, approving the Development Agreement between the City of Plymouth and Shenandoah Ridge LLC.
- G. Pursuant to Government Code section 65868, the City Council of the City of Plymouth and the Developer now desire to enter into this First Amendment to the Development Agreement relating to the Property in conformance with the applicable provisions of state and local law in order to achieve the development of the Project in accordance with the project approvals, City ordinances and resolutions, and the City's Municipal Code.
- H. The First Amendment to the Development Agreement does not alter the densities allowed within the project and simply reflects necessary changes to impact fee schedules, park development, and the construction of model homes, all which are needed to ensure a successful project; and all of the City Council findings contained in Ordinance 2012-02 approving the Development Agreement are still true and correct.
- I. The First Amendment to the Development Agreement has been processed, considered and executed in accordance with the City's development agreement procedures and the requirements of state law.
- J. The City has evaluated the potential impacts associated with the First Amendment to the Development Agreement and found them to be exempt from further analysis under the California Environmental Quality Act, as set forth in City Council Resolution No. 2016-21, approved on June 9, 2016.

Section 2. Findings

The Plymouth City Council hereby finds as follows:

- (1) That the recitals above are true and correct and incorporated herein by this reference.

- (2) That the proposed First Amendment to the Development Agreement attached hereto as **Exhibit 1** and incorporated herein by this reference is consistent with the goals, policies, standards and objectives of the City of Plymouth General Plan;
- (3) That the First Amendment to the Development Agreement is compatible and in conformity with the public convenience, general welfare, and meets the economic, social, environmental and planning goals of the City of Plymouth General Plan;
- (4) That the First Amendment to the Development Agreement will not be detrimental to health, safety, and the general welfare of the City and will not adversely affect the orderly development of property or property values; and
- (5) That the Developer of the Project will construct public improvements and facilities and provide for ongoing services from which the general public will benefit as more fully set forth in the project approvals.

Section 3. Adoption of First Amendment to Development Agreement

The First Amendment to the Development Agreement between the City of Plymouth and Shenandoah Ridge LLC is hereby adopted and approved and the Mayor of the City of Plymouth is authorized to execute the same.

Section 4. Recordation

Within ten (10) days after the First Amendment to the Development Agreement becomes effective and is fully executed by all parties, the City Clerk shall submit the First Amendment to the County Recorder for recordation.

Section 5. Effective Date

This uncodified Ordinance shall take effect and be in force thirty (30) days after its adoption. The City Clerk of the City of Plymouth shall cause the Ordinance to be posted in at least three (3) public places in the City of Plymouth in accordance with Section 36933 of the Government Code of the State of California.

PASSED AND ADOPTED BY the City Council of the City of Plymouth, on this 23rd day of June, 2016 by the following vote:

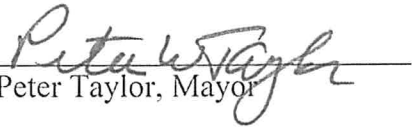
AYES: Peter Amoruso, Sandy Kyles, Jason Ralphs, Peter Taylor

NOES: Jon Colburn

ABSENT: None

ABSTAIN: None

Ord 2016-08


Peter Taylor, Mayor

ATTEST:

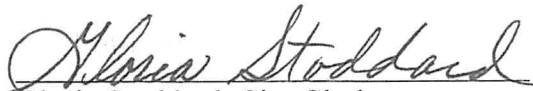

Gloria Stoddard, City Clerk

Exhibit 1

OFFICIAL BUSINESS
Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:

City of Plymouth
9426 Main Street
P.O. Box 429
Plymouth, CA 95669
Attention: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF PLYMOUTH AND SHENANDOAH RIDGE LLC

RELATIVE TO THE SHENANDOAH RIDGE PROJECT

This First Amendment ("**First Amendment**") to Development Agreement is entered into this ___ day of _____ 2016, by and between the CITY OF PLYMOUTH, a California municipal corporation ("**City**"), SHENANDOAH RIDGE LLC, a California limited liability corporation ("**Developer**"). City and Developer are hereinafter collectively referred to as the "**Parties**," and singularly as a "**Party**."

RECITALS

On April 21, 2012, the effective date of City Council Ordinance 2012-02, the City of Plymouth and Developer entered into that certain agreement entitled Development Agreement by and between the City of Plymouth and Shenandoah Ridge LLC Relative to the Shenandoah Ridge Project (the "**Development Agreement**").

On October 27, 2011, the City Council certified as adequate and complete the Environmental Impact Report ("**EIR**") for the Project on the Property via City Council Resolution No. 2011-14.

In order to adjust to current market conditions and make the project viable, Developer has requested this First Amendment to allow for council-approved changes to impact fee schedules, extend the time for community park site selection, clarify when a lot sold triggers the obligation to contribute to the Community Benefit Fund, and allow for up to three model homes to be built prior to the formation of the community facilities district.

The City evaluated the potential impacts associated with the amendments to the Agreement and found them to be exempt from further CEQA analysis, as set forth in City Council Resolution 2016-21 adopted on June 9, 2016.

All recitals and findings of determination in City Council Ordinance 2012-02, which adopted the Development Agreement on March 22, 2012, are still accurate and relevant to this

First Amendment and incorporated herein. All findings contained in City Council Ordinance 2016-08 adopting this First Amendment are incorporated herein.

This First Amendment is consistent with the objectives, policies, general land uses and programs specified and contained in the City's General Plan on April 27, 2012, the date the Development Agreement was executed.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties hereby agree to amend the Agreement as follows:

AGREEMENT

Incorporation of Recitals. Recitals A through F are hereby incorporated herein, including the documents referenced in the Recitals.

1. **Amendment of Section 5.1.3, concerning "Impact Fee Credits."** City and Developer agree that Section 5.1.3 of the Agreement is hereby amended to include additional language, shown in underline, as follows:

"5.1.3 Impact Fee Credits. To the extent that Developer prepays fees, or incurs costs for planning, design, acquisition of land or construction of water or sewer, or drainage facilities, and such costs have been included in the calculation of AB 1600 Fees, upon Developer providing adequate documentation of any such fee prepayments or costs incurred, Developer shall be allowed a credit, toward the payment of the respective impact fee ("Impact Fee Credits") in accordance with Section 15.06 of the Plymouth Municipal Code. At the City Manager's discretion, all or a portion of Impact Fee Credits in one fee category may be applied to fees in another fee category; i.e. excess water impact fee credits could be applied to wastewater fees. This provision does not apply to pre-paid water impact fees paid per §6.2. Developer shall have the right to transfer and assign Impact Fee Credits to a third party, and upon Developer informing the City in writing of such transfer and assignment and paying the City an administrative fee equal to five percent (5%) of the total dollar amount of Impact Fee Credits transferred and assigned, the City shall thereafter assign such Impact Fee Credits to such assignee."

2. **Amendment of Section 6.1.3(a), concerning community park development.** City and Developer agree that Section 6.1.3(a) is hereby amended to include the deletions and additions shown by strikeouts and underlines, as follows:

"(a) Upon submittal of the first Final Map for the Project, With approval of the second or a subsequent Final Map, but no later than the Final Map specified in section (b) below, for Both Projects, the City Council shall require Developer to shall also submit up to two or three Community Park conceptual layouts for an approximately 12.5 acre Community Park, including phasing options, with the features and amenities listed in Exhibit E, on at least two different sites identified by the City in the approximate location described in the Plymouth General Plan. In the event Developer is able to secure a site from a willing seller in that approximate location, with City Council approval, the conceptual plans may be limited to that site. Prior to retaining a design professional to prepare the conceptual plan, Developer shall review the scope of work with the City Council, and Developer and the City Council will determine the design process including public participation, timing and costs. The City Council shall select a preferred alternative within 90 days of approval of the first Final Map conceptual plan. The 60% Community Park Obligation shall be reduced by costs incurred by Developer for this phase, as approved by the City Council. Costs for

completing the conceptual plan shall be included in the improvement security provided for the first applicable Final Map unless such plan is completed before approval of the Map.”

3. Amendment of Section 6.2, concerning “Prepayment of Water Impact Fees.”

City and Developer agree that Section 6.2 is hereby amended to include the addition of the final paragraph, shown in underline, as follows:

“6.2 Prepayment of Water Impact Fees. Both Developers shall be jointly and severally obligated to prepay certain water impact fees to the City (hereinafter, “Prepaid Water Impact Fees”) after all of the following conditions have occurred (hereinafter, “Prepayment Conditions”):

- (a) City Council certification of the EIR; and
- (b) City Council approval of the rezoning, the Tentative Map, the Development Plan and the Design Guidelines required for development of the Project, and the tentative map, the development plan and the design guidelines required for development of Shenandoah Ridge; and
- (c) inclusion of Both Projects in the City’s sphere of influence; and
- (d) annexation of Both Projects into the City; and
- (e) City Council approval and execution of this Agreement and the development agreement with Shenandoah Ridge LLC; and
- (f) expiration of any time periods within which a third party can file a voter initiative, referendum, or other challenge to any of the actions in the aforementioned conditions (a) through (e) above; and
- (g) full and final resolution of any third party litigation, voter initiative, referendum, or other challenge, if any, to any of the aforementioned conditions (a) through (e) above.

Both Projects together shall pay such Prepaid Water Impact Fees on the dates and in the combined amounts as follows:

May 1, 2013	\$28,500
November 1, 2013	\$28,500
May 1, 2014	\$31,000
November 1, 2014	\$31,000
May 1, 2015	\$36,500
November 1, 2015	\$36,500
May 1, 2016	\$40,000
November 1, 2016	\$40,000
May 1, 2017	\$50,000

November 1, 2017 \$50,000

Total \$372,000

In the event any of the Prepayment Conditions have not been met prior to any due date shown above, any such due dates shall be extended to a date which is thirty (30) days after that time when all Prepayment Conditions have been met. Either Shenandoah Ridge LLC and/or Shenandoah Ridge LLC may pay any portion of future Prepaid Water Impact Fees at any time prior to their due date.

In addition to Both Developers' payments of the Prepaid Water Impact Fees listed above, Both Developers together shall pay an additional Prepaid Water Impact Fee in the combined amount of \$40,000 ("Additional Prepaid Water Impact Fee") if both following conditions have occurred:

- (1) Prepayment Conditions (a) through (f) have been met; and
- (2) No third-party filed a voter initiative, referendum, or other legal action challenging any of the Prepayment Conditions (a) through (e).

Both Developers shall be jointly and severally obligated pay the Additional Prepaid Water Impact Fee within 30 days of conditions (1) and (2) above having been met. In the event conditions (1) or (2) above cannot be met, Both Developers shall be relieved of any obligation to pay the Additional Prepaid Water Impact Fee. All amounts due under this Section 6.2 may be paid by either Zinfandel Development LLC and/or Shenandoah Ridge LLC.

For any Prepaid Water Impact Fees paid or Additional Prepaid Water Impact Fee paid, the City will allow credits toward any Water "past costs" fees due or Water Facilities fees due, and any such credits shall be subject to Impact Fee Credits in accordance with Section 5.1.3. For the purpose of interpreting this Section 6.2, references in Section 5.1.3 to "Developer" shall be considered to refer to Both Developers. From time to time, Both Developers may jointly provide written instructions to the City indicating which of Both Developers' projects should be credited, and upon the City receiving such instructions, the City shall allow credits in accordance with such instructions.

In recognition of the housing market, the City Council may approve, by Resolution, a revised payment schedule for the above prepaid fees. The City Council may not increase or decrease the total amount owed, by may approve changes to the timing of the payments."

4. Amendment of Section 6.3.2, concerning "Lot Sold Contribution." and Section 5.1.2, concerning Applicable Impact Fees, and Time of Payment". City and Developer agree that Sections 6.3.2 and 5.1.2 of the Agreement are hereby amended as follows:

- a) Section 6.3.2 is hereby amended to include additional language regarding a Developer wholly owned subsidiary, shown in underline, a follows:

"6.3.2 Lot Sold Contribution. In the event Developer sells a Lot instead of a home, to a third party other than a wholly owned subsidiary of Developer formed for home construction or other Project purposes, Developer shall pay to City a benefit contribution to the City's Community Benefit Fund upon the close of escrow for Developer's first sale

of said Lot in the Project equal to one and six-tenths percent (1.6%) of the gross selling price of such Lot.”

- a. Section 5.1.2 is hereby amended to add the following sentence at the end of this section regarding a Developer wholly owned subsidiary:

“In the event Developer forms a wholly owned subsidiary for home construction, the fee payment timing shown in the Impact Fee Table above for Developer also applies to the subsidiary.”

5. Amendment of Section 8.2, concerning “Maps and Permits.” City and Developer agree that Section 8.2 of the Agreement is hereby amended to include additional language, shown in underline, as follows:

“8.2 Maps and Permits. Provided that Developer is in compliance with, and not in default under, this Agreement, City shall not refrain from approving any final subdivision map nor shall it cease to issue building permits, certificates of occupancy or final inspections for development of the Property that is consistent with the Project Approvals. The approval of any application for a final subdivision map or other permit or entitlement may be conditioned upon compliance with this Agreement or any provision of it or with the Shenandoah Ridge Tentative Map Conditions of Approval, as applicable. If Developer requests City to approve and record a Final Map before the construction of the subdivision improvements, then nothing in this Agreement shall restrict City from requiring Developer (or the successor-in-interest) to enter into and comply with a subdivision improvement agreement and contract security in the form as shown in Exhibit D. Developer and City acknowledge that any subdivision improvement agreement requires the approval of the City Council. As such, Developer and City will be able to make modifications to the subdivision improvement agreement, as shown in Exhibit D, as long as such changes are mutually agreed upon by the Parties.”

6. Amendment of Section 11.1, concerning “Formation, Consent, Waiver and Special Benefit.” City and Developer agree that Section 11.1 of the Agreement is hereby amended to include additional language, shown in underline, as follows:

“11.1 Formation, Consent, Waiver and Special Benefit. Developer shall cooperate with City in formation of a Community Facilities District pursuant to applicable Government Code Sections (herein the “Shenandoah Ridge Services District”), and consents herewith to the levy of such special taxes as are necessary to fund the maintenance and public safety service obligations described below and in the Project Approvals. The boundaries of the Shenandoah Ridge Services District shall include all Lots within the Project and shall exclude Open Space and Park parcels. The special tax shall be initiated on all residential dwelling units for which a building permit is issued, and shall commence to be levied beginning the subsequent fiscal year after the building permit is issued. The special tax shall also be established to include a levy on vacant Lots to provide maintenance funds during development or Developer shall agree to fund such maintenance. No residential building permit shall be issued until the formation of, and inclusion of the Property in, the Shenandoah Ridge Services District, except a building permit for up to three model homes may be issued prior to formation and those homes shall be included in the formation. For purposes of Article XIID of the California Constitution, Developer acknowledges hereby that all the services described herein to be provided by the Shenandoah Ridge Services District will provide a “special benefit” to the Property, as defined by said Article, and that the foregoing support and consent shall apply as to any claim that any portion of the

services supported by the special tax does not provide special benefit to the Property. A vote by Developer against the levying of the special tax or a vote to repeal or amend the special tax shall constitute an event of default under this Agreement.”

7. Amendment of Sections 27.1 and 27.2, concerning “Insurance.” City and Developer agree that Sections 27.1 and 27.2 are hereby amended to include the deletions and additions shown by strikeouts and underlines, as follows:

“27.1 Commercial General Public Liability and Property Damage Insurance. At all times that Developer is constructing any improvements that will become public improvements, Developer and/or Developer’s contractors as applicable shall maintain in effect a policy of commercial comprehensive general liability insurance as described in Exhibit D. The policy so maintained ~~by Developer~~ shall name City, its officers, officials, contractors, employees and agents as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

27.2 Workers’ Compensation Insurance. At all times that Developer is constructing any improvements that will become public improvements, Developer and/or Contractor as applicable shall maintain Workers’ Compensation insurance for all persons employed, and not excluded from Workers Compensation Insurance requirements, by Developer for work at the Property as described in Exhibit D. Developer and/or Contractor agrees to indemnify and defend the City against any claims, costs (including legal fees and costs) and liability resulting from ~~Developer’s~~ failure to maintain any such insurance.”

8. Definition of Terms. All capitalized terms used in this First Amendment shall have the same definition as provided in the Agreement, except where a different definition has been supplied in this First Amendment.

9. All Other Terms in Force. Except as amended by this First Amendment, all terms and conditions of the Agreement remain in full force and effect.

10. Recording. Within ten (10) days after the Effective Date, City shall record this First Amendment with the Amador County Recorder’s Office.


11. Counterparts. The Parties may execute this First Amendment in counterparts, each of which will be considered an original, but all of which will constitute the same instrument.

12. Entire Agreement. This First Amendment sets forth the Parties’ entire understanding regarding the matters set forth above. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those matters (whether written, oral, express, or implied) and may be modified only by another written agreement signed by all Parties. This First Amendment will control if any conflict arises between it and the Agreement.

IN WITNESS WHEREOF, the City Plymouth, a municipal corporation, has authorized the execution of this First Amendment in duplicate by its Mayor and attested to by its City Clerk under the authority of Ordinance No. 2016-08, adopted by the Council of the City on 23rd day of June, 2016, and Developer has caused this First Amendment to be executed.


"CITY"

CITY OF PLYMOUTH,
a municipal corporation

By: 
Name: Peter TAYLOR

Its: Mayor

ATTEST:


Gloria Stoddard, City Clerk

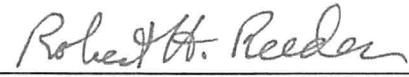
APPROVED AS TO FORM:


Katherine A. Cook
City Attorney

2622323.1

"DEVELOPER"

SHENANDOAH RIDGE LLC.,
a California limited liability company,
by Reeder-Sutherland Inc., Manager

By: 

Name: Robert H. Reeder

Its: President