

## TERRACES PROJECT ALTERNATIVE PROCESS AGREEMENT

This Terraces Project Alternative Process Agreement ("Agreement") is entered into January 22, 2014 ("Effective Date"), by and between the City of Lafayette, a California municipal corporation ("Lafayette" or "City"), on the one hand, and Anna Maria Dettmer, as Trustee of the AMD Family Trust, as amended and restated on September 23, 2005 ("Dettmer"), and O'Brien Land Company, a California limited liability company ("O'Brien"), (Dettmer and O'Brien together "Applicant"), on the other hand. Applicant and City are individually referred to as "Party" and collectively referred to as the "Parties".

### RECITALS

A. On March 21, 2011, Applicant submitted an application to the City for the Terraces of Lafayette Apartment Project ("Apartment Project"), consisting of a 315 unit multi-family moderate income development at the southwest corner of Pleasant Hill Road and Deer Hill Road on Contra Costa County Assessor's Parcel Number 232-150-027 (the "Property").

B. On August 12, 2013, the City Council certified an Environmental Impact Report ("EIR") for the Apartment Project and on September 9, 2013, and September 23, 2013, the Parties entered into a Tolling Agreement and a First Amendment to Tolling Agreement which tolled any claims or potential claims by Applicant against City and City against the Applicant arising from City's certification of the EIR and any defenses to such claims which either Party may assert or potentially assert.

C. The Parties desire to consider a project alternative to the Apartment Project that consists of 44-45 single-family detached homes and public parkland and parking amenities as described in greater detail below in Section 3.1 ("Project Alternative").

D. On January 13, 2014, and January 22, 2014, the City Council conducted two public meetings to discuss this Agreement and the Project Alternative and to set forth the development process that the Parties would follow to review the Project Alternative in lieu of continuing the review of the Apartment Project.

E. By this Agreement, the intent of the Parties is to: (i) set forth a process for consideration of the Project Alternative; (ii) "suspend" the Apartment Project pending the consideration of the Project Alternative; and (iii) preserve all of the rights and defenses of Applicant and City with regard to the Apartment Project, until the City Council makes a determination on the Project Alternative.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Intentionally Deleted.
2. Term.

The term of this Agreement shall commence upon the Effective Date and shall remain in effect until November 14, 2014, unless (a) terminated by Applicant, at any time during the term

of this Agreement, in Applicant's sole and absolute discretion, by delivery of notice to City withdrawing Applicant's Project Alternative Application, which termination shall be effective upon delivery, (b) modified or extended by mutual consent of the Parties as set forth below, or (c) as extended by appeal, challenge or referendum as set forth in Section 3.5.1 below. In the event of any termination or expiration of this Agreement without approval of the Entitlements as set forth below, City's processing of the Apartment Project Application shall immediately resume, with Applicant and City situated as they were prior to the suspension of processing of the Apartment Project Application pursuant to Section 3.5 below, with all of their respective rights, obligations, causes of action, and defenses related to the Apartment Project Application intact, including, but not limited to, all provisions of the Housing Accountability Act (Gov. Code section 65589.5, et seq.).

3. **Process to Consider Project Alternative.**

3.1 **Project Alternative.** From and after the execution of this Agreement, Applicant shall prepare the development application required for consideration of the Project Alternative as described in Section 3.2 ("Project Alternative Application"). The Project Alternative Application shall be generally as shown on the Concept Site Plan, dated December 3, 2013, attached as Exhibit "A" and incorporated by reference ("Concept Site Plan"). The Concept Site Plan generally provides 44-45 single-family residential units on Parcel A, which will be retained by Applicant, and recreation and parking areas on Parcel B, which will be conveyed to City. The Project Alternative Application shall include the following:

3.1.1 A single-family detached home subdivision of no fewer than 44 units and no more than 45 units, with lot sizes of 4,500 square feet as generally shown on the Concept Site Plan, with no portion of a building exceeding 30 feet above finished grade.

3.1.2 A private road leading to a controlled intersection at the western Deer Hill Road entrance.

3.1.3 Berming, grading and landscaping to ensure that all structures are substantially concealed from Deer Hill Road.

3.1.4 All structures, when complete, will be substantially concealed from Mt. Diablo Boulevard, Pleasant Hill Road, and the portions of Highway 24 that are within Lafayette's city limits and generally consistent with the hillside subdivision regulations as modified by the P-1 rezoning referenced in Section 3.2.

3.1.5 A pedestrian/bike bypass around the southern perimeter.

3.1.6 Development of Parcel B as defined below pursuant to Section 3.3.3.

3.2 **Project Alternative Application.** Applicant shall submit the Project Alternative Application, consisting of the following: (a) a general plan amendment to allow for single family housing in the APO land use designation, (b) a rezone of the property to Planned Unit District (P-1) that includes a preliminary and final development plan, (c) a subdivision map,

and (d) grading permit, hillside permit, and tree removal permit (collectively, the "Entitlements"). The Project Alternative Application shall go through the complete City review process as provided by the Lafayette Municipal Code (Circulation Commission, Design Review Commission, Parks, Trails, and Recreation Commission, Planning Commission, and City Council (collectively, the "Review Process") which shall be expedited so long as Applicant timely submits all City requested materials.

3.3 Development Agreement. The Parties will also prepare a development agreement ("Development Agreement") that shall be considered simultaneously with the Project Alternative Application. The Development Agreement shall provide for:

3.3.1 The installation of the pedestrian/bike bypass around the southern perimeter.

3.3.2 The sale of Parcel B as generally identified in the Site Concept Plan of approximately 13.6 acres to City for \$1,816,504 to be paid at the time of recordation of the final map and transfer of Parcel B to the City.

3.3.3 In lieu of payment of parkland development/acquisition fees, Applicant is responsible for:

3.3.3.1 All engineering, architectural, and landscape architectural fees; all grading, including retaining walls; installation of all utilities below-ground (such as drainage, sewer, water); and installing all landscaping on both Parcel A and Parcel B.

3.3.3.2 Building and installing the following public improvements on Parcel B (the "Public Improvements"):

Item	Estimated Max. Cost
All-Weather Artificial Turf Soccer/Lacrosse Field (180' by 300')	\$1,000,000
Fencing for Soccer/ Lacrosse Field	\$50,000
Parking Lot with lighting and landscaping	\$600,000
Tot Lot	\$120,000
Restrooms	\$200,000
Dog Park turf, fencing, furniture	\$100,000
ADA Accessible Walkway	\$80,000
<b>Total:</b>	<b>\$2,150,000</b>

3.3.3.3 The estimated maximum costs listed above in Section 3.3.3.2 are only estimates. Applicant is responsible for the first \$1,816,504 of the actual costs for the facilities listed in Section 3.3.3.2. Costs between \$1,816,504 and \$2,150,000 are equally shared by the City and Applicant. Costs above \$2,150,000 are the City's responsibility. The City Manager or his designee shall approve the contractor, such approval shall not be untimely or unreasonably withheld, the final drawings, and the costs for the final drawings for the facilities prior to execution by Applicant of a contract to construct the facilities. City shall also approve any change orders regarding the improvements that deviate from the City-approved drawings and/or that affect the cost of the work.

3.3.4 Applicant shall not receive the certificate of occupancy for the last three (3) homes until the City accepts as complete all of the work referenced in Sections 3.3.3.1 and 3.3.3.2.

3.3.5 Prior to the recordation of the final map or certificate of occupancy for any property, the Applicant shall provide proof that Applicant has mitigated the impacts of the Project Alternative on the Public Improvements on Parcel B. To mitigate such impacts, the Applicant shall either: (a) agree to approve an annual Mello-Roos Community Facilities District special tax for the City to fund a portion of the maintenance, operation, repairs and replacements of the Public Improvements serving the Project Alternative in the amount of \$495 per unit, with an annual inflation of 2 %, with any costs for the approval and creation of such annual special tax to be paid by the Applicant; or (b) provide other funds sufficient to mitigate the impacts of the Project Alternative on the Public Improvements in the same amount with inflation as the annual special tax. If the Applicant fails to approve the annual special tax or provide other sufficient funds sufficient to mitigate the impacts of the Project Alternative on the Public Improvements in the same amount with inflation as the annual special tax, no building permits for the Property shall be issued.

3.3.6 In constructing the Public Improvements, Applicant shall agree to all security, guarantee, warranty, and indemnification provisions as set forth in City's subdivision improvement agreement.

3.3.7 Upon review of the Supplemental EIR as described in Section 3.4, the Parties will determine whether to include additional indemnification language regarding Parcel B and Parcel A.

3.3.8 Applicant shall be responsible for all standard fees and nexus-based conditions of approval established by the City during the public review process, excluding parkland development/acquisition fees as referenced above in Section 3.3.3.

3.4 CEQA. The Project Alternative was not considered in the EIR for the Apartment Project, and therefore, the City shall comply with the California Environmental Quality Act ("CEQA") in its consideration of the Project Alternative, which shall include a Supplemental EIR. The Supplemental EIR may raise new potential significant impacts, which will be reviewed by the City in compliance with CEQA. In moving forward with further environmental review in regard to the Project Alternative, neither Party waives any claims or potential claims arising from City's earlier certification of the EIR for the Apartment Project and any defenses to such claims which either Party may assert or potentially assert.

3.5 Suspension of Apartment Project. The Parties agree that City will suspend the processing of the Apartment Project pending City's processing of the Projective Alternative as set forth herein.

3.5.1 The Parties agree to toll the processing of the Apartment Project as of December 9, 2013, until the City Council makes a determination on the Project Alternative, but no later than November 14, 2014, or as extended by appeal, challenge or referendum as set forth in Section 3.5.3 below.



3.5.2 The Parties desire to timely pursue consideration of the Project Alternative, and therefore, neither Dettmer, O'Brien, nor their respective representatives shall: (a) file an action to compel the City to provide public notice or hold a hearing pursuant to Government Code section 65956(a); and/or (b) provide public notice pursuant to Government Code section 65956(b). Furthermore, the Parties acknowledge that because the Parties have mutually agreed to toll the processing of the Apartment Project, City has not failed to act to approve or disapprove the Apartment Project under the Permit Streamlining Act, and the Apartment Project shall not be deemed approved under the Permit Streamlining Act.

3.5.3 For the purposes of this Agreement, the City Council's determination of the Project Alternative will be deemed to have occurred when the City Council approves, approves with conditions or modifications, or denies the Project Alternative and all of the Entitlements and the Development Agreement and all applicable periods for any appeal, challenge or referendum relating to the approval of the Entitlements have expired, with no appeal, challenge or referendum having been filed, or if an appeal, challenge or referendum has been filed, such appeal, challenge or referendum has been resolved in a manner acceptable to Applicant in its sole and absolute discretion. In the event that an appeal, challenge or referendum has not been resolved in a manner acceptable to Applicant, in Applicant's sole and absolute discretion, Applicant shall have the right to terminate this Agreement in accordance with Section 2 above.

3.5.4 If the City Council approves or approves with conditions or modifications the Project Alternative, and Applicant elects to move forward with the Project Alternative, Applicant shall within ten (10) days of the City Council's determination of the Project Alternative as defined in Section 3.5.3 withdraw its Apartment Project Alternative application, and the Parties shall execute a settlement agreement that includes a mutual and full release of all known and unknown claims between them regarding the Apartment Project.

3.5.5 If the City Council does not approve the Project Alternative, or in the event that an appeal, challenge or referendum has not been resolved in a manner acceptable to Applicant in Applicant's sole and absolute discretion, Applicant shall have the right to terminate this Agreement in accordance with Section 2 above, and City's processing of the Apartment Project Application shall immediately resume with Applicant and City situated as they were (with all of their respective rights, causes of action, and defenses related to the Apartment Project Application intact, in accordance with Section 2 above) prior to the suspension of processing of the Apartment Project Application pursuant to Section 3.5 above.

#### 4. Warranties and Representations.

The Parties warrant and represent that they have authority to enter into this Agreement, and that neither has assigned to any third party any rights hereunder save and except as set forth in the Recitals hereto.

#### 5. Indemnification.

Applicant agrees to defend, indemnify and hold harmless the City, its agents, officers, officials, and employees from all claims, demands, lawsuits, writs of mandamus, and other

actions or proceedings (collectively "Actions") brought against the City or its departments, commissions, agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul this Agreement. In the event the City becomes aware of any such Actions, the City shall promptly notify the undersigned and shall cooperate fully in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the undersigned shall reimburse City for any attorney's fees, costs and expenses, including any plaintiff's or other third party's attorneys' fees, costs and expenses, directly and necessarily incurred by the City in the course of the defense.

6. **Covenant of Further Assurances.**

Each Party agrees to execute such other documents and perform such other acts as may be necessary or reasonably desirable in order to carry out the purposes of this Agreement.

7. **Agreement Entered Into With Independent Judgment.**

Each Party acknowledges that he, she or it has had the opportunity to seek advice of independent legal counsel in connection with this Agreement and that he, she or it understands the meaning of every term of this Agreement and the consequences of signing this Agreement. Each Party further declares and represents that he, she or it has reviewed this Agreement in its entirety and that, in entering into this Agreement, he, she or it relied wholly on his, her or its own respective judgment, belief, knowledge, investigation, independent legal advice and research and that he, she or it has not been influenced to any extent whatsoever in making this Agreement by any representations or statements regarding the same by any other party or by any person or persons representing or acting for any other party.

8. **No Admission of Liability.**

Neither the negotiation nor the execution nor the performance of this Agreement by any Party shall constitute an admission or concession of liability or wrongdoing by any Party and any such liability or wrongdoing is expressly denied.

9. **Attorneys' Fees and Costs.**

The Parties agree to each bear their own attorneys' fees and costs in connection with this Agreement.

10. **Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, understandings, and proposals concerning the subject matter of this Agreement. This Agreement may be modified only by a written instrument executed by both Parties.

11. **Counterparts.**

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

12. **Governing Law.**

This Agreement will be governed by and construed in accordance with the laws of the State of California. Venue shall be in Contra Costa County.

**IN WITNESS WHEREOF**, the Parties each have executed this Agreement as of the Effective Date.

*[The remainder of this page is intentionally left blank]*

CITY OF LAFAYETTE, A CALIFORNIA  
MUNICIPAL CORPORATION

By: Don Tatzin  
Don Tatzin, Mayor

O'BRIEN LAND COMPANY, A CALIFORNIA  
LIMITED LIABILITY COMPANY

By: [Signature]  
HsBy: Vice President

ANNA MARIA DETTMER, AS TRUSTEE OF  
THE AMD FAMILY TRUST, AS AMENDED  
AND RESTATED ON SEPTEMBER 23, 2005

By: Anna Maria Dettmer



**EXHIBIT "A"**

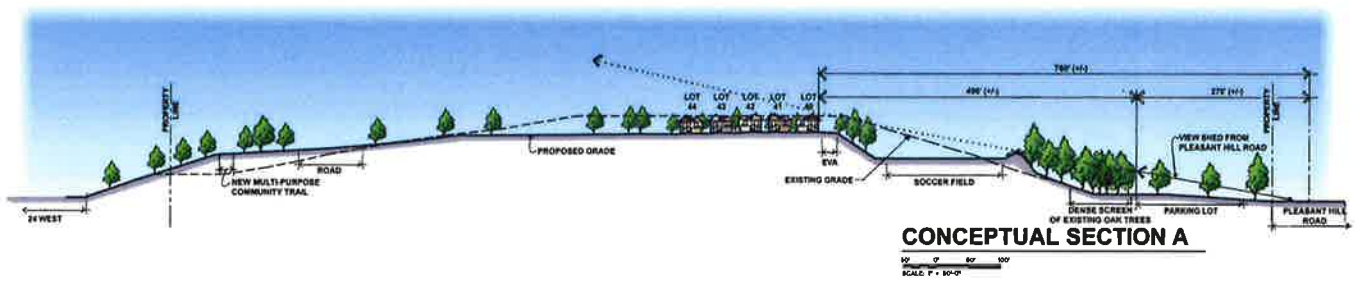
Concept Site Plan Dated December 3, 2013

*[To Be Attached]*



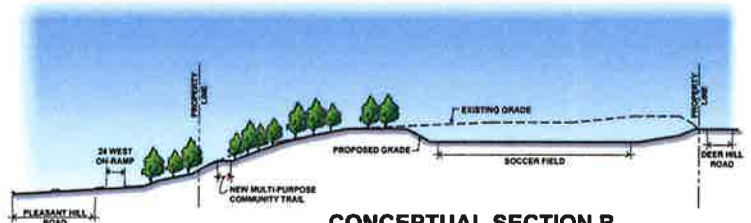
LEGEND	SIZE
PARCEL A TO BE RETAINED BY DEVELOPER	8.7 ACRES
PARCEL B TO BE PURCHASED BY THE CITY	13.6 ACRES

**CONCEPT SITE PLAN**  
 0 20 40 100'  
 SCALE: 1" = 60'-0"



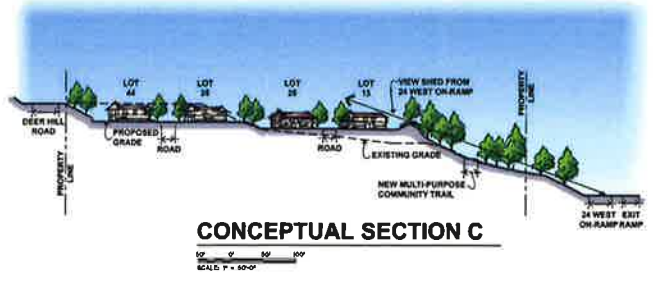
**CONCEPTUAL SECTION A**

0' 20' 40' 60' 80' 100'  
SCALE: 1" = 50'-0"



**CONCEPTUAL SECTION B**

0' 20' 40' 60' 80' 100'  
SCALE: 1" = 50'-0"



**CONCEPTUAL SECTION C**

0' 20' 40' 60' 80' 100'  
SCALE: 1" = 50'-0"

Living & Garden Center, Inc.  
10000 24th Street, NW  
Atlanta, GA 30329  
404.252.1234  
www.livingandgarden.com

**SITE SECTIONS**

SCALE: SEE SCALE  
DATE: 10/15/2013  
REVISED:  
PROJECT NO: 1302  
SHEET: 5F



PLAY GROUND

**DEER HILL COMMUNITY PARK**

SCALE: 1" = 20'-0"

1. This plan is for the Deer Hill Community Park, located at the intersection of Deer Hill Road and Pleasant Hill Road in the City of Denver, Colorado. The project is a public park and includes a soccer and lacrosse field, a dog park, a play ground, and a parking lot. The plan shows the layout of the park and the location of the various facilities. The plan is subject to the City of Denver's zoning and subdivision regulations. The plan is prepared by LCA Architects, Inc. and is for informational purposes only. It is not intended to be used as a legal document. The plan is the property of LCA Architects, Inc. and is not to be reproduced or distributed without the written consent of LCA Architects, Inc.

SCALE:	1" = 20'-0"
DATE:	12/13/2013
REVISIONS:	
PROJECT NO.:	1000
SHEET OF:	





SKETCH - 1

#12061

11/22/12



**SKETCH-3**

#13061 11/22/12





**SKETCH - 4**

H. ROU

12/5/13