

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**W25**

November 18, 1997

**MEMORANDUM**

**TO:** COMMISSIONERS AND INTERESTED PERSONS

**FROM:** CHARLES DAMM DEPUTY DIRECTOR  
SOUTH COAST DISTRICT STAFF

**SUBJECT:** A-5-RPV-93-005 (Palos Verdes Land Holdings Company/Zuckerman)  
Condition Compliance Condition 6 **Access and Habitat Management and Maintenance**

In 1993, the Commission approved, on appeal, the applicant's permit for a golf course and residential subdivision, after extensive discussions with the resources agencies. As part of the project description, the applicant proposed to dedicate and improve 75.5 acres of parks, open space and habitat preserves. The 75.5 acres of land and the trails and parking lots offered and required in mitigation would be accepted either in fee or as easements by the City of Rancho Palos Verdes. The applicant proposed that the future golf course owners/operators, the beneficiaries of the permit, would maintain these areas to provide habitat for endangered species and recreation for the public. At the time of the permit's approval, the methods for funding this maintenance were still unspecified.

In condition 6, the Commission reiterated a City of Rancho Palos Verdes requirement that the applicant or its successor in interest provide a funding program assuring maintenance of all dedicated areas, habitat mitigation areas, and all special features necessary to protect habitat. In order to assure that the cost of maintaining these mitigation measures was borne by the development, not local government, the Commission imposed a condition requiring a funding program for maintenance of access and habitat areas. Because the mechanism of the funding program was not decided at the time of the Commission's approval, the condition requires the funding program to be reported to the Commission. The condition stated:

**6. ACCESS AND HABITAT MANAGEMENT AND MAINTENANCE**

Prior to issuance of the coastal development permit the applicants shall provide for the review and approval by the Coastal Commission an access and habitat management and maintenance program:

A. Funding Program. The program shall include a long term funding program which will provide for the actual cost of both:

(1) park maintenance and periodic repair and replacement of landscaping, restrooms, trails, fences and benches and other facilities; and,

(2) on-going habitat protection and restoration including a) on-site supervision of trail and habitat areas by resident Qualified Naturalist, operation of interpretive signs and displays, facility, funding of public outreach programs, including youth education and docent program,

and b) maintenance of drainage systems, oil separators and other devices required to protect habitat in nearby ocean waters and tide pools.

B. Maintenance. The program shall include the legal authority and other provisions to maintain all habitat and public access areas to the standards required in this coastal development permit, and to maintain all drainage and water quality protection systems proposed by the applicant to protect the habitat of ocean waters and tide pools.

To comply with this condition, the applicant has submitted a maintenance and funding program that includes a development agreement between the Zuckerman Entities and Palos Verdes Land Holding Company (applicant) and the City of Rancho Palos Verdes (Exhibit 4, attached). The agreement was approved by the City on November 5, 1997, as Ordinance No. 328. The development agreement requires the golf course owner, and all subsequent golf course owners, to pay for the maintenance of the parks, trails, restrooms, public facilities and the habitat (revegetation) areas to the reasonable satisfaction of the City. Item 11.4. states in part:

"11.4 Agreement to Maintain Amenities and to Pay Certain Revenues to City. Developer hereby agrees that developer and any subsequent owner(s) of those parcels of the Property which comprise the golf course: ..(a). [establishes a fee per round of golf]... (b) shall maintain to City's reasonable satisfaction the trails, parks and open space areas located on the property .... and any improvements located thereon, including, without limitation, fences, signs, landscaping, furniture, trash cans, drinking fountains etc. and shall maintain the two on site public parking lots, the public restrooms and the golf course clubhouse, the storm drains that will not be accepted by Los Angeles County, the fire access lane abutting Ocean Terraces condominiums and the trails located on City's Shoreline Property that owners were required by the California Coastal Commission to construct and improve, all monitoring wells and dewatering wells located on the Property (and upon the request of City shall convert such monitoring wells into dewatering wells) and other devices located on-site to control the level of the ground water or enhance the geologic stability of the Property as specifically set forth in the agreement which is attached hereto as Exhibit E. Developer further agrees that the agreement attached hereto as Exhibit E shall be recorded as a covenant against the parcels comprising the golf course and shall continue in effect notwithstanding the expiration or termination of this development agreement.

Item 11.5 states in part:

11.5 Park Land Dedications and Monetary Contribution. ....The habitat conservation areas located on the Property and off site are discussed at length in a Habitat Conservation Plan which has been approved by City and the applicable resource agencies. The Habitat Conservation Plan ("Plan") provides that it is initially the Owner's responsibility, for a minimum period of five years, to ensure that the habitat is planted

and established. Under the Plan, after the first five years pass and the habitat is established, the City is to perform the long term maintenance of the habitat. It is the intent of this agreement that in addition to the initial maintenance of the habitat for the first five years, Developer shall perform City's long term maintenance responsibilities to City's reasonable satisfaction.....As more particularly set forth in the Agreement which is attached hereto as Exhibit E, if Developer or any subsequent owner(s) of those parcels of the Property which comprise the golf course do not fulfill their maintenance obligations with respect to the habitat conservation areas to the City's reasonable satisfaction ...City shall assume maintenance obligation and ...Developer shall pay a fee to the City in the amount of one dollar per round of golf...[for maintenance costs.].

The applicant initially asserted that the development agreement alone demonstrated compliance with condition 6. However, on reviewing the development agreement it became apparent that it was deficient in several respects. First, the development agreement does not address all of the maintenance obligations. The following are required by condition 6 but not included in the development agreement:

1. Periodic repair and replacement of restrooms, benches, etc.
2. Funding for the outreach and education program.
3. Funding for an onsite Qualified Naturalist to supervise the habitat maintenance and public education programs.
4. Funding for the maintenance and/or replacement of the oil separators, street sweeping or other water quality programs required in the coastal development permit and not required in the SWPPP.
5. The absence of any definition of the applicant's maintenance responsibility for "unimproved" or "primitive" trails.

In addition, the development agreement obligated the permittee to maintain the improvements to the "reasonable satisfaction of the City." This requirement fails to insure that the improvement will be maintained to the degree necessary for continued safe use of the improvements.

To address these deficiencies, the applicant has submitted an Access and Habitat Management and Maintenance Program that calls for the applicant and all future owners of the golf course to maintain the trails, restrooms, signs, fences, parking lots park furniture and improvements, the oil separators that protect the tide pools and to fund the outreach program and the employment of a naturalist (Exhibit 3). The Program includes the items that were missing in the development agreement. In addition, it describes the standards to which areas will be maintained. Even though the Development Agreement requires maintenance to the "City's reasonable satisfaction", the Program assures that the area will, at a minimum, be maintained to the standards described in the Program. The Program provides:

### **Access and Habitat Management and Maintenance Program**

The program provides that the owner of the golf course shall:

1. Maintain the dedicated parks and other facilities in a safe, usable and attractive condition, suitable for public use and enjoyment, and periodically repair and/or replace the park furniture, restrooms, trails, fences, benches and signs as needed in conformance with the Public Amenities Plan and/or as described in the final detailed Park Plans to be submitted according to condition 4.
2. Maintain all improved dedicated trails required in the Coastal Commission's conditions to permit A-5-RPV-93-005 (as amended) in a safe, usable and attractive condition, suitable for public use and enjoyment, in conformance with the final Trail Plans to be submitted according to Condition 4. Replace slumps and erosion (washouts) on unimproved trails.
3. Maintain all of the habitat revegetation areas in viable form in conformance with the standards of the detailed Revegetation Plan for each revegetation area as approved by the U. S. Fish and Wildlife Service and the California Department of Fish and Game, following the methods described in section 4.9 of the approved HCP.
4. Fund and operate outreach programs and employ a qualified naturalist for on-site supervision as part of the golf course staff or by means of a contract with a recognized local conservation organization as agreed to in the letter from Ocean Trails to the Coastal Commission dated September 1, 1997.
5. Maintain and periodically repair and/or replace the oil separator(s) and/or parking lot low flow filtration or sweeping program offered in compliance with the Coastal Commission conditions. These devices or programs shall be maintained so that the parking lot discharge meets the standards of the Regional Water Quality Control Board's discharge requirement for habitat areas as described in the Santa Monica Bay Plan.
6. Manage and maintain all aspects of the project as specified in the Commission's conditions to permit A-5-RPV-93-005 as amended, the Public Amenities Plan and the approved Habitat Conservation Plan. The management and maintenance program will be implemented for the duration of the golf course and other improvements approved in coastal development permit A-5-93-005.

A-5-RPV-93-005(Palos Verdes Land Holdings/Zuckerman)  
Applicant's compliance with Condition 6,  
Access and Habitat Management and Maintenance Program.  
page 5

With respect to the outreach program, the applicant proposes to employ a naturalist through the golf course and to employ the local conservancy as the education arm of the development. Exhibit 3, letter from Mr. Kenneth Zuckerman September 3, 1997.

To assure that future owners of the golf course understand the requirements of this program, the applicant proposes to record a deed restriction against the golf course, to make all subsequent owners of the the golf course aware of their responsibility for future maintenance of the parks, trails, restrooms and public facilities, the drainage/ water quality improvements and the habitat areas in accordance with the Access and Habitat Management and Maintenance Program. (With this language recorded, the Commission's intent to assure that the mitigating measures imposed on the development in its special conditions are maintained by the applicant's successors in interest. Upon recordation of this deed restriction, and the recordation of all other dedications and deed restrictions, the permit can issue.



*Ocean Trails*  
PALOS VERDES



*Condition compliance  
cont 6*

*A 5 RPV 93.005  
Exhibit 2  
P'*

November 18, 1997

Pam Emerson  
Los Angeles Area Supervisor  
California Coastal Commission  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802-4302

Dear Ms. Emerson,

The Ocean Trails Project is required by Condition 6 of its Coastal Permit to provide ongoing access and habitat management and maintenance:

- A. Funding Program. The program shall include a long term funding program which will provide for the actual cost of both:
- (1) park maintenance and periodic repair and replacement of landscaping, restrooms, trails, fences, benches and other facilities; and,
  - (2) on-going habitat protection and restoration including a) on-site supervision of trail and habitat areas by resident Qualified Naturalist, operation of interpretive signs and displays, facility, funding of public outreach program ...

With this letter you will find a Management and Maintenance Program to ensure that these requirements will be met in a satisfactory manner (see attachment).

The project has also signed a Development Agreement with the City of Rancho Palos Verdes. This agreement, which has been reviewed by CCC staff, provides for RPV oversight of maintenance of the facilities and a mechanism to enforce compliance, as follows:

... the Developer and any subsequent owner of the portion of the property which is to be used as a golf course shall maintain to the City's reasonable satisfaction the trails, parks, and open space areas located on the Property, ... and any improvements located thereon, including, without limitation, fences, signs, landscaping, furniture, trash cans, drinking fountains, etc., and shall maintain the two on-site public parking lots, the public restroom at the golf course clubhouse, the storm drains that will not be accepted by Los Angeles County, the fire access lane abutting the

**THE OCEAN TRAILS COURSE AT PALOS VERDES**

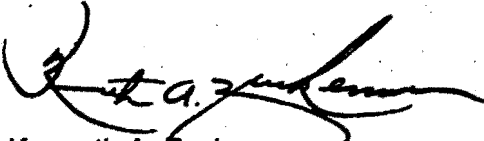
707 Silver Spur Road, #210 • Rolling Hills Estates, CA 90274

Phone: 310-265-5525 • Fax: 310-265-5522

Ocean Terraces Condominiums, the trails located on City's Shoreline Property that Owners were required by the California Coastal Commission to construct and improve, and maintain the habitat areas both on the Property and off-site, as referred to in the approved Habitat Conservation Plan, or if said habitat maintenance is not performed to City's satisfaction, to pay an additional fee of One Dollar (\$1.00) per round of golf to reimburse City for the cost of performing said maintenance ... If Developer or any subsequent owners of those parcels of the Property which comprise the golf course do not fulfill their maintenance obligations with respect to said improvements to City's reasonable satisfaction, then, after providing Owners with the notice and opportunity to cure the default as set forth in Section 16.1, City may commence proceedings to revoke or impose additional conditions to ensure said maintenance on the conditional use permit which was issued by City for the golf course...

We look forward to continuing to work with you to move this project forward. If you have any questions, feel free to call Barbara Dye at my office (265-5525).

Sincerely,



Kenneth A. Zuckerman  
Project Manager

A 5 RPV 93 005  
Exh. 6.12  
P 2

### **Access and Habitat Management and Maintenance Program**

The program provides that the owner of the golf course shall:

1. Maintain the dedicated parks and other facilities in a safe, usable and attractive condition, suitable for public use and enjoyment, and periodically repair and/or replace the park furniture, restrooms, trails, fences, benches, and signs as needed in conformance with the Public Amenities Plan and/or as described in the final detailed Park Plans to be submitted according to condition 4.
2. Maintain all improved dedicated trails required in the Coastal Commission's conditions to permit A-5-RPV-93-005 (as amended) in a safe, usable and attractive condition, suitable for public use and enjoyment, in conformance with the final Trail Plans to be submitted according to Condition 4. Replace slumps and erosion (washouts) on unimproved trails.
3. Maintain all of the habitat revegetation areas in viable form in conformance with the standards of the detailed Revegetation Plan for each revegetation area as approved by the U. S. Fish and Wildlife Service and the California Department of Fish and Game, following the methods described in section 4.9 of the approved HCP.
4. Fund and operate outreach programs and employ a qualified naturalist for on-site supervision as part of the golf course staff or by means of a contract with a recognized local conservation organization as agreed in the letter from Ocean Trails to the Coastal Commission dated September 1, 1997.
5. Maintain and periodically repair and/or replace the oil separator(s) and/or parking lot low flow filtration or sweeping program offered in compliance with the Coastal Commission conditions. These devices or programs shall be maintained so that the parking lot discharge meets the standards of the Regional Water Quality Control Board's discharge requirement for habitat areas as described in the Santa Monica Bay Plan.
6. Manage and maintain all aspects of the project as specified in the Commission's conditions to permit A-5-RPV-93-005 as amended, the Public Amenities Plan, and the approved Habitat Conservation Plan.

The management and maintenance program will be implemented for the duration of the golf course and other improvements approved in coastal development permit A-5-93-005.

A 5 RPV 93 005  
Exh. b. + 2 p 3



A 5 RPU 93000  
Exhibit 3  
P. ●  
naturalist  
letter

September 3, 1997

RECEIVED  
SEP 4 1997

CALIFORNIA  
COASTAL COMMISSION

Pam Emerson  
Los Angeles Area Supervisor  
California Coastal Commission  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802-4302

Dear Ms. Emerson,

The Ocean Trails Project is required by Condition 6 of its Coastal Permit to provide ongoing access and habitat management and maintenance:

- A. Funding Program. The program shall include a long term funding program which will provide for the actual cost of both:
- (1) park maintenance and periodic repair and replacement of landscaping, restrooms, trails, fences, benches and other facilities; and,
  - (2) on-going habitat protection and restoration including a) on-site supervision of trail and habitat areas by resident Qualified Naturalist, operation of interpretive signs and displays, facility, funding of public outreach program ...

The tasks specified in Condition A.(1) will be carried out by the golf course landscaping staff. They will be uniquely qualified to do this well, because they will have the appropriate equipment available on site, and will have expertise in managing coastal sage scrub since a significant portion of the course will be vegetated with native habitat. Performance in this area will be guaranteed by a provision of the Development Agreement with the City of Rancho Palos Verdes which allows the City to levy an additional fee per round of golf and do the maintenance itself if the project operator does not do it adequately.

The tasks specified in Condition A.(2) will be carried out by an employee of the golf course or by a contract employee provided by a local organization with expertise in this area such as the Palos Verdes Peninsula Land Conservancy. The resident Qualified Naturalist will be provided with office space, and will have the responsibility for:

- monitoring the condition of the trails and habitat areas on a regular basis and communicating with the golf course staff as to their status and needs; and

## THE OCEAN TRAILS COURSE AT PALOS VERDES

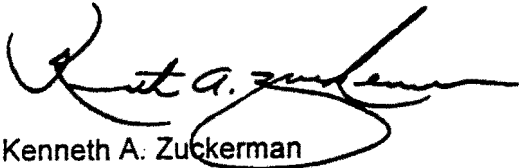
707 Silver Spur Road, #210 • Rolling Hills Estates, CA 90274

Phone: 310-265-5525 • Fax: 310-265-5522

- working with the Docents from the City's Point Vicente Interpretive Center and other area resources to provide an outreach and youth education programs

We look forward to continuing to work with you to move this project forward. If you have any questions, feel free to call Barbara Dye at my office (265-5525).

Sincerely,



Kenneth A. Zuckerman  
Project Manager

A 5 RPV 93005  
Exhibit 3  
p 2

## ORDINANCE NO. 328

AN ORDINANCE OF THE CITY OF RANCHO PALOS  
VERDES APPROVING A DEVELOPMENT AGREEMENT WITH  
THE DEVELOPER OF THE OCEAN TRAILS PROJECT

WHEREAS, on September 17, 1996, the City Council adopted Resolution No. 96-80, with the concurrence of the Ocean Trails property owners, requiring the property owners to enter into a Development Agreement with the City to provide for substitute funding methods in lieu of those previously contemplated as part of the original project approvals in 1992; and

WHEREAS, pursuant to state law, California Government Code Section 65864 et seq., cities can enter into development agreements with private property owners; and

WHEREAS, after notice issued pursuant to the provisions of the Rancho Palos Verdes Municipal Code, the Planning Commission conducted a public hearing on October 14, 1997, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Development Agreement, and following the public hearing, the Planning Commission adopted Resolution No. \_\_\_\_\_ recommending approval of the Development Agreement to the City Council; and

WHEREAS, after notice issued pursuant to the provisions of the Rancho Palos Verdes Municipal Code, the City Council conducted a public hearing on October 21, 1997, at which time all interested parties were given an opportunity to be heard and present evidence;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES ORDAINS AS FOLLOWS:

Section 1: The proposed Development Agreement conforms with the maps and policies of the General Plan and the City's Coastal Specific Plan. Accordingly, the Development Agreement is consistent with all applicable provisions of the General Plan and the Specific Plan that are relevant to the project.

Section 2: The proposed Development Agreement complies with the requirements of California Government Code Sections 65865 through 65869.5.

Section 3: The proposed Development Agreement will not be detrimental to or cause adverse effects to adjacent property owners, residents, or the general public, since the project will be constructed in accordance with the last revisions that were made to the project by the City Council in September 1996 (Revision "C"), and by the Planning Commission in September 1997 (Conditional Use Permit No. 163 - Revision "D"), and the Coastal

Exhibit 4

A 5 RPV 93005

p2 of 31

(2)

Development  
AgreementConditional  
Compliance

(page 1 deleted)

Permit approved by the California Coastal Commission, as last revised on October 7, 1997.

Section 4. The proposed Development Agreement provides clear and substantial benefit to the residents of the City, because the Development Agreement will provide a method to substitute revenue sources that either have been eliminated or severely compromised by State legislation enacted since the original approval of the project, and the Agreement guarantees that the public amenities and open space created as part of this project will be properly maintained in the future.

Section 5. For the foregoing reasons and based on the information contained in the Staff Reports, Minutes and other records of the proceedings, the City Council hereby approves the Development Agreement with the developers of the Ocean Trails project attached hereto as Exhibit "A" and incorporated herein by this reference.

PASSED, APPROVED and ADOPTED this 21st day of October 1997 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

CITY CLERK  
CITY OF RANCHO PALOS VERDES  
30940 Hawthorne Boulevard  
Rancho Palos Verdes, CA 90275-5391

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(Space Above for Recorder's Use)

**DEVELOPMENT AGREEMENT**

(Pursuant to Government Code Sections 65864 - 65869.5)

This DEVELOPMENT AGREEMENT ( Agreement ) is entered into on \_\_\_\_\_ 1997, between the entities listed on the signature pages hereto under the heading ZUCKERMAN ENTITIES , and PALOS VERDES LAND HOLDINGS COMPANY, L.P., a California limited partnership (hereinafter referred to collectively as Developer ), and the CITY OF RANCHO PALOS VERDES, a municipal corporation organized and existing under the laws of the State of California ( City ). Developer and City are sometimes collectively referred to herein as the parties.

**RECITALS:**

This Agreement is predicated upon the following facts:

A. These Recitals refer to and utilize certain capitalized terms which are defined in this Agreement. The parties intend to refer to those definitions in conjunction with the use thereof in these Recitals.

B. Government Code Sections 65864 - 65869.5 ( Development Agreement Law ) authorize City to enter into binding development agreements with persons having a legal or equitable interest in real property or the development of such property, all for the purpose of strengthening the public planning process, encouraging private participation and comprehensive planning and reducing the economic costs of such development.

C. Pursuant to Government Code Section 65865, City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements.

(4)

A 5 REV 93 005

EX 4 P 3

D. Developer owns, either in fee or by leasehold, and is the proposed developer of the Property as described on Exhibit A, except for those portions thereof previously dedicated to governmental agencies for street purposes, parks or open space.

E. Developer anticipates developing a golf course and residential planned development in Subregions 7 and 8 of the City commonly known as the Ocean Trails Project (hereinafter referred to as Project) requiring substantial investment in public facilities and substantial investment in on-site and off-site improvements in order to make the Project feasible, much of which is to be maintained by City after the development of the Project has been completed.

F. Developer has applied for, and City has approved, vesting tentative tract maps, parcel maps, conditional use permits and other approvals related to the Project, which have been amended on several occasions, in order to protect the interests of its residents and the quality of the community and the environment (collectively referred to as the Approvals). The latest revisions to the Project were approved by the City Council of City on September 3, 1996, and by the Planning Commission on September 9, 1997. In addition, on April 15, 1993, the California Coastal Commission approved Coastal Permit No. 103 for the Project, which likewise has been amended on January 12, 1995, September 27, 1995, February 1, 1996, July 11, 1996, and October 7, 1997, to reflect the modifications to the Project.

G. As part of the approval process, City has undertaken, pursuant to the California Environmental Quality Act (CEQA), the required analysis of the environmental effects which would be caused by the Project. In that regard, on June 2, 1992, the City Council of City adopted Resolution No. 92-53, which certified Environmental Impact Report No. 36 and imposed a series of mitigation measures in connection with the development of the Project to eliminate or mitigate, to the extent feasible, any potentially adverse impacts caused by the Project and made the required environmental findings. On December 7, 1992, the City Council of City adopted Resolution No. 92-115, which approved an Addendum to the Environmental Impact Report prepared for revisions to the Project, in accordance with the provisions of CEQA. On October 5, 1993, the City Council of City adopted Resolution No. 93-89, which approved a second Addendum to the Environmental Impact Report prepared for additional revisions to the Project, in accordance with the provisions of CEQA. On September 6, 1994, the City Council of City adopted Resolution No. 94-71, which approved a third Addendum to the Environmental Impact Report prepared for additional revisions to the Project, in accordance with the provisions of CEQA. On March 11, 1996, the City Council of City adopted Resolution No. 96-15, which approved a fourth Addendum to the Environmental Impact Report prepared for additional revisions to the Project, in accordance with the provisions of CEQA. On September 3, 1996, the City Council of City adopted Resolution No. 96-72, which approved a fifth Addendum to the Environmental Impact Report prepared for additional revisions to the Project, in

(5)

Ex 4 P 4

A5 RPV93005

accordance with the provisions of CEQA. On October 23, 1997, the City Council of City adopted Resolution No. 97-92, which approved a sixth Addendum to the Environmental Impact Report to revise the project description to include the preparation of this Development Agreement, in accordance with the provisions of CEQA.

H. Due to the potential cost to City of maintaining the habitat conservation areas and other public improvements which will be dedicated to City after construction of the Project is completed and the inability of City to rely on traditional methods for obtaining financing to maintain these improvements, such as taxes and assessment districts, and the uncertainty concerning the validity of the City's golf tax, because of the adoption of Propositions 62 and 218, and due to the potential cost of developing the Project and the Developer's desire to purchase from City an easement on a portion of City's property, commonly referred to as the Switchbacks, and to use a portion of certain property recently conveyed to City by the County of Los Angeles, to revegetate said areas for use as habitat for endangered or threatened species, City and Developer wish to enter into a development agreement relating to the Project. Accordingly, proceedings have been undertaken in accordance with City's rules and regulations.

I. The Planning Commission and the City Council have found that this Agreement is consistent with the City's General Plan, Coastal Specific Plan, Development Code and the Approvals, as most recently amended.

J. On November 5, 1997, the City Council of City adopted Ordinance No. 328, approving this Agreement with Developer.

K. City has found and determined that the execution of this Agreement is in the best interest of the public health, safety and general welfare of City and its residents and that adopting this Agreement constitutes an appropriate exercise of its police power.

The parties agree as follows:

1. Definitions.

1.1. Agreement is this Development Agreement.

Agreement Date is the date this Agreement is executed by City.

1.2. City is the City of Rancho Palos Verdes, California.

1.3. Developer is each of the entities listed on the signature pages hereto under the heading ZUCKERMAN ENTITIES, Palos Verdes Land Holdings Company, L.P., a California limited partnership, and their successors in interest to all or any part of the Property.

1.4. Development Plan is all of those ordinances, resolutions, codes, rules, regulations, Approvals and official policies of City governing the development and use of the Property as of the Agreement Date, including, without limitation, the permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property, and all of those permits and Approvals which are referenced on Exhibit B, which have been issued or granted by City and the California Coastal Commission in connection with the Project, allowing the development of seventy-five single family residential dwelling units and four (4) affordable housing units on the Property and requiring four (4) additional affordable units off-site. To the extent any of the foregoing are further amended by City from time to time with the consent of Developer, the appropriate component of the Development Plan shall be deemed to be automatically amended. Notwithstanding the immediately preceding sentence, if this Agreement is required by law to be amended in order for the Development Plan to include such amendments, Development Plan shall not include such amendments unless and until this Agreement is so amended. A copy of all of the conditions of approval which have been imposed on the Project by the City and the Coastal Commission is attached hereto as Exhibit C.

1.5. Effective Date is that date which is the later of: (a) the date of expiration for filing a referendum petition relating to this Agreement, if no such petition is filed within such period; or (b) the results of a referendum election are declared approving this Agreement, if a referendum petition is filed within the applicable period.

1.6. Project is the residential planned development and eighteen-hole public golf course commonly referred to as the Ocean Trails Project and associated amenities, including, without limitation, on-site and off-site improvements, contemplated by the Development Plan, as the same may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.7. Property is the real property of which the Project is, or is anticipated to be, located as described on Exhibit A.

2. Exhibits. The following documents are referred to in this Agreement, attached hereto and incorporated herein by this reference:

(9)

A5 RPV 93-005

Ex 4 p 6

Exhibit  
Designation  
Description

A

Legal Description of the Property

B

Permits and Approvals Constituting the Development Plan

C

All Conditions of Approval Imposed on the Project

D

Maps depicting all of the Public Amenities, including, without limitation, parks, trails and habitat areas

E

Agreement to be recorded against the golf course parcels obligating any owner of the said parcels to maintain the trails, parks and certain other specific on-site public improvements and certain habitat areas, all as specified therein, and guaranteeing the payment to City of the City's golf tax and a per round golf fee in certain circumstances

F

Chapter 3.40 of the Rancho Palos Verdes Municipal Code

3. Mutual Benefits. This Agreement is entered into for the purpose of carrying out the Development Plan for the Project in a manner that will insure certain anticipated benefits to both City and its residents and to Developer, as set forth in this Section. City and Developer agree that, due to the size and duration of the Project, certain assurances on the part of each party as to the Project will be necessary to achieve those desired benefits.

3.1. Benefits to City. The benefits to City (including, without limitation, the City's residents) under this Agreement include, but are not limited to: (a) the dedication to City of the improvements which will be available to the public, as depicted on Exhibit D, including parks, trails and habitat areas; (b) a guaranty, which shall be set forth in the agreement referred to in paragraph (c) of this Section 3.1, guaranteeing payment to City of the revenue which would have been generated from the golf course by virtue of the City's golf tax, regardless whether the golf tax which is set forth in Chapter 3.40 of the Rancho Palos Verdes Municipal Code is found by a court to be invalid; (c) the agreement that Developer and any subsequent owner of the portion of the Property which is to be used as a golf course shall (i) maintain to City's reasonable satisfaction

(S)

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the trails, parks, and open space areas located on the Property as described in Resolution No. 96-94, which approved the Final Public Amenities Plan for the Project, and any improvements located thereon, including, without limitation, fences, signs, landscaping, furniture, trash cans, drinking fountains, etc., and shall maintain the two on-site public parking lots, the public restroom at the golf course clubhouse, the storm drains that will not be accepted by Los Angeles County, the fire access lane abutting the Ocean Terraces Condominiums, and the trails located on City's Shoreline Property that Owners were required by the California Coastal Commission to construct and improve, and (ii) maintain the habitat areas both on the Property and off-site, as referred to in the approved Habitat Conservation Plan, or if said habitat maintenance is not performed to City's satisfaction, to pay an additional fee of One Dollar (\$1.00) per round of golf to reimburse City for the cost of performing said maintenance; all of which shall be set forth in a separate agreement or covenant which is recorded against the parcels comprising the golf course; (d) the payment of one hundred sixty-five thousand dollars (\$165,000.00) in cash to the City as consideration for the non-exclusive use of twenty-one acres of the conservation easement which has been established by the City in the Switchbacks area for habitat enhancement purposes; (e) the provision of additional residential housing; (f) the addition of eight residential units in the City which will be affordable to persons of very low to low income households, four of which will be located on-site and four of which will be located within the City's Coastal Zone or within three miles thereof; (g) improvements to roadways; (h) a golf course which will be available for use by the public; and (i) an increase in property tax revenues to be derived by City.

3.2. Benefits to Developer. Developer has expended and will continue to expend substantial amounts of time and money on the planning and infrastructure construction of the Project. In addition, Developer will expend substantial amounts of time and money in constructing public improvements and facilities and in providing for public services in connection with the Project. Developer would not make such additional expenditures without this Agreement and such additional expenditures will be made in reliance upon this Agreement. The benefits to Developer under this Agreement consist of: (a) the assurance that Developer will preserve the right to develop the Property as planned and as set forth in the Development Plan; and (b) the non-exclusive use of twenty-one acres of the City's property in the Switchbacks area and twenty acres of certain property ("Shoreline Property") which was conveyed to City by the County of Los Angeles for habitat restoration purposes as mitigation for development of the Project.

4. Interest of Developer. Developer represents that Developer has a legal interest in the Property.

5. Binding Effect of Agreement. The burdens of this Agreement bind and the benefits of this Agreement inure to the successors in interest to the parties hereto.

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6. Relationship of Parties. The contractual relationship between City and Developer is that Developer is an independent entity and not the agent of City.

7. Term. The term of this Agreement shall commence upon the Effective Date and shall continue until all building permits required to complete the development of the Project as contemplated by the Development Plan have been issued, provided that in no event shall such term exceed ten (10) years following the Effective Date of this Agreement, as extended by events of force majeure as such events are set forth in Section 18.3 below. In no event, however, shall the term of this Agreement exceed fifteen (15) years.

8. Changes in Project. Developer shall not be entitled to any change, modification, revision or alteration in the Development Plan relating to the permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings or the provision for reservation or dedication of land for public purposes without review and approval by those agencies which approved the particular aspect of the Development Plan in the first instance. Subject to the foregoing provisions of this Section 8, City acknowledges that Developer may seek amendments to entitlements to use and new entitlements to use in connection with the development of the Project. Subject to Sections 10 and 11 below, nothing in this Agreement shall be deemed to restrict or expand the authority of City or the Coastal Commission in determining whether to approve or deny any such amendments or new entitlements to use.

9. Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees, partners and representatives harmless from liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from the negligence or intentional, wrongful misconduct of Developer or of Developer's contractors, subcontractors, agents, employees or other persons acting on Developer's behalf which relate to the Project. Developer agrees to and shall defend and indemnify City and its officers, agents, employees, partners and representatives from any and all actions for damages caused or alleged to have been caused by reason of the negligent or intentional, wrongful misconduct of Developer or of Developer's contractors, subcontractors, agents, employees or other persons acting on Developer's behalf in connection with the Project.

10. Vested Right. By entering into this Agreement and relying thereon, Developer is obtaining a vested right to proceed with the Project in accordance with the Development Plan, and City is securing certain public benefits and financing which help to alleviate current or potential problems in City and enhance the public health, safety and welfare. City therefore agrees to the following:

10.1. **No Conflicting Enactments.** Neither the City Council of City nor any other agency of City shall enact any ordinance, policy, rule, regulation or other measure applicable to the Project which relates to the rate, timing or sequencing of the development, the density, design, construction standards and specifications of the development, or, subject to Section 12.1 below, other matters applicable to the construction of all or any part of the Project or which is otherwise in conflict with this Agreement. This Section shall not restrict the City's ability in the event of a public emergency to take such reasonable measures under its police powers to protect the public health and safety as it deems necessary to deal with such emergency even if such measures are incompatible with other terms of this Development Agreement, including, without limitation, shutting off the water to the golf course if water on the golf course is causing or contributing to the public emergency. Without limiting other matters which do not constitute a public emergency, for purposes hereof, a public emergency shall not include matters which develop over time such as, without limitation, traffic concerns or air quality issues; except, however, public emergency shall include any matter relating to the geologic stability of the Property upon which the Project is located and the depth of the water table underlying said Property which, in City's reasonable judgment, is adversely impacting the public health and safety. If the geologic problem is being caused primarily by adjacent or upstream properties, City will first take available actions against the owners of said other properties prior to taking action against Owners of the subject Property. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the foregoing limitations are intended to reserve to City all of its police power which cannot be so limited. Notwithstanding the foregoing, this Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority which cannot be restricted by contract.

10.2. **Intent of Parties.** In addition to and not in limitation of the foregoing, it is the intent of Developer and City that no moratorium or other limitation (whether relating to the rate, timing or sequencing of the development, the density, design, construction standards and specifications of the development, or, subject to Section 12.1 below, other matters applicable to the construction of all or any part of the Project and whether or not enacted by initiative or otherwise) affecting subdivision maps, building permits, occupancy certificates or other entitlements to use approved, issued or granted within City, or portions of City, shall apply to the Project to the extent such moratorium or other limitation is in conflict with this Agreement. Notwithstanding the foregoing, should an ordinance, general plan or zoning amendment, measure, moratorium, policy, rule, regulation or other limitation enacted by citizens of City through the initiative process be determined by a court of competent and final jurisdiction to invalidate or prevail over all or any part of this Agreement, Developer shall have no recourse against City pursuant to this Agreement, but shall retain all other rights, claims and causes of action at law or in equity which Developer may have independent of this Agreement.

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## 11. General Development of the Project.

11.1. **Project.** While this Agreement is in effect, Developer shall have a vested right to develop the Project in accordance with the terms and conditions of this Agreement and the Development Plan, and City shall have the right to control the development of the Project in accordance with the terms and conditions of this Agreement and the Development Plan. Thus, the Development Plan shall control the overall design, development and construction of the Project and all on-site and off-site improvements and appurtenances in connection therewith, including, without limitation, all mitigation measures (including those required to minimize or eliminate any potentially significant environmental effects). The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, the provisions for reservation and dedication of land for public purposes and other terms and conditions of development applicable to the Property shall be those set forth in the Development Plan.

11.2. **Phasing and Timing of Development.** The parties acknowledge that although Developer currently anticipates that the Project will be phased and constructed in increments over an approximate five year time frame, at the present time Developer cannot predict when or the order in which Project phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, competition and other similar factors. To the extent permitted by the Development Plan and this Agreement, Developer shall have the right to develop the Project in phases in such order and at such times as Developer deems appropriate within the exercise of its subjective business judgment, so long as the Project is constructed as an integrated residential planned development as contemplated by the Development Plan.

11.3. **Effect of Agreement on Land Use Regulations.** The rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings and the design, improvement and construction standards and specifications applicable to development of the Property are those rules, regulations and official policies in force as of the Agreement Date. In connection with any approval which City is permitted or has the right to make under this Agreement relating to the Project, or otherwise under its rules, regulations and official policies, City shall exercise its discretion or take action in a reasonably expeditious manner which complies and is consistent with the Development Plan and the standards, terms and conditions contained therein or in this Agreement.

11.4. **Agreement To Maintain Amenities And To Pay Certain Revenues To City.** Developer hereby agrees that Developer and any subsequent owner(s) of those parcels of the Property which comprise the golf course: (a) shall pay to City the tax

imposed pursuant to City Ordinance No. 291 (Chapter 3.40 of the Rancho Palos Verdes Municipal Code, Exhibit "F", hereto), even if said tax is determined by a court of competent jurisdiction to be invalid by virtue of Proposition 62 or any other applicable law; and (b) shall maintain to City's reasonable satisfaction the trails, parks, and open space areas located on the Property as described in Resolution No. 96-94, which approved the Final Public Amenities Plan for the Project, and any improvements located thereon, including, without limitation, fences, signs, landscaping, furniture, trash cans, drinking fountains, etc., and shall maintain the two on-site public parking lots, the public restroom at the golf course clubhouse, the storm drains that will not be accepted by Los Angeles County, the fire access lane abutting the Ocean Terraces Condominiums, and the trails located on City's Shoreline Property that Owners were required by the California Coastal Commission to construct and improve, all monitoring and dewatering wells located on the Property (and upon request of City, shall convert such monitoring wells into dewatering wells) and other devices located on-site to control the level of the ground water or enhance the geologic stability of the Property, as specifically set forth in the agreement which is attached hereto as Exhibit E. Developer further agrees that the agreement attached hereto as Exhibit E shall be recorded as a covenant against the parcels comprising the golf course and shall continue in effect notwithstanding the expiration or termination of this Development Agreement.

If Developer or any subsequent owner(s) of those parcels of the Property which comprise the golf course do not fulfill their maintenance obligations with respect to said Improvements to City's reasonable satisfaction, then, after providing Owners with the notice and opportunity to cure the default as set forth in Section 16.1, City may commence proceedings to revoke or impose additional conditions to ensure said maintenance on the conditional use permit which was issued by City for the golf course (Conditional Use Permit No. 163), in accordance with the notice and hearing requirements set forth in the Rancho Palos Verdes Municipal Code. This paragraph shall not limit any other rights, remedies, or causes of action that City may have at law or equity to address said breach.

City covenants that, in consideration for Developer guarantying the payment of the golf tax discussed in paragraph (a) of this Section 11.4, Developer shall not be obligated to pay any other similar tax or fee or comply with any similar exaction imposed in connection with the operation of the golf course; provided, however, this paragraph shall not be construed to preclude the imposition of taxes or fees which are imposed on a City-wide basis either on all business owners or on all property owners.

The provisions of this Section 11.4 shall survive the termination of this Agreement.

11.5. Park Land Dedications and Monetary Contribution. In conjunction with processing this Project and obtaining other permits required by other appropriate

governmental agencies, including, but not limited to, the U.S. Fish and Wildlife Service, Developer has caused to be prepared and processed a mitigation/restoration program for the preservation of and enhancement of certain areas both on-site and on properties located near the Property which are owned by City (habitat conservation areas). The habitat conservation areas located on the Property and off-site are discussed at length in a Habitat Conservation Plan which has been approved by City and the applicable resource agencies. The Habitat Conservation Plan ("Plan") provides that it is initially the Owners' responsibility, for a minimum period of five years, to ensure that the habitat is planted and established. Under the Plan, after the first five years pass and the habitat is established, the City is to perform the long term maintenance of the habitat. It is the intent of this Agreement that in addition to the initial maintenance of the Habitat for the first five years, Developer shall perform City's long term maintenance responsibilities, to City's reasonable satisfaction. In addition, Developer shall offer for dedication to City the three public parks and the on-site habitat conservation areas depicted on Exhibit D. All improvements which are to be dedicated to the City, including, without limitation, the improvements referred to in this Section and Section 11.4, shall be completed as prescribed in the Development Plan. As more particularly set forth in the Agreement which is attached hereto as Exhibit E, if Developer or any subsequent owner(s) of those parcels of the Property which comprise the golf course do not fulfill their maintenance obligations with respect to the habitat conservation areas to City's reasonable satisfaction, then, after providing Developer with the notice and opportunity to cure the default set forth in Section 16.1 of this Agreement, City shall assume that maintenance obligation, and in addition to the tax to be paid pursuant to Section 11.4(a) above, Developer or said subsequent owner(s) of such parcels shall pay a fee to City in the amount of One Dollar (\$1.00) per round of golf (or any portion thereof) played on the golf course to be developed as part of the Project. The provisions of this Section 11.5 shall survive the termination of this Agreement.

11.6. **Payment for Switchbacks Area.** As payment for the use of twenty-one acres of the City's property in the Switchbacks area for habitat restoration purposes as mitigation for development of the Project, prior to the issuance of a grading permit, Developer shall pay to City the sum of One Hundred Sixty-Five Thousand Dollars (\$165,000). Developer's right to use such property and twenty acres of the Shoreline Property shall survive the termination of this Agreement and shall be memorialized in a license agreement between Developer and City which shall be recorded against each of said parcels.

11.7. **Satisfaction of Park Fee Requirements.** In consideration of the dedication and improvement of three parks on the Property and the agreement set forth in Exhibit E that the owner of the golf course parcels shall maintain said parks and other areas specified in that agreement, Developer shall be deemed to have satisfied all park requirements of City, and no further park fees, exactions or dedications shall be

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applicable to the development of the Project.

11.8. **Development Fees.** Except as provided in Section 12 of this Agreement, City shall not, without the prior written consent of Developer, impose or increase any fees or exactions applicable to the development of the Property or any portion thereof, or impose any such fees or exactions as a condition to the implementation of the Project or any portion thereof, except those fees and exactions in effect on the date the application for the two Vesting Tentative Tract Maps for the Project was deemed complete in accordance with Government Code Sections 66498.1 and 66474.2 (the Application Date). This provision shall not prevent the application of escalation clauses which, as of the Application Date, were in place in connection with those fees and exactions in effect as of the Application Date.

11.9. **Public Works.** Any public works facilities which will be constructed by Developer and dedicated to City or any other public agency upon completion shall be constructed in accordance with the design and construction standards as would be applicable to City or such other public agency should it have undertaken such construction. This Section shall not be interpreted to require public bids or any other similar requirements unless otherwise required by applicable law.

## 12. Rules, Regulations and Official Policies.

12.1. **New Rules.** This Agreement shall not prevent City from applying the following new rules, regulations and policies:

(a) Processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for development approvals, for monitoring compliance with any development approvals, or for monitoring compliance with environmental impact mitigation measures; provided such fees and charges are uniformly imposed by City on all similar applications and for all similar monitoring.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matters of procedure; provided such regulations are uniformly imposed by City on all similar matters.

(c) Regulations governing construction standards and specifications which are of general application which establish standards for the construction and installation of structures and associated improvements such as and including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Fire Code; provided that such construction standards and specifications (i) are applied on a City-wide basis and (ii) do not reduce the amount of land within the Property which can be utilized for structures and improvements or increase the amount

of open space within the Property.

(d) Regulations which are not in conflict with the Development Plan or this Agreement.

(e) Regulations which are in conflict with the Development Plan or this Agreement if such regulations have been consented to in writing by Developer.

12.2. Subsequent Actions and Approvals. In accordance with Government Code Section 65866, this Agreement shall not prevent City in subsequent actions applicable to the Property from applying new rules, regulations and policies which do not conflict with those existing rules, regulations and policies set forth in the Development Plan or this Agreement, nor shall this Agreement prevent City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

12.3. State and Federal Laws. In the event that state or federal laws or regulations, enacted after this Agreement is executed, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

13. Amendment or Cancellation of Agreement. This Agreement may be amended or canceled in whole or in part only by mutual consent of the parties in the manner provided for in Government Code Section 65868.

14. Enforcement. Unless amended or canceled as provided in Section 13, or modified or suspended pursuant to Government Code Section 65869, this Agreement is enforceable by either party hereto notwithstanding any change in any applicable general or specific plan, zoning, subdivision or building regulation or other applicable law or regulation adopted by City (or by the voters of City unless found by a court of competent and final jurisdiction to prevail over this Agreement) which alters or amends the Development Plan or the timing of any development.

#### 15. Periodic Review of Compliance With Agreement.

15.1. Periodic Review. City and Developer shall review this Agreement at least once every twelve (12) months from the date this Agreement is executed in accordance with Section 17.82.080 of the Rancho Palos Verdes Municipal Code. City shall notify Developer in writing of the date for review at least thirty (30) days prior

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thereto. However, City's failure to comply with this Section 15.1 shall not affect the validity of this Agreement.

15.2. **Good Faith Compliance.** During each periodic review, Developer shall be required to demonstrate good faith compliance with the terms of this Agreement.

#### 16. Events Of Default.

16.1. **Default by Developer.** If City determines on the basis of substantial evidence that Developer has not complied in good faith with the terms and conditions of this Agreement, City shall, by written notice to Developer, specify the manner in which Developer has failed to so comply and state the steps Developer must take to bring itself into compliance. If, within sixty (60) days after the effective date of notice from City specifying the manner in which Developer has failed to so comply, Developer does not commence all steps reasonably necessary to bring itself into compliance as required and thereafter diligently pursue such steps to completion, then Developer shall be deemed to be in default under the terms of this Agreement and City may terminate this Agreement or seek specific performance as set forth in Section 16.3.

16.2. **Default by City.** If Developer determines on the basis of substantial evidence that City has not complied in good faith with the terms and conditions of this Agreement, Developer shall, by written notice to City, specify the manner in which City has failed to so comply and state the steps City must take to bring itself into compliance. If, within sixty (60) days after the effective date of notice from Developer specifying the manner in which City has failed to so comply, City does not commence all steps reasonably necessary to bring itself into compliance as required and thereafter diligently pursue such steps to completion, then City shall be deemed to be in default under the terms of this Agreement and Developer may terminate this Agreement or seek specific performance as set forth in Section 16.3.

16.3. **Specific Performance Remedy.** Due to the size, nature and scope of the Project, and due to the fact that it will not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun, the parties acknowledge that money damages and remedies at law generally are inadequate and that specific performance is appropriate for the enforcement of this Agreement. Therefore, the remedy of specific performance shall be available to all parties hereto. This subsection shall not limit any other rights, remedies, or causes of action that any party may have at law or equity.

17. **Institution of Legal Action.** In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, to recover damages for any default, or to obtain any other remedies consistent

with the purposes of this Agreement. Any such legal action shall be brought in the Superior Court for Los Angeles County, California.

**18. Waivers and Delays.**

18.1. **Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, and failure by a party to exercise its rights upon a default by the other party hereto, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future.

18.2. **Third Parties.** Nonperformance shall not be excused because of a failure of a third person except as provided in Section 18.3 below.

18.3. **Force Majeure.** Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes, other labor difficulties, government regulations, court actions, or other causes beyond the party's control.

19. **Notices.** All notices required or provided for under this Agreement shall be in writing and delivered in person and deposited in the United States mail, postage prepaid and addressed as follows:

**TO CITY:** City of Rancho Palos Verdes  
30840 Hawthorne Boulevard  
Rancho Palos Verdes, California 90275  
Attn: City Manager

**TO DEVELOPER:** Zuckerman Entities  
707 Silver Spur Road, Suite 201  
Rolling Hills Estates, California 90274  
Attn: Kenneth Zuckerman

**AND**

Palos Verdes Land Holdings Company, L.P.  
25200 La Paz Road, Suite 210  
Laguna Hills, California 92653  
Attn: Chris A. Downey

Either party may change the address stated herein by giving notice, in writing, to the other party and thereafter notices shall be addressed and submitted to the new address.

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20. **Attorneys Fees.** If legal action is brought by either party against the other for breach of this Agreement, or to compel performance under this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys fees and costs.

21. **Transfers and Assignments.**

21.1. **Right to Assign.** Developer shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall be permitted to cause a violation of the Subdivision Map Act, Government Code Section 66410, et seq.) to any person, partnership, joint venture, firm, corporation or other entity at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment of the rights, duties and obligations arising under or from this Agreement and shall be made in strict compliance with the following conditions precedent:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property.

(b) Concurrently with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, Developer shall notify City, in writing, of such sale, transfer or assignment and of whether the transferee or assignee has assumed any of Developer's obligations hereunder, and Developer shall provide City with a copy of the executed assignment agreement. Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Developer under this Agreement.

21.2. **Release of Transferring Owner.** Notwithstanding any sale, transfer or assignment, a transferring Developer shall continue to be obligated under this Agreement unless such transferring Developer is given a release or a partial release in writing by City, which release or partial release shall be provided by City upon the full satisfaction by such transferring Developer of the following conditions:

(a) Developer is not then in default under this Agreement.

(b) Developer has provided City with the notice and executed agreement required under paragraph (b) of Subsection 21.1 above.

(c) Such assignee or transferee has assumed such duties and obligations as to which Developer is requesting to be released in a manner approved by City, and Developer has provided City with written evidence, in a form and substance satisfactory to City, demonstrating the experience, capability, competence, and financial ability of the proposed transferee or assignee to carry out such

obligations for which Developer is requesting a release.

21.3. Termination of Agreement with Respect to Individual Parcels Upon Sale to Public. Notwithstanding any provisions of this Agreement to the contrary, the burdens of this Agreement shall terminate as to any lot or parcel which has been finally subdivided and individually leased or sold for residential purposes to the purchaser or user thereof and thereupon and without the execution or recordation of any further document or instrument such lot or parcel shall be released from and no longer be subject to or burdened by the provisions of this Agreement; provided, however, that the benefits of this Agreement shall continue to run as to any such lot until a building is constructed on such lot or until the termination of this Agreement, if earlier. Nothing herein shall be construed as exempting any such lot from the provisions of the Development Plan or other applicable rules and regulations.

22. Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action. Provided that Developer has been permitted to select the legal counsel to represent Developer and City in connection with such action, subject to approval by City, which shall not be unreasonably withheld, Developer agrees to reimburse City for its costs and legal expenses incurred after the date of this Agreement in any such action. In addition, provided that Developer has been permitted to select the legal counsel to represent Developer and City in connection with such action, subject to approval by City, which shall not be unreasonably withheld, if in any such action there is an order, ruling, or judgment which includes a requirement that the City pay damages or reimburse any party for legal fees or costs incurred in connection with that action, Developer hereby agrees that it will pay said damages, fees and costs. If City or Developer determines that Developer's legal counsel would have a conflict of interest in representing both Developer and City, then City may engage its own legal counsel to represent City in connection with such action, which shall be fully reimbursed by Developer, provided that City defends the action in good faith. Additionally, in such event, Developer shall not be required to pay any amounts pursuant to any settlement entered into by City without Developer's consent. In the event of any litigation challenging the effectiveness of the Agreement, or any portion hereof, this Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending.

23. Protect as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect thereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only

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relationship between City and Developer is that of a government entity regulating the development of private property by the owner of such property.

24. Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

25. Authority to Execute. Palos Verdes Land Holdings Company, L.P. and each individual and entity comprising the Zuckerman Entities each warrant and represent that the person(s) executing this Agreement on behalf of each such respective entity has the authority to execute this Agreement on behalf of such entity and has the authority to bind each such respective entity to the performance of its obligations hereunder.

26. Recordation. This Agreement and any amendment or cancellation hereto shall be recorded in the Office of Official Records of the County of Los Angeles, by the City Clerk within the period required by Section 65868.5 of the Government Code.

27. Protection of Mortgage Holders. Nothing contained herein shall limit or interfere with, and no breach hereof shall diminish or impair, the lien of any mortgage holder having a mortgage made in good faith and for value on any portion of the Property. Mortgage holder includes the beneficiary under a deed of trust, and mortgage includes the deed of trust. Notwithstanding anything to the contrary contained herein, no mortgage holder shall have any obligation or duty under this Agreement to perform any of Developer's obligations hereunder, except that: (i) to the extent that any obligation to be performed by Developer is a condition to the performance of an obligation by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) such lender shall be responsible for performing any continuing obligation of Developer (such as payment of money or performance of maintenance), which accrues while such lender holds title to the Property or portion thereof. City shall have no greater remedy against any such lender than it would have had against Developer had Developer continued to hold title to the Property or portion thereof. If a Mortgage holder requests that City give such Mortgage holder a copy of all notices given to Developer hereunder, then City shall deliver to such Mortgage holder, concurrently with delivery to Developer, any notice given to Developer pursuant to this Agreement. Each Mortgage holder shall have the right (but not the obligation) for a period of ninety (90) days after receipt of such notice from City, to cure or remedy, or to commence to cure or remedy, the matter set forth in the notice (if such matter relates to a default by Developer). If such matter is of a nature which can only be remedied or cured by such Mortgage holder upon obtaining possession, such Mortgage holder shall seek to obtain possession with diligence through foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the matter within thirty (30) days after obtaining possession. If any such matter cannot be remedied or cured within such thirty (30) day period, then such Mortgage holder shall

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have such additional time as may be reasonably necessary (as mutually agreed by such Mortgage holder and City) to remedy or cure such matter, provided such Mortgage holder is diligently pursuing such cure to completion.

28. **Severability of Terms.** If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to enforce.

29. **Subsequent Amendment to Authorizing Statute.** This Agreement has been entered into in reliance upon the provisions of the statute governing development agreements (Government Code Section 65864 - 65869.5 inclusive) in effect as of the Agreement Date. Accordingly, subject to Section 12.3 above, to the extent a subsequent amendment to the Government Code would affect the provisions of this Agreement, such amendment shall not be applicable to this Agreement unless necessary for this Agreement to be enforceable or unless this Agreement is modified pursuant to the provisions set forth in this Agreement and Government Code Section 65868.

30. **Interpretation and Governing Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

31. **Section Headings.** All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

32. **Incorporation of Recitals and Exhibits.** Recitals A through K and attached Exhibits A through F are hereby incorporated by this reference as though fully set forth in full.

33. **Rules of Construction and Miscellaneous Terms.**

33.1. **Gender.** The singular includes the plural; the masculine gender includes the feminine; shall is mandatory, may is permissive.

33.2. **Time of Essence.** Time is of the essence regarding each provision of this Agreement in which time is an element.

33.3. **Cooperation.** Each party covenants to take such reasonable actions and execute all documents that may be necessary to achieve the purposes and objectives of this Agreement.

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34. Estoppel. Either City or Developer (the sending party ) may, at any time, and from time to time, deliver written notice to the other party (the receiving party ) requesting that the receiving party certify in writing that: (a) this Agreement is in full force and effect and a binding obligation of the receiving party; (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) the sending 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. The receiving party shall execute and return such certificate within thirty (30) days following the receipt thereof. City acknowledges that a certificate hereunder may be relied upon by transferees and any Mortgage holder.

The parties have executed this Development Agreement on the date and year first written above.

Dated: \_\_\_\_\_, 1997

**DEVELOPER**

**PALOS VERDES LAND HOLDINGS COMPANY,**  
L.P., a California limited  
partnership

By:

**COASTAL GOLF CORPORATION,**  
a California corporation,  
general partner

By:

Its:

By:

Its:

[SIGNATURES CONTINUE]

*[deleted as exhibits]*

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AT RV 93005

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

CITY CLERK  
CITY OF RANCHO PALOS VERDES  
30940 Hawthorne Boulevard  
Rancho Palos Verdes, CA 90275-5391

(Space Above for Recorder's Use)

#### DECLARATION OF RESTRICTIONS

This Declaration of Restrictions ("Declaration") is made as of \_\_\_\_\_, by the entities listed on the signature pages hereto under the heading "ZUCKERMAN ENTITIES", and PALOS VERDES LAND HOLDINGS COMPANY, L.P., a California limited partnership (hereinafter referred to collectively as ("Owners")), who are all of the Owners of that certain real property more particularly described on Exhibit "A", attached hereto and incorporated herein by this reference (the "Property").

#### RECITALS

A. Owners anticipate constructing and operating a golf course on that certain real property more particularly described on Exhibit "A", attached hereto and incorporated herein by this reference (the "Property").

B. As a condition of approval in connection with the project which Owners contemplate developing (of which the Property is a part), the City of Rancho Palos Verdes, California (the "City"), required that Owners record a restrictive covenant in favor of the City imposing restrictions on the Property, all as more specifically set forth below.

C. Owners have elected to comply with the applicable conditions of approval, including, without limitation, the applicable conditions set forth in Conditional Use Permit No. 163, by executing and causing to be recorded this Declaration.

#### DECLARATION

NOW, THEREFORE, Owners hereby create the following restrictions on the use and enjoyment of the Property.

1. Open to Public. All portions of the Property within the golf course contemplated to be developed by Owners, including any permanent structures, for golf course and related recreational uses shall remain open to the general public during normal operating hours. Additionally, the conversion of any portion of any such facilities to a private or member-only use,

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A 5-RPV 93005

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[signature pages ~~deleted~~ not  
in exhibit)

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RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

CITY CLERK  
CITY OF RANCHO PALOS VERDES  
30940 Hawthorne Boulevard  
Rancho Palos Verdes, CA 90275-5391

(Space Above for Recorder's Use)

#### DECLARATION OF RESTRICTIONS

This Declaration of Restrictions ("Declaration") is made as of \_\_\_\_\_, by the entities listed on the signature pages hereto under the heading "ZUCKERMAN ENTITIES", and PALOS VERDES LAND HOLDINGS COMPANY, L.P., a California limited partnership (hereinafter referred to collectively as ("Owners")), who are all of the Owners of that certain real property more particularly described on Exhibit "A", attached hereto and incorporated herein by this reference (the "Property").

#### RECITALS

A. Owners anticipate constructing and operating a golf course on that certain real property more particularly described on Exhibit "A", attached hereto and incorporated herein by this reference (the "Property").

B. As a condition of approval in connection with the project which Owners contemplate developing (of which the Property is a part), the City of Rancho Palos Verdes, California (the "City"), required that Owners record a restrictive covenant in favor of the City imposing restrictions on the Property, all as more specifically set forth below.

C. Owners have elected to comply with the applicable conditions of approval, including, without limitation, the applicable conditions set forth in Conditional Use Permit No. 163, by executing and causing to be recorded this Declaration.

#### DECLARATION

NOW, THEREFORE, Owners hereby create the following restrictions on the use and enjoyment of the Property.

1. Open to Public. All portions of the Property within the golf course contemplated to be developed by Owners, including any permanent structures, for golf course and related recreational uses shall remain open to the general public during normal operating hours. Additionally, the conversion of any portion of any such facilities to a private or member-only use,

or the implementation of any program to allow extended or exclusive use or occupancy of any such facilities by an individual or limited group or segment of the public, shall not occur without an amendment to Conditional Use Permit No. 163 and Coastal Commission Permit A-5-RPV-93005, as most recently amended on October 7, 1997, or the issuance of a new permit permitting such conversion or implementation.

2. Operations. (a) The parking lots at the end of Street A; (b) the restrooms in the vicinity of the parking lot at the west end of La Rotonda Drive; and (c) the restrooms and patio area within the clubhouse all shall be operated as public facilities. These facilities all shall remain open to the public from dawn to dusk. No fee or validation shall be required for the use of these facilities.

3. Overflow Parking Lot. The overflow parking lot located adjacent to the maintenance yard on the golf course Lot 38 of Vesting Tentative Tract Map 50667 shall be operated from 8:00 a.m. to 5:00 p.m.: (a) on all summer and holiday weekends; (b) during all banquets and special events, and (c) whenever there are more than 125 cars in the westerly clubhouse parking lot.

4. Duration. Subject to the remaining provisions of this Section, this Declaration shall remain in full force and effect during the period that either Conditional Use Permit No. 163 or Coastal Commission Permit A-5-RPV-93-005, or either of them, or any modification or amendment of either of them, remains effective, and during the period that the development authorized by Conditional Use Permit No. 163 and Coastal Commission Permit A-5-RPV-93-005 or any modification of said development remains in existence in or upon any part of, and thereby confers benefit upon, the Property described herein, and shall bind Owners and all of their assigns or successors in interest. Notwithstanding the foregoing, this Declaration shall not become effective as to any portion of the Property until a final tract map or a final parcel map is recorded against such portion of the Property for development purposes, or Owners or their successors or assigns commence grading operations on such portion of the Property. Within five (5) business days after request from Owners from time to time, Owners and the City shall enter into amendments of this Declaration terminating this Declaration as to all portions of the Property upon which a final tract map or a final parcel map has been recorded solely for purposes of development of one or more residential dwelling units. In the event that both Conditional Use Permit No. 163 and Coastal Commission Permit A-5-RPV-93-005 expire or are surrendered prior to the recordation of any final tract map or final parcel map for development purposes within the Property or the commencement of grading operations on the land included within such map, the City will, within five (5) business days of request from Owners or their successor or assign, execute, acknowledge and cause to be

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recorded an appropriate document terminating this Declaration as to such portion of the Property.

4. Subordination. The holder of any mortgage, deed of trust or any other monetary lien encumbering the Property shall execute the form of Subordination which is attached to this Declaration of Restrictions.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date hereinabove provided.

Dated: \_\_\_\_\_, 19\_\_\_\_

"OWNERS"

PALOS VERDES LAND HOLDINGS COMPANY,  
L.P., a California limited  
partnership

By: \_\_\_\_\_

COASTAL GOLF CORPORATION,  
a California corporation,  
general partner

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

"ZUCKERMAN ENTITIES":

ANNA ZUCKERMAN-VDOVENKO, as  
successor trustee of the Zuckerman  
Family Trust (Edward K. Zuckerman  
and Ola Zuckerman) No. 301 created  
pursuant to a declaration of trust  
dated September 11, 1953

\_\_\_\_\_  
ANNA ZUCKERMAN-VDOVENKO

[SIGNATURES CONTINUE]

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