AGENDA ITEM 1.A.2

REQUEST

PUBLIC HEARING TO CONSIDER INTRODUCING AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH SURLAND COMMUNITIES, LLC. THE ELLIS SPECIFIC PLAN SITE IS APPROXIMATELY 321 ACRES LOCATED AT THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND LINNE ROAD. APPLICATION DA16-0001 - APPLICANT IS THE SURLAND COMMUNITIES, LLC

DISCUSSION

This agenda item involves a public hearing to consider the Surland Communities, LLC’s (Project Applicant, or Surland), application for an amendment to the development agreement between the City and Surland. The development agreement is titled: Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC. The development agreement (DA) currently relates to the development of the Ellis project, which is a mix of residential, commercial, office/professional, institutional, and recreational uses, parklands, and a swim center (collectively, the Project or Ellis Project) at the 321-acre project site. The proposed amendment to the DA would make several changes to how Residential Growth Allotments (RGAs) are contemplated and how the swim center would be constructed.

Currently, the DA allows the developer rights to develop Ellis, and enjoy access to up to 2,250 RGAs to be used to develop Ellis, given that it has a zoning range of between 1,000 and 2,250 residential units at the Ellis site. The amendment to the development agreement contemplates the developer using Residential Growth Allotments (RGAs) that the developer does not use to develop Ellis (2,250 less the number chosen to develop Ellis) on such other properties as defined in the DA. Such rights to these RGAs could only be exercised if future development areas chosen by Surland are approved by the City Council through typical application processing. The DA Amendment would also establish provisions for Surland to design and build the Swim Center in exchange for making the same payment to the City for its construction.

Summary of Key Terms in the proposed DA Amendment:

On March 5, 2013, the City adopted an Ordinance approving the DA, which provided for real property and funding to be used toward the creation of a swim center.

The DA was amended on May 20, 2014 via Ordinance 1194, which provided funding to be installed in two payments. On September 15, 2014, Surland made the first installment payment of $2 million dollars. Pursuant to the amended DA, the second payment of $8 million was due on September 15, 2015.

Since September 2015, several tolling agreements have been executed between Surland and the City in an effort to respond to a concept of a public private partnership with Wild Rivers Waterpark, which ultimately was not pursued, and to subsequently
allow time to negotiate additional DA terms as requested by Surland and approved by Council.

Exhibit 1 to the ordinance is the draft Second Amendment to the Amended and Restated Development Agreement By and Between the City of Tracy and Surland Communities, LLC (Proposed DA Amendment). In order to assist the Planning Commission and the public in reviewing the Proposed DA Amendment, a summary is provided below. The Proposed DA Amendment primarily relates to the Article 1 section of the existing DA. The Recitals set out the factual background of the DA and provide the foundation on which the DA is based. Article 1, the “Applicable Development Terms”, contains the heart of the DA. Article 1 spells out the proposed terms of what benefits each party anticipates receiving from the agreement and what is to be done by each party. This is the part of the agreement that contains the specifics of the DA.

Key terms in Article 1 of the Amended DA are outlined below, beginning with the public benefit that the City would receive via the original DA and this Amended DA.

**Public Benefits:**

Existing

- $10 million for a swim center (payable to City, after LAFCo annexation and completion of any litigation in favor of applicant, in two payments). First payment of $2 million was received, second payment tolled to April 4, 2018.
- 16 acres of land for a swim center at the Ellis site, if selected by City Council.
- Design assistance for the construction of a swim center.

Proposed DA Amendment

- To design, construct and pay up to $150,000 in costs for an entrance sign for the swim center at the corner of Summit Drive and Corral Hollow Road.
- To design and plan, and pay up to $100,000 in costs for Surland architects and planners, to work with the City to complete a design for the swim center.
- To design and construct the ultimate storm drainage system at Ellis to accommodate the swim center site.
- To construct the frontage improvements for the swim center on Summit Drive.
- To construct utility infrastructure stubbed to the swim center site from Summit Drive.
- To design and construct the swim center, costs of which would be reimbursed by the City through an agreement.
**Developer Benefits:**

**Existing**

- Vesting project approvals for the Ellis Specific Plan.
- 2,250 RGAs for use at Ellis Specific Plan at a maximum rate of 225 per year.
- Water supply for 2,250 residential units.
- DA term of 25 years.
- Naming rights to the swim center.
- No wastewater treatment cost for first 800 residential units of capacity.
- Wastewater conveyance in Corral Hollow line for 330 residential units, with potential to secure an additional 220 residential units worth of capacity.
- No cost for 550 units of Corral Hollow wastewater conveyance.

**Proposed DA Amendment**

- Developer will have rights to secure RGAs through the Development Agreement as well as through other vested rights as defined in Growth Management Guidelines Subsections F3 and F4.
  
The Developer agrees that the DA Amendment shall not adversely affect any property owner’s existing rights to RGAs under the current GMO and Guidelines.
- Developer will have the right to a total of 2,250 RGAs and will be able to use those RGAs at Ellis or other DA properties as defined in the DA and as approved by the City.
- Building Permits issued to Owner shall be valid for 24 months.
- Owner may execute an agreement with the City to provide for payment of certain development impact fees at close of escrow for each residential unit and at final inspection for commercial projects, rather than at issuance of building permit.
- Modifications to park approval process to approve all parks as part of the Specific Plan Approval, where only major modifications would come back to the Parks Commission for approval.
- Affirmation of the intent to expand the coverage of the existing DA in the future to other DA properties for the benefit of using RGAs and potential nexus infrastructure if future discretionary approvals are granted by Council.
• City and Owner to execute an Infrastructure Reimbursement Agreement to outline processes for potential future reimbursements.

• Additional clarifications to the naming of the swim center to Serpa Aquatic Park or Les and Carol Serpa Aquatic Park to include additional criteria related to the City’s use of the name in various promotions and marketing, as proposed in Exhibit E to the DA.

• Developer requests that the City will not grant RGAs to any other entity or project through a DA and that the City shall not expand the current boundaries of the Primary Area or the Secondary Growth Area if the Developer’s right to obtain RGAs may be directly or indirectly prohibited, restricted or impaired.

Other proposed terms:

• As provided in the Ellis Community Facilities District (CFD), all residential and commercial uses shall pay an annual fee of $110 per lot/parcel for swim center maintenance, which shall be adjusted annually by CFD formula.

• In exchange for annual maintenance fee, each residential dwelling and commercial lot within the Ellis Property Owners Association shall receive an annual all-access family pass for the Swim Center.

Program details shall be provided in the Aquatics Park Terms Agreement, which will be presented to Council.

Environmental Document

On January 22, 2013, the City Council certified the Environmental Impact Report (EIR) for the Ellis Project (SCH#2012022023), which also reviewed and supported the City’s approval of the original DA. In accordance with California Environmental Quality Act (CEQA) Guidelines Section 15164, an Addendum to the EIR was prepared for the proposed DA Amendment to the Ellis Project, as well as for the proposed Ellis Specific Plan Amendment and the associated General Plan Amendment and Zoning Ordinance Amendment being reviewed by the Commission this evening. That Addendum was provided to the Commissioners as Attachment G to the staff report for the Ellis Specific Plan Amendment and associated approvals.

Pursuant to CEQA Guidelines Section 15162 and based on the analysis and evaluation provided in the Addendum, no new significant impacts would occur because of the proposed DA amendment, nor would there be any substantial increase in the severity of any previously-identified significant environmental impact. In addition, no new information of substantial importance shows that mitigation measures or alternatives that were previously found not to be feasible or that are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment. Therefore, pursuant to CEQA Guidelines Section 15164, an Addendum to the EIR, as prepared in compliance with CEQA, is the appropriate CEQA document and is adequate to support the proposed DA amendment.
RECOMMENDATION

Staff recommends that Planning Commission discuss the DA Amendment and make its recommendations to City Council.

Prepared by: Andrew Malik, Development Services Director

Approved by: Randall Bradley, City Manager

ATTACHMENTS

A: Planning Commission Resolutions (Including Exhibit 1, the Ordinance. The Ordinance includes Exhibit 1, the DA.)
RESOLUTION 2017-______

RECOMMENDING THAT THE CITY COUNCIL APPROVE A SECOND AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC

WHEREAS, On March 5, 2013, the City Council approved that certain Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC, executed by the City of Tracy (the “City”) and Surland Communities, LLC (“Surland”), recorded in the official records of San Joaquin County as Document Number 2013-119548 (the “DA”); and

WHEREAS, On June 5, 2014, the City and Surland executed that certain First Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC, recorded in the official records of San Joaquin County as Document Number 2014-064062; and

WHEREAS, On July 12, 2016, Surland submitted a request to the City asking the City Council to authorize staff to negotiate a second amendment to the DA (the “Second Amendment”) to extend the time periods in the DA for (a) the City to accept Surland’s land dedication offer, and (b) Surland to make its second swim center payment of eight million dollars ($8,000,000). In exchange for the City’s agreement to extend these time periods, Surland offered to design and construct certain infrastructure improvements relating to the proposed public swim center described in the DA, at Surland’s sole cost; and

WHEREAS, On August 16, 2016, the City Council approved Surland’s request and directed staff to prepare the proposed Second Amendment to extend the above-described time periods and provide for Surland’s design and construction of the above-described infrastructure improvements; and

WHEREAS, On May 25, 2017, Surland submitted a request to the City asking the City Council to authorize staff to expand the scope of the negotiations for the Second Amendment to, among other things, also address the concepts of (a) having Surland construct the proposed public swim center and fund the first $8 million of construction costs in lieu of making its second swim center payment, and (b) potentially expanding the property subject to the DA to lands outside of the current Ellis Specific Plan area; and

WHEREAS, On July 5, 2017, the City Council approved Surland’s request and authorized staff to expand the scope of negotiations for the Second Amendment; and

WHEREAS, The City and Surland have completed their negotiations for the Second Amendment; and

WHEREAS, On December 20, 2017, the City’s Planning Commission held a duly noticed public hearing on Surland’s application for the Second Amendment, during which the Planning Commission determined that (a) pursuant to the applicable requirements of the California Environmental Quality Act (Public Resources Code § 21000 et seq.) (“CEQA”) and its implementing regulations (California Code of Regulations § 15000 et seq.), the proposed Second Amendment would not result in any new significant environmental effects that were not identified and adequately addressed in the Final Environmental Impact Report for the Surland
Communities Amended and Restated Development Agreement and Ellis Specific Plan Applications (State Clearinghouse Number 2012022023) certified by the City Council on January 22, 2013, by Resolution Number 2013-011, and therefore the City’s approval of the Second Amendment is adequately supported by an addendum to the EIR.

NOW, THEREFORE, BE IT RESOLVED, That the Planning Commission hereby recommends that the City Council adopt Ordinance ______ (attached hereto as Exhibit 1), approving the Second Amendment to the Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC.

* * * * * * * * * * * * *

The foregoing Resolution 2017-______ was adopted by the Planning Commission on the 20th Day of December, 2017, by the following vote:

AYES: COMMISSION MEMBERS:
NOES: COMMISSION MEMBERS:
ABSENT: COMMISSION MEMBERS:
ABSTAIN: COMMISSION MEMBERS:

________________________________
CHAIR

ATTEST:

_________________________________
STAFF LIAISON
RESOLUTION 2017-_____

RECOMMENDING THAT THE CITY COUNCIL
DENY APPLICATION NUMBER DA16-0001 FOR AN AMENDMENT TO
THAT CERTAIN AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC

WHEREAS, On January 22, 2013, the City Council certified the Final Revised
Environmental Impact Report ("EIR") for the Ellis project (Resolution No. 2013-011) and
approved a General Plan Amendment, Annexation, and the Ellis Specific Plan for the 321-acre
site known as the Ellis Specific Plan area (Resolution No. 2013-012); and

WHEREAS, On March 5, 2013, the City Council approved that certain Amended and
Restated Development Agreement by and between the City of Tracy and Surland Communities,
LLC (the “DA”); and

WHEREAS, Applications were submitted to the City for a General Plan Amendment, an
Ellis Specific Plan Amendment, a Zoning Ordinance Amendment, and a DA Amendment for the
Ellis Project, Application Numbers GPA15-0003, SPA15-0003, ZA17-0012, and DA16-0001 (the
"Project"); and

WHEREAS, In accordance with the California Environmental Quality Act ("CEQA") and
its implementing regulations (the "Guidelines"), including without limitation Guidelines Section
15164, an Addendum to the EIR was prepared for the proposed Project, which Addendum is
attached to the December 20, 2017 Planning Commission Staff Report (Agenda Item 1.A.1) as
Attachment "F”. Pursuant to Guidelines Section 15162 and based on the analysis and
evaluation provided in the Addendum, no new significant impacts would occur because of the
proposed Project, nor would there be any substantial increase in the severity of any previously-
identified significant environmental impact. In addition, no new information of substantial
importance shows that mitigation measures or alternatives that were previously found not to be
feasible or that are considerably different from those analyzed in the EIR would substantially
reduce one or more significant effects on the environment. Therefore, pursuant to CEQA
Guidelines Section 15164, an Addendum to EIR, as prepared in compliance with CEQA, is the
appropriate CEQA document and is adequate to support the proposed Project; and

WHEREAS, On December 20, 2017, the Planning Commission conducted a duly noticed
public hearing during which it considered the proposed General Plan Amendment, Ellis Specific
Plan Amendment, Zoning Ordinance Amendment, and the DA Amendment for the Project; and

WHEREAS, The Planning Commission considered the General Plan Amendment, Ellis
Specific Plan Amendment, Zoning Ordinance Amendment, and DA Amendment, the staff report
accompanying the Project, and all public comment and testimony, and determined that it would
recommend that the City Council deny the application for the DA Amendment.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein as
findings.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning
Commission recommends that the City Council DENY the application to amend the Amended
and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC (Application Number D16-0001), as attached to the December 20, 2017 Planning Commission ordinance as Exhibit “1.”

* * * * * * * * * * * * *

The foregoing Resolution 2017-______ was adopted by the Planning Commission on the 20th Day of December, 2017, by the following vote:

AYES: COMMISSION MEMBERS:
NOES: COMMISSION MEMBERS:
ABSENT: COMMISSION MEMBERS:
ABSTAIN: COMMISSION MEMBERS:

CHAI

STAFF LIAISON
ORDINANCE ______

AN ORDINANCE OF THE CITY OF TRACY APPROVING THE SECOND AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC (APPLICATION DA16-0001)

WHEREAS, On March 5, 2013, the City Council approved that certain Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC, executed by the City of Tracy (the “City”) and Surland Communities, LLC (“Surland”), recorded in the official records of San Joaquin County as Document Number 2013-119548 (the “DA”); and

WHEREAS, On June 5, 2014, the City and Surland executed that certain First Amendment to Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC, recorded in the official records of San Joaquin County as Document Number 2014-064062; and

WHEREAS, On July 12, 2016, Surland submitted a request to the City asking the City Council to authorize staff to negotiate a second amendment to the DA (the “Second Amendment”) to extend the time periods in the DA for (a) the City to accept Surland’s land dedication offer, and (b) Surland to make its second swim center payment of eight million dollars ($8,000,000). In exchange for the City’s agreement to extend these time periods, Surland offered to design and construct certain infrastructure improvements relating to the proposed public swim center described in the DA, at Surland’s sole cost; and

WHEREAS, On August 16, 2016, the City Council approved Surland’s request and directed staff to prepare the proposed Second Amendment to extend the above-described time periods and provide for Surland’s design and construction of the above-described infrastructure improvements; and

WHEREAS, On May 25, 2017, Surland submitted a request to the City asking the City Council to authorize staff to expand the scope of the negotiations for the Second Amendment to, among other things, also address the concepts of (a) having Surland construct the proposed public swim center and fund the first $8 million of construction costs in lieu of making its second swim center payment, and (b) potentially expanding the property subject to the DA to lands outside of the current Ellis Specific Plan area; and

WHEREAS, On July 5, 2017, the City Council approved Surland’s request and authorized staff to expand the scope of the negotiations for the Second Amendment; and

WHEREAS, The City and Surland have completed their negotiations for the Second Amendment; and

WHEREAS, On December 20, 2017, the City’s Planning Commission held a duly noticed public hearing on Surland’s application for the Second Amendment, during which the Planning Commission took appropriate action under the California Environmental Quality Act (Public Resources Code § 21000 et seq.) (“CEQA”) and its implementing regulations (California Code of Regulations § 15000 et seq.), the Planning and Zoning Law, the Tracy Municipal Code, and
City of Tracy City Council Resolution Number 2016-115, and made recommendations to the City Council regarding the proposed Second Amendment; and

WHEREAS, on ____________ ______, 2017, the City Council of the City of Tracy held a duly noticed public hearing on Surland’s application for the Second Amendment, during which the City Council heard public comments and testimony on the proposed Second Amendment.

THE CITY COUNCIL OF THE CITY OF TRACY HEREBY ORDAINS AS FOLLOWS:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein as findings.

2. **Compliance with CEQA.** The City Council hereby finds the following:
   a. Pursuant to Section 15168 of the CEQA Guidelines, the proposed Second Amendment is within the scope of the project evaluated in that certain Final Environmental Impact Report for the Surland Communities Amended and Restated Development Agreement and Ellis Specific Plan Applications (State Clearinghouse Number 2012022023) certified by the City Council on January 22, 2013, by Resolution Number 2013-011 (the “FEIR”), and will not result in any new significant environmental effects that were not identified and adequately addressed in the FEIR; and
   b. None of the conditions described in Section 15162 of the CEQA Guidelines calling for preparation of a subsequent EIR have occurred or will occur due to the adoption and implementation of the proposed Second Amendment, and an addendum to the FEIR is the appropriate form of compliance with CEQA and the CEQA Guidelines for the City’s action on the proposed Second Amendment.

3. **Findings regarding Second Amendment to the Development Agreement.** The City Council hereby finds that the proposed Second Amendment to the Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC, for those reasons more specifically set forth in the Recitals of the proposed Development Agreement,
   a. is consistent with the objectives, policies, general land uses and programs specified in the City General Plan and any applicable community and specific plan, and will comply with the provisions of Government Code Section 66473.7;
   b. is in conformity with public convenience, general welfare, and good land use practices;
   c. will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area, nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole;
d. will not adversely affect the orderly development of property or the preservation of property values; and

e. is consistent with the provisions of Government Code Sections 65864 et seq.

4. **Second Amendment to Development Agreement Approval.** The City Council approves the Second Amendment to the Amended and Restated Development Agreement with Surland Communities, LLC, attached hereto as Exhibit “1”.

5. **Effective Date.** This Ordinance takes effect 30 days after its final passage and adoption.

6. **Publication.** This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within fifteen days from and after its final passage and adoption.

* * * * * * * * * * * * *

The foregoing Ordinance ______ was introduced at a regular meeting of the Tracy City Council on the _____ day of ____________, 2018, and finally adopted on the _____ day of ____________, 2018, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

____________________________________
Mayor

ATTEST:

____________________________________
City Clerk
SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC

This SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY and SURLAND COMMUNITIES, LLC (the “Second Amendment”) is made and entered into as of this ___ day of ____________, 2018 (the “Effective Date”) by and between the CITY OF TRACY, a municipal corporation (“City”), and SURLAND COMMUNITIES, LLC, a California limited liability company (“Owner”), pursuant to Government Code sections 65864 et seq. and City Resolution No. 2004-368 which establishes the rules, regulations and procedures for the approval, operation and modification of development agreements and the provisions of that certain Amended and Restated Development Agreements By and Between The City of Tracy and Surland Communities, LLC dated April 18, 2013 and recorded on September 17, 2013 under Recorder’s Serial No. 2013-119548, Official Records of San Joaquin County, California (the “Development Agreement).

RECITALS

A. The City and Owner entered into the Development Agreement in order to strengthen the public planning process and encourage private participation and the funding of community benefits and amenities that could not otherwise be required under controlling law. Among other things, the Development Agreement provides for Owner to (i) provide $10,000,000 (the “Owner Swim Center Contribution”) to be used to design and fund the construction of a public swim center (the “Swim Center”), and (ii) offer to dedicate approximately 16 acres of land to the City, which will be used for the proposed Swim Center (the “Land Dedication Offer”). The
Development Agreement also provides that, in exchange for the Owner Swim Center Contribution and Land Dedication Offer, the City shall reserve and Owner shall be eligible for the allocation of up to 2,250 Residential Grown Allocations ("Subsection F.3. RGAs") to be used exclusively on the Property.

B. On October 14, 2014 (Recorders Serial # 2014-097799), Owner timely made Owner’s Land Dedication Offer. Under the Agreement to Extend (Recorder’s Serial # 2015-073934), the City had until September 15, 2016, to accept the Land Dedication Offer or the City would be deemed to have rejected the Land Dedication Offer and the land would be available for development by Owner consistent with the Ellis Specific Plan. Following Owner’s submittal of the Land Dedication Offer, the City and Owner agreed that there is an alternate location in the Ellis Specific Plan area that may be preferable as the location for the proposed Swim Center, and Owner agreed to prepare and submit to the City a revised land dedication offer (the “Revised Land Dedication Offer”) to replace the original Land Dedication Offer.

C. Under the Development Agreement, the Owner Swim Center Contribution was due in two (2) installment payments. Owner timely made Owner’s First Swim Center Payment on September 5, 2014. Owner’s second installment payment of $8,000,000 ("Owner’s Second Swim Center Payment") is a subject of this amendment.

D. On August 16, 2016, the City Council approved Owner’s request to negotiate a second amendment to the Development Agreement to extend the deadline for Owner’s Second Swim Center Payment and the deadline for the City’s acceptance of the Land Dedication Offer, in exchange for Owner’s providing to the City certain infrastructure improvements relating to the proposed Swim Center.
E. To give the Parties time to prepare and process Owner’s requested Development Agreement amendment, the City and Owner executed that certain Agreement To Toll And Extend The Dedication Acceptance Period And The 60-Day Cure Period Respecting The Second Swim Center Payment Under Amended And Restated Development Agreement By And Between The City Of Tracy And Surland Communities, LLC (the “First Tolling Agreement”), by which the City and Owner agreed to: (i) extend the sixty-day cure period for Owner’s Second Swim Center Payment to September 5, 2017; (ii) extend the time period for the City’s acceptance of the Land Dedication Offer to November 24, 2017; and (iii) require Owner to deliver the Revised Land Dedication Offer not later than September 15, 2017.

F. In December of 2016, the City and Owner began discussions to expand the scope of the proposed Development Agreement amendment to provide for Owner to assume the obligation to design and construct the proposed Swim Center, and to describe a process by which other real property could become subject to the Development Agreement, subject to future Owner applications and future City approvals. The City and Owner agreed that such expanded negotiations would require additional time to prepare and process the expanded second amendment to the Development Agreement, and on August 15, 2017, the City Council approved that certain Second Agreement To Toll And Extend The Dedication Acceptance Period And The 60-Day Cure Period For The Second Swim Center Payment Under The Amended And Restated Development Agreement By And Between The City Of Tracy And Surland Communities, LLC (the “Second Tolling Agreement”), by which the City and Owner agreed to: (i) extend the sixty-day cure period for Owner’s Second Swim Center Payment to December 5, 2017; (ii) extend the time period for the City’s acceptance of the Land Dedication Offer to December 5, 2017, provided that the City shall not accept the Land Dedication Offer before November 15, 2017;
and (iii) require Owner to deliver the Revised Land Dedication Offer not later than December 5, 2017. Subsequently in November 2017 the parties entered into a third tolling agreement that extends the time for the parties to perform their obligations until April 4, 2018.

G. On [date], the City Planning Commission, following a duly noticed public hearing, recommended approval of this Second Amendment. On [date], 2017, the City Council following a duly noticed public hearing, adopted Ordinance No. ____ approving this Second Amendment and authorizing its execution. That Ordinance took effect on [date], the Effective Date of the Second Amendment.

H. Pursuant to the provisions of the Development Agreement Enabling Resolution, Government Code section 65868 and Section 1.09 of the Development Agreement, Owner has filed with the City an application for an amendment to the Development Agreement. The City found that the Owner was not in default under the Development Agreement, has considered the application and reviewed the substance of the proposed changes, modifications, and amendments contained in this Second Amendment. By entering into and executing this Second Amendment, the parties hereto agree that the Development Agreement shall hence forward be modified and amended as contained herein.

I. This Agreement is consistent with the General Plan and the 2013 Ellis Specific Plan as further amended in 2014. Owner has filed further amendments to the Ellis Specific Plan which are scheduled to be considered by the City Council in December 2017. As required by the General Plan, this Agreement envisions proper environmental analysis and a proper planning process in compliance with controlling law before any approval allowing development can take place.

J. The parties understand and agree that:
(i) In order to achieve area wide consistency in planning and design achieve General Plan goals, policies objectives to efficiently use land and public infrastructure, and for community consistency Owner intends to annex to the Ellis Property Owners Association all real property which is subsequently subject to the Development Agreement; and, (ii) such other real property may adopt the Ellis Specific Plan design and planning standards for all infrastructure and site improvements.

K. This Development Agreement for all purposes in naming and otherwise shall be referred to as the “Surland Development Agreement”.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Incorporation of Recitals:** The recitals set forth above are incorporated into this Second Amendment as though set forth in full herein.

2. **Section 1.01(j). The Swim Center Obligations,** is added as follows. Section 1.01 **The Swim Center Obligations.**

   (j) (i) Owner agrees to retain and compensate consultants to design the Swim Center with input from the community and City staff and with direction from the City Council. All true and correct expenses paid by Owner concerning the design and construction of the Swim Center shall be a credit against the Owner’s contribution identified in Recital A. In anticipation of this Development Agreement amendment and at the request of City, Owner retained consultants prior to the approval and execution of this Development Agreement amendment, and funds expended by Owner during the period before the Second Amendment is executed shall be eligible for credits. The parties acknowledge that the studies, reports and
designs prepared by Owner's consultants shall be the property of Owner and shall not without prior written consent of Owner be used by City in any manner. The studies, reports and designs shall be jointly owned by Owner and City after Owner is fully reimbursed for Owner's costs of obtaining the studies, reports and designs through reimbursements and/or credits unless City is subsequently in default under this Agreement in which case City shall no longer be treated as a co-owner. All studies, reports and designs shall be assigned to City upon Owner's transfer of ownership of the Swim Center to City.

(ii) Before Owner prepares construction improvement plans the City Council shall approve a final conceptual plan. City and Owner shall agree upon a list of design, construction and/or improvements that Owner shall design and/or construct. If, after the City Council approves a final conceptual plan, it decides to modify the plan or add additional features or amenities then the cost of changing the conceptual plan or any design or construction plans relying on the original conceptual plan shall be additive funding provided by the City above the initial Swim Center funding.

(iii) Previously Owner has provided Two Million Dollars of a Ten Million Dollar contribution to the City for the Swim Center. City, in a manner consistent with the performance, funding and construction agreement mentioned subsequently, shall cause the Two Million Dollars initial contribution to be applied to the Owner's design and construction activities. After the Two Million Dollar initial contribution is applied to the Eight Million future contribution then the remaining obligation shall be satisfied in full by Owner providing Swim Center design and construction of improvements equal to Ten Million Dollars in costs incurred by Owner. The parties shall enter into a design, funding and construction agreement as further described in Exhibit D contemporaneously with the approval of this Second Amendment. The
City Council has requested Owner facilitate additional design, construction, operations, and improvements beyond the Owner contribution. Owner has agreed and shall facilitate completion of additional design improvements and construction of approved plans beyond Eight Million Dollars with funding provided by City in an amount equal to Thirty Five Million Dollars with a supplementary contingency amount of twenty percent of the total estimated costs of Forty Five Million Dollars (Swim Center Funding). The City shall have the right to review and approve the design and improvement plans and City shall not unreasonably withhold approval. This additional construction of approved plans shall represent Owner’s entire obligation to facilitate design and construction improvements for the Swim Center improvements and once the additional agreed upon improvements are constructed Owner’s obligation to facilitate design and construction improvements for the Swim Center under this Agreement shall terminate. If the parties agree that Owner shall construct Swim Center improvements in addition to the final conceptual plan approved by City Council and the list of design, construction and/or improvements then the parties shall meet in good faith to negotiate and execute agreements concerning the method of City paying for additional constructed improvements. All subsequent costs shall be paid by the City and not the Owner, and Owner shall have no further financial obligation toward the design, construction, development, operation or maintenance of the Swim Center.

(iv) As required by and according to the manner established by the CFD, each residential lot and Commercial parcel (as defined in subsection v) within the Ellis Property Owners Association (which is defined to mean for purposes of this Agreement a property owners association established by Owner) shall pay an annual fee of $110 per lot/parcel toward Swim
Center maintenance, which fee shall be adjusted annually according to the applicable community facility district formula.

(v) The residents of each residential dwelling shall receive from the City an annual all access family pass administered by the EPOA, and the Ellis Commercial Association shall receive one all access family pass for each legally created lot designated village center or commercial (Commercial) located within the Ellis Property Owners Association boundary to the Swim Center at no additional cost.

(vi) Owner has made an irrevocable offer to dedicate approximately sixteen acres for a swim center and subsequently the City Council has determined that the Swim Center shall be located at the property offered for dedication, therefore, Owner’s contribution of land for the Swim Center shall be equal to and be treated as the dedication of sixteen (16) acres of community park land under the City’s parkland dedication ordinance and this credit of sixteen (16) acres of park land and shall be available by Owner and shall be applied at the option of Owner to the Property and/or to such other real property which is subsequently subject to the Development Agreement (DA Property). (The criteria for Owner applying this Agreement to DA Property is explained in subsection 1.07(h) of this Agreement.) After Owner’s irrevocable offer of dedication and the City’s determination that this land shall be used for the swim center there shall be no more dedications and/or community park fees collected or paid by any residential or commercial real property within the Property, and any land offered for dedication or community park fees previously collected shall be reimbursed to Owner within thirty (30) days of approval of this agreement which is date of the decision to locate the Swim Center at Ellis. However, the decision of when to accept the dedication of land may be made at any time until the City accepts the Swim Center improvements constructed by Owner.
(vii) If the City elects to construct or authorize Owner to construct the Swim Center using the Owner Swim Center Contribution then the Swim Center shall be named the “Serpa Aquatic Park” for all naming and identification purposes, as further described in Exhibit A, including but not limited to digital, print and signage, the designation of “Les and Carol Serpa Aquatic Park” may also be used. If the City elects to construct or authorize the Owner to construct the Swim Center at the Ellis Swim Center Site, the site shall only be used for a public swim center with only those uses as formally agreed upon by the City and Owner or Owner’s designee. In making the dedication of the real property for the Swim Center it was the intent of the parties that the real property shall only be used for an aquatic park and no other use and the City shall not sell the real property. This term shall survive the term of this Development Agreement.

(viii) City shall promptly and immediately take reasonable actions necessary to expeditiously process all required plans, City Council approval of improvement plans, acquire all land necessary, (including by not limited to easements, real property, entitlements, project approval(s), San Joaquin County approval(s), railroad easements, any other agency approvals), and completion of all actions necessary shall be perfected without unreasonable delay whatsoever, for the approval and start of construction of Storm Basin 3A by Owner or Owner’s designee as soon as practical. Owner or Owner’s designee shall promptly and immediately take reasonable actions necessary to finalize an off-site improvement agreement with City Council approval, and following those actions expeditiously to prepare all required plans, process improvement plans for City Council approval, and commence construction once all permits, easements and other approvals have been provided by the City. The parties agree that in performing this obligation time is of the essence. Unless expressly prohibited by law or
expressly required by a condition of a grant, City shall not charge any development, planning or construction fees or charge (including overhead, plan checking, building permit, project management, or any other fee) for the Swim Center. Any and all regulatory agency fees, or actual special outside plan review costs, including but not limited to the SJCOG conservations easement costs, shall be paid by the City. If improvements are funded by a CFD and funds are available to the City of Tracy from the CFD, no bonding shall be required as part of an improvement agreement or any public improvements.

3. Section 1.07, Residential Growth Allotments, shall be deleted from the Development Agreement and the following inserted in its place:

1.07 **Residential Growth Allotments; Building Permits.**

(a) Treatment of Development Agreement Residential Growth Allocations.

(i) Through this Development Agreement City shall reserve and vest in favor of Owner, and Owner shall be eligible for, the allocation of 2,250 Development Agreement Residential Growth Allotments and building permits (Subsection F.3 RGAs) for residential development on the Property as may be revised from time to time, minus any Subsection F.3 RGAs already issued by City to Owner. As explained subsequently Owner is eligible to receive Subsection F.4 RGAs (Subsection F.4. RGAs or RGAs) and building permits from any available source of allocating RGAs or building permits other than through this Development Agreement. This amendment to the Development Agreement does not exempt building permits from being subject to plan check, building code requirements, and other permit related requirements in effect as of the Effective Date of the amendment to the Development Agreement.
(ii) At Owner’s option, Subsection F.3 RGAs may be applied to a project as defined in the GMO on the Development Agreement Effective Date (Project) within the Property’s boundary and all Subsection F.3 RGAs perfected (a RGA is perfected when a residential building permit is issued according to the allocated RGA) for which a building permit is issued shall be deducted from the 2,250 DA RGAs allocated by this Agreement and to DA Property which become part of the Property in accordance with section 1.07(f)(i) through and including (iv), below. For a calendar year where Owner applies Subsection F.3 RGAs to a Project, or more than one Project in that calendar year the Project(s) may not receive more than 225 Subsection F.3 RGAs and building permits. At the end of the calendar year this limitation of receiving no more than 225 Subsection F.3 RGAs and being unable to receive RGAs from other sources for those Projects shall automatically lapse. The Subsection F.3 RGAs applied to the Project(s) and for which building permits are issued shall be deducted from the 2,250 Subsection F.3 RGA allocation derived from and vested by this Development Agreement.

(iii) Except as otherwise provided herein, in no event shall Owner be allocated more than 2,250 Subsection F.3 RGAs from this Development Agreement over the Term of this Agreement ("Overall RGA Maximum") which may be applied to the Property.

(b) Treatment of RHNA or unused RGAs that may become available for re-issuance from subsequent rounds of RGA allocations under the GMO or other sources other than this Development Agreement.

(i) This Development Agreement vests Owner with the absolute right to obtain Subsection F.4 RGAs and building permits from any and all other sources. Thus each year
Owner shall be eligible for Subsection F.4 RGAs as provided in the GMO and the GMC Guidelines in effect on the Effective Date ("Annual RGA Eligibility").

(ii) This amendment is designed to permit additional property to be added to and incorporated in to the Development Agreement and therefore become Property of the Development Agreement, and Owner may apply for RGAs for Projects and home builders within the Property (whether or not annexed to the ESP) area. Owner may allocate RGAs, building permit or both, derived from any source, including the Growth Management ordinance, this Development Agreement, the RHNA or any other sources not specifically identified herein to Projects or homebuilders within the property subject to this Agreement and building permits in certain circumstances may be acquired without an RGA such as through RHNA, and as subsequently provided by this section.

(iii) RGAs secured by Owner by means of any provision of the GMO Guidelines other than subsection F.3, RHNA, subsequent rounds of the allocation of RGAs under the GMO or from any other source other than from Section F.3 RGAs through this Development Agreement shall not be deducted from the Overall RGA Maximum and shall not be subject to a limitation of 225 subsection F.3 RGAs in a single calendar year. The parties acknowledge and agree that Owner has a vested right to receive no more than 2,250 RGAs and building permits through this Development Agreement; however, this limitation of receiving 2,250 RGAs and building permits at a rate of no more than 225 Subsection F.3 RGAs and building permits during a calendar year does not operate in any manner to prevent or frustrate Owner’s efforts to obtain RGAs and building permits from all other sources and applying those RGAs and building permits to Projects within the Property that do not receive Section F.3 RGAs and building permits during the applicable calendar year.
(c) Owner shall apply to City for Subsection F.3 RGAs and/or Subsection F.4 RGAs ("RGA Application(s)") according to the Development Agreement and the requisite applicable requirements of the GMO Guidelines in effect on the Development Agreement Effective Date using the Application form attached hereto as Exhibit B or the form then stipulated in the GMO Guidelines then in effect, at the option of the Owner. The form shall designate the Project receiving the Subsection F.3 RGAs/Subsection F.4 RGAs and shall identify whether the application is for Subsection F.3 RGAs or Subsection F.4 RGAs.

(d) Owner shall provide a separate Application for each calendar year in which Owner seeks Subsection F.3 RGAs/Subsection F.4 RGAs. There shall be a separate application for each type of RGA applied for. Pursuant to Section F.4(c) of the GMO Guidelines, Owner shall have the first right and shall be entitled to apply for at any time during the year and obtain for the Property any RGAs not applied for, applied for but not granted, unclaimed, or unassigned to the Tracy Hills project, or granted RGAs which have been rescinded from the Tracy Hills project, according to the maximum amount of RGAs available or prioritized for Tracy Hills through the GMO in any calendar year, during any calendar year during the term of this Agreement and all RGAs obtained through this process and applied to the Project shall not be deducted from the annual Overall RGA Maximum. Owner shall have the right to apply RGAs obtained under this subsection (d) to any DA Properties and these RGAs shall not be subject to the total or annual limitation of Subsection F.3 RGA allocations or be a deduction against the Overall Subsection F.3 RGA Total.

Only Owner may apply for Subsection F.3 RGAs/Subsection F.4 RGAs for property subject to this Agreement, unless Owner notifies City in writing of an exception and designates another entity to apply for RGAs. Pursuant to Section F.4(c) of the GMO Guidelines, City shall
notify Owner within ten (10) days of any RGAs not applied for, applied for but not granted, unclaimed, or unassigned to the Tracy Hills project, or granted RGAs which have been rescinded from the Tracy Hills project according to the maximum amount of RGAs available or prioritized for Tracy Hills through the GMO in any calendar year. City agrees to make RGAs available to Owner pursuant to Section F.4(c) of the GMO Guidelines at the earliest possible date such RGAs become available after the time for Tracy Hills to request a RGA has passed or at the earliest possible time to acquire an allocated RGA after the time for Tracy Hills to perfect the allocated RGA has lapsed without Tracy Hills perfecting the allocated RGA pursuant to GMO rules. If RGAs are available Owner shall have the right to apply for Tracy Hills RGAs and the Growth Management Board shall allocate Tracy Hills RGAs to the Project(s) identified by Owner within fifteen (15) days of the date the Growth Management Board received the Owner’s application(s).

(e) With the expressed exception of subsection F.1 “Vested Projects”, in instances where all RGAs are not claimed or claimed but are not perfected (collectively unclaimed RGAs) such unclaimed RGAs shall be allocated using the following procedure, priority and percentages. RGAs shall be allocated according to each category’s percentage of the total number of eligible RGAs until all RGAs are claimed or the City conducts an entire round of RGA allocations and no RGAs are claimed by any category. The priority of categories shall follow the order the subcategories are listed in subsection F of the GMO Guidelines. Hence the priority shall be Primary Growth Areas, Development Agreements, Tracy Hills and Ellis Specific Plan Projects, and then Other Projects. Since subsection F.1, Vested Projects, is not assigned a total number of RGAs by the GMO Guidelines it does not participate in subsequent rounds of RGA allocations. Vested Project as defined in Subsection F.1 of the GMO at the time of this
amendment approval shall retain all rights as provided by the GMO immediately prior to this amendment being effective.

(f) However, after first excluding RHNA or other similar sources of building permits, Owner agrees it will not apply for Tracy Hills RGAs or other Available RGAs in a manner that is responsible for the City allocating more than the maximum possible RGAs in a given calendar year. The City represents and warrants that during the duration of this Development Agreement, as amended, it shall not grant RGAs to any other person or entity through a development agreement and shall not expand the current boundaries of the Primary Area and Other Projects Area, if Owner’s right to obtain RGAs under this Agreement may be directly or indirectly prohibited, restricted or impaired.

(g) Owner shall be eligible for building permits according this Development Agreement and to the applicable requirements of the GMO and the GMO Guidelines in effect on the Development Agreement Effective Date and the building permits issued hereunder shall be in accordance with the following:

(i) Building permits issued hereunder shall be deemed to have been secured by Owner upon the meeting of applicable plan check review requirements to issue a building permit and payment to the City of the building permit plan check inspection fee, due under the Municipal Code;

(ii) Despite any provision of the Municipal Code to the contrary, building permits issued hereunder shall continue in existence for a period of not less than twenty-four (24) months or until a certificate of occupancy for the structure is issued, whichever first occurs, and
plot plans approved at the time of building permits may be adjusted or resubmitted during this period without further fees for minor modifications.

(iii) If noticed by Owner to City for a Project, all development impact fees and other fees and contributions identified in the EFIP, or agreed upon by the City and Owner in other finance plans such as the City Master Plans, or any other Fee Programs, or other impact fee, agreed to by the City and Owner and attributable to a structure shall be due and payable through close of escrow for a home builder to a home buyer for a residential structure, and upon a final inspection approval for a commercial structure for the noticed Project. The process for such payment is attached hereto and incorporated herein by this reference as Exhibit C. However, if a type of fee to be collected is immediately necessary to fund infrastructure construction that is directly needed by the building being constructed by the building permit for a commercial building then a fee for that relevant category shall be collected at the time the building permit is issued by the City, if prior to issuing the building permit City sends Owner a written justification for accelerating collection of the fee based upon the reason stated in this sentence and second meets and confers with Owner in good faith at the earliest possible time before accelerating collection of the specific category of fee for the specific building permit. However, if a type of fee to be collected is immediately necessary to fund infrastructure construction that is directly needed by the building being constructed for a residential building then the fee for that related category shall be collected at the time the building permit is issued by the City, if the determination for the need to accelerate payment is made prior to approving the final map that including the relevant building lot(s). City shall send Owner a written detailed and comprehensive justification for accelerating collection of the fee based upon the reason stated in this sentence and shall meet and confer with Owner in good faith at the earliest possible time.
before accelerating collection of the specific category of fee for the specific final map buildings. In no event shall the time to pay the applicable fees exceed twenty four (24) months from approval of the final inspection for a residential lot.

However, if during the twenty-four months City determines that some or all of the deferred fees are immediately needed to fund infrastructure construction that is directly needed for the future occupants of the residential unit then the City has the right to deliver written notice to the real property owner demanding payment of the applicable fee and the real property owner shall pay the demand within thirty (30) days of receipt of City’s written notice.

(iv) The Ellis Specific Plan Finance and Implementation Plan (“EFIP”) shall be the finance plan for ESP Property, and the amount of fees as documented is a vested element, and no other fees shall be charged without the mutually written consent of the parties. Owner may request that the ESP or a portion of the ESP join another finance district and upon approval by Owner and City the ESP or a portion of the ESP may be included in a different finance district, including updating the EFIP as needed.

(v) For any finance district, district fee, or community facility districts to be effective Owner’s prior written consent, which may be withheld for any reason, is required for any property subject to this development agreement and, the Ellis Community Facilities District (ECFD) has been approved by Owner and is in effect. The obligation to make ECFD payments to City for maintaining the Swim Center shall be considered a community wide benefit and shall take the place of, be the equivalent of participating in and shall constitute full satisfaction for any future community wide facilities district or fees, including any facility district or other funding mechanism to fund public services, public landscape, park maintenance, basin maintenance,
project-specific maintenance, police, fire and/or public works. Owner agrees to include Property into the ECFD and therefore, City shall not delay, deny, or condition any application filed, or processing for any Property because any or all of the Property is not joined into a CFD, Mello Roos District, or other Financing District.

(h) Owner shall have the right but not the obligation to file a request with the City to approve and if approved thereafter have recorded this development agreement against DA Property subject to the following conditions being satisfied:

(i) The DA Property has been annexed to the City of Tracy;

(ii) The Owner owns or has an enforceable right, within the meaning of “legal and equitable interest in real property” as used in current Government Code Section 65865(a) and (b), to purchase DA Property;

(iii) The Owner agrees to annex the DA Property into the Ellis Property Owners Association, the ECFD or equivalent community finance district, the Ellis Finance Plan, or other requisite finance districts; and,

(iv) The development agreement, either in the form of this Development Agreement or as may be modified by the parties, proposed for DA Property contains an amended property description that includes a property description of the DA Property.

(v) The City Council adopts a finding that amending the property description into this Development Agreement is not inconsistent with the GMO in its form as of the Effective Date of this Agreement.
For purposes of this subsection 1.07(h) the parties acknowledge and agree the term “annexed to the City of Tracy” as used in subsection 1.07(h)(i) means the City of Tracy has complied with the California Environmental Quality Act for purposes of adopting a general plan designation, a zoning or pre-zoning classification, an application to the San Joaquin Local Agency Formation Commission (LAFCo) and, at Owner’s option, a specific plan and one or more tentative parcel or subdivision maps, and LAFCo has approved the City’s annexation request and, if required a sphere of influence amendment for real property not currently subject to the Development Agreement.

(i) Notwithstanding any other provision of this Agreement or any other City ordinance, rule, regulation or custom: (1) except for a tentative map receiving DA RGAs in a calendar year, the Property shall not be subject to any limitation or condition concerning the total number of RGAs or building permits from all potential sources in any year or during any RGA and/or building permit cycle; and, (2) approved plot plans and building permits shall have a term of at least two (2) years and shall be eligible for extensions as provided by the City ordinance, rules and regulations or other applicable laws.

5. Section 1.15(c) is added as follows.

(c) The concept plan for neighborhood parks shall be first presented to the City Parks Commission, the concept plan shall then be updated in coordination with City staff, and if City Council approves the neighborhood parks as part of the Specific Plan or relevant planning and approval documents (Project Plan) then the neighborhood park concept and design shall be in accordance with the then existing Project Plan and may including approximate size, name, location site plans, structures, equipment, uses, plants, trees, signage, color palette and
features. Neighborhood parks may be one acre or more, and parks of two acres or more are allowed to have adjacent mail boxes with a roof structure, lighting and other features for mail service to the neighborhood residents, adjacent mail boxes with a roof structure shall not be a credit towards neighborhood park acreage, and maintenance for such neighborhood parks shall be funded by the Ellis community facility district or similar district. The neighborhood parks shall be bonded through a park improvement agreement or other acceptable agreement, at a bonding amount determined by the applicable finance plan or Project Plan, the developer shall be responsible for building the parks and there shall be no impact fee or other fees collected for neighborhood parks. The Project Plan shall provide developed neighborhood park land of three (3) acres per thousand residents. The Project Plan shall provide regulations on the character and amenities for each park. As the park system is implemented detailed designs will be developed for the construction of each park and the final location of parks shall be identified by Owner on tentative maps(s). Modifications and refinements of individual park designs including park location will be considered a minor variation as per the approved Project Plans. The elimination of a major amenity, or comprehensive change of a major amenity to another use shall be considered a major variation and require review by the City parks commission.

6. Section 1.15 Ellis Specific Plan Parks (b) is deleted and replaced with the following:

   (b) The timing of constructing Property neighborhood park improvements shall be according to the applicable Project Plan.

7. Section 1.15(d) is added as follows.
(d) Except for neighborhood park land which shall be maintained by City with funding from the ECFD, all landscape improvements shall be maintained by the Ellis Property Owners Association (EPOA), with funding from the ECFD. The City and EPOA have or shall enter into a maintenance agreement to set forth and facilitate among other things the required maintenance obligations, standards for maintenance, and other associated obligations(s) as well as compliance with the Ellis operations and maintenance manual, to ensure the long-term maintenance of all public park and landscape areas, and other public improvements within the ECFD boundaries. The City and EPOA may amend and make changes agreed upon to the maintenance agreement and Ellis operations and maintenances manual upon mutual consent. The maintenance manual will be updated by Owner periodically to include improvements which have been installed in public parks, landscape areas, and other public improvements within the ECFD boundaries, and updated versions shall be provided to the City and EPOA. The City and EPOA may then amend and make changes to existing improvement standards or guidelines which are part of the manual upon mutual agreement.

8. A new section 1.16(e) is added as follows:

e. On August 16, 2016 the parties agreed to defer the performance of certain acts. As consideration for this deference Owner agreed to:

(i) design and construct the Swim Center monument sign at the corner of Summit Drive and Corral Hollow Road at Owner’s sole expense in an amount not to exceed One Hundred and Fifty Thousand Dollars ($150,000); and,
(ii) expand and improve the Summit Drive paved travel section to the northeast along the frontage of the Swim Center to a five-foot wider section to accommodate potential future Swim Center turn lanes.

9. A new section 1.17 is added as follows:

Section 1.17 **Community Facilities District.**

The City and Owner shall cooperate to annex property into the ECFD and the ECFD shall authorize bond indebtedness, and authorize the special taxes, and bond proceeds from the ECFD. Property identified as a Future Annexation Area may annex into a then existing improvement area, or a new improvement area using the unanimous approval process.

Any fees paid from Property or Owner which are determined to be subject to reimbursement with ECFD proceeds or other proceeds shall be deemed “deposits” which may be returned to Owner upon payment of an equivalent amount to the City from ECFD proceeds. City and Owner shall agree on all Property which shall be subject to any other community facility district.

10. A new section 1.18 is added as follows:

Section 1.18 **Program/Public Improvements/Infrastructure**

A. Except for the process to fund, design, and/or construct the Aquatic Center which is described at section 1.01(j) of this Second Amendment, Owner or Owner’s designee may fund, design, and/or construct any program/public infrastructure upon the execution of the requisite improvement agreement, as approved by the City which approval shall not be unreasonably withheld. Owner shall notify the City in writing of the intent to design and/or construct improvements, and at the time of such notice there shall not be a construction or improvement
contract in effect that provides for the construction of the specific improvement. Owner shall
insure that improvement agreements have been executed and security is posted for the work of
the improvement. Owner shall be eligible for credits and/or reimbursements for the work in
amounts equal to the full amount of the capital improvement program plan identified in the
applicable fee program, or other public improvements, in such instances City shall not charge
cost recovery for the related component of the plans and improvements, plans check fees shall be
fully reimbursable. For site improvements which Owner or Owner’s designee will fund, design,
and/or construct public infrastructure, and a plan check fee is collected by City, Owner shall be
eligible to receive reimbursements of plan check fees paid, after acceptance of the improvement
by the City, the City shall then reconcile actual costs against the plan check fee paid and shall
only charge based on the actual costs, for any project work over five million dollars which is
allowed by City code. City shall keep all EFIP funds in discrete accounts, including program
management, and provide Owner with an annual accounting of all accounts.

B. After the parties execute a written agreement to fund, design, and/or construct
program infrastructure improvements all credits and reimbursements available to Owner,
including without limitation credits and reimbursements available as a result of Owner’s
election, shall apply to any program expenditure. Owner shall be eligible for both a credit
against fees paid, and/or against future fees to be paid, and reimbursement. Owner and City shall
enter into a master reimbursement agreement to identify credits and reimbursements, which shall
become part of the reimbursement agreement prior to, concurrent with, or subsequent to the
improvement(s).

C. Reimbursement Agreement credits and reimbursements, approved by the City
through a Reimbursement Agreement shall be allocated in such a manner determined, and in the
sole discretion of Owner as Owner deems appropriate, with credits being allocated to "like-kind" fees, like-kind fees shall be fees which are in the same fund type of infrastructure, such as water, wastewater, storm, transportation/roads, public facilities, parks, etc. Owner may have balances of credits before impact fee payments are due, in such event Owner may allocate such credits to specific lots by written direction to the City indicating available credits being applied to specific lots.

D. All program infrastructure/public improvement capacity funded or constructed by Owner shall be available to accommodate the fair share capacity for Owner's Property as approved by City in the relevant agreement (for purposes of this subsection D and section 1.18 F) The City has discretion on the use of the capacity prior to when Owner needs occur, so long as the capacity is available without delay or restriction to Owner or any partial use of this capacity is required or needed. Owner may construct on-site and off-site infrastructure necessary to provide recycled water service. Recycled Water Fees will be paid in an amount equal to the requisite finance plan, and in accordance Project Plans but no other current or future fee. All recycled water infrastructure improvements within entry, collector and community streets, and other public streets as approved by the City, and as defined by the requisite Project Plan will be recommended by staff to be program costs as part of the water master plan update. Once adopted these costs will be subject to credit and reimbursement according to the reimbursement agreement designee. Concurrent with approval of a final map for any part of Property subject to the Agreement City shall review, and if capacity not currently being used exists, shall reserve wastewater services capacity for treatment and conveyance for residential and commercial wastewater uses included in the approved final map. Through this Agreement City shall allocate and vest in favor of Owner and City shall supply Owner water supply for 2,250 residential units,
including all commercial areas and uses (Including Ellis Village Center and Limited Use Area) in the Ellis Specific Plan, including the Swim Center in accordance with the Ellis FIP. Owner shall have the right to use all fair share infrastructure capacity described in the Ellis FIP, including but not limited to storm, water, wastewater, transportation (traffic), community park and public buildings. The applicable Project Plan shall identify the financial plan(s) such as the Ellis FIP, the City Master Plans, or any other Fee Programs, or other impact fee, development impact fees and other fees and contributions identified and agreed upon by the City and Owner and attributable to a structure.

E. The Reimbursement Agreement shall be approved prior to the City Council second reading of with this Agreement, and within thirty (30) days after approval of the Reimbursement Agreement for the funding and/or constructing infrastructure, the City shall immediately establish separate Reimbursement accounts for the work identified in the Reimbursement Agreement, and the work identified in future additional work to the Reimbursement Agreement for depositing reimbursements funds due per the Reimbursement Agreement. City shall provide Owner with a written accounting of funds available for reimbursement to the party identified in the Reimbursement Agreement for the Work within sixty (60) days after executing the Reimbursement Agreement or additional work to the Reimbursement Agreement, City shall transfer to the appropriate reimbursement account all available funding necessary to reimburse Developer for any of the Work Components identified in the Reimbursement Agreement which are subject to an executed Improvement Agreement, Off-Site Improvement Agreement, or other agreement to construct the Work Components. In accordance with the Reimbursement Agreement Fee Credits, as this term is defined in the Reimbursement Agreement, credits may be applied toward impact fees due or paid, on any
property with like kind infrastructure fees, by notice to the City from Reimbursement Agreement identified party, after the City Council accepts the Work component identified in the Reimbursement Agreement. The City and Owner shall cooperate to amend the Reimbursement Agreement to add additional Work components as necessary. Reimbursements and credits will be based on infrastructure category funds such as water, wastewater, roadways, parks, and storm, etc.

Sources for the Reimbursements may include monies from the South ISP, Plan C, RSP, Infill, I-205, Ellis FP, Master Plans, benefitting properties, and/or other City Impact Fee Funds, Finance Plans, or other funding sources, as identified by the City. Credits shall apply against Impact Fees, which otherwise would be payable by properties to City, and applied as directed in writing to the City by the party identified in the Reimbursement Agreement. Payment of reimbursements by City shall be by check or by wire and payable as per the Reimbursement Agreement. City shall provide Owner a quarterly report indicating the balance of said reimbursement accounts. Administrative costs may apply for enhanced reporting and accounting.

All reimbursements shall be made in full in accordance with the Reimbursement Agreement from funds available at least as often as each City fiscal quarter the City shall release and immediately disburse all funds in any accounts in accordance with the Reimbursement Agreement. The reimbursement agreement will not substantially impair existing reimbursement agreements, or written commitments in effect, as of the date of this amendment. The City represents, warrants and covenants that the funds deposited in infrastructure fund account(s) available for reimbursement shall not be used for any intra-fund transfer without the prior written consent in accordance with the Reimbursement Agreement. Funds in the account shall be deposited in an interest-bearing account and all interest shall be paid in accordance with the
Reimbursement Agreement as additional consideration for entering into this Agreement. City shall make all reasonable efforts to provide the "Total Credit and Reimbursement" as of approval of an agreement for the improvement(s) or work, or as soon thereafter as possible. The right to Reimbursement for the improvement(s) or work shall have priority over other improvement projects, or reimbursements. The reimbursement agreement will not substantially impair existing reimbursement agreements, or written commitments in effect as of the date of this amendment.

F. Wastewater treatment capacity needed by Owner which have not yet been provided shall be made available from existing available capacity of the Tracy Waste Water Treatment Plant by determining the capacity requirements of a final map for use of available capacity during the processing of the final map. Owner may participate in additional expansions above for Owner needs by request to the City. The Ellis Initial Capacity shall be applied to the Property according to written directions from Owner to City. In addition to the Ellis Initial Capacity, all property depicted on final maps which are approved by the City shall be served by the existing wastewater treatment capacity. The Ellis Initial Capacity credits shall be applied to the Property according to written directions from Owner to City. Owner wastewater conveyance needs which have not been met shall be included in the Corral Hollow Conveyance Expansion, or other requisite conveyance system(s) as approved by City, which approval shall not be unreasonably withheld. City shall make available a minimum capacity from the Corral Hollow Conveyance Capacity Phase 1 Expansion (referred to as a choke point at times) for five hundred and fifty (550) residential units whenever needed by Owner for project improvements and/or development until the ultimate Corral Hollow Conveyance Expansion is complete. Owner may use the Eastside sewer conveyance system via a connection through Peony on an interim basis
for the first 550 residential units until the ultimate Corral Hollow Conveyance Expansion
upgrades are constructed and operational, including the Corral Hollow conveyance system:
connection to Ellis Town Drive to serve conveyance required by Owner in the Corral Hollow
Conveyance System for property subject to this Agreement.

11. Section 3.01(b).4 is deleted.

12. Section 3.01(b).9 shall be deleted from the Development Agreement and the
following inserted in its place.

(9) "Certificate of Occupancy" shall mean a certificate issued by the City
authorizing occupancy of a residential unit.

IN WITNESS WHEREOF, the Parties do hereby agree to the full performance of the
terms set forth herein.

"City"
CITY OF TRACY, a municipal
corporation

"Owner"
SURLAND COMMUNITIES,
LLC, a California limited liability
company

By: ________________________________
Title: Mayor
Date: ________________________________

By: ________________________________
Title: Les Serpa
Date: ________________________________

Attest:

By: ________________________________
Title: CITY CLERK
Date: ________________________________
Exhibits to the DA will be provided at the City Council meeting.