

**ORDINANCE NO. 372**

**AN ORDINANCE OF THE ARVIN CITY COUNCIL  
ADOPTING THE AMENDMENT TO THE DEVELOPMENT  
AGREEMENT BETWEEN  
SYCAMORE VILLAS AND THE CITY OF ARVIN  
CONCERNING TRACT 5816.**

**WHEREAS**, Sycamore Villas, LLC (“Sycamore”), and the City of Arvin (the “City”) entered into a development agreement on February 6, 2003, (“the Development Agreement”) vesting certain rights in Sycamore to develop Tract 5816 within the City of Arvin (“the Development.”); and

**WHEREAS**, Sycamore filed an action against the City and others in Kern County Superior Court in 2004 claiming that the City failed to properly allocate sewer capacity to the Development by denying Sycamore’s sewer plans for Phases 5 and 6 of the Development and also favored other developers within the City by allocating sewer capacity to the other developers’ projects while simultaneously rejecting Sycamore’s sewer plans; and

**WHEREAS**, Sycamore alleged that the City’s actions were a breach of the Development Agreement and also violated Sycamore’s civil rights; and

**WHEREAS**, Sycamore filed a second action against the City and others in Kern County Superior Court in 2006 claiming that the City placed an improper sewer condition on a parcel map within the Development thereby causing damages to Sycamore in excess of \$30,000,000; and

**WHEREAS**, during the litigation the City obtained a land lease and constructed a pipeline from the waste water treatment plant to the leased land thereby expanding its sewer capacity; and

**WHEREAS**, on May 11, 2007, the Arvin City Council voted unanimously to settle the lawsuits filed by Sycamore and on May 15, 2007 executed a settlement agreement to that effect (“the Settlement Agreement.”); and

**WHEREAS**, the Arvin City Council deems the Settlement Agreement as a reasonable compromise of the claims by Sycamore given the potential liabilities and the costs that had already, and in the future would be, incurred to defend the lawsuits; and

**WHEREAS**, the City agreed pursuant to the Settlement Agreement to amend the Development Agreement to guarantee certain sewer capacity to Sycamore and decrease the amount of fees owed by Sycamore; and

**WHEREAS**, a true and correct copy of the amendment to the Development Agreement is attached hereto as Exhibit "A" (the "Amendment") and incorporated herein by reference; and

**WHEREAS**, in accordance with Government Code sections 65090 and 65091, the City of Arvin properly noticed a public hearing before the Arvin Planning Commission to discuss the proposed Amendment; and

**WHEREAS**, on July 3, 2007, the Arvin Planning Commission held the above-mentioned public hearing and took evidence regarding the proposed Amendment; and

**WHEREAS**, after considering all of the evidence presented at the hearing, on July 3, 2007, the Planning Commission adopted a resolution recommending the Arvin City Council adopt the Amendment; and

**WHEREAS**, a true and correct copy of the Resolution of the Arvin Planning Commission recommending the Arvin City Council adopt the Amendment is attached hereto as Exhibit "B" and incorporated herein by reference; and

**WHEREAS**, in accordance with Government Code sections 65090 and 65091, the City properly noticed the July 10, 2007 and July 24, 2007 hearings before the Arvin City Council regarding the proposed Ordinance to Amend the Development Agreement, which included publication in the Bakersfield Californian, posting on the bulletin board of the City of Arvin City Hall, and notifying property owners within 300 feet of the project site by United States Mail; and

**WHEREAS**, the City Council did, on July 10, 2007 and July 24, 2007, conduct a duly noticed public hearing as prescribed by law, and considered evidence presented by the Planning Commission, Planning Director and other interested parties regarding the proposed Amendment; and

**WHEREAS**, the evidence taken by the City Council reveals that:

- 1. The Amendment is consistent with the General Plan for the City; and
- 2. The Amendment is mutually agreeable to both Sycamore and the City; and
- 3. The Amendment will not result in any environmental impacts and a General Exemption has been adopted in compliance with the California Environmental Quality Act;

**THEREFORE, BE IT ORDAINED** by the Arvin City Council as follows:

**Section 1.** Based on the evidence presented, and the findings set forth, the Amendment to the Development Agreement is hereby found to be consistent with the City's General Plan and mutually agreeable to both Sycamore and the City.

**Section 2.** Pursuant to the requirements of the California Environmental Quality Act (CEQA) of 1970, the Amendment will not result in any environmental impacts and a General Exemption has been adopted in compliance with the California Environmental Quality Act

**Section 3.** The City Council does hereby adopt the Amendment to the Development Agreement, attached hereto as Exhibit "A".

**Section 4. Effective Date.** This Ordinance shall be effective thirty (30) days after its approval by City Council.

**I HEREBY CERTIFY** that the foregoing ordinance was passed and adopted by the City Council of the City of Arvin at a regular meeting thereof held on the 24<sup>th</sup> day of July, 2007 by the following vote:

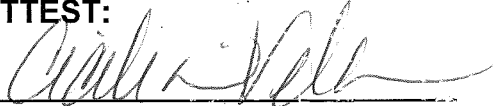
**AYES:** CM Stoner, CM Brar, Mayor Tarver

**NOES:** MPT Flores

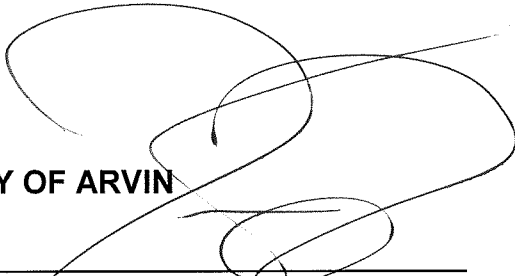
**ABSTAIN:** \_\_\_\_\_

**ABSENT:** CM Ojeda

**ATTEST:**

  
\_\_\_\_\_  
**CECILIA VELA, City Clerk**

**CITY OF ARVIN**

  
By: \_\_\_\_\_  
**TIM TARVER, Mayor**

**APPROVED AS TO FORM:**

  
By: \_\_\_\_\_  
**LAURA OLIVIER, City Attorney**

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# EXHIBIT "A"

RECORDING REQUESTED BY

City of Arvin  
200 Campus Drive  
Arvin, CA 93203

WHEN RECORDED RETURN TO

ATTN: CITY CLERK  
CITY OF ARVIN  
200 CAMPUS DRIVE  
ARVIN, CA 93203

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

## AGREEMENT NO. 2007-18

### AMENDMENT TO THE DEVELOPMENT AGREEMENT

This Amendment to the Development Agreement ("Amendment") is made and entered into as of this 24<sup>th</sup> day of July, 2007, and entered into by and between SYCAMORE VILLAS, LLC, a California limited liability company ("Developer") and the CITY OF ARVIN, a municipal corporation (the "City").

#### RECITALS

A. City and Developer entered into a Development Agreement (the "Agreement") pursuant to the authority of Government Code Sections 65864 through 65869.5 (the "Development Agreement Law") which was recorded on July 3, 2003 in the Kern County Official Records as Document Number 0203133456. The terms capitalized in this Amendment have the same meaning as set forth in the Agreement unless modified by the terms of this Amendment. The Property which is the subject of the Agreement and this Amendment is described in Exhibit A attached hereto. The City and Developer acknowledge and agree that the Agreement, as modified by this Amendment, remains in full force and effect and that the Existing Approvals including Vesting Tentative Tract Map 5816 remain in full force and effect and will remain in full force and effect during the Term of the Agreement unless modified by mutual agreement of the City and Developer.

B. Developer is in the process of developing the Property pursuant to the terms of the Existing Approvals and Existing Laws.

C. City and Developer by this Amendment agree to amend the Agreement pursuant to the provisions of the Development Agreement Law to resolve disputes which have arisen concerning the Agreement and other matters as set forth below including but not limited to the allocation of sewer capacity for the Project necessary for the timely development of the Project.

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engineer (the "Sewer Expert"), with significant experience with wastewater treatment facilities to accurately assess the remaining capacity of the City's wastewater treatment facilities and sewer spreading grounds. The City and Developer will cooperate in good faith to select the Sewer Expert. If the City and Developer are unable to agree upon a Sewer Expert by July 15, 2007, or by a later date if agreed to by the parties, the Court, upon application by any party, shall select the Sewer Expert.

The Sewer Expert shall determine the City's current sewer capacity as expeditiously as possible, and the City, wastewater treatment operator and Developer shall to the best of their ability cooperate with the Sewer Expert and provide the Sewer Expert with all information requested by him for this purpose. The City and Developer contemplate that the Sewer Expert's determination will be completed by June 11, 2007 (and earlier if possible), and will do everything reasonably necessary to cause this to occur. If and when (1) proposed or anticipated future developments could reduce the City's remaining sewer capacity to a level near or below the Reserved Sewer Capacity, or (2) the City's remaining capacity is otherwise near the Reserved Sewer Capacity, the City shall so inform Developer in writing and the Sewer Expert shall perform any reasonable additional assessments to ensure that the Reserved Sewer Capacity remains in place for Developer. The Sewer Expert's work shall be paid for by the City.

To assist Developer in monitoring the remaining sewer capacity in the City, (1) The City shall maintain accurate, complete, and thorough records relating to its sewer capacity, including but not limited to, (a) reports and data showing daily and monthly average effluent and influent flow levels, and (b) records that show the number of projects that have been or are anticipated to be connected to the City's sewer system; and (2) will provide to Developer monthly reports that are provided to the City by its wastewater treatment plant operator detailing the current status of the plant and the previous month's usage."

3. Add Section 4.8 to the Agreement to read as follows:

"4.8 Minimum Use of Reserved Sewer Capacity in first 5 years. To the extent Developer submits sewer plans for less than 150 single family residential units of sewer capacity (whether used for single family, multi-family or commercial uses) by June 1, 2012, the City can thereafter use the capacity allocated to these unused units for other developments. Nonetheless, the City remains obligated under the Agreement to continue to set aside Reserved Sewer Capacity for the remaining units out of the 750 single family residential units through the Term of the Agreement."

4. Add Section 4.9 to the Agreement to read as follows:

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Developer the remainder of the \$700,000 upon completion of the second of these roads.”

8. Modification of Article 6, Periodic Review of Compliance Provisions:

Article 6 of the Agreement, requires Developer to provide information and documents to the Planning Director of the City for the annual review of Developer’s good faith compliance with the terms of the Agreement. Section 6.2 of the Agreement describes the materials to be provided. By this Amendment, Article 6 is hereby modified to define the information Developer is to provide to the Planning Director of the City so there are no future disputes on this issue: it is agreed that pursuant to Article 6 of the Agreement, Developer need only provide to the City in connection with its annual review (1) four sets of current Master Plans indicating the completed phases and phases in progress, together with a review fee of the lesser of actual costs of \$1,000 subject to escalation as set forth in article 3.5 of the Agreement; and (2) an accompanying letter describing the items accomplished under the Agreement over the previous year, as well as the projected projects for the coming year.

9. Add Section 13.11 to the Agreement to read as follows:

“13.11 Development Agreement Parity. In the event the City enters into a development agreement with another private developer of private, undeveloped land on “for-profit” projects (excluding not-for-profit projects which include, but are not limited to economic enterprise zone agreements, redevelopment agency agreements, low and affordable income housing project agreements, humanitarian housing project agreements (*i.e.*, “Habitat for Humanity”), senior housing project agreements, and farmworker housing project agreements), and the other development agreement (the “Other Agreement”) has an aggregate fee and tax this is less than that provided for under the Agreement, the parties hereto shall negotiate in good faith to amend the Agreement to match, as nearly as possible, the lower aggregate fee and tax reflected in the Other Agreement.”

10. Counterparts:

This Amendment may be executed in two or more counterparts and by facsimile, and by the different Parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

EXHIBIT A

P.M.W. NO. 1-00  
PARCEL NO. 1

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 31 SOUTH, RANGE 29 EAST, M.D.M., IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH  $89^{\circ} 49' 13''$  WEST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 35 A DISTANCE OF 660.35 FEET;  
THENCE SOUTH  $00^{\circ} 10' 47''$  WEST PERPENDICULAR TO SAID NORTH LINE A DISTANCE OF 660.00 FEET;  
THENCE SOUTH  $89^{\circ} 49' 13''$  EAST PARALLEL TO SAID NORTH LINE A DISTANCE OF 660.00 FEET TO A POINT ON THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH  $00^{\circ} 12' 38''$  EAST ALONG SAID EAST LINE A DISTANCE OF 660.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 435,716 SQUARE FEET GROSS.  
CONTAINING 10.00 ACRES MORE OR LESS

EXHIBIT A

P.M.W. NO. 1-00  
PARCEL NO. 3

BEING A PORTION OF THE WEST HALF OF SECTION 35, TOWNSHIP 31 SOUTH, RANGE 29 EAST, M.D.M., IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 35;  
THENCE SOUTH  $89^{\circ} 49' 13''$  EAST ALONG THE NORTH LINE OF SAID SECTION A DISTANCE OF 1720.99 FEET MORE OR LESS TO A POINT WHICH LIES 965.43 FEET WEST OF THE NORTHEAST CORNER OF SAID WEST HALF OF SECTION 35;  
THENCE SOUTH  $00^{\circ} 10' 47''$  WEST PERPENDICULAR TO SAID NORTH LINE A DISTANCE OF 965.00 FEET;  
THENCE SOUTH  $89^{\circ} 49' 13''$  EAST PARALLEL WITH SAID NORTH LINE A DISTANCE OF 964.92 FEET TO A POINT ON THE EAST LINE OF SAID WEST HALF OF SECTION 35 AND WHICH POINT LIES 965.00 FEET FROM SAID NORTHEAST CORNER OF THE WEST HALF OF SECTION 35;  
THENCE SOUTH  $00^{\circ} 12' 38''$  WEST ALONG SAID EAST LINE A DISTANCE OF 4341.08 FEET TO THE SOUTHEAST CORNER OF SAID WEST HALF OF SECTION 35;  
THENCE NORTH  $89^{\circ} 51' 08''$  WEST ALONG THE SOUTH LINE OF SAID WEST HALF OF SECTION 35 A DISTANCE OF 2698.74 TO THE SOUTHWEST CORNER OF SAID SECTION 35;  
THENCE NORTH  $00^{\circ} 20' 13''$  EAST ALONG THE WEST LINE OF SAID SECTION A DISTANCE OF 2653.50 FEET TO THE WEST QUARTER CORNER OF SAID SECTION;  
THENCE NORTH  $00^{\circ} 21' 00''$  EAST CONTINUING ALONG SAID WEST LINE A DISTANCE OF 2654.11 FEET TO THE POINT OF BEGINNING.

EXCEPTING FROM THE ABOVE DESCRIBED PARCEL TRACT NO. 5816 PHASE 1 AS FILED AUGUST 18, 2000 IN BOOK 46 OF MAPS AT PAGE 51 IN THE COUNTY RECORDER'S OFFICE OF SAID COUNTY AND ALSO EXCEPTING TRACT NO. 5816 PHASE 2 AS FILED AUGUST 18, 2000 IN BOOK 46 OF MAPS AT PAGE 53 IN SAID COUNTY RECORDER'S OFFICE.

CONTAINING 298.04 ACRES GROSS MORE OR LESS.

**ACKNOWLEDGMENT**

State of : California

County of Kern

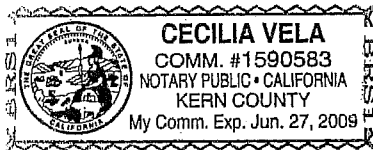
On July 24, 2007, before me Cecilia Vela, Notary Public,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Tim Tarver  
Name(s) of Signer (s)

personally known to me  
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/ they~~ executed the same in ~~his/her/their~~ authorized capacity(~~ies~~), and that by ~~his/her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal



Cecilia Vela  
Signature of Notary Public

Place Notary Seal Above

State of California )  
County of Los Angeles )

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On September 12, 2007 before me, Kelly McIntyre, notary public,  
(here insert name and title of the office)

personally appeared Mimi Mok

personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he is / she is / they executed the same in his her / their authorized capacity(ies), and that by his her / their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature Kelly McIntyre

(Seal)

### OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

### Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Amendment to the Development Agreement containing 6 pages, and dated \_\_\_\_\_.

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s) Mimi Mok, President  
Title(s)
- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: \_\_\_\_\_

representing: Sycamore Villas, LLC  
Name(s) of Person(s) or Entity(ies) Signer is Representing  
S.K.Y. Management, LLC

| Additional Information   |  |
|--|--|
| Method of Signer Identification  |  |
| <input checked="" type="checkbox"/> Personally known to me                   |  |
| <input type="checkbox"/> Proved to me on the basis of satisfactory evidence: |  |
| <input type="checkbox"/> form(s) of identification                           | <input type="checkbox"/> credible witness(es)    |
| Identification is detailed in notary journal on:                             |  |
| Page # _____   | Entry # _____                                    |
| Notary contact: _____  |  |
| Other  |  |
| <input type="checkbox"/> Additional Signer(s)                                | <input type="checkbox"/> Signer(s) Thumbprint(s) |
| <input type="checkbox"/> _____   |  |

# EXHIBIT "B"

## RESOLUTION NO. APC07-02

### A RESOLUTION OF THE ARVIN PLANNING COMMISSION RECOMMENDING TO THE ARVIN CITY COUNCIL TO APPROVE AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN SYCAMORE VILLAS AND THE CITY OF ARVIN CONCERNING TRACT 5816.

**WHEREAS**, Sycamore Villas, LLC ("Sycamore"), and the City of Arvin (the "City") entered into a development agreement on February 6, 2003, ("the Development Agreement") vesting certain rights in Sycamore to develop Tract 5816 within the City of Arvin ("the Development."); and

**WHEREAS**, Sycamore filed an action against the City and others in Kern County Superior Court in 2004 claiming that the City failed to properly allocate sewer capacity to the Development by denying Sycamore's sewer plans for Phases 5 and 6 of the Development and also favored other developers within the City by allocating sewer capacity to the other developers' projects while simultaneously rejecting Sycamore's sewer plans; and

**WHEREAS**, Sycamore alleged that the City's actions were a breach of the Development Agreement and also violated Sycamore's civil rights; and

**WHEREAS**, Sycamore filed a second action against the City and others in Kern County Superior Court in 2006 claiming that the City placed an improper sewer condition on a parcel map within the Development thereby causing damages to Sycamore in excess of \$30,000,000; and

**WHEREAS**, during the litigation the City obtained a land lease and constructed a pipeline from the waste water treatment plant to the leased land thereby expanding its sewer capacity; and

**WHEREAS**, on May 11, 2007, the Arvin City Council voted unanimously to settle the lawsuits filed by Sycamore and on May 15, 2007 executed a settlement agreement to that effect ("the Settlement Agreement."); and

**WHEREAS**, the Arvin City Council deems the Settlement Agreement as a reasonable compromise of the claims by Sycamore given the potential liabilities and the costs that had already, and in the future would be, incurred to defend the lawsuits; and

**WHEREAS**, the City agreed pursuant to the Settlement Agreement to amend the Development Agreement to guarantee certain sewer capacity to Sycamore and decrease the amount of fees owed by Sycamore; and

**WHEREAS**, a true and correct copy of the amendment to the Development Agreement is attached hereto as Exhibit "A" (the "Amendment") and incorporated herein by reference; and

**WHEREAS**, amending the Development Agreement requires a public hearing before the Arvin Planning Commission and the Arvin City Council pursuant to Government Code section 65867 as it represents a modification to the conditions of approval of development agreement items that were previously reviewed and approved by the Arvin Planning Commission and the City Council as a part of the discretionary approval process; and

**WHEREAS**, the Amendment is consistent with the Arvin General Plan and is mutually agreeable to both the City and Sycamore; and

**WHEREAS**, the Amendment will not result in any environmental impacts and a General Exemption has been adopted in compliance with the California Environmental Quality Act; and

**WHEREAS**, the City properly noticed the July 3, 2007 hearing before the Arvin Planning Commission for the proposed Amendment pursuant to Government Code sections 65090 and 65091, which included publication in the Bakersfield Californian, posting on the bulletin board of the City of Arvin City Hall on June 22, 2007, and notifying property owners within 300 feet of the project site by United States Mail;

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Commission of the City of Arvin as follows:

1. The above recitals are true and correct;
2. The Arvin Planning Commission, in exercising its discretion, hereby approves this Resolution and recommends that the Arvin City Council approve the Amendment to the Development Agreement between Sycamore and the City, concerning Tract 5816, Phases 1 through 12.

I **HEREBY CERTIFY** that the foregoing Resolution was passed and adopted by the Arvin Planning Commission at a regular meeting thereof held on the 3<sup>rd</sup> day of July, 2007, by the following vote:

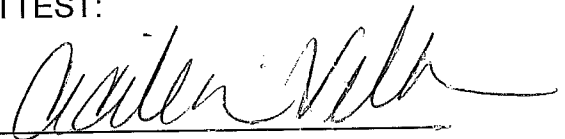
AYES: PC LaFavor, PC Flores, PC Vargas, Chair Castillo

NOES: \_\_\_\_\_

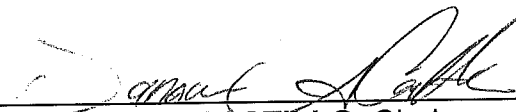
ABSENT: VC Saenz

ABSTAIN: \_\_\_\_\_

ATTEST:

  
\_\_\_\_\_  
CECILIA VELA, Secretary

**ARVIN PLANNING COMMISSION**

By:   
\_\_\_\_\_  
DAMARIS CASTILLO, Chair

APPROVED AS TO FORM:

By: \_\_\_\_\_  
EVA PLAZA, Legal Counsel