

ORDINANCE NO. 438

**AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ARVIN FOR A THIRD AMENDMENT TO THE
DEVELOPMENT AGREEMENT WITH K. HOVNIANIAN AT
CIELO, LLC**

WHEREAS, California Government Code Section 65864 *et seq.* authorizes cities to enter into development agreements with private property owners; and

WHEREAS, the City of Arvin City Council (the “City Council”) previously entered into a Development Agreement with Sycamore Villas, LLC, pursuant to the authority of Government Code Sections 65864 through 65869.5 which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, (“Development Agreement”); and

WHEREAS, under the Development Agreement, Sycamore Villas, LLC had the right to sell, assign or transfer the Development Agreement, and all of its rights, duties and obligation thereunder, to any person, including a portion thereof; and

WHEREAS, Sycamore Villas, LLC, sold a portion of the property subject to the Development Agreement to K. Hovnianian at Ceilo, LLC, and transferred its obligations and rights to K. Hovnianian at Ceilo, LLC, thereunder, and K. Hovnianian at Ceilo, LLC, is a successor in interest to that portion of the property; and

WHEREAS, pursuant to Government Code Section 65868, development agreements may be amended; and

WHEREAS, the Development Agreement was subsequently amended, some amendments with K. Hovnianian at Ceilo, LLC as a party, and some without, depending on the portion of the property subject to the Development Agreement being affected; and

WHEREAS, the City and K. Hovnianian at Ceilo, LLC, desire to clarify obligation regarding K. Hovnianian at Ceilo, LLC, real property and obligations subject to the Development Agreement, and to do so by an amendment of the Development Agreement; and

WHEREAS, for the purposes of reference only, this amendment to the Development Agreement has been identified as the “Third Amendment to Development Agreement” (“Third Amendment”); and

WHEREAS, the City Council conducted a duly noticed public hearing on November 15, 2016, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Third Amendment.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ARVIN DOES
ORDAIN AS FOLLOWS:**

Section 1. The proposed Third Amendment to the Development Agreement makes a minor amendment to clarify fee and other obligations regarding the Development Agreement. This minor change does not make any physical changes to the Project that were imposed on the Project and conforms to the maps and policies of the City's General Plan. Accordingly, the revision to the Development Agreement is consistent with all applicable provisions of the General Plan.

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

Section 3. The proposed Third Amendment to the Development Agreement will not be detrimental, or cause adverse effects, to adjacent property owners, residents, or the general public, since the Project will be constructed in accordance with the plans and entitlements that were approved previously by the City, and development of any future phases will be subject to further review and consistency with the Development Agreement as amended.

Section 4. The proposed Third Amendment to the Development Agreement does not alter the clear and substantial benefit to the residents of the City of the Project, since the proposed amendment makes no substantive changes to the Project or to the Development Agreement.

Section 5. For the foregoing reasons, and based on the information contained in the staff reports, supporting documentation, minutes and other records of the proceedings, all of which are incorporated herein by this reference, the City Council hereby approves the proposed Third Amendment to the Development Agreement, which amendment is attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 6. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code, section 36933.

Section 7. This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage and adoption.

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I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the 15th day of November 2016, and adopted the Ordinance after the second reading at a regular meeting held on the 06th day of December 2016, by the following roll call vote:

AYES: CM Ortiz, CM Robles, CM Martinez, MPT Madrigal, Mayor Gurrola

NOES: _____

ABSTAIN: _____


ABSENT: _____

ATTEST



CECILIA VELA, City Clerk

CITY OF ARVIN

By: 
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

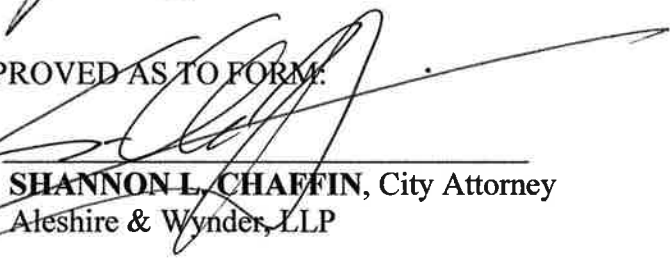
By: 
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

Exhibit A: Third Amendment To Development Agreement

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

EXHIBIT A

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO
(Document exempt from recording fees
pursuant to Cal. Gov. Code §27383)

CITY OF ARVIN
Attn: City Clerk
200 Campus Drive
Arvin, CA 93203

(Space Above This Line for Recorder's Office Use Only)

AGREEMENT NO. 2016-42

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Third Amendment to Development Agreement ("Third Amendment") is made and entered into effective as of November 1, 2016, and entered into by or between K. HOVNANIAN AT CIELO, LLC a California limited liability company ("KHAC"), and the CITY OF ARVIN, a municipal corporation ("the City"). KHAC and the City are collectively referred to herein as ("Parties").

RECITALS

A. The City previously entered into a Development Agreement with Sycamore Villas, LLC, pursuant to the authority of Government Code Sections 65864 through 65869.5 which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, ("Development Agreement"), with KHAC subsequently receiving the rights and obligations under the Development Agreement for a portion of the property subject to the Development Agreement.

B. The Development Agreement was subsequently amended. For reference purposes only, the Parties have identified this amendment as the "Third Amendment to Development Agreement" ("Third Amendment").

C. This Third Amendment specifically applies only to the real property owned by KHAC within the "Larger Parcel," and more particularly described in the legal description attached hereto as Exhibit "A" ("KHAC Property").

D. It is the intent of the Parties to clarify obligations for the KHAC Property and to resolve any potential claims against the City, including disputes related to the potential overpayment of fees by KHAC.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Fee Credit.** The City shall provide KHAC with a credit of Four Hundred and Seventy Six Thousand Dollars (\$476,000) ("the Credit"). The Credit may be used towards payment of any fee due or owing the City, and may be used for any project (whether within the Larger Parcel or not) except for Tract 5816, Phase 12 in the Larger Parcel ("Tract 5816"). The Credit may not be used for more than 50% of the applicable fee(s) for each lot. The Credit may be sold, assigned or transferred, in whole or in part, except that the City must be given prior notice at least four (4) business days in advance before said transfer will be effective. Said notice shall include the name, address, and identifying information of both the transferor or transferee, the amount or portion of the Credit being transferred, and reference this Third Amendment. The Credit, or any unused portion thereof, and all of KHAC's rights and benefits under this Paragraph, shall (i) survive the expiration or termination of the Development Agreement, and (ii)

automatically expire on the date that is twenty-five (25) years after the effective date of this Third Amendment.

2. Expedited Review and Inspections. Any newly submitted improvement plans, architectural plans and structural plans for Tract 5816, Phase 12, shall receive expedited review by the City, as more fully set forth on Exhibit "B" attached hereto. The City shall also hire or retain a building inspector to be available Tuesdays and Thursdays (unless otherwise mutually arranged by the Parties) for inspections for those periods of time when construction is actively occurring in Tract 5816, Phase 12. KHAC acknowledges that in some circumstances (such as an official holiday, unexpected illness, family emergency, etc.) the building inspector may not be available on the designated days; the City will use reasonable efforts to provide a building inspector so that such absence will not be extended. This requirement for expedited review and inspections shall not be required for any other property other than Tract 5816, Phase 12.

3. Fees. The total cost for all permits, inspections, checks, fees and other charges associated in any way with the development of real property or the construction of improvements on lots thereon (collectively, "Fees") for single family residential lots within the KHAC Property are capped at a total of Four Thousand, Six Hundred Dollars (\$4,600) per lot; provided, however, that KHAC shall not be entitled to a refund of any Fees paid prior to the date of this Third Amendment. "Fees" shall not include a tax, nor shall it include charges by entities other than the City, such as charges for water connections, fire protection, lighting or maintenance districts, etc., regardless if those services may be subsequently associated with the City in some manner. To avoid all doubt, from and after the date of this Third Amendment (i) no future increases in the Fees are permitted, (ii) no other Fees of any type or category whatsoever are to be imposed upon KHAC, its successors or assigns, in connection with the development within the KHAC Property, and (iii) KHAC, its successors and assigns shall never pay more than \$4,600, in the aggregate, in Fees in connection with the construction of single family residences within the KHAC Property. The Credit may be used to pay up to 50% of this amount except for lots in Tract 5816, Phase 12. All other fees that are not for single family residential units (e.g., multifamily residential, commercial, etc.) for the KHAC Property shall be as stated among the Conditions of Approval set forth in Exhibit B to the Development Agreement. Irrespective of an expiration or earlier termination of the Development Agreement, KHAC's rights under this paragraph shall survive until November 14, 2026. Nothing in this Paragraph shall modify KHAC's obligations unrelated to Fees, or obligations to install onsite improvements or offsite improvements, if any.

4. Remainder Unchanged. Except as specifically modified and amended in this Third Amendment, the Development Agreement as amended by the Parties remains in full force and effect and is binding upon the Parties.

5. Release. KHAC, individually, and on behalf of its successors, trustees, creditors, and assigns, completely releases, acquits, and forever discharges the City, its agents, officers, employees, attorneys, successors, predecessors, insurers, and members of the City Council, from any and all claims, rights, demands, obligations, liabilities, claims or causes of action of any and every kind, nature and character, whether known or unknown, whether in law or in equity, which it may have had, or ever had, or could in the future have against the City for any act or omission that occurred prior to entering into the Third Amendment, and which are in any way related to the Development Agreement as amended. This release contained herein is made notwithstanding Section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

KHAC expressly acknowledges that this release is intended to include without limitation, all claims and causes of action that KHAC does not know or suspect to exist in his favor and that this release contemplates the extinguishment of all such claims and causes of action for any acts, omissions or events which are in any way related to the Development Agreement as amended and occurred prior to the effective date of the Third Amendment.

6. No Default. The Parties each represent and warrant to the other that, as of the date of this Third Amendment, neither Party is aware of any breach or default (or with the giving of notice or the passage of time, of any event that could constitute a breach or default) of the other Party under the Development Agreement. Nothing in this Paragraph shall constitute a waiver of KHAC's obligations to comply with the Development Agreement, including obligations to install any improvements that may be required by the Development Agreement as amended by the Parties, notwithstanding the passage of time.


7. Continuing Obligations. KHAC shall comply with its Annual Review and other requirements of the Development Agreement as amended by the Parties.

8. No Admission of Liability. This Third Amendment and compliance with it, shall not operate or be construed as an admission by the City of any liability, misconduct, or wrongdoing whatsoever.

9. Counterparts. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same agreement.


IN WITNESS WHEREOF, the Parties have duly executed this Third Amendment on the day and year first above written.

CITY OF ARVIN,
a municipal corporation

By: 
Jose Flores, Mayor

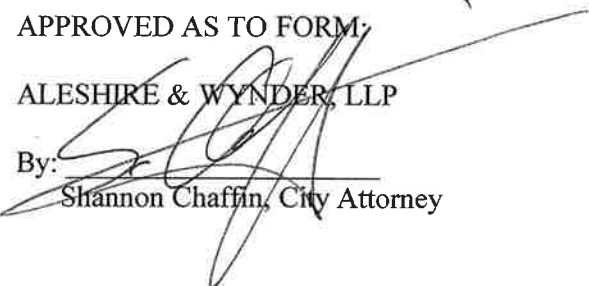
November 6th, 2016
December

ATTEST:



Cecilia Vela, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDR, LLP

By: 
Shannon Chaffin, City Attorney

K. HOVNANIAN AT CIELO, LLC,
a California limited liability company

By: 
Chad Fuller, Vice President and
Chief Legal Counsel

November 14, 2016

Note: Developer's signature shall be notarized, and appropriate attestations shall be included as may be required by the bylaws, articles of incorporation, or other rules or regulations applicable to developer's business entity.

APPROVED AS TO FORM:


By: 
Chad Fuller, Vice President and Chief
Legal Counsel

Exhibit A
Legal Description of KHAC Property

The land referred to herein below is situated in the City of Arvin, County of Kern, State of California, and is described as follows:

Lot 82 of Tract No. 5816 Phase 7 as shown on the Map recorded October 3, 2006 and filed in Book 56, Pages 84 through 92, inclusive, of Miscellaneous Maps, in the Office of the County Recorder, County of Kern, State of California;

Lots 13, 14 and 22 of Tract No. 5816 Phase 8 as shown the Map recorded October 3, 2006 and filed in Book 56, Pages 93 through 0100, inclusive, of Miscellaneous Maps, in the Office of the County Recorder, County of Kern, State of California; and

Lots 16 through 96 of Tract 5816 Phase 12 as shown on the Map recorded June 26, 2007 and filed in Book 58, Pages 22 through 29, inclusive, of Miscellaneous Maps, in the Office of the County Recorder, County of Kern, State of California.

Exhibit B
Expedited Review

A. Improvement Plans:

The City will use reasonable efforts to turn around newly submitted plan checks within three weeks from the first submittal date and two weeks from each additional plan check. These deadlines shall not apply unless a complete plan check packet is submitted with all required information.

B. Architectural & Structural Plans. The City will also use reasonable efforts to turn around newly submitted architectural and structural plans within three weeks from the first submittal date and two weeks from each additional plan check. These deadlines shall not apply unless a complete plan check packet is submitted with all required information.

C. Building Permits. The City shall issue building permits to KHAC within one week from an application date. These deadlines shall not apply unless a complete packet is submitted with all required information.

The provisions set forth in this Exhibit "B" shall not be required for any other property other than Tract 5816, Phase 12.

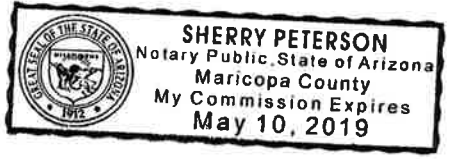
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF ~~CALIFORNIA~~ ^{Arizona})
) ss.
COUNTY OF Maricopa)

On November 14, 2016, before me, Sherry Peterson

a Notary Public, personally appeared Chad Fuller VP, CLO, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Sherry Peterson

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Kern

On December 6, 2016 before me, Cecilia Vela, Notary Public
(insert name and title of the officer)

personally appeared Jose Gutierrez
who 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/shé/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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

