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**ANNEXATION SETTLEMENT AGREEMENT
(TRACT 21461)**



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March 31, 2003

**ANNEXATION SETTLEMENT AGREEMENT
(TRACT 21461)**

This Annexation Settlement Agreement ("Agreement") is made and entered into by and between Sunnymead Ranch Planned Community Association, a California nonprofit mutual benefit corporation ("Association"); and New West Properties Development Company, Inc., a California corporation, and Sunnymead Ranch, LLC (collectively, "Developer"), based upon the following recitals:

RECITALS

- A. The Association is the homeowners' association for the planned residential development of Sunnymead Ranch, located in the City of Moreno Valley, County of Riverside, California.
- B. Developer is the owner of Tract 21461, Riverside County ("Developer's Property"). Developer's Property is not yet improved with residential structures.
- C. Developer proposes to install site improvements on Developer's Property and subsequently arrange for Developer's Property to be improved with 51 single-family lots and houses, public streets, and certain common areas.
- D. Developer contends it has the right to cause Developer's Property to be annexed into the Association. The Association disputes that contention. This dispute arises out of the Association's 2002 annexation of a different tract and the issues of whether said annexation revived automatic annexation rights for other properties and whether, if such rights of automatic annexation were revived, Developer would be entitled to exercise those rights.
- E. Developer and the Association desire to completely resolve this dispute and avoid the risks and uncertainty of litigation. Further, Developer seeks to avoid the uncertainty of seeking a City of Moreno Valley change to the condition imposed by said City in 1986 that

Developer's Property become part of the Association, and the Association, on the other hand, seeks to avoid the risk of incompatible development and/or use of Developer's Property which might occur if Developer's Property remains outside the Association.

In compromise of the dispute described above and in consideration of the mutual covenants and promises contained herein, the parties do hereby agree as follows:

1. **Reimbursement of Association.** Developer shall pay the Association the sum of \$9,000.00 towards reimbursement of the Association's administrative and legal expenses in negotiating and carrying out the terms of this Agreement.
2. **Delivery of Annexation Instrument.** An annexation instrument is to be drafted by Developer within 45 days of the parties' execution of this Agreement ("Instrument"). The contents of the Instrument shall be consistent with this Agreement and subject to approval by the Association, with such approval not to be unreasonably withheld. Upon the Association's execution and delivery of the Instrument to Developer, the Instrument shall be executed and recorded by Developer within 30 days, together with any subordination agreements necessary to make the Association's CC&Rs prior to any liens or security interests against the Developer's Property or any common area intended to be turned over to the Association pursuant to this Agreement.
3. **Residential and Related Improvements.** Following the Association's delivery of the Instrument described at paragraph 2, above, Developer shall proceed with the construction and completion of the residential and related improvements to Developer's Property. The 51 houses to be constructed on Developer's Property shall be substantially completed within 36 months of the Association's delivery of the executed Instrument to the Developer.
4. **Landscaping/Fencing Improvements on Lots.** The lots of Developer's Property adjacent to the park area shall be completed with rear-yard fencing of black wrought iron consistent with existing rear-yard perimeter fencing in Sunnymead Ranch. Maintenance of those fences shall be the individual lot owners' responsibility. All lots

adjoining lots in another tract shall have a rear-yard solid, off-white, vinyl, tongue-and-groove style privacy fencing by Ultraguard, six-feet high, installed by Developer at the property line with the adjoining tract. [All other fencing (except perimeter walls and wrought-iron fencing surrounding the park) shall be of identical vinyl type, style and color.] No double fencing is permitted. Developer shall arrange for replacement of the current wood fencing with adjacent homeowners with existing property-line fencing. Said fences shall be the maintenance responsibility of the individual lot owners. All 51 residential lots on Developer's Property shall be improved with front-yard landscaping. All such landscaping, fence and/or wall improvements are to be complete at the time of close of escrow of the sale to each purchaser.

5. **Assessments.** Upon transfer or sale (close of escrow) of the first lot of a phase in the Developer's Property, the duty to pay regular assessments shall commence on the first day of the following month for all of the lots in said phase. Developer's duty to pay assessments and capital contributions shall be bonded or otherwise secured in a manner and form acceptable to the Association and the California Department of Real Estate. Developer shall sell its inventory in no more than three phases, each with not less than 11 lots.
6. **Capital Contributions/Well Improvements.** On the date of each escrow closing of Developer's sales to consumers, Developer shall cause the buyers to pay the Association a capital contribution of \$1,500.00 per lot for each of the 51 lots in Developer's Property ("Capital Contributions"). Said Capital Contributions shall be reduced on a pro rata basis by credit(s) for the amount(s) previously expended by Developer for exploration and development of a water well on future common area Lot E of the tract with the necessary improvements required to operate and transport water suitable for lake purposes to the Association's existing lake ("Well Improvement Expenditures"). Capital Contributions not offset by credit for Well Improvement Expenditures shall be paid to the Association in cash and used by the Association for any lawful Association purposes.

Developer is initially authorized to expend not more than \$10,000.00 on Well Improvement Expenditures to determine whether suitable water in sufficient quantities is available at the well site on Lot E.

Developer shall make further Well Improvement Expenditures upon proof to the Association of Developer's actual payment to the water well contractor(s) of all prior authorized Well Improvement Expenditures, Developer's written report of the progress of the water well and related improvements, and the Association's written authorization(s) of further Well Improvement Expenditures up to a certain amount.

Developer shall take/receive no mark-up, cost reimbursement or overhead payment of any type related to the Well Improvement Expenditures. The Well Improvement Expenditures shall be devoted solely to the payment of third parties for the costs of their provision of materials and services directly related to the development of the water well and related improvements to pump and deliver water to the Association's lake. Developer shall account to the Association for all Well Improvement Expenditures.

7. **Association Cost Offset Payment.** The parties acknowledge that the Association's operating, maintenance and reserves costs for the Developer's Property will, according to the budget for the tract submitted by Developer, exceed the assessment income to the Association from the 51 residential lots within Developer's Property. To help offset this added Association financial burden, Developer shall pay the Association the sum of \$1,900.00 per lot ("Offset Payments"). Offset Payments shall be delivered to the Association not later than Developer's close of escrow for sale of each of the 51 residential lots or March 31, 2004, whichever comes first. Developer's total Offset Payments' obligation is \$96,900.00. Offset Payments may be used by the Association for any lawful Association purpose.
8. **Mailbox Maintenance and Reserves.** Developer shall install cluster mailboxes of the type installed in Tract 29761. The Association shall accept maintenance responsibilities for these mailboxes. Developer shall pre-fund (or cause its buyers to do so) the Association's reserves for mailbox maintenance and repair in the amount of \$117.00 per lot at close of escrow for each lot.
9. **Marketing.** In order to avoid consumer confusion, Developer shall not describe itself in advertising or marketing materials as "Sunnymead Ranch" or use the words "Sunnymead Ranch" in

combination with any others to describe Developer, although it may use "Sunnymead Ranch" to refer to the Association and/or the geographic area.

10. **Construction of Houses.** Developer agrees that the houses to be constructed on Developer's Property shall be not less than substantially equivalent to the existing houses within Sunnymead Ranch in quality of construction materials. The houses on Developer's Property shall be a minimum 2,700- (livable area) square feet. Lots shall be not less than 7,200-square feet in size. Each home's garage shall have a driveway of sufficient depth to park two adjacent full-size automobiles on the driveway without blocking the sidewalk. Each garage shall accommodate at least three automobiles.

The front of homes constructed shall substantially conform to the homes depicted in the elevations dated 3-31-03 and attached as Exhibit "A." Aggregate side-yard setbacks between homes shall be at least 14 feet.

11. **Common Areas.** All common areas in each phase to be transferred to the Association pursuant to this Agreement shall be completed and transferred to the Association upon the commencement of the assessment obligations for each such phase of Developer's Property. Provided, however, until the commencement of assessments in the final phase, Developer shall provide landscape maintenance for all common areas in the Developer's Property in exchange for the Association's monthly payment to Developer of \$4.16 per lot per month for each annexed assessment-paying lot in the tract. Upon commencement of assessments for the final phase, the Association shall have the rights of inspection and acceptance for all common area as set out in paragraph 13. From and after the Association's acceptance of Developer's final phase transfer, the Association's payments to Developer for landscape maintenance shall cease, and the Association shall assume landscape maintenance via its own maintenance contractor.

12. **Common Area Improvements.** Prior to close of the first escrow for sale to a consumer in a companion residential phase, Developer shall complete the common area improvements for each such phase of the tract at Developer's sole expense. The following improvements must

be installed by Developer. The below improvements shall be installed at Developer's expense in the Association's common areas as a condition of this Agreement:

- a. Construction of a fenced and gated central park in substantial conformity with the plans dated 3-31-03 and attached as Exhibit "B." Developer may restrict access to this area until it is turned over to the Association but shall complete such improvements as part of its first phase. Adequate safety lighting similar to that at the paseo behind Cedar Creek Terrace shall be installed at the park. A minimum of three picnic tables shall be installed. Picnic tables shall be made of black, perforated steel of the type used elsewhere in the Association. Park gate keys and locks shall be the same as other Association common area keys and locks. The park's walk shall be a minimum of five-foot wide and constructed of stamped concrete designed to deter skateboarding. The walk shall have a continuous safety rail installed at its outside edge wherever the walk is adjacent to a steep slope.
- b. Installation of attractive, appropriate landscaping and landscape irrigation on all other Association maintenance areas in substantial conformity to the plan dated 3-31-03 and attached as Exhibit "C."
- c. Perimeter walls and monument walls along Sunnymead Ranch Parkway shall be of split-faced masonry consistent in color and style with existing walls in the Association.
- d. The water well and related improvements, described above at paragraph 6, provided it is determined that suitable water in sufficient quantities is available for economical use for lake replenishment purposes. Said determination of the availability of well water shall be made by the Association following Developer's completion of and report on the water well exploration work. (The Association's determination, if any, that sufficient water is not available shall not affect Developer's credit for Well Improvement Expenditures already authorized and expended in accordance with paragraph 6 of this Agreement.)

13. **Inspection of Common Area Improvements.** Once the common area improvements have been completed, Developer shall provide the Association with written notification of the same, sent by certified mail. Developer shall make the common area improvements available for the Association's inspection at any time within the 30-day period following receipt of said notice. Unless the Association objects to the condition of the common area improvements within said 30-day period, the transfer of the common area to the Association shall proceed. If the Association objects to the condition of said improvements, it shall provide the Developer with a punch list of items for correction, Developer or the responsible contractor under Developer's supervision shall perform the corrective work and again provide the Association written notice of completion as provided above. All common area improvements shall be designed and constructed to be of the quality and kind that is the standard of the industry. The Association's inspection and disapproval of common area improvements shall not be unreasonable.
14. **Common Area Property Tax.** Developer shall ensure that, upon transfer of the proposed common area, the Riverside County Tax Assessor assesses the value of the proposed common area for property tax purposes to the separate interests within the Association, pursuant to California Revenue and Taxation Code Section 2188.5.
15. **Title Insurance.** Developer shall provide the Association, at the Developer's sole cost and expense, an ALTA owner's title insurance policy, issued by First American Title Insurance Company, for the benefit of the Association, as insured, in the amount of \$100,000.00, insuring that the Association is the fee owner of the proposed common areas, subject only to the Association's CC&Rs.
16. **Flood Control Improvements.** Developer will construct and transfer to the City of Moreno Valley (or other public agency) for its operation and maintenance all flood control and storm drainage improvements within the Developer's Property. The Association shall have no obligations of any sort in regard to the flood control/storm drainage improvements except to recognize the public agency easement rights to access, operate and maintain said improvements at the public agency's expense.

17. **Model Homes.** During Developer's sales of Developer's Property, Developer shall have the right to construct and operate no more than three model homes with sales staffing on three individual lots of Developer's Property. Developer may install and maintain reasonable attractive signs and advertising banners on Developer's unsold lots during the sales phase.
18. **Construction Activity.** Developer agrees that all of Developer's construction activity shall be subject to the following:
- a. Construction hours shall be in strict compliance with the City's ordinances, and no construction activity may be conducted on Sundays or national holidays.
 - b. Developer agrees that no construction activity which unreasonably interferes with the quiet enjoyment of Association residents will be permitted. Contractors and workers must use discretion in determining the time of day and the duration of particularly noisy activities, such as the operation of pneumatic drills, concrete saw cutting, etc. Radios, stereos, etc., of construction workers should not be audible to neighboring residents.
 - c. Any construction materials, including cement, sand, etc., spilled on the Association property or streets within the Association must be immediately cleaned up. No one is permitted to place, stockpile or store construction or other materials on Association property.
 - d. Damage caused during construction to any Association property must be promptly and completely repaired. The entire job site shall be regularly cleaned and all construction debris, trash, etc., removed from the job site and from the Association.
 - e. Developer shall take all necessary steps to prevent dust, debris or erosion from adversely affecting any Association residents' lots or Association-maintained property, including the Association's lake.

19. **Association Common Area Lot, Maintenance Areas, and Water Rights.** The lot to be transferred to the Association shall not be included in the Instrument. Instead, this lot (lettered Lot E of Tract 21461) shall be separately deeded to the Association. This common area lot, together with Association maintenance (easement) areas adjacent to Sunnymead Ranch Parkway, at the tract entry, and other areas as reflected in Exhibits "B" and "C," shall be completed and transferred to the Association by the initial close of escrow for its companion phase of residential lots as follows:

PHASE	COMMON AREAS
1	N/A
2A	N/A
2B	All Maintenance Areas/Lot E

Developer shall, prior to transfer or sale of any lot within Developer's Property, quitclaim to the Association any and all right, title or interest, present or future, to drill for, use, exploit, pump and otherwise enjoy the benefit of the water in and underlying Tract 21461.

20. **Defend, Indemnify and Hold Harmless.** Developer shall defend, indemnify and hold the Association, and its officers, agents and employees, harmless from any and all claims or liabilities regarding or relating to the annexation, construction, development or design of the project and/or the improvements thereon, including, but not limited to, any claims of mechanic's, labor or material liens upon the proposed common areas.

21. **General Provisions.**

- a. In any action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs incurred.
- b. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of the County of Riverside, State of

California. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

- c. The parties agree that this Agreement may be executed in counterparts.
- d. This Agreement contains the sole and entire agreement and understanding of the parties with respect to the subject matter of this Agreement. Any and all prior discussions, negotiations, agreements, commitments or understandings related hereto, if any, are hereby merged and incorporated herein. No representations, oral or otherwise, express or implied, other than those specifically contained herein, have been made among the parties with respect to the subject of this Agreement. No other agreements not specifically contained herein, oral or otherwise, shall be deemed to exist or to be binding on the parties with regard to the subject matter of this Agreement.
- e. No amendment to this Agreement shall be valid unless the same is set forth in a writing, signed by both parties to this Agreement.
- f. Except as otherwise specified, any notice to be given to the parties to this Agreement shall be sent, via first-class mail, postage prepaid, to the following addresses:

To the Association: Sunnymead Ranch Planned
Community Association
23600 Sunnymead Ranch Parkway
Moreno Valley, CA 92557

Attention: President

with a copy to: Fiore, Racobs & Powers
6670 Alessandro Boulevard, Suite B
Riverside, CA 92506

Attention: Peter E. Racobs

To the Developer: Sunny Ranch, LLC
New West Properties Development Company, Inc.
369 San Miguel Drive, Suite 350
Newport Beach, CA 92660

Attention: Curt Ensign

with a copy to: Mr. Dennis G. Tyler
Palmieri, Tyler, Wiener,
Wilhelm & Waldron, LLP
P.O. Box 19712
Irvine, CA 92623-9712

- g. The terms of, and the duties and obligations imposed by, this Agreement shall be binding upon any successors, assigns or transferee of any party to this Agreement. Although Developer may direct performance of certain obligations hereunder by Developer's contractors, such delegation shall not relieve Developer of the duty and obligation to the Association that Developer perform all its covenants as provided herein. No assignment of rights and/or duties hereunder by any party shall be effective unless such assignment is approved in writing by the other party. This Agreement may be recorded by either party; provided that if this Agreement is recorded, it shall be released via a recorded instrument executed by both parties at the request of either upon the recordation of the annexation instrument.
- h. Consistent with the foregoing, the parties hereto shall prepare, execute and/or record such additional agreements or instruments as may be required to carry out the intent of this Agreement.

IT IS SO COVENANTED AND AGREED.

"Developer"

NEW WEST PROPERTIES
DEVELOPMENT COMPANY, INC.

Date: April, 2003

By: [Signature]
Its PRESIDENT

SUNNYMEAD RANCH, LLC

Date: April, 2003

By: [Signature]
Its MANAGING MEMBER

"Association"

SUNNYMEAD RANCH PLANNED
COMMUNITY ASSOCIATION

Date: _____, 2003

By: _____
Its President for the Board of Directors

IT IS SO COVENANTED AND AGREED.

“Developer”

NEW WEST PROPERTIES
DEVELOPMENT COMPANY, INC.

Date: _____, 2003

By: _____
Its _____

SUNNYMEAD RANCH, LLC

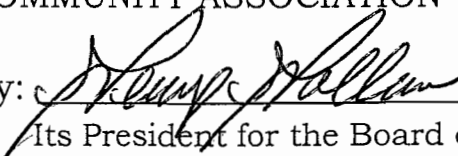
Date: _____, 2003

By: _____
Its _____

“Association”

SUNNYMEAD RANCH PLANNED
COMMUNITY ASSOCIATION

Date: 4/10/_____, 2003

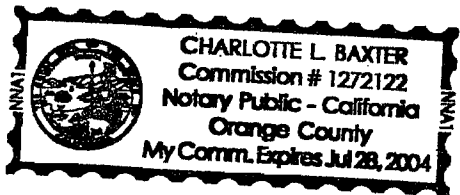
By: _____
Its President for the Board of Directors

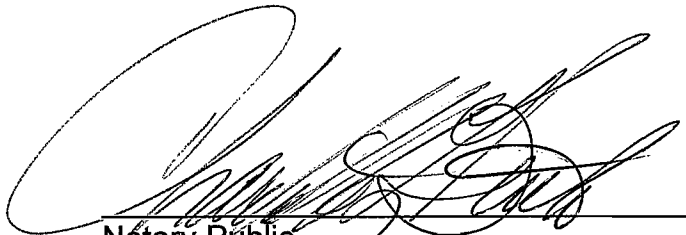
State of California)
) SS.
County of Orange)

On April 1, 2003, before me, **Charlotte L. Baxter**, Notary Public, personally appeared **Curt Ensign**, (X) 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.

(seal)



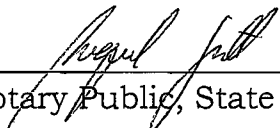

Notary Public

ACKNOWLEDGMENT

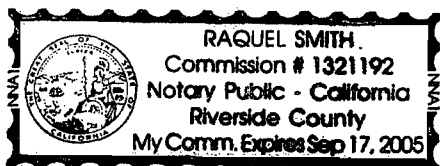
STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On this 10 day of APRIL 2003, before me, RAQUEL SMITH, a Notary Public, State of California, duly commissioned and sworn, personally appeared GEORGE GALLANES, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public, State of California

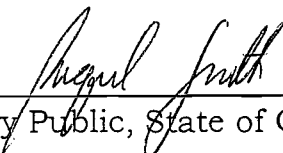


ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On this 10 day of APRIL 2003, before me, RAQUEL SMITH, a Notary Public, State of California, duly commissioned and sworn, personally appeared GEORGE GALLANES, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public, State of California

