

SLS  
rec'd  
2/1/00

07-7-05  
-03-0  
file

AGREEMENT REGARDING I-80 INTERCHANGE  
AT AMERICAN CANYON ROAD

This Agreement (herein so called) is made and entered into this 7<sup>th</sup> day of SEPTEMBER, 1989 by and between the City of Vallejo and Sky Valley Limited Partnership, an Illinois limited partnership (herein "Developer") with reference to the following facts:

RECITALS:

1. On September 15, 1987, the City, by Resolution #87-613 N.C., conditionally approved Specific Area Plan #87-02, dated July 1987 (the "SAP") pertaining to the development of certain real property located within the City consisting of approximately 756.98 acres after the conveyance of certain Open Space to the City (the "Project").

2. The Tentative Subdivision Map for Phase 1 of the Project was approved by the City on November 1, 1988 by Resolution #88-932 N.C.

3. On December 22, 1987, the City entered into a Development Agreement (herein so called) with Sky Valley Company, a California limited partnership ("Sky Valley Company"), the then owner of the Project.

4. The SAP contemplated that the primary access route to the Project would begin near the intersection of Interstate 80/American Canyon Road/McGary Road (the "Intersection"), that the Intersection and certain other portions of the freeway interchange would be upgraded by the Project and other benefiting developments to meet the standards of Cal Trans, Napa County, Solano County and the City, and that an Encroachment Permit would be required from Napa County.

5. The SAP provided that prior to the issuance of the 664th building permit for the Project:

(i) a detailed list of the improvements to the I-80/American Canyon Road interchange and the construction schedule thereof shall be reviewed by the City of Vallejo, Solano County, Napa County, and reviewed and approved by Cal Trans; and

(ii) an agreement be entered into with Cal Trans for the improvements to the I-80/American Canyon Road interchange, which agreement shall include a detail list of the improvements and the construction schedule for the improvements.

6. On September 22, 1987, the County of Napa, the City and Sky Valley Company entered into a Memorandum of Understanding (herein so called) with respect to the Intersection, wherein, among other things, Sky Valley Company

agreed: to construct the improvements to the Intersection in accordance with the proposed "Conceptual Modification Plan" prepared by Brian, Kangas, Foulk, Consulting Engineers (the "Engineers"); that such improvements would be a condition of developmental approvals by the City; and to adhere to the tentative schedule to obtain Cal Trans approval for the proposed improvements to the Intersection as set forth on page 5 of the Project Study Report prepared by the Engineer.

7. The City and Sky Valley Company have heretofore determined that it will be necessary for Sky Valley Company to obtain an Encroachment Permit from the County of Solano inasmuch as the portion of McGary Road to which the access road for the Project will intersect is located in the County of Solano.

8. On August 17, 1989, the County of Solano issued an Encroachment Permit (herein so called) in favor of the Project which imposed certain Special Conditions (herein so called) as set forth therein and certain Construction Obligations (herein so called) with respect to the Intersection, a copy of which Encroachment Permit is attached hereto as Exhibit "A".

9. On September 5, 1989 the City, by Resolution #89-5N, approved the assignment of the Development Agreement from Sky Valley Company to Developer. Developer intends to acquire the Project from Sky Valley Company.

10. The Developer has expressed its concern to the City that the various conditions and obligations with respect to the proposed improvements at the Intersection may impede or impair the ability of the Developer to successfully develop the Project.

11. The City has expressed to the Developer its concern that a method be established to provide for the cost associated with the contemplated improvements to the Intersection.

12. The City and the Developer are mutually desirous of setting forth herein their mutual understandings and agreements with respect to the improvements to the Intersection and the method of funding the cost of constructing such improvements.

#### AGREEMENT:

Now, therefore, for and in consideration of the Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged and confessed by the City and the Developer, the City and the Developer do herein and hereby agree as follows:

1. Within seven (7) business days after the approval of this Agreement by the City, Developer shall cause to be issued

in favor of the City an unconditional, irrevocable letter of credit from a financial institution reasonably acceptable to City in the amount of One Million Six Hundred Twenty Thousand Dollars (\$1,620,000.00) or, alternatively, cause to be issued in favor of the City payment and/or performance bonds in said amount (in either instance, the "Developer's Security"), which Developer's Security shall be pledged to the City to secure Developer's obligation to contribute One Million Six Hundred Twenty Thousand Dollars (\$1,620,000.00) to the City towards the construction of the Stage II improvements to the Intersection as contemplated by the Encroachment Permit, including the acquisition of necessary rights-of-way. City does hereby select Figure 2, Alternative B of the Project Study Report for American Canyon Road Interchange, dated July 26, 1989, a copy of which Figure 2, Alternative B is attached hereto as Exhibit "B", and does hereby agree to recommend to Cal Trans and to support the approval of Figure 2, Alternative B, by Cal Trans. In the event the City undertakes the Stage II improvements to the Intersection as contemplated by the Encroachment Permit, Developer shall contribute to the City, within ten (10) business days from receipt of invoices from the City for Stage II improvements to the Intersection, the amount of all such invoices, notwithstanding that such invoices may exceed the amount of Developer's Security. In the event the Developer fails to contribute such sums to the City as aforesaid, then the City shall be entitled to draw upon the Developer's Security for such unpaid invoices, and, to the extent such unpaid invoices exceed the amount of Developer's Security, then Developer shall remain liable for such excess. The terms and conditions, if any, of the Developer's Security shall be subject to the reasonable approval of the City. Developer shall use its good faith efforts to acquire the rights-of-way necessary to construct the Stage II improvements at such time as the City notifies Developer that it is prepared to commence the Stage II improvements. In the event Developer, after the use of its good faith efforts, is unable to acquire such rights-of-way, then the City shall exercise its power of eminent domain to acquire such rights-of-way, provided Developer shall bear the cost of condemnation.

2. The City has heretofore caused to be levied a new Excise Tax (herein so called) applicable to all real property development within the City. Included within the real property development which shall be subject to the Excise Tax shall be the Project. The City does hereby covenant and agree to expend an amount equal to \$2,000 per residential dwelling unit times the number of units approved for the Project solely and exclusively for the cost of improvements to the Intersection as required by the SAP, the Development Agreement, the Memorandum of Understanding, Tentative Map, the Encroachment Permit and the Project Study Report prepaid by the Engineer, dated July 26, 1989, for the American Canyon Road Interchange (the "Revised PSR"), including any future amendments or modifications thereto.

3. In addition to the Excise Tax, the Project shall be subject to a Surcharge Fee (herein so called) on the

residential units and in the amounts set forth on Schedule I attached hereto and made a part hereof.

4. Both the Excise Tax and the Surcharge Fee shall be collectable by the City on the issuance of Building Permits for residential dwelling units, but not before. Furthermore, the City shall not increase the amount or rate of the Surcharge Fee with respect to the Project. In the event the current amount per unit of the Excise Tax (to-wit, \$3,000) shall increase for whatever reason, including any inflationary adjustments, then the amount per unit of the Surcharge Fee shall be reduced correspondingly and proportionately.

5. The City does hereby assume all of the obligations of Developer with respect to the construction of the improvements to the Intersection as contemplated or required by the Encroachment Permit, the SAP, the Development Agreement, the Memorandum of Understanding, the Tentative Map and the Revised PSR, including any future amendments or modifications thereto, and the City does hereby release, discharge and acquit the Developer from and with respect to all such obligations. The City does hereby covenant and agree with Developer that the American Canyon Road Intersection will provide a direct connection to Sky Valley Road, the access road to the Project.

6. Attached hereto as Schedule II is an analysis of the Developer's Source of Funds (herein so called) that are contemplated to be available to the City to construct the improvements to the Intersection. In addition to the Developer's Source of Funds set forth on Schedule II and the interest to be earned thereon, the City will have other funds made available through the Excise Tax on other real property developments. Furthermore, the City will attempt to impose a surcharge fee on other real estate developments which benefit from the improvements to the Intersection (the "Additional Surcharge"). In the event the cost of the improvements to the Intersection shall, for whatever reason, be less than the total of all funds collected by the City through the Developer's Source of Funds, the Excise Tax on other real estate developments, the Additional Surcharge and any other source of funding for such improvements hereafter established by the City (the "Excess Funds"), then, and in that event, the City and the Developer shall share the Excess Funds equally for a period of time not to exceed five (5) years from completion of the overpass or for an amount not to exceed up to FOUR MILLION DOLLARS (\$4,000,000.00), whichever shall first occur.

7. In the event, for whatever reason, the City determines that the contemplated improvements to the Intersection will not be required, then the City shall refund to the Developer the Surcharge Fees paid by or through the Project, the Surcharge Fee shall terminate and the City shall return to the Developer the Developer's Security.

8. The City does hereby covenant and agree with Developer that City shall, within sixty (60) days from the approval of this Agreement by the City, initiate proceedings to annex all of the access road to the Project from the American Canyon Road Interchange not now included in the City and those portions of McGary Road and surrounding property involved in the Intersection which are located in Solano County and shall diligently pursue such annexation. If such annexation is approved by Solano County LAFCO and other governmental agencies having jurisdiction with regard thereto, then no later than 30 days after completion of such annexation, the City shall issue to Developer an Encroachment Permit to allow access to the Project by the direct connection of Sky Valley Road to the American Canyon Road Interchange. Such Encroachment Permit shall contain no independent conditions to the issuance of building permits to Developer for the Project.

9. Upon acceptance of this Agreement by the City, all conditions contained in the SAP, Development Agreement, Tentative Map, Memorandum of Understanding, Encroachment Permit, Revised PSR and any other related documents or agreements, pertaining to the proposed improvements to the Intersection as a condition to the issuance of building permits to Developer for the Project in excess of 663 residential dwelling units shall be deemed satisfied so that Developer shall be entitled to be issued a maximum of 1481 building permits for the Project without such conditions.

10. This Agreement shall be governed and construed under the laws of State of California and the obligations of the parties hereto are and shall be performable in Solano County, California.

11. This Agreement shall inure to and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the date set forth below their respective signatures.

DATED: September 7, 1989

SKY VALLEY LIMITED PARTNERSHIP, an  
Illinois limited partnership

By: C.T. Nine, Inc., an  
Illinois corporation,  
its General Partner

By: Frank D. Love  
Date: September 9, 1989

APPROVED AS TO FORM:

Bloodin  
BRUCE REED GOODMILLER,  
Deputy City Attorney

CITY OF VALLEJO  
a municipal corporation

By: Edward G. Wohlenberg  
EDWARD G. WOHLLENBERG,  
City Manager

Attest: Mildred R. Watson  
for MILDRED R. WATSON,  
city clerk

(City Seal)

SCHEDULE I  
 TO AGREEMENT REGARDING I-80 INTERCHANGE  
 AT AMERICAN CANYON ROAD

SKY VALLEY SURCHARGE FEE

<u>HOUSING TYPE</u>	<u>NUMBER OF UNITS</u> <i>4/16/07</i>		<u>SURCHARGE FEE PER UNIT</u>	
Single Family Detached	683 <i>693</i>	+ 30,000	\$3,000	<i>2,049,000</i>
Zero Lot Line	156 <i>138</i>	- 27,000	1,500	<i>234,000</i>
Townhouses	292 <i>287</i>	- 5,000	1,000	<i>292,000</i>
Condominiums and/or Hotel Units	350 <i>342</i>	- 2,000	1,000	<i>350,000</i>
		- 4,000		<i>2,925,000</i>

SCHEDULE II  
TO AGREEMENT REGARDING I-80 INTERCHANGE  
AT AMERICAN CANYON ROAD

SOURCES OF FUNDS

Developer Contribution from Sky Valley Limited Partnership	\$1,620,000
Excise Tax and Surcharge on the Project (Estimate) ( <sup>Excise</sup> 2,925,000 + <sup>Surcharge</sup> 2,925,000)	<u>5,850,000</u>
TOTAL	\$7,470,000

5/18/07

10/15/07

# 2,925,000

- 4,000