

**ORDINANCE NO. 1156**

**AN UNCODIFIED ORDINANCE APPROVING AMENDMENT NO. 8  
TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN  
THE CITY OF FOLSOM AND ELLIOTT HOMES, INC.  
RELATING TO THE DEVELOPMENT KNOWN AS  
“PALLADIO MALL” IN BROADSTONE UNIT NO. 2**

The City Council of the City of Folsom hereby does ordain as follows:

**SECTION 1 PURPOSE**

The purpose of this ordinance is to approve Amendment No. 8 to the Development Agreement between the City of Folsom and Elliott Homes, Inc. relative to the property known as “Palladio Mall” in Broadstone Unit No. 2, as shown on Exhibit A.

**SECTION 2 AMENDMENT TO THE DEVELOPMENT AGREEMENT**

The Development Agreement between the City of Folsom and Elliott Homes, Inc., relative to the property known as Broadstone Unit No. 2, is hereby amended as set forth in Exhibit A.

**SECTION 3 SEVERABILITY**

If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 4 EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be posted at least five (5) days prior to and published within fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to Government Code section 36933(c)(1).

This ordinance was introduced and the title thereof read at the regular meeting of the City Council on January 10, 2012, and the second reading occurred at the regular meeting of the City Council on January 24, 2012.

The foregoing instrument is a correct copy of the original on file in this office.

ATTEST: *Christa Saunders*  
City Clerk of the City of Folsom, California

On a motion by Council Member Starsky, seconded by Vice Mayor Miklos, the foregoing ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this 24<sup>th</sup> day of January, 2012 by the following vote, to wit:

AYES: Council Member(s): Miklos, Morin, Sheldon, Starsky, Howell

NOES: Council Member(s): None

ABSENT: Council Member(s): None

ABSTAIN: Council Member(s): None

  
Kerri M. Howell, MAYOR

ATTEST:

  
Christa Saunders, CITY CLERK

Effective: February 23, 2012

**AMENDMENT NO. 8 TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN  
THE CITY OF FOLSOM AND ELLIOTT HOMES, INC.  
RELATING TO THE DEVELOPMENT KNOWN AS  
BROADSTONE UNIT NO. 2**

**THIS AMENDMENT NO. 8 TO THE DEVELOPMENT AGREEMENT** ("Amendment") is made by the between the City of Folsom, a municipal corporation ("City"), and Elliott Homes, Inc., an Arizona corporation ("Developer"), pursuant to the authority of Article 2.5, Chapter 4, Division 1, Title 7 (Section 65864, et.seq of the Government Code) relating to Development Agreements. This document amends the Development Agreement recorded on May 12, 1994 in the County of Sacramento, Book 940512, Page 1776.

**RECITALS**

WHEREAS, Developer owns that certain real property in the City of Folsom, California identified at Exhibit A, attached hereto and incorporated herein by reference, which property is generally bounded by Broadstone Parkway, East Bidwell Street, Palladio Parkway, and Iron Point Road, which property is the site of the Palladio Mall (the "Property"); and

WHEREAS, the Property is subject to that certain Development Agreement by and between the City of Folsom and Elliott Homes, Inc. relative to the development known as Broadstone Unit No. 2, dated December 14, 1993, as previously amended (the "Development Agreement"); and

WHEREAS, the Development Agreement became effective on January 13, 1994; and

WHEREAS, the City and Developer have amended the Development Agreement over time; and

WHEREAS, Developer sold a portion of the property covered by the Development Agreement to Kaiser Permanente in 2004 and the terms of the Development Agreement and amendments thereto are applicable to Kaiser as specified in Amendments 5-7; and

WHEREAS, the Development Agreement provides that, in the development of the Property, the Developer shall be subject to development impact fees that may be adopted following the effective date of the Development Agreement, and that the Developer of the Property shall pay development impact fees in the amount in effect at the time such fees are customarily imposed in conjunction with the seeking of land use entitlements; and

WHEREAS, on March 23, 2006, the City Council rescinded Resolutions 6222 and 6684 and adopted Resolution 7812, a Resolution Establishing City Impact and Connection Fees for Law Enforcement, Fire Suppression, General Facilities, Vehicles and Equipment, Water, Sanitary and Sewer, Transportation Improvement, Drainage and Light Rail; and

WHEREAS, the City recognizes that the Palladio Mall project will greatly benefit the retail environment of the City, and that a number of significant transportation improvements have been made to the site and the surrounding area, including the widening of East Bidwell, Iron Point Road, and Broadstone Parkway and reconstruction of the US 50/East Bidwell Street Interchange, a substantial portion of which were constructed and/or funded by the Broadstone Unit No. 2 developer;

and

WHEREAS, on October 12, 2010 the City Council conducted a first reading and on October 26, 2010 conducted a second reading of uncodified Ordinance No. 1135 authorizing Amendment No. 7 to the Development Agreement ("Amendment No. 7") the effect of which was to freeze the Development Impact Fees on the Palladio portion of the property as specified in Amendment 7; and

WHEREAS, neither Amendment 7 nor prior amendments froze Development Impact Fees associated with other property in Broadstone Unit No. 2, except the Palladio portion of the property; and

WHEREAS, Developer is in the process of continuing to solicit and secure tenants for the Palladio Mall project; and

WHEREAS, Developer desires to amend the Development Agreement by amending certain provisions in Amendment No. 4, which were previously amended by extending the term for three years through January 12, 2015 and continuing the freeze of Development Impact Fees at the 2006 level as specified in Amendments 5-7, as herein provided; and

WHEREAS, Kaiser desires to extend the term applicable to the property it owns in Broadstone Unit No. 2 without any provision for freezing fees on its property; and

WHEREAS, Developer applied to the City to Amend the Development Agreement prior to the expiration of the agreement; and

WHEREAS, this Amendment was duly reviewed and considered by the City's Planning Commission on December 7, 2011 pursuant to Section 86567 of the Government Code; and,

WHEREAS, A Supplemental Environmental Impact Report and Addendum have been previously certified for the Palladio Mall project in accordance with the requirements of the California Environmental Quality Act and this Development Agreement Amendment does not result in substantial changes to the project, and thus no additional environmental review is required; and.

WHEREAS, having duly considered this Amendment and having held the noticed public hearings, the City further finds and declares that the provisions of this Amendment are consistent with the maps and the text of the City's General Plan and the Broadstone Master Plan, as amended, and the Conditions of Approval imposed upon the vesting tentative subdivision maps.

NOW THEREFORE, in consideration of the above recitals and the mutual covenants, terms, conditions and restrictions contained herein, and in exchange for valuable consideration, the parties hereby agree to an amendment to the Development Agreement as follows:

1. This Amendment to the Development Agreement shall be effective as of the effective date of Ordinance No. 1156 approving this Amendment No. 8 to the Development Agreement and for purposes of the term of the Development Agreement shall relate back to the date and run for three (3) years from January 12, 2012 through January 12, 2015 unless terminated sooner pursuant to the terms of the Development Agreement.

2. Section 4 of Amendment No. 4 is hereby deleted in its entirety and replaced with the following:

"4. Those development impact fees in effect as of September 26, 2006 shall apply to those portions of Developer's Palladio Mall project for which completed building permit plans and applications are submitted to the City for the Palladio Mall project on or prior to January 13, 2015."

3. Section 5 of Amendment No. 4 is hereby deleted in its entirety and replaced with the following:

"5. As to those portions of the Palladio Mall portion of the Broadstone Unit No. 2 area only for which completed building permit plans and applications have not been submitted to the City on or prior to January 13, 2015, Developer shall pay all development impact fees then in effect, including, but not limited to, those fees identified in Resolution 7812, or such other development impact fees as may be in effect after the adoption of Resolution 7812."

4. Section 3 of Amendment No. 5 is hereby deleted in its entirety and replaced with the following

:

"3. This Agreement shall continue in force and effect with respect to vesting of development rights only for the Palladio Property (legal description attached as Exhibit A) and the Kaiser property (legal description attached as Exhibit B) for a period of time extending until January 12, 2015."

5. Except as expressly modified by this Amendment, all of the terms and conditions of the Development Agreement, and any amendment thereto prior to this amendment, shall remain in full force and effect. Should there be a conflict between the terms of this Amendment and the Development Agreement, and any amendment thereto, the terms of this Amendment shall prevail and control.

6. Developer shall defend, indemnify, and hold harmless the City and its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees to attack, review, set aside, void, or annul any approval by the City or any of its agencies, departments, commissions, agents, officers, employees, or legislative or advisory body concerning or in any way related to this Amendment or the development impact fees related thereto. The City will promptly notify the Developer of any such claim, action or proceeding, and will cooperate fully in the defense. If the City should fail to cooperate fully in the defense, the Developer shall not thereafter be responsible to defend, indemnify and hold harmless the City or its agents, officers and employees, pursuant to this condition. The City may, within its unlimited discretion, participate in the defense of any such claim, action or proceeding if both of the following occur: (1) the City bears its own attorney's fees and costs; and (2) the City defends the claim, action or proceeding in good faith. These obligations of Developer shall survive any termination of the Development Agreement and any amendment thereto.

7. In any litigation, arbitration or proceeding by which one party either seeks to enforce its rights under the Development Agreement or seeks a declaration of any rights or obligations thereunder, the prevailing party shall be awarded its reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment. These obligations of Developer shall survive any termination of the Development Agreement and any amendment thereto.

8. To the extent this Amendment may be uncertain or ambiguous such that it requires interpretation or construction, then it is the intent of the parties that it shall be interpreted and construed liberally so as to promote and to meet the purpose and intent of the Amendment and the goals, obligations and objectives referenced in the Amendment. If the provisions of this agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Amendment and the applications of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby.

9. This Amendment to the Development Agreement may only be amended in the same manner as required for any other amendment to a Development Agreement.

10. This Amendment, and all other agreements and exhibits referred to herein, constitute the final, complete and exclusive statement of the terms of the agreement between the parties and supercede all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Amendment by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Amendment.

11. This Amendment shall terminate and be of no further force or effect upon the termination of the Development Agreement.

IN WITNESS WHEREOF, City and Developer acknowledge their agreement to the above terms, conditions, rights and obligations, by execution of this Amendment to the Development Agreement by their duly authorized representatives whose signatures appear below.

Dated: January \_\_\_\_\_, 2012

CITY OF FOLSOM  
A Municipal Corporation

By: \_\_\_\_\_  
Kerri M. Howell, MAYOR

Dated: January \_\_\_\_\_, 2012

ELLIOTT HOMES, INC.  
An Arizona Corporation

By: \_\_\_\_\_  
Harry C. Elliott, III, President

By: Its:

**Approved as to Content:**

\_\_\_\_\_  
David Miller  
City Community Development Director

\_\_\_\_\_  
Date

**Approved as to Content:**

\_\_\_\_\_  
James W. Francis, Finance Director

\_\_\_\_\_  
Date

**Approved As To Form:**

\_\_\_\_\_  
Bruce C. Cline, City Attorney

\_\_\_\_\_  
Date

**Attest:**

\_\_\_\_\_  
Christa Saunders, City Clerk

\_\_\_\_\_  
Date

**NOTICE: SIGNATURE(S) MUST BE NOTARIZED.**

A certificate of acknowledgment in accordance with the provisions of California Civil Code Section 1189 must be attached for each person executing this agreement. Section 1189(b) provides: "Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made."

State of California

)

)**ss.**

County of

)

On \_\_\_\_\_ 2012 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, 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.

Signature \_\_\_\_\_ (Seal)