

RESOLUTION NO. 2017-013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK APPROVING A WATER CAPACITY CHARGE CREDIT AGREEMENT BY AND BETWEEN THE CITY OF ROHNERT PARK, UNIVERSITY DISTRICT LLC AND VAST OAK PROPERTIES L.P.

WHEREAS, on April 22, 2014, the City Council of the City of Rohnert Park adopted Ordinance Number 878 approving a Development Agreement ("Development Agreement") between the City of Rohnert Park and Vast Oak Properties L.P. and the University District LLC ("Developer"); and

WHEREAS, on October 25, 2016, the City Council of the City of Rohnert Park adopted its Ordinance No. 900 approving a Second Amendment to the Amended and Restated Development Agreement ("Second Amendment"); and

WHEREAS, the Second Amendment requires the Developer to make payments towards the construction of the City's Water Tank Number 8 so that the City can construct these improvements to support the development of the University District Project; and

WHEREAS, on November 22, 2016, the City Council of the City of Rohnert Park ("City") adopted Resolution No 2016-112 adopting its Water Capacity Charge Program and finding this action Categorically Exempt under the California Environmental Quality Act; and

WHEREAS, the Water Capacity Charge Program includes the construction of Water Tank Number 8 and the Developer's payments required by the Second Amendment are prepayments of that portion of the Water Capacity Charges for University District applicable to Water Tank Number 8, which would otherwise be due at the time building permits are pulled; and

WHEREAS, the City and Developer desire to enter into a Water Capacity Charge Credit Agreement to recognize the prepayment of Water Capacity Charges, the credit due to Developer and the applicability and transferability of these Water Capacity Charge Credits only to the development of the project as described in the Development Agreement; and

WHEREAS, approval of this agreement is categorically exempt from environmental review pursuant to California Environmental Quality Act guidelines section 15061(b)(3) because the payment of Water Capacity Charges provides a means of mitigating environmental impacts which have been identified in other environmental analyses including the University District Environmental Impact Report; and

WHEREAS, Developer will be required to pay the full total amount of the Water Capacity Charges applicable to the University District that are not applicable to Water Tank Number 8.

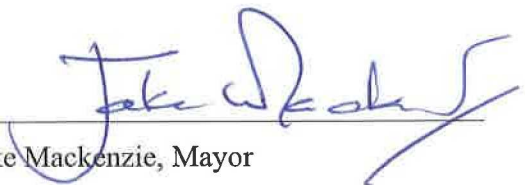
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby authorize and approve the Water Capacity Charge Credit Agreement by and between the City of Rohnert Park, University District LLC and Vast Oak Properties L.P. attached as Exhibit A.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the Water Capacity Charge Agreement and any appropriate Water Capacity Charge Assignments, in substantially similar form to that agreement attached hereto and incorporated by this reference as Exhibit A, subject to minor modification by the City Manager or City Attorney.

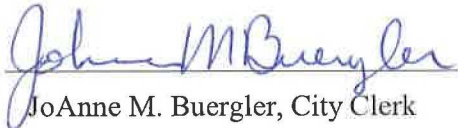
BE IT FURTHER RESOLVED that the Finance Director is hereby authorized and directed to take all actions necessary to effectuate the intent of the Agreement.

DULY AND REGULARLY ADOPTED this 24th day of January, 2017.

CITY OF ROHNERT PARK


Jake Mackenzie, Mayor

ATTEST:


JoAnne M. Buergler, City Clerk

Attachment: Exhibit A

AHANOTU: Aye BELFORTE: Aye CALLINAN: Aye STAFFORD: Aye MACKENZIE: Aye
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

Exhibit A to Resolution

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
)
City of Rohnert Park)
130 Avram Avenue)
Rohnert Park, California 94928-2486)
Attention: City Clerk)

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

Exempt from recording fee per Gov. Code § 27383.

WATER CAPACITY CHARGE CREDIT AGREEMENT

BY AND BETWEEN THE CITY OF ROHNERT PARK

AND UNIVERSITY DISTRICT LLC AND VAST OAK PROPERTIES L.P.

This WATER CAPACITY CHARGE AGREEMENT (the "Agreement") is made and entered into on this _____ day of _____ 2017 (the "Effective Date") by and between UNIVERSITY DISTRICT LLC, a Delaware limited liability corporation ("University District"), VAST OAK PROPERTIES L.P., a California limited partnership ("Vast Oak"), and the CITY OF ROHNERT PARK, a California municipal corporation ("City"), with reference to the following facts and intentions. University District and Vast Oak are collectively referred to herein as "Developer."

RECITALS

A. On April 22, 2014, the City Council of the City of Rohnert Park adopted its Ordinance No. 878 approving an Amended and Restated Development Agreement with the Developer recorded in the Official Records of Sonoma County as Document No. 2014051817, as amended (the "Development Agreement").

B. On October 25, 2016, the City Council of the City of Rohnert Park adopted its Ordinance No. 900 approving a Second Amendment to the Amended and Restated Development Agreement with the Developer recorded in the Official Records of Sonoma County as Document No. 2016106715 (the "Second Amendment").

C. The Second Amendment requires the Developer to make payments towards the construction of the City's Water Tank Number 8 in the amount of Five Million Dollars (\$5,000,000) ("Prepayment Amount") so that the City can construct these improvements to support the development of the University District Project. The Developer has paid the Prepayment Amount.

D. On November 22, 2016, the City Council of the City of Rohnert Park adopted its Resolution No. 2016-112 establishing its Water Capacity Charge Program. Resolution No. 2016-112 provides that the Water Capacity Charge Program shall be administered in accordance with Section 3.28 of the Municipal Code, which allows the developer to receive “credits” for charges that have been prepaid or for constructing infrastructure.

E. Water Tank Number 8 is included in the City’s Water Capacity Charge Program for the University District.

F. City and Developer desire to enter into an agreement regarding (1) Developer’s prepayment of Water Capacity Charges; (2) credits applicable to Developer up to the Prepayment Amount; and (3) the assignment of the Water Capacity Charge Credits, as set forth in Section 3 below.

A G R E E M E N T

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth in this Agreement, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are true and correct and are hereby incorporated into and form a material part of this Agreement.

2. Property Subject to Agreement. The property which is the subject of this Agreement (“Property”) is located in the City of Rohnert Park, Sonoma County, California, and is described in Exhibit 1, attached hereto and incorporated by this reference. The Property is only a portion of the real property subject to the Development Agreement. The City has approved the development of residential subdivision on the Property (the “Project”).

3. Water Capacity Charge Credit.

3.1. Source and Method of Credit. Subject to the limitations set forth in this Section 3, Developer, or any approved assignee, shall receive Water Capacity Charge Credits, as set forth below, for payments received towards the construction of Water Tank Number 8 up to the Prepayment Amount:

- For 274 single family lots in Vast Oak Phase 1 (West) which have not yet pulled building permits, an amount not to exceed \$2,369.95 per lot or a total of \$649,366.30
- For 837 single family lots in Vast Oak Phase 2 (East), Vast Oak Phase 3 (North) and the Phase 4 UDLLC property, an amount not to exceed \$4,669.46 per lot or a total of \$3,908,338.02
- For the multifamily parcel in Vast Oak Phase 3 (North), scheduled for the development of 218 affordable units, an amount not to exceed \$442,295.68.

The City shall offer credits only up to the Prepayment Amount.

3.2 Implementation of Water Capacity Charge Credit. The Water Capacity Charge Credits shall be applied against the Water Capacity Charges that would otherwise be applicable to the Project, as the result of construction on the Property. Developer shall be entitled to receive Water Capacity Charge Credits at the time of issuance of building permits for construction on the Property. The City shall keep an accounting of the balance of Water Capacity Charge Credits based upon the Prepayment Amount minus the credits applied to building permits on the Property. The Water Capacity Charge Credits shall run with the land and may be credited only for development of the Project on the Property, provided that Developer may allocate the use of the Water Capacity Charge Credits among components of the Project. Developer may authorize the assignment of all or portions of the Water Capacity Charge Credit balance in writing, with the prior written consent of the City in accordance with Section 6.6 below, provided that Water Capacity Charge Credits may not be assigned outside the boundaries of the Property and the Water Capacity Charge Credits are fully utilized on the development of the Property. Developer acknowledges and agrees that payment of the Water Capacity Charge Credits is limited to the development of the Property and not the entire real property described in the Development Agreement.

3.3 Expiration of Water Capacity Charge Credit. The Water Capacity Charge Credit reflects prepayment by the Developer of Water Capacity Charges that would otherwise be due at the time building permits are issued for structures on the Property. City's obligation to apply and extend credits shall expire immediately when the available balance of the Prepayment Amount reaches \$0.00, as determined by City in its reasonable discretion.

4. Community Facilities District; Intent to Reimburse. City and Developer acknowledge that the California Statewide Communities Development Authority has formed a Community Facilities District that includes the Property. Payment of Water Capacity Charges to support the construction of Water Tank Number 8 is potentially eligible for funding through a Community Facilities District and Developer's costs may be reimbursed with the proceeds of Community Facilities District bonds at some future date.

5. Breach of Agreement; Remedies.

5.1. Notice of Breach and Default. The occurrence of any of the following constitutes a breach and default of this Agreement:

- (1) Developer refuses or fails to complete payment in accordance with the payment schedule.
- (2) Developer assigns the Agreement without the prior written consent of City.
- (3) Developer assigns all or a portion of the Water Capacity Charge Credit balance without the prior written consent of the City.

- (4) Developer is adjudged bankrupt or makes a general assignment for the benefit of creditors, or a receiver is appointed in the event of Developer's insolvency.
- (5) Developer or Developer's contractors, subcontractors, agents, employees or assignees, fail to comply with any terms or conditions of this Agreement.

The City may serve written notice of breach and default upon Developer.

5.2. Remedies. Should the Developer breach this Agreement, among other available remedies, City may hold all available credits for prepaid funds received under this Agreement for the benefit of the Property. No failure on the part of City to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that City may have hereunder.

6. Miscellaneous.

6.1 Compliance with Laws. Developer shall fully comply with all federal, state and local laws, ordinances and regulations in the performance of this Agreement. Developer shall, at its own cost and expense, obtain all necessary permits and licenses for the Work, give all necessary notices, pay all fees and taxes required by law and make any and all deposits legally required by those public utilities that will serve the development on the Property. Copies and/or proof of payment of said permits, licenses, notices, fee and tax payments and deposits shall be furnished to the City Engineer upon request.

6.2. Notices. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if: (a) personally delivered; or (b) dispatched by next day delivery by a reputable carrier such as Federal Express to the offices of City and Developer indicated below, provided that a receipt for delivery is provided; or (c) if dispatched by first class mail, postage prepaid, to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either party may from time-to-time designate by next day delivery or by mail as provided in this section.

City: City of Rohnert Park
130 Avram Avenue
Rohnert Park, CA 94928
Attn: City Manager

with a copy to: City of Rohnert Park
130 Avram Avenue
Rohnert Park, CA 94928
Attn: City Attorney

Developer: University District LLC
500 La Gonda Way, Ste. 100
Danville, CA 94526
Attn: Mr. Kevin Pohlson

Vast Oak Properties L.P.
c/o Quaker Hill Development Corp.
P.O. Box 2240
Healdsburg, CA 95448
Attn: Ms. Dianne Anderson

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served two (2) business days after the date of deposit if addressed to an address within the State of California, and three (3) business days if addressed to an address within the United States but outside the State of California.

6.3 Attorney Fees. Should any legal action be brought by either party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to all costs of suit; reasonable attorney fees, and such other costs as may be determined by the court.

6.4 Entire Agreement. The terms and conditions of this Agreement constitute the entire agreement between City and Developer with respect to the matters addressed in this Agreement. This Agreement may not be altered, amended or modified without the written consent of both parties hereto.

6.5 Runs with the Land; Recordation. This Agreement pertains to and shall run with the Property. Upon execution, this Agreement shall be recorded in the Official Records of Sonoma County.

6.6 Transfers; Assignments. Developer may assign its obligations under this Agreement to successor owner(s) of the Property subject to the Agreement only with the prior written approval of the City. In connection with any such assignment, Developer and its assignee shall execute and deliver to City a written assignment and assumption agreement in a form similar to that attached as Exhibit 2.

6.7 Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

6.8 Severability. If any provision of this Agreement is held, to any extent, invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provision, and shall remain in full force and effect.

6.9 Waiver or Modification. Any waiver or modification of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of each Party.

6.10. Relationship of the Parties. Neither Developer nor Developer's contractors, subcontractors, agents, officers, or employees are agents, partners, joint venturers or employees of City and the Developer's relationship to the City, if any, arising herefrom is strictly that of an independent contractor. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Further, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

6.11. Binding Upon Heirs, Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon all heirs, successors and assigns of the parties hereto; provided, however, that this Agreement shall not be binding upon a purchaser or transferee of any portion of the Property unless this Agreement has been assigned pursuant to Section 7.6, in which event this Agreement shall remain binding upon Developer.

6.12. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Sonoma, State of California.

6.13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

6.14. Interpretation. This Agreement shall be construed according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall apply to the interpretation of this Agreement.

6.15. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions contained in this Agreement.

6.16. Authority. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

6.17. Joint and Several Liability. University District and Vast Oak agree to and shall be jointly and severally liable for all obligations of Developer under this Agreement.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the Effective Date.

"CITY"

CITY OF ROHNERT PARK, a California

municipal corporation

Dated: _____

By: _____

City Manager

Per Resolution No. 2017-____ adopted by the Rohnert Park
City Council at its meeting of January 24, 2017.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

"DEVELOPER"

University District LLC,

Dated: _____

By: _____

Kevin Pohlson

Vice President

By: _____

Gregory Glenn

Chief Financial Officer

Vast Oak Properties L.P.

By: _____

Diane Anderson

General Partner

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)

) ss.

COUNTY OF SONOMA)

On _____ before me, _____,
(here insert name and title of the officer)

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)

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)

) ss.

COUNTY OF CONTRA COSTA)

On _____ before me, _____,

(here insert name and title of the officer)

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)

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)

) ss.

COUNTY OF SONOMA)

On _____ before me, _____,
(here insert name and title of the officer)

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)

Exhibit 1

Property Subject to the Agreement

Exhibit 2

Form of Assignment

(form on following page)

EXHIBIT 2

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

University District LLC
500 La Gonda Way, Suite 100
Danville, California 94526
Attention: John Ryan

ASSIGNMENT OF WATER CAPACITY CHARGE CREDITS AND CONSENT OF CITY

This Assignment of Fee Credits (the "Assignment") is made and entered into as of _____, 201__ ("Assignment Date"), by and between _____ ("Assignee"), VAST OAK PROPERTIES L.P., a California limited partnership, and UNIVERSITY DISTRICT LLC, a Delaware limited liability company ("Assignor"), with reference to the following facts.

RECITALS

- A. Assignor is the owner of certain real property located in the City of Rohnert Park, Sonoma County, State of California (the "Overall Property").
- B. Pursuant to that certain Water Capacity Charge Agreement (the "WC Charge Agreement") entered into by Assignor and the City of Rohnert Park (the "City") dated as of January __, 2017 and recorded on _____, 2017 as document number _____ in the Official Records of Sonoma County, Assignor has earned certain fee credits (the "WC Charge Credits") in the amount of Five Million and 00/100 Dollars (\$5,000,000.00) in connection with Assignor's prepayment of fees under the City's Water Capacity Charge Program ("Water Capacity Charges").
- C. Assignor has now entered into an *Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions* with Assignee, dated as of _____ (the "Purchase Agreement"), pursuant to which, among other things, Assignor has agreed to transfer and convey to Assignee all of Assignor's rights in and to the portion of the Overall Property described on Exhibit "A" attached hereto (the "Property") and cause Assignor to assign WC Charge Credits applicable to each of the __ lots (each, a "Lot") comprising the Property
- D. In light of the Purchase Agreement, Assignor now desires to assign, transfer and convey to Assignee, all right, title and interest of Assignor in and to the WC Charge Credits applicable to the Property.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Effective as of the Assignment Date, Assignor hereby grants, transfers, conveys and assigns to Assignee all of Assignor's rights, title, and interests in and to the WC Charge Credits in the amount of _____ Dollars (\$) per Lot within the Property to the extent that such WC Charge Credits can be applied by Assignee against Assignee's WC Charges for the Lots acquired by Assignee at the time the building permit for the applicable Lot is issued.
2. Attorneys' Fees. If Assignor or Assignee bring any action against the other for the enforcement or interpretation of this Assignment, the non-prevailing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs.
3. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and all of which shall taken together be deemed one document.
4. Survival. This Assignment and the provisions hereof shall inure to the benefit of and be binding upon the parties to this Assignment and their respective successors, heirs and permitted assigns.

(Signature Page Follows.)

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

“ASSIGNOR”

“ASSIGNEE”

UNIVERSITY DISTRICT LLC,
a Delaware limited liability company

By:

By: _____

Name:

Name: _____

Title:

Title: _____

By:

Name:

Title:

“VAST OAK”

VAST OAK PROPERTIES,
a California limited partnership

By: Quaker Hill Development Corporation,

a California corporation,

its general partner

By: _____

Name: _____

Its: _____

CERTIFICATION OF WATER CAPACITY CHARGE CREDITS AND CONSENT

TO ASSIGNMENT OF WATER CAPACITY CHARGE CREDIT

By its signature below, the City hereby certifies that Assignor has the Water Capacity Charge Credits described in the Assignment available for assignment and hereby consents to the assignment of the PFFP Fee Credits to Assignee as provided herein.

[CITYCONSENT SIGNATURE BLOCK]

By: _____

Name: _____

Title: City Manager

EXHIBIT "A"

DESCRIPTION OF PROPERTY

(To be attach