

Attachment O

Community Benefits Agreement

COMMUNITY BENEFITS AGREEMENT

between

CONTRA COSTA COUNTY and

DIABLO GLEN WALNUT CREEK CCRC LLC

(County File Nos. CDGP20-00001, CDRZ20-03225, CDMS20-00007, CDLP20-02038, CDDP20-03018)

This Community Benefits Agreement (“Agreement”) is entered into as of _____, 2022 (“Effective Date”) by and between Contra Costa County (“County”), a political subdivision of the State of California, and Diablo Glen Walnut Creek CCRC LLC (“Developer”), a Delaware limited liability company.

RECITALS

A. On _____, 2022, the County Board of Supervisors certified the environmental impact report (the “EIR”) and approved Developer’s Spieker Senior Continuing Care Retirement Community Project (the “Project”), a State-licensed continuing care retirement community composed of 354 independent living units, a health care center, and other amenities, located in the unincorporated Walnut Creek area, including a General Plan amendment (CDGP20-00001), a rezoning (CDRZ20-03225), a minor subdivision (CDMS20-00007), a land use permit (CDLP20-02038), and a preliminary and final development plan (CDDP20-03018).

B. In addition to the discretionary land use approvals already obtained from the County, Developer intends to obtain County building permits necessary to construct the Project.

C. Due to its location, surrounding uses, and State-licensed medical care components, the Project is a unique institutional development that would be constructed in an established community. The Developer’s commitments provided for in this Agreement will enhance the public benefits provided to the community, in addition to those benefits derived directly from the Project.

AGREEMENT

NOW THEREFORE, Contra Costa County and Developer agree as follows:

1. Purpose. The purpose of this Agreement is to memorialize Developer’s commitment to making an annual community benefits contribution to the County during the term of this Agreement.
2. Term. The term (“Term”) of this Agreement begins on the Effective Date, and it expires upon the earliest of any of the following to occur: (a) the payment of the final community benefit payment provided for in Section 3; or (b) the effective date of any court decision that invalidates or sets aside the Project or the EIR.

3. Community Benefits Payments.
 - a. Developer shall pay \$500,000 to the County, less any Credit, (the “First Payment”) upon Final Approval of the Project. “Final Approval” means that the final map for the Project has been approved by the County Board of Supervisors, all required permits and entitlements from the City of Walnut Creek have issued, the respective statutes of limitations for challenging the Project have run, and any pending legal challenges or appeals related to the Project have been finally resolved. The First Payment shall be made to the County on or before the December 31st immediately following the earlier of (i) the Final Approval described above, and (ii) the issuance of the first building permit for the Project.
 - b. After payment of the First Payment, Developer shall pay \$277,778 to the County in each of the nine following years (each a “Subsequent Payment”). Each of these nine Subsequent Payments shall be made to the County on or before December 31 in the year in which a Subsequent Payment is due.
4. Use of Payments. The County shall, in its sole discretion, allocate funds received pursuant to this Agreement to benefit the local community, including areas within the unincorporated Contra Costa County and the City of Walnut Creek near the Project. Funds may be used to, for example and without limitation: establish or maintain parks or trails; maintain or beautify roadways, rights-of-way, or open space; or establish, maintain, or beautify other community improvements. The County may coordinate with the City of Walnut Creek in the allocation and expenditure of funds received pursuant to this Agreement.
5. In-kind Community Improvement Credit.
 - a. The parties acknowledge that Developer may fund and directly provide additional in-kind community improvements not required of Developer as part of the Project approvals. Subject to approval by the Conservation and Development Director (the “Director”), which shall be in their sole discretion to give, Developer shall be credited the actual costs incurred by Developer, up to \$500,000, in directly providing any additional in-kind community improvement that is consistent with the uses described in Section 4 (the total of all approved actual costs, the “Credit”). Only actual costs incurred by Developer prior to payment of the First Payment are eligible for credit.
 - b. Prior to payment of the First Payment, Developer shall provide the County with documentation of the actual costs incurred by Developer, including but not limited to, an accounting of contracts executed, purchases made, and Developer’s staff time spent to directly provide any additional in-kind community improvements. At the Director’s request, Developer shall provide additional documentation or information.
6. Notices. All payments, notices, demands, and other communications made under this Agreement shall be in writing and personally delivered, sent by overnight carrier with

delivery charges prepaid for next business day delivery, or sent by First Class U.S. Mail with postage prepaid, and addressed as follows:

To County: Director of Conservation and Development
30 Muir Road
Martinez, CA 94553

To Developer: Spieker Senior Development
c/o Tobias Mellows
3000 Sand Hill Road #3-190
Menlo Park, CA 94025

A payment, notice, demand, or other communication shall be deemed given on the same day it is personally delivered, on the next business day following deposit with and overnight carrier, or on the fifth day after deposit in the U.S. Mail. A party may change its address for delivery of notices under this Agreement by providing written notice of the change in accordance with this section.

7. Assignment. Developer's obligations under this Agreement shall be binding upon Developer's successors and assigns. Developer shall not assign this Agreement, or any of its obligations under this Agreement, to any other person or entity without the advance written approval of the County, which shall not be unreasonably withheld. If Developer sells, conveys, or otherwise transfers ownership of the Project to a third-party, Developer shall require that third-party to accept an assignment of this Agreement. Notwithstanding the above, County consent to assignment or other transfer under this Section shall not be required for an assignment or transfer resulting from corporate reorganization, restructuring, merger, or name change involving Developer and affiliated entities, so long as there is no substantial change in the management or control of Developer, and Developer provides County with prior notice of the assignment.
8. No Third-Party Beneficiaries. Nothing in this Agreement confers and rights or obligations on any person or entity that is not a party to this Agreement.
9. Counterparts. The Agreement may be executed in counterparts.
10. Governing Law. This Agreement shall be governed by the laws of the State of California.

[Signatures on following page]

The County and Developer have executed this agreement as specified below.

CONTRA COSTA COUNTY

**DIABLO GLEN WALNUT CREEK
CCRC LLC**

Name: _____
Title: _____
Date Signed: _____

By: _____
Name: _____
Title: _____
Date Signed: _____