RECORDING FEES
EXEMPT PURSUANT TO
GOVERNMENT CODE §27383

Exhibit B

RECORDING REQUESTED BY:
City of Vacaville

WHEN RECORDED MAIL TO:
Michelle Thornbrugh
City Clerk
City of Vacaville
650 Merchant Street, Vacaville, CA 95688

Affects APNs: 0138-010-030, -050

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF VACAVILLE AND VACAVILLE S2 INVESTORS, LLC REGARDING THE DEVELOPMENT OF REAL PROPERTY COMMONLY REFERRED TO AS THE FARM AT ALAMO CREEK

December 11, 2018

DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF VACAVILLE
AND VACAVILLE S2 INVESTORS, LLC
REGARDING THE DEVELOPMENT OF REAL PROPERTY COMMONLY REFERRED TO AS THE FARM AT ALAMO CREEK

THIS DEVELOPMENT AGREEMENT (hereinafter "Agreement") is entered into this 11 day of December, 2018, by and between **VACAVILLE S2 INVESTORS, LLC**, a California limited liability company ("Developer") and the **CITY OF VACAVILLE**, a municipal corporation ("City"), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code, and Division 14.17 of the Vacaville Municipal Code. City and Developer are also referred to hereinafter individually as "party" or collectively as the "parties."

RECITALS

This Agreement is made with reference to the following facts:

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California enacted Section 65864 et seq. Of the California Government Code (the "Development Agreement Legislation"). The Development Agreement Legislation authorizes City to enter into a development agreement for the development of property with any person having a legal or equitable interest in real property. City has authorized the undertaking of development agreements within the City of Vacaville and has established procedures for entering into development agreements through the adoption of Division 14.17 of the Vacaville Municipal Code.

B. Developer has a legal and/or equitable interest in certain real property consisting of approximately 199.50 acres commonly referred to as the Farm at Alamo Creek located east of Leisure Town Road and North of Elmira Road in Solano County, California legally described in Exhibit A attached hereto and incorporated herein by reference and generally shown on Exhibit B ("Project Site").

C. Developer intends to request annexation of the Project Site into the City limits and to develop the Project Site as a master planned community, consisting of approximately 584 single-family dwelling units, 184 multi-family dwelling units, a trail system, pocket parks, community park, club house, and an agricultural and open space buffer along the eastern edge of the Project Site and other uses all as more specifically described in the Project Approvals (as hereinafter defined) and in the Subsequent Approvals (as hereinafter defined) as and when they are adopted, approved or issued, and certain off-site improvements to be constructed in connection therewith ("Project"). The Project will consist of twelve (12) "Neighborhoods" that may be developed in phases. A figure identifying the Neighborhoods is attached hereto as Exhibit B1. The area identified as "Area 13" on the Tentative Map would be developed as part of the development of property immediately to the north of the Project Site.

D. The parties now desire to set forth their understandings and agreement concerning the vesting of certain rights including the Vacaville General Plan ("General Plan") and the Farm at

Alamo Creek specific plan for the Project. In executing this Agreement, Developer recognizes that the use and development of the Project Site are subject to the grant of certain Subsequent Approvals, which are hereinafter defined and identified. Developer recognizes that the Subsequent Approvals are subject to review by the City's planning staff, public hearings and discretionary approvals by the appropriate decision-making body(ies) in accordance with the terms and conditions of this Agreement, and are further subject to the requirements of the California Environmental Quality Act, Public Resources Code §§21000, et. seq., the CEQA Guidelines, 15 California Code of Regulations §§15000 et. seq., and City's local regulations, policies and guidelines (collectively referred to as "CEQA") to the degree that the environmental impacts of the Subsequent Approvals have not already been reviewed in accordance with CEQA such as the environmental impact report developed for this Agreement and the Project Approvals. City has also adopted a mitigation monitoring and reporting program ("MMRP") to ensure that those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed. Those mitigation measures for which Developer is responsible are incorporated into, and required by, the Project Approvals. City has also adopted findings of fact and statements of overriding considerations for those adverse environmental impacts of the Project that may not or cannot be mitigated to an acceptable level.

E. City acknowledges that Developer's agreement to make the commitments herein furthers the City's efforts for development of the Project Site, and that such commitments constitute a material factor in City's willingness to approve this Agreement. City also acknowledges that it is willing to provide Developer with the undertaking contained in this Agreement because City has determined that development of the Project Site will provide public benefits that could not be obtained without vested approval of large-scale development including, without limitation, needed community open space and recreation opportunities, increased tax revenues, coordinated planning of development, installation of both on and off-site public infrastructure, creation of additional needed local employment opportunities, and the creation of additional housing opportunities (collectively referred to as the "Public Benefits").

F. In exchange for the special benefits to City described in this Agreement, together with other public benefits that will result from the development of the Project Site, the parties now desire to set forth their understandings and agreement concerning the vesting of Developer's right to develop the Project Site in accordance with the Project Approvals (as hereinafter defined). Developer will receive by this Agreement certain assurances concerning the conditions under which Developer may proceed with the Project and, therefore, desires to enter into this Agreement.

G. City has given the required notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, City has found that the provisions of this Agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in City's General Plan.

H. On October 2, 2018, City's Planning Commission ("Planning Commission"), the initial hearing body for purposes of development agreement review, recommended approval of this Agreement. On December 11, 2018, City's City Council ("City Council") adopted its Ordinance No. 1931 approving this Agreement and authorizing its execution.

I. Developer has secured various environmental and land use approvals, entitlements, and permits relating to the development of the Project (the "Project Approvals"). These Project Approvals include, without limitation, the following:

(1) EIR. The Environmental Impact Report (State Clearinghouse No. 2017062068), which was prepared pursuant to CEQA, was recommended for certification by the Planning Commission on October 2, 2018, and certified with findings by the City Council on November 13, 2018, by Resolution No. 2018-131 (certifying EIR and adopting findings) (the "EIR").

(2) General Plan Amendment**.** On November 13, 2018, following Planning Commission review and recommendation, and after a duly-noticed public hearing, the City Council, by Resolution No. 2018-132, approved a general plan amendment that changes the designation of a portion of the Project Site from Urban Reserve to Residential Low Density, Agricultural Buffer, Public Open Space, and Public/Institutional (the "GPA"). The Specific Plan serves as a master planned development permit for the Project; the Specific Plan addresses all information requirements of Vacaville Municipal Code Chapter 14.09.111 except for the architectural review of the individual Neighborhoods.

(3) Specific Plan. On November 13, 2018, following Planning Commission review and recommendation, and after a duly-noticed public hearing, the City Council, by Resolution No. 2018-132, approved the *Farm at Alamo Creek Specific Plan* (the "Specific Plan"). The Specific Plan serves as a master planned development approval for the Project; the Specific Plan addresses all information requirements of Vacaville Municipal Code Chapter 14.09.111 except for the architectural review of the individual Neighborhoods.

(4) Zone Change. On November 13, 2018, consistent with Vacaville Municipal Code Section 14.09.071.140 and Government Code Section 65859, following Planning Commission review and recommendation, and after a duly-noticed public hearing, the City Council, by Ordinance No. 1932, approved the pre-zoning of the Project Site (the "Zone Change").

(5) Tentative Map. In accordance with Government Code Section 66454, on November 13, 2018, following Planning Commission review and recommendation, and after a duly-noticed public hearing, the City Council, by Resolution No. 2018-133, approved Tentative Map No. 17-087 for the Project Site (the "Tentative Map").

J. Immediately prior to the approval of this Agreement, the City Council took the following actions:

(1) Determined that the EIR adequately addressed this Agreement and made the findings required by CEQA; and

(2) After a duly-noticed public hearing, made appropriate findings required by Division 14.17 of the Vacaville Municipal Code, that the provisions of this Agreement are consistent with the General Plan.

K. Applications for land use approvals, entitlements, and permits other than the Project Approvals that are necessary to or desirable for the development of the Project and that are consistent with the Project (collectively, "Subsequent Approvals") have been or will be made by Developer. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals, design review approvals (including site plan, planned development architectural and landscaping plan approvals), deferred improvement agreements and other agreements relating to the Project, annexation of the Project Site to the City, detachments of the project site from special districts, conditional use permits, grading permits, building permits, lot line adjustments, sewer and water connections, certificates of occupancy, subdivision maps (including tentative, vesting tentative, parcel, vesting parcel, and final subdivision maps), preliminary and final development plans, re-zonings, encroachment permits, re-subdivisions, and any amendments to, or repealing of, any of the foregoing. At such time as any Subsequent Approval applicable to the Project Site is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be treated as a "Project Approval" under this Agreement.

L. Developer and City agree that phased final maps may be recorded in substantial conformance with the Tentative Map. These final maps will likely include at least one large lot final map that does not create individual residential lots (the "Large Lot Final Map"). The phased final maps will also include multiple small lot final maps that create the individual residential lots that will make up the Project's Neighborhoods (each a "Neighborhood Final Map"). Developer and City agree that the Neighborhoods may be acquired and owned in the future by different entities (each a "Neighborhood Developer") and that certain park and open space obligations under this Agreement will be specific to certain Neighborhood Final Maps and their related Neighborhood Developers. When the term "Neighborhood Developer" is used in this Agreement, any reference to an obligation of a Neighborhood Developer shall only be related to the portion of the Project Site associated with that Neighborhood Developer's Neighborhood Final Map.

M. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Project Approvals (including the Subsequent Approvals), thereby encouraging planning for, investment in and commitment to use and development of the Project Site. Continued use and development of the Project Site will in turn provide substantial housing, employment, and property and sales tax benefits as well as other public benefits to City, and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Legislation was enacted.

N. The terms and conditions of this Agreement have undergone extensive review by City's staff, and by its Planning Commission and City Council at publicly-noticed meetings and have been found to be fair, just and reasonable and in conformance with the City General Plan, the Development Agreement Legislation, and Division 14.17 of the Vacaville Municipal Code and, further, the City Council finds that the economic interests of City's residents and the public health, safety and welfare will be best served by entering into this Agreement.

NOW, THEREFORE, in consideration of the premises, covenants and provisions set forth herein, the parties agree as follows:

AGREEMENT

SECTION 1. EFFECTIVE DATE AND TERM

1.A. Effective Date

This Agreement shall become effective on the later of (1) the thirty-first (31st) day following the adoption by the City Council of the ordinance approving this Agreement; or (2) upon receipt of the certified results of a referendum election (the "Effective Date"). Notwithstanding the foregoing, this Agreement shall not become operative as to any portion of the Project Site until such portion of the Project Site is annexed to City. Upon annexation of such portion, this Agreement will automatically become "operative" (as contemplated by California Government Code Section 65865) with respect to, and will bind the use of, such portion of the Project Site. Upon annexation of any portion of the Project Site, the terms and provisions of this Agreement will relate back to the Effective Date with respect to such portion.

1.B. Term

This Agreement shall commence upon the Effective Date and shall remain in effect for a term of ten (10) years after the Effective Date ("Term"), unless said Term is terminated, modified, or extended as expressly set forth in this Agreement, or by the mutual written agreement of the parties. Notwithstanding the foregoing, the Term shall be extended for the period of time commencing with the Effective Date and ending with the date the certificate of completion for the annexation of the Project Site is recorded by the Solano County Recorder. The Term of this Agreement and any subdivision map or any of the other Project Approvals shall not include any period of time (up to a maximum of five (5) years) during which: (i) a development moratorium including, but not limited to, a water or sewer moratorium, is in effect; (ii) the actions of public agencies that regulate land use, development or the provision of services to the project site prevent, prohibit or delay either the construction, funding or development of the Project so long as Developer makes commercially reasonable efforts during such prohibition or delay to implement the Project; or (iii) there is any mediation, arbitration; litigation or other administrative or judicial proceeding pending involving the Vested Elements, or Project Approvals; if any of these events occur, the Term of this Agreement shall be extended by the length of time of such event up to a maximum of five (5) years. Developer shall notify the City within sixty (60) days after the date Developer has actual knowledge of the start of such (i) moratorium, (ii) delay or (iii) judicial proceeding.

1.C. Termination of Agreement

Except as otherwise provided in this Agreement, this Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Agreement as set forth in Section 1.B

(1) Survival of Obligations. Upon the termination or expiration of this Agreement as provided herein, neither party shall have any further right or obligation with respect to the Project Site under this Agreement except with respect to any obligation that is

specifically set forth in this Subsection as surviving the termination or expiration of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals (other than this Agreement) for the Project, except that the Developer shall continue to comply with the following obligations of this Agreement until implementation of the Project Approvals is complete: 5.E. No Mineral Exploitation, Water Rights, etc., 5.F. Processing Charges, Development Impact Fees Applicable to Project Site, 5.J. Community Park Development, 5.K. Community Benefit Contribution, 5.L. Water Annexation Fee, 5.M. Agricultural Land Mitigation, 8.G. No Damages, 14.F. Hold Harmless; Indemnification Of City, and 14.G. Cooperation in the Event Of Legal Challenge.

(2) Termination by City. Notwithstanding any other provision of this Agreement, City shall not have the right to terminate this Agreement as it applies to all or any portion of the Project Site before the expiration of the Term hereof unless:

a. City complies with all termination procedures set forth in the Development Agreement Legislation,

b. There is an alleged default by Developer and such default is not cured pursuant to Section 7 of this Agreement,

c. Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council, and

d. This Agreement is terminated only with respect to that portion of the Project Site to which the default applies.

SECTION 2. OBLIGATIONS OF CITY

2.A. City Enactments Affecting the Rate, Timing or Sequencing of Development

Neither City nor any agency of City shall enact any ordinance, resolution, rule, procedure or other measure that relates to the rate, timing or sequencing of development of the Project Site. Except as specifically provided herein to the contrary and in accordance with the purpose of the Development Agreement Legislation, the development agreement provisions set forth in Division 14.17 of the Vacaville Municipal Code, and in consideration of the benefits derived by City as recited herein, no future modification of City's codes or ordinances, or adoption of any code, ordinance, regulation or other action that purports to limit the rate of development over time or alter the sequencing of development phases (whether adopted or imposed by the City Council or through the initiative or referendum process) shall apply to the Project Site. However, this Subsection shall not limit City's right to ensure that Developer timely constructs and provides all necessary infrastructure to serve the proposed development as a condition of issuance of any City permit, approval or other land use entitlement sought by Developer for the Project Site. Subject to the provisions of Section 2.I.1 of this Agreement, Developer shall install public infrastructure consistent with the Farm at Alamo Creek Specific Plan phasing plan, as approved with the Project Approvals and that is attached to the conditions of approval of the Tentative Map. City's Director of Public Works is authorized to approve revisions to the infrastructure phasing plan as future circumstances warrant, including the actual phasing of the

Project infrastructure deviating from the phasing contemplated at the time of City's approval of this Agreement.

In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the parties hereto to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. Developer shall provide City with periodic updates of development projections to ensure that City will have information necessary to comply with its obligations set forth in this Agreement. However, this Subsection shall not limit City's right to impose requirements concerning the timing or commencement of construction when related to the need for infrastructure or utilities as a condition of permits or upon approval of other entitlements sought by Developer.

2.B. Vested Elements

Certain actions of City identified below (the full enactments of which are incorporated herein by reference thereto), are declared binding and not subject to change except if specifically stated to the contrary in other sections of this Agreement. Such actions are hereinafter referred to herein as the "Vested Elements."

No part of the Vested Elements may be revised or changed during the Term hereof without the consent of the owner of the portion of the Project Site to which the change applies (or that would be affected by any reduction or decrease in rights or increase in burdens caused by such change), unless expressly stated to the contrary in other sections of this Agreement. The foregoing notwithstanding, applications for permits, entitlements, and other approvals shall be subject to such changes in the General Plan, the Vacaville Municipal Code, City's zoning code, and other rules, regulations, ordinances and official policies hereinafter adopted (and in effect at the time of the application) that do not conflict with the Vested Elements or materially deprive Developer of the benefits thereof.

The Vested Elements shall be effective against, and shall not be amended by, any subsequent ordinance or regulation, whether adopted or imposed by the City Council or through the initiative or referendum process. The Vested Elements are:

(1) The General Plan, approved by the City Council on August 11, 2015, including any amendment thereto enacted prior to the execution of this Agreement which includes without limitation the GPA.

(2) The Specific Plan.

(3) The Zone Change

(4) The Tentative Map

(5) Mitigation measures proposed (and not rejected as infeasible) in the EIR certified with respect to the Specific Plan and related development project actions for the Project Site.

(6) Parcel map waivers, tentative parcel maps, tentative subdivision maps, vesting tentative parcel maps, vesting tentative subdivision maps, conditional use permits, design review approvals and other zoning entitlements or discretionary reviews granted with respect to portions of the Project Site, subject to the provisions of Subsections 2.C and 2.D, below.

2.C. Subdivision and Parcel Maps

Developer shall have the right from time to time to file applications for subdivision maps, parcel map waivers and/or parcel maps with respect to some or all of the Project Site in order to re-configure the parcels comprising the Project Site as may be necessary or desirable to develop a particular phase of the Project Site or to lease, mortgage or sell a portion of the Project Site. Nothing herein contained shall be deemed to authorize Developer to subdivide or use the Project Site, or any portion thereof, for purposes of sale, lease or financing in any manner that conflicts with the provisions of the Subdivision Map Act, Government Code §§ 66410 et seq., or with the Vacaville Municipal Code; nor shall this Agreement prevent City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not preclude or materially burden or delay Developer's realization of the rights conferred under the Vested Elements.

2.D. Applicable Subdivision and Safety Regulations; No Conflicting Enactments

Nothing herein contained shall be deemed to prevent City from amending the laws, ordinances, uniform codes, rules or regulations pertaining to or imposing health and safety, fire protection, mechanical, electrical, plumbing, grading and/or building requirements or other requirements that would be defined as "ministerial" under the California Environmental Quality Act, Public Resources Code §§21000 et seq. pertaining to new construction or development in the City, including the Project, when such amendments are enacted or adopted prior to the issuance of a building permit for the Project (or portion thereof), in which case such amendment shall apply to the Project (or portion thereof).

Except as set forth above, any ordinance, resolution, rule, regulation, standard, directive, condition or other measure adopted or amended subsequently to the Effective Date (each individually referred to as a "City Law"), whether approved by Subsequent Approval or other action by City or by initiative, referendum or other means, that reduces the development rights granted to Developer by this Agreement shall not apply to the Project Site. For the purpose of this Agreement, any City Law shall be deemed to reduce the development rights provided hereby if such City Law would accomplish any of the following either by specific reference to the Project or as part of a general enactment that applies to or affects construction or development in the City:

(1) Limits or reduces the density or intensity of the Project, or any part thereof, or otherwise requires any reduction in the square footage or number of proposed buildings

or other improvements, or requires an increase in the portion of the Project Site required to be dedicated for public use (including the size of rights-of-ways or park and recreational uses). However, this provision shall not require City to increase the density of allowable development on the Project Site to offset or compensate for a reduction in density resulting from state or federal laws including, but not limited to, laws relating to airport safety or wetlands, species or habitat protection, preservation or restoration. The foregoing provision is not intended to limit Developer's legal rights against state or federal authorities imposing such laws, but is intended to disallow suit against City due to the impact of such laws upon the Project and to free City from any obligation to increase the density of development, whether commercial or residential or otherwise, in one area of the Project Site due to reduction in available, developable lands in other areas of the Project Site other than as set forth in the Specific Plan. City, however, agrees to cooperate with Developer in Developer's attempt to mitigate or minimize the impacts from such reductions in density on the overall development of the Project Site. As used in the preceding sentence, City's duty to "cooperate" with Developer does not include the obligation to contribute financially to such attempts by Developer;

(2) Change any land uses or other permitted uses of the Project Site until the Project, or portion thereof, has been completed as evidenced by issuance of a certificate of occupancy by City (or completion of final inspection if no certificate of occupancy is required);

(3) Limits or controls the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all necessary infrastructure adequate to serve such development or construction is constructed or provided by Developer, unless otherwise expressly provided for in this Agreement;

(4) Except as otherwise allowed by this Agreement, enforce or apply any City Law to the Project that is not uniformly applied on a City-wide basis to substantially similar types of development projects and project sites with similar land use designations; the foregoing notwithstanding, City shall be allowed to establish zones of benefit, rate zones, benefit districts, assessment districts or similar financing mechanisms, which may apply to the Project Site, so long as the costs associated with such zones, districts or mechanisms are: (i) uniformly applied to all similar uses within the affected zone, district or area, and (ii) not exclusively imposed upon or assessed against the Project;

(5) Require the obtainment of additional discretionary permits or approvals by City other than those required by applicable law or which City is required to impose by the authority of the state or federal government or of special districts or agencies that are not subject to the authority of City and whose jurisdiction extends to the Project Site; or

(6) Impose or enforce any City ordinance or regulation, which controls commercial rents charged within the Project Site.

In the event of an irreconcilable conflict between the terms of the Vested Elements and a City Law, the provisions of the Vested Elements shall control. In the event of an irreconcilable

conflict between the terms of the Vested Elements and this Agreement (on the other hand), the terms of this Agreement shall control.

2.E. Processing Of Project Applications

City shall use its best efforts to commit the necessary time and resources of City staff to work with the Developer on the timely processing of the necessary applications for entitlements needed for the Project.

(1) Due Diligence by City. City will accept, make completeness determinations, and process, promptly and diligently, to completion all applications for Subsequent Approvals for the Project, in accordance with the terms of this Agreement, including, but not limited to, the following:

a. The processing of applications for and issuance of all discretionary approvals requiring the exercise of judgment and deliberation by City, including without limitation, the Subsequent Approvals;

b. The holding of any required public hearings; and

c. The processing of applications for and issuing of all ministerial approvals.

(2) Fast Track Processing. The City has a Customer Service Plan with timelines for the processing of projects. The City will use its best efforts to process plan checks and permitting requests in compliance with such Plan, as may be amended from time to time.

(3) Relocation of Easements. Upon Developer's request, City shall use its best efforts, at no cost to City, to assist Developer in:

a. Locating or acquiring any new public easements or rights-of-way required for the Project so as to minimize interference with development of the Project, including, at the City Council's sole discretion, through the use of eminent domain, and

b. Developer's efforts to relocate or remove easements to facilitate development of the Project.

2.F. Relationship and Integration with City's Planned Growth Ordinance; Building Permit Allocations; Obligation of Developer to Designate Persons to Whom Permits Are to Be Allocated

This Section shall be considered an approved "Phasing Plan" that satisfies Vacaville Municipal Code § 14.05.044.010. The City hereby exempts seven hundred sixty eight (768) residential building permits from the building permit allocation process of City's Planned Growth Ordinance (Vacaville Municipal Code, Division 14.05), as follows:

(1) Commencing in the calendar year in which the first Neighborhood Final Map for the Project, or any portion thereof, is approved by City and for each calendar year thereafter (effective on January 1 of each such year) during the Term of this Agreement, City shall allocate three hundred (300) assignable building permits to Developer. If, in any calendar year, Developer fails to use the total allocation of permits for that year, up to one hundred fifty (150) building permits of the unused portion of such annual allocation shall be carried over and added to Developer's succeeding year's allocation. Such "carry-over" shall apply to that year only and shall not be carried over to any succeeding year. The allocations provided for in this Section shall automatically apply and shall not require any formal request by Developer for such annual reservation of building permits.

(2) Should Developer propose to assign the annual allocation, or any portion thereof, to a builder of the Project Site other than Developer, Developer shall submit an application for assignment to City's Director of Community Development identifying such other builder(s) and the number(s) to be allocated. The application shall be submitted to City's Director of Community Development within the time period specified by and approved by City's Director of Community Development.

(3) In the event there is no assignment of the annual building permit allocation by City, City shall issue building permits under the Phasing Plan on a first-come first-served basis to Developers of the Project.

2.G. [Intentionally Left Blank]

2.H. Environmental Mitigation

To the extent permitted by law, City shall not impose upon the Project any mitigation measures other than those specifically imposed by the Project Approvals, and the MMRP adopted concurrently with the Project Approvals, as authorized by the Vacaville Municipal Code or the Specific Plan. City shall not impose additional mitigation measures on the basis that the EIR fully analyzes the environmental impacts of the Project, thereby alleviating the need for additional environmental review except in the circumstances described in Section 21166 of the Public Resources Code. To the extent permitted by law, City shall, in connection with any Subsequent Approval, adopt statements of overriding consideration recognizing the specific economic, social and other benefits of the Project that outweigh and make infeasible any additional mitigation measures.

2.I. Infrastructure

(1) Infrastructure Phasing Flexibility. Notwithstanding the provisions of any phasing requirements in the Project Approvals, Developer and City recognize that economic and market conditions may necessitate changing the order in which the infrastructure is constructed. Therefore, City and Developer hereby agree that should it become necessary or desirable to develop any portion of the Project's infrastructure in an order that differs from the order set forth in the Project Approvals, Developer and City shall collaborate and City shall permit any modification requested by Developer so long as the modification continues to ensure adequate infrastructure is available to serve that portion

of the Project being developed and there are no adverse impacts to existing infrastructure or proposed infrastructure for future portions of the Project, the determination of which shall be made solely by City's Director of Public Works.

(2) Infrastructure Capacity. Subject to Developer's installation of infrastructure in accordance with the requirements of the Project Approvals and payment of the appropriate development impact fees, City hereby acknowledges that it will have, and shall reserve, sufficient capacity in its infrastructure, services and utility systems, including, without limitation, traffic circulation, storm drainage, flood control, sewer collection, sewer treatment, sanitation service and, except for reasons beyond City's control, water supply, treatment, distribution and service, as and when necessary to serve the Project as it is developed. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no restriction on hookups or service for the Project except for reasons beyond City's reasonable control. Notwithstanding anything to the contrary in this Section 2.I(2), Developer shall install new sanitary sewer collection systems to create any required additional capacity to serve the Project if the DIF 54 project and the junction structure are not constructed prior to first Project occupancy.

2.J. Model Homes

Prior to recordation of any Neighborhood Final Map, City agrees to issue, to the extent permissible by any relevant laws, building permits and certificates of occupancy (or completion of a final inspection if no certificate of occupancy is required) for the construction of model homes (and related model home complex structures) that will be used by Developer for the purpose of promoting sales of single family residential units within the Project, subject to City's standard design review and building permit procedures; provided, however, in no event shall City be required to issue more than five (5) building permits for the construction of model homes in each residential Neighborhood of the Specific Plan (*i.e.* Neighborhoods 1 through 12 as identified in Exhibit B1) unless a higher number of building permits is otherwise approved by the Director of Community Development and in no event shall Developer be permitted to sell or transfer any model home until a Neighborhood Final Map has been approved and recorded on that portion of the Project Site where the model home is to be located.

2.K. Annexation

Developer will cooperate to complete annexation of the Project Site to the City. Without limiting the foregoing, to the maximum extent permitted by law, within thirty (30) days after the Effective Date, City will: (i) adopt a "Resolution of Application" to the Solano County Local Area Formation Commission ("LAFCO") requesting annexation of the Project to the City; and (ii) submit to LAFCO the Resolution of Application, a plan for the provision of services and any other materials required by LAFCO for a complete application, said documents and materials to be consistent with the Project Approvals and this Agreement. City shall use its best efforts to cause the completion of such annexation subject to all applicable requirements in or limits of law. If a certificate of completion for the annexation of the Project Site is not recorded on or before the date that is five (5) years after the Effective Date, unless the Parties agree to extend

such date, either Party may terminate this Agreement by notifying the other Party in which case this Agreement shall be of no further force and effect.

2.L. Credits and Reimbursements for Community/Capital Improvements

City and Developer shall enter into reimbursement agreements for all improvement projects undertaken by developer that are at that time of construction included within the City's capital improvement program and/or development impact fee program; or conversely, undertaken by City that are at the time of construction Developer's obligation under the Project's Conditions of Approval, this Agreement, or other instrument. Such agreements shall be entered into prior to the start of construction of such projects and this Agreement authorizes the City Manager and or the City Manager's designee to enter into such agreements. The reimbursement agreements shall include terms that either (i) give Developer specific impact fee credits, or (ii) establish a mechanism for Developer to reimburse City up to a maximum agreed upon dollar amount that equals the estimated costs associated with the management, design, financing, construction and installation of the projects. Reimbursement agreements shall be approved by City and Developer prior to any expenditures which City or Developer seeks reimbursement. The credits for each project shall be credited against only those specific impact fees associated with the category of improvement constructed. If the Project's total fee obligation exceeds the value of a credit for that fee, Developer shall pay the amount of that impact fee that exceeds the value of such credit after that credit is exhausted. Such specific fee credits shall be transferable to other development within the City, with the exception of the Drainage Detention fee credits. In the event that the fee credits are insufficient to provide full reimbursement for the maximum agreed upon dollar amount, the City shall reimburse the remaining funds from subsequent development fees paid by other development in the City, with the exception of the Drainage Detention Impact fee credits. Drainage Detention fee credits will only be credited up to the Project's otherwise applicable Drainage Detention fee obligation. As an alternative to annual payments of remaining funds, the reimbursement agreement shall provide that Developer, in its sole discretion, may transfer any reimbursement balance due them to any other project in the City, in the form of fee credits.

SECTION 3. PROPERTY SUBJECT TO THIS DEVELOPMENT AGREEMENT

3.A. Property Subject To This Agreement

All of the property described in Exhibit A shall be subject to this Agreement. Upon the acquisition by Developer of a legal or equitable interest in any property within or immediately adjacent to the exterior boundaries of the Project Site (the "Additional Property"), the Additional Property shall automatically become part of the Project Site and City and Developer shall execute and record an Administrative Amendment of this Agreement in accordance with Section 14.D to amend the legal description of the Project Site attached hereto as Exhibit A to add such Additional Property.

3.B. Term of Subdivision Maps and Other Project Approvals

(1) The term of any parcel map waiver, tentative parcel map, tentative subdivision map, vesting tentative parcel map, vesting tentative subdivision map, or subdivision

improvement agreement relating to the any portion of the Project Site shall be coterminous with the Term of this Agreement. In no event shall the term of such maps or agreements be for a term longer than the Term without the amendment of this Agreement.

(2) The term of any conditional use permit, design review approval or other adjudicatory approval for development of any portion of the Project Site shall be five (5) years, which period of time may be extended for two (2) additional one (1)-year periods by the entity having decision–making authority over such time extension request. Any such permit, approval, or entitlement shall continue in effect and no time extension will be necessary if either of the following occur within the Project Site: (i) the building foundation for at least one (1) home is installed and completed and, thereafter, Developer diligently continues construction of the Project towards completion, or (ii) Developer obtains a building permit and diligently continues construction towards completion of a non-residential use.

SECTION 4. MATERIAL OBLIGATIONS OF DEVELOPER; TERMINATION FOR BREACH OF SUCH OBLIGATIONS

Notwithstanding anything to the contrary herein contained, the Term of this Agreement shall be subject to termination by City (but not by Developer) for failure on the part of Developer to achieve the objectives stated below, subject to the provisions of this Agreement relating to permitted delays and delaying causes. Developer's performance in achieving these objectives shall be considered and evaluated as part of the annual review as provided for in this Agreement. The objectives to be achieved by Developer are:

4.A. Community Facilities District Formation

Developer shall apply for and procure adoption by City of such resolutions and actions as may be required to form or join a community facilities district ("CFD"). The purpose of the CFD is to pay for the full cost of City services for the Project, including fire protection and police protection. The CFD shall be formed by City before the recordation of the first Neighborhood Final Map. City agrees to process and act upon such application with reasonable due diligence.

4.B. Landscaping, Lighting and Maintenance Districts

Developer shall apply for and procure adoption by City of such resolutions and actions as may be required to, join existing or form new lighting, landscaping and maintenance districts ("LLMD's") in no more than five (5) Project Site phases. The purpose of the LLMD's are to pay for the full maintenance cost of City services for the Project, including: (i) setback landscaping, (ii) street lighting, (iii) the detention basin stormwater improvements and the landscaping surrounding the detention basin; (iv) open space including open space amenities within Parcels 16, 19 and 20; and (v) the Project's fair share of neighborhood parks. City shall approve all Developer applications to join existing or form new LLMD's prior to recordation of the Final Map(s) associated with each Project Site phase. City agrees to process and act upon such application with reasonable due diligence. For avoidance of doubt, the conditions of approval to the Tentative Map require, among other things, that separate from and independent of the

LLMD's (i) the Project's Homeowners' Association maintain the Project's pocket and linear parks, any setback landscaping along Leisure Town Road and Hawkins Road that falls outside of the City's right of way, including within easements over Solano Irrigation District water conveyance improvements (if any), and the Project's agricultural buffer area; and (ii) the Developer's design of the detention basin aeration system and preparation of a maintenance plan for the detention basin and aeration system (both at no cost to the City).

SECTION 5. DEVELOPER'S OBLIGATIONS FOR WHICH CITY MUST ALLOW DEVELOPER RIGHT TO CURE DEFAULT

5.A. No Obligation to Develop

Developer shall have no obligation to initiate or complete development of any phase of the Project within any period of time except: (i) as provided in Subsection 2.A of this Agreement; (ii) the obligations otherwise stated in a separate agreement or undertaking that is part of the Vested Elements or that is entered into in connection with any community facilities or assessment district creation or financing; (iii) the conditions for commencement of construction stated in any conditional use permit, design review approval or entitlement or approval for construction of specific improvements on a specific parcel; or (iv) as provided in the Subdivision Map Act (Gov't Code §§ 66400 et. seq.) or Divisions 14.11 ("Subdivisions") or 14.12 ("Dedications and Improvement Requirements") of the Vacaville Municipal Code, as applied to subdivision improvement agreements. Failure to undertake and complete the matters identified in this Section shall constitute a material breach of this Agreement for which this Agreement may be terminated by City if such breach is not cured as provided in this Agreement.

5.B. General Obligations

As consideration for City entering into this Agreement, Developer agrees that it will comply with all Project Approvals and Subsequent Approvals. The parties acknowledge that the execution of this Agreement by City is a material consideration for both Developer's acceptance of, and agreement to comply with, the terms and conditions of the Project Approvals and Subsequent Approvals.

5.C. Infrastructure Construction; Dedication of Land, Rights of Way and Easements

Notwithstanding anything to the contrary in this Agreement, Developer shall only be required to pay standard development impact fees (DIF). If Developer agrees to install a DIF project, City and Developer shall enter into a reimbursement agreement related to such projects prior to the start of construction of such projects subject to the same general terms as the reimbursement agreements described in Section 2.L of this Agreement.

Developer is obligated as a condition of approval to the Tentative Map to dedicate the parcels for open space and parks identified on Exhibit C. Developer will dedicate and construct, without compensation, deduction, or credit street frontage and improvements to street frontages adjacent to open space and park sites within or abutting the Project Site except for the frontage along Elmira Road of the Community Park Parcel (defined in Section 5.J(1)) and the adjacent park parcel designated as Parcel 17 on Exhibit B1 (such excepted improvements being the "Park Frontage Improvements") and City shall promptly accept from Developer the completed public

improvements (and release to Developer any bonds or other security posted in connection with performance thereof in accordance with the terms of such bonds). Notwithstanding anything to the contrary in this Agreement, City shall grant Park and Recreation Fee credits for the actual costs of construction of the Park Frontage Improvements up to the maximum allocated to such improvements in the DIF study as it may be amended from time to time. Except as described in Section 5.J, Developer shall, without compensation, deduction, or credit, level the land for the open space and park sites identified on Exhibit C and will place utility stubs to serve such open space and park sites to the parcel/lot line of such open space and park sites at such places mutually agreed to by City and Developer during Developer's construction of utility improvements for the Project.

Except as Described in Section 5.J, Developer shall dedicate, without compensation, deduction, or credit, road rights-of-way, utility and other easements required for development of the Project in accordance with the Tentative Map.

City shall cooperate with Developer and use its best efforts to bring about construction of the infrastructure required for the development contemplated in the Vested Elements that is beyond Developer's control, including county, state, or federal participation in such construction and, when appropriate, as determined by City in its sole discretion, through the exercise of the power of eminent domain so long as funds are available therefore without cost or expense to City, either from bond sales proceeds, cash payments, or a combination thereof.

5.D. Developer Funding of Infrastructure Shortfalls and Jepson Parkway

In the event a public agency responsible for making certain area-wide infrastructure improvements lacks sufficient funds to complete such improvements that are required to be constructed as part of the Vested Elements, Developer shall have the option of proceeding with the development of such improvements subject to the reasonable approval by the Director of Public Works. City and Developer shall enter into a reimbursement agreement related to such improvements in accordance with Section 2.L Credits and Reimbursements for Community/Capital Improvements.

Leisure Town Road Frontage Improvements

The portion of the Project's frontage abutting Leisure Town Road is included in Phase 1B of the Jepson Parkway project, which will realign and widen Leisure Town Road from Elmira Road northward. The approved funding agreement between the City and the Solano Transportation Authority (STA) for the Jepson Parkway project assumes that future development along Leisure Town Road will either construct their frontage improvements (described herein) at their sole expense, or reimburse the City for constructing those improvements.

The Project's Leisure Town Road obligations consist of all improvements required to construct:

- Up to 20 feet of roadway construction (City is responsible for anything greater than 20 feet);
- Concrete Curb, Gutter and Multi-Use pathway;
- Storm drainage;

- Street lighting;
- Landscaping and irrigation in the setback area;
- Relocation and undergrounding of the SID canal;
- Relocation and undergrounding of the overhead joint utilities;
- Any required walls, berms, or other elements required by the specific plan to separate the Project from the public right of way.

In the event that the Jepson Parkway project precedes the Project, the City may construct the full roadway improvements; concrete curb, gutter and multi-use pathway; storm drainage; street lighting; relocation and undergrounding of SID Canal; and relocation of the overhead joint utilities. With commencement of the Project, the Developer will complete the undergrounding of the overhead joint utilities; landscaping and irrigation; and any required walls, berms or other elements required by the specific plan. Under this scenario, City and Developer shall enter into a reimbursement agreement in accordance with Section 2.L Credits and Reimbursements for Community/Capital Improvements to reimburse the City for actual costs incurred related to the design and construction of all frontage improvements deemed the Developer's responsibility.

In the event that the Project precedes the Jepson Parkway project, the Developer will construct all of the Projects Leisure Town Road frontage obligations (described herein). Roadway construction shall include additional widening, grinding, adjustments to profile, and any other improvements necessary to properly conform to the existing roadway. Any roadway construction in excess of the required 20 foot width shall be subject to reimbursement by the City in accordance with Section 2.L Credits and Reimbursements for Community/Capital Improvements.

5.E. No Mineral Exploitation; Water Rights; Closure and Transfer of Existing Water Wells and Water System

No portion of the Project Site surface and no portion of the Project Site lying within five hundred (500) feet of the surface of the land may be utilized for extraction of oil, gas, hydrocarbon or any other mineral, metal, rock or gravel or any activities associated with or ancillary to any such activities. Nothing herein contained shall be deemed to prevent or restrict exploitation and/or extraction of such minerals and other substances below a plane lying five hundred (500) feet below the surface of the Project Site so long as all such activities conducted within the boundaries of the Project Site are confined to a level below said elevation; and nothing in this Subsection shall be deemed to prevent movement or export of rock, gravel or earth as part of grading activity undertaken in connection with development allowed under the Vested Elements.

No portion of the Project Site may be utilized for the placement of water wells or the extraction of water by Developer or any successor in interest. City shall have the sole and exclusive right to all water, rights in water, or the placement of wells and use of water underlying the Project Site, whether above or below five hundred (500) feet of the surface and this provision shall constitute a transfer of all such water rights to City effective upon the Effective Date.

5.F. Processing Charges, Development Impact Fees Applicable To Project Site

Every application for an approval and every approval and issuance of permits or entitlements thereafter shall be subject to all application fees, processing fees, development impositions, development impact fees and regulatory fees, set by or within the control of City (including, but not limited to, any other fee or charge levied or imposed in connection with or by reason of the conduct of development or business activity within City) levied upon the Project Site, or any portion thereof, as a condition of approval of such development, including fees imposed to mitigate the Project's environmental impacts, subject to the following:

(1) New Regulatory or Development Impact Fees. Subject to the restrictions and exceptions in subsection 3 below, City may enact new regulatory fees or development impact fees that may be imposed on all or portions of the Project Site or development thereof so long as: (i) the amount charged has been determined in accordance with all applicable law; and (ii) Developer is given credit for the fees previously paid, and the fair value of improvements and land previously dedicated by Developer prior to the enactment of such regulatory or development impact fee requirements where such fees, improvements or land dedications relate to or pertain to the same public benefit or mitigation measures addressed by the new regulatory or impact fee requirement.

(2) Development Impact Fees Defined. For purposes hereof, "development impact fees" and/or DIF shall include all charges, levies and impositions that are or would be so categorized under applicable California law as of the date of commencement of the Term of this Agreement but do not include, nor does this Agreement limit City's ability to impose upon the Project Site, special taxes, special assessments or maintenance district assessments, zones of benefit, rates or surcharges that are imposed on one or more areas of the City to finance area-specific public services, facilities or infrastructure. For avoidance of doubt, development impact fees include the City's General Plan Cost Recovery Fee.

(3) Limitation on Development Impact Fees. The Project Site shall not be subject to any development impact fee enacted or revised after the Effective Date of this Agreement unless it applies on a City-wide basis (although zones of benefit may be designated by City with charges allocated among the properties within such zones based upon the benefit received by such properties). Any development impact fees levied against or applied to the Project must be consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 et seq. ("AB 1600"). Developer retains all rights to protest an imposition, fee, dedication, reservation, or other exaction, as set forth in California Government Code Section 66020. Nothing in this Agreement shall diminish or eliminate any of Developer's rights set forth in such Section 66020. If the City adopts a Quimby Act Fee pursuant to Government Code Section 66477, such fee shall not apply to Project residential units and/or lots that have paid (or received credit or reimbursements pursuant to Section 5.J) for park and recreation impact fees. Also, any Quimby Act Fee adopted shall not apply to the Project until a revision to the park and recreation fee is adopted related to the programs to be covered by the Quimby Act Fee. In other words, in no event shall the Project pay for the same public benefit through both the park and recreation fee and Quimby Act Fee.

(4) Processing Costs. Nothing herein contained shall exempt Developer from paying processing costs imposed by City for the processing of Developer's applications, including such costs as may be necessary to hire consultants and conduct studies required to develop the Project, subject to the provisions of this Section. Prior to engaging the services of any consultant or authorizing the expenditure of any funds for such consultant, City shall consult with Developer, to seek mutually agreeable terms regarding: (i) the scope of work to be performed by such consultant; and (ii) the projected costs associated with such work.

5.G. Dedicated Property Shall Be Free of Hazardous Wastes and Encumbrances

All real property or interests in land offered for dedication by Developer to City shall be free and clear of: (i) hazardous waste and materials, and (ii) all liens, encumbrances, and clouds on title other than recorded easements or restrictions that do not interfere with or preclude the use of such property for its intended purpose as reasonably determined by City. Such property shall be transferred in the same or better condition than it existed upon the Effective Date of this Agreement.

5.H. Developer to Provide Projections for Development of the Project

In order to facilitate the timely development of the Project Site, Developer, or the "Master Developer" designated by Developer, shall provide City with reports of its projected timetable for the design and construction of the Project ("Development Projections") each time there is a material change in Developer's or the Master Developer's anticipated progress in developing the Project. In addition, Developer or the Master Developer shall provide Development Projections with the documentation Developer is required to provide City in conjunction with the Annual Review, as defined in Section 8 of this Agreement.

5.I. [INTENTIONALLY LEFT BLANK]

5.J. Community Park Development

(1) Community Park Parcel Right of Purchase. The Tentative Map identifies a "Community Park Parcel" which is also identified as Parcel 18 on Exhibit B-1. City shall have the right to purchase the Community Park Parcel on an As-Is (other than Developer's obligations in Section 5.G) basis for a period of 25-years after the Effective Date (the "Purchase Right Period"). Upon expiration of the Purchase Right Period, City shall have no right or interest in the Community Park Parcel and shall consider any applications related to the development of the Community Park Parcel in good faith. The documents related to the conveyance of the Community Park Parcel to the City shall limit the City's use of the Community Park Parcel to park and ancillary uses. The purchase price of the Community Park Parcel shall be its fair market value at the time of conveyance as determined in accordance with the procedures set forth in this Section 5.J(2) unless other procedures are agreed to in writing.

(2) Determination of Fair Market Value.

a. Within fifteen (15) days after City provides written notice that it intends to acquire the Community Park Parcel during the Right to Purchase Period, City and Developer will each appoint one (1) independent appraiser who by profession must be a real estate broker or MAI Appraiser who has been active over the five (5) year period ending on the date of such appointment in the sale of unimproved land in Solano County, California.

b. Prior to the City's acquisition of the Community Park Parcel during the Right to Purchase Period, City will submit to Developer the City's determination of the fair market value of the Community Park Parcel prepared by its appointed appraiser ("City's FMV Determination"). Developer will have thirty (30) days ("Developer's Review Period") after receipt of City's FMV Determination within which to accept the City's FMV Determination or to reasonably object thereto in writing. Developer's failure to accept the City's FMV Determination in writing within Developer's Review Period will conclusively be deemed Developer's rejection thereof. If Developer reasonably objects to the City's FMV Determination, then, prior to the expiration of Developer's Review Period, Developer shall submit to City in writing a statement of Developer's determination of the fair market value of the Community Park Parcel prepared by its appointed appraiser ("Developer's FMV Determination"). For a period of fifteen (15) days after the expiration of Developer's Review Period (the "Outside Agreement Date"), City and Developer will attempt in good faith to agree upon the fair market value of the Community Park Parcel using their commercially reasonable good faith efforts. If City and Developer fail to reach agreement on or before the Outside Agreement Date, then each party's determination will be submitted to appraisal in accordance with the provisions below:

(i) The two (2) appraisers will, within fifteen (15) days after the Outside Agreement Date (the "Third Appraiser Appointment Date"), agree upon and appoint a third appraiser who shall be qualified under the same criteria set forth above for qualification of the initial two (2) appraisers.

(ii) The third appraiser shall timely prepare an independent appraisal of the fair market value of the Community Park Parcel that shall be a dollar value equal to or between the dollar values of the City's FMV Determination and Developer's FMV Determination and will notify City and Developer in writing of its decision (the "Appraiser's Decision"). In other words, the dollar value of the Appraiser's Decision cannot be a higher than the highest FMV Determination nor lower than the lowest FMV Determination.

(iii) The Appraiser's Decision will be binding upon City and Developer. If either City or Developer fails to appoint an

appraiser prior to the Final Appraiser Appointment Date, the appraiser timely appointed by the other party shall determine whether the parties shall rely on the City's FMV Determination or Developer's FMV Determination to determine the fair market value of the Community Park Parcel and issue the Appraisers' Decision within fifteen (15) days after the Third Appraiser Appointment Date.

(iv) If the two (2) appraisers fail to agree upon and timely appoint a third appraiser, or if neither Developer nor City appoint an appraiser prior to the Final Appraiser Appointment Date, the average dollar value of Developer's FMV Determination and the City's FMV Determination shall determine the fair market value of the Community Park Parcel and that average value shall be deemed the Appraisers' Decision for purposes of this Agreement.

(v) The cost of the third appraiser will be equally borne by City and Developer. Each party shall bear their own costs related to each party's appointed appraiser.

(3) Recordation of Memorandum of Agreement. Within 30 days after this Agreement is recorded in the Official Records, Developer shall record a memorandum of agreement in the Official Records that summarizes the City's Right of Purchase.

(4) No Developer Obligation. Developer shall have no obligations related to the development of a park on the Community Park Parcel other than the payment of DIF in accordance with this Agreement.

(5) Interim Uses. Developer shall have the right to establish uses on the Community Park Parcel in accordance with the Community Park Parcel's Specific Plan land use designation and the Community Park Parcel's zoning district until the City's acquisition of the Community Park Parcel. Interim uses shall not result in the permanent stripping of topsoil from more than 5% of the Community Park Parcel. Immediately prior to City's acquisition of the Community Park Parcel, Developer shall be responsible for terminating the then-existing use of the Community Park Parcel unless the parties agree otherwise in writing.

(6) Notices. Developer is responsible to inform all home buyers (i) of the uncertainty associated with whether a community park will be constructed on the Community Park Parcel, and if so, the timing for construction of a community park; and (ii) that any use on the Community Park Parcel will be terminated if the City constructs a community park. At a minimum, this notification shall be provided as follows:

a. By written disclosure acknowledged by the home-buyer at time of escrow; and

b. By prominent display at each model home complex of information on the uncertain timing of park construction.

5.K. Community Benefit Contribution

Notwithstanding any other term of this Agreement, Developer agrees to pay City a "Community Benefit Contribution" of $8,370 for each dwelling unit at the time a building permit is issued for such dwelling unit within the Project Site. The parties agree that there may be an adjustment to the Community Benefit Contribution per unit in response to the City Council reviewing what improvements or programs should be funded by the Community Benefit Contribution versus an impact fee, meaning that the amount of the Community Benefit Contribution may be reduced. In addition, the City agrees that at no time shall the Community Benefit Contribution imposed on the Project Site during any calendar year be higher than the community benefit contribution, or other similar contribution that funds the same types of improvements or programs, imposed on any future development project that includes single family homes in the same calendar year that is: (i) east of Leisure Town Road; (ii) in a growth area identified in the City's General Plan (including, but not limited to, the East of Leisure Town Road Growth Area and the Northeast Growth Area identified as part of the approval of the City's 2008 Urban Growth Boundary); or (3) within the Vanden Meadows Specific Plan area. Developer shall have a right to a reduction in the Community Benefit Contribution so that Developer is no longer obligated to pay an amount higher than the amount imposed on other development projects that include single family homes in these areas. The Community Benefit Contribution shall be automatically adjusted by the percentage change, if any, in the Engineering News Record San Francisco Bay Area Construction Cost Index during the prior twelve-month period, as calculated for the twelve-month period from on or about the preceding November 1st, on January 1 of each year for the Term of this Agreement. The Community Benefit Contribution funds shall be used for capital improvements and/or acquisition of lands that the City Council considers to be of community-wide benefit.

5.L. Water Annexation Fee

Notwithstanding any other term of this Agreement, Developer agrees to pay City $2,783 per dwelling unit as payment for the cost of acquiring additional domestic water to serve the residential uses contemplated by the Project (the "Water Annexation Fee"). This fee will be adjusted March 1 of every year, beginning in 2019, based on the San Francisco Bay Area Construction Cost Index as published in March by the Engineering News Record (ENR). The ENR Cost Index for San Francisco in March of 2018 was 11,557.90. This cost shall be in addition to the standard water service connection fee assessed by City at building permit issuance. The Water Annexation Fee shall be paid prior to building permit issuance.

5.M. Agricultural Land Mitigation

Developer shall preserve or create, in Developer's discretion, one acre of agricultural land that is viable for farming operations for each acre of agricultural land converted by the Project. Developer can satisfy this condition by encumbering property owned by Developer or third

parties with an agricultural conservation easement in perpetuity. Developer may record multiple easements to satisfy this obligation. Prior to issuance of each grading permit for the Project, Developer must demonstrate to the City that it either has (i) encumbered an acreage that equals at least the sum of the amount of acreage of agricultural land that has previously been developed as part of the Project and the acreage that is proposed to be developed with such grading permit; or (ii) has provided a surety in a form that is satisfactory to the Directory of Community Development that ensures implementation of an agricultural conservation easement that encumbers an acreage that equals at least the sum of the amount of acreage of agricultural land that has previously been developed as part of the Project and the acreage that is proposed to be developed with such grading permit. Upon the request of Developer, City may, in City's sole discretion, permit Developer to use a deed restriction in-lieu of a conservation easement.

As an alternative, in Developer's sole discretion, to the recording of a conservation easement or deed restriction to satisfy the Project's agricultural mitigation obligations, except for any acreage adjacent to the Project Site required to be used for mitigation pursuant to General Plan Policy COS-P4.4, Developer may pay an in-lieu fee to satisfy such obligations if City adopts a fee program for this purpose. Such fee shall be paid prior to the later of the recording of a Neighborhood Final Map or issuance of grading permit for each undeveloped portion of the Project Site or for any developed portion of the Project site which has provided a surety described above in this Section 5.M.

City agrees to consider establishment of this in-lieu fee program, in consultation with the Solano Land Trust, and shall make good faith efforts to present findings and recommendations, including those arising from City General Plan Policy LU-P5.2, to the City Council within six (6) months of the Effective Date of this Agreement. City shall make good faith efforts to design any proposed in-lieu fee program to ensure that the payment of such fee satisfies the Project's nesting and foraging habitat mitigation requirements associated with avian species impacted by the loss of agricultural land caused by the Project so that a separate conservation easement related to such species, in addition to the payment of the fee, is not required as a habitat mitigation measure for these species. Upon establishment of such fee, Developer shall be permitted to satisfy all of the Project's agricultural and associated avian nesting and foraging habitat mitigation requirements for all portions of the Project Site that have a surety described above in this Section 5.M or that have not yet been issued grading permits or recorded a small-lot Final Map on the date the fee is effective. Upon each payment of an in-lieu fee for a portion of the Project Site, City shall take all reasonable actions necessary to cause the release of any surety associated with that same portion of the Project Site.

SECTION 6. PROVISIONS RELATING TO ASSESSMENT PROCEEDINGS

6.A. Construction and Acquisition Proceedings

Developer may, in its sole discretion, propose or initiate proceedings for the formation of an assessment and/or community facilities district (including any potential Benefit District for the Project) for the purpose of financing the payment of all or a portion of the design, acquisition and construction costs required for any on-site or off-site improvements that are designed and constructed by Developer in connection with its development of the Project Site (or portions thereof) pursuant to the Vested Elements. City shall diligently process such proposal provided:

(i) the proposal complies with law, (ii) is otherwise regular in form, (iii) is consistent with City's standards, (iv) provides for a lien-to-value ratio and other financial terms that are reasonably acceptable to City, (v) the person, firm or entity initiating the proceedings advances such funds as City requires to provide for staff and outside consultants to undertake such proceedings, and (vi) City has reviewed and approved the consultants proposed by Developer for such undertaking including, but not limited to, bond counsel and the financial advisory underwriter, which approval shall not be unreasonably withheld. City shall diligently seek to sell any bonds to be issued and secured by such assessments upon the best terms reasonably available in the marketplace; provided, however, that City's duty to market such bonds shall be suspended during any period when marketing conditions render the issuance of such bonds economically infeasible. Developer may initiate improvement and assessment proceedings utilizing assessment mechanisms authorized under the law of the State of California where the property subject to assessment provides primary security for payment of the assessments. Developer (or any successor of Developer as to any portion of the Project Site as to that portion) may initiate such assessment proceedings with respect to that portion of the Project Site to provide financing for the design or construction of improvements for such portion of the Project Site. City shall allocate shortfalls or cost overruns in the same manner as the special taxes or assessments for construction of improvements (as opposed to assessments for maintenance) are allocated in a community facilities district or other similar financing mechanism so that each lot and/or parcel within the benefited area (including the Project Site) shall bear its appropriate share of the burden thereof and construction or acquisition of needed improvements shall not be prevented or delayed.

If the Project is benefitted by the oversizing of any infrastructure improvements made by adjacent developments, Developer shall agree to join any assessment and/or community facilities district formed for the purpose of financing the payment of all or a portion of the design, acquisition and construction costs required for any on-site or off-site improvements that are designed and constructed to serve the Project Site so long as each lot and/or parcel within the benefited area (including the Project Site) bears its appropriate share of the burden thereof. Nothing in this Agreement shall limit Developer's right to object to the amount of the proposed assessment or the costs proposed to be assessed.

6.B. <u>Maintenance District Proceedings</u>

(1) <u>City-Initiated Proceedings.</u> City is authorized to, and presently contemplates, the creation and establishment of LLMD's to fund those activities described in Section 4.B. If City creates such LLMDs, City may, in its sole discretion, allow Developer (or a designated successor, agent or homeowners association, collectively referred to as "Developer" for the purpose of Subsections B through E of Section 6) to perform some or all of such maintenance work, provided such work is performed to City's satisfaction and standards and Developer agrees to indemnify and hold City harmless from any injury or damage resulting from such performance of work. City shall credit Developer the value of such work performed against the assessment that Developer would otherwise pay to the LLMD. If, at any time, City, in its sole discretion, determines that the work is not being performed to City's satisfaction or standards, City may notify Developer of such substandard performance, and if not cured within thirty (30) days of such notice, City

may, through a LLMD, take responsibility for such work and, thereafter, maintain the areas in question and assess Developer for the value of the work performed.

(2) Developer-Initiated Proceedings. Developer may submit requests to City to annex or create and establish the LLMDs contemplated under Section 4.B, above. City shall consider such requests, provided the requests comply with law and are otherwise regular in form.

(3) Mechanism. Developer and/or City shall have the right to annex or form or create such LLMDs under any mechanism authorized by law where the benefited property may be assessed or charged for payment of such maintenance and operating cost.

(4) Portion of Project Site. Developer and/or City may initiate proceedings for annexation or formation of such LLMDs with respect to a portion of the Project Site to provide for maintenance of improvements for such portion without the consent of the owners of other portions of the Project Site provided the assessments are not levied upon such other owners and the formation of such district does not interfere with the ability to form other LLMDs to maintain improvements on other portions of the Project Site.

(5) Inspection of Developer-maintained Improvements. In the event that Developer assumes responsibility to maintain improvements on the Project Site, Developer shall reimburse City for City's cost to inspect the improvements maintained by Developer. Payment to City shall be made within thirty (30) days of Developer's receipt of City's invoice or statement of such costs.

6.C. [Intentionally Left Blank]

6.D. Right of Reimbursement from Assessment Proceeds

In any assessment proceeding, special tax proceeding or other financing proceeding undertaken by City pursuant to the provisions of this Section 6, City shall reimburse Developer for any costs or fees reasonably incurred or paid for by Developer for the administration, design and construction of improvements, fulfillment of the requirements of the Vested Elements, or implementation of mitigation measures that can properly be included in such assessment proceedings, together with interest thereon at the rate being charged on the principal amount of the assessments from which said reimbursement is made or at such other rate as City determines fairly compensates Developer for the cost of the funds to be reimbursed.

6.E. Right of Reimbursement from Others Benefited

If Developer agrees to plan, design or construct excess improvements not required by City for development of the Project Site or agrees to make dedications, provide mitigation measures or incur costs in connection with public improvements in excess of those required to develop the Project Site that are not included within the capital improvement program and/or the development impact fee program at the time of construction, City agrees to cooperate with Developer in the formation or enlargement of any assessment districts, including without

limitation Benefit Districts, that Developer, in its sole discretion, may elect to initiate related to the Project in order to be reimbursed its excess costs associated with such improvements.

SECTION 7. DEFAULT, REMEDIES, TERMINATION OF AGREEMENT

7.A. Notice of Default and Liability

Subject to extensions of time mutually agreed to in writing by the parties or as otherwise provided herein, material failure or delay by any party to perform any term or provision of this Agreement constitutes a default hereunder. Upon the occurrence of such default, the party alleging such default shall give the other party written notice thereof, specifically stating that it is a notice of default under this Agreement, specifying in detail the nature of the alleged default and, when appropriate, the manner in which said default may be satisfactorily cured, and giving a reasonable time that shall be not less than sixty (60) days measured from the date of personal service or delivery by certified mail of the written notice of default. During any such cure period or during any period prior to notice of default, the party charged shall not be considered in default for the purpose of terminating this Agreement or instituting legal proceedings.

If a dispute arises regarding any other claim of default under this Agreement, the parties shall continue to perform their respective obligations hereunder, to the maximum extent practicable irrespective of such dispute. Notwithstanding anything to the contrary, no default hereunder in the performance of a covenant or obligation with respect to a particular lot or parcel shall constitute a default as to other portions of the Project Site, and any remedy arising by reason of such default shall apply only to such lot or parcel. Absent evidence to the contrary, any liability occasioned by such default shall be the responsibility of the owner(s) of the lot or parcel involving such default.

7.B. Remedies

Upon expiration of the cure period referenced above, if the default remains uncured, or if such cure cannot be accomplished within such cure period and the defaulting party has not commenced such cure during such period and diligently prosecuted such cure thereafter, the non-defaulting party may, at its option, give notice of intent to terminate this Agreement pursuant to Government Code Section 65868, or pursue such other remedies as may be available to such party. Notice of intent to terminate shall be by certified mail, return receipt requested. In the event the notice of intent to terminate is given by City, the matter shall be scheduled for consideration and review by the City Council within sixty (60) days in accordance with Government Code Sections 65867 and 65868 and Vacaville Municipal Code § 14.17.218.030. After considering the evidence presented, the City Council shall render its decision to terminate or not terminate this Agreement. If the City Council decides to terminate this Agreement, City shall give written notice thereof to the defaulting party.

Evidence of default of this Agreement may also be taken during the regular annual review of this Agreement as described below. Any determination of default (or any determination of failure to demonstrate good faith compliance as a part of the annual review) made by City against Developer, or any person who succeeds Developer with respect to any portion of the Project Site, shall be based upon written findings supported by evidence in the record as provided by

Vacaville Municipal Code §§ 14.17.218.030 and 14.17.218.030. Notwithstanding any other provision of this Agreement to the contrary, remedies for a default by Developer or its successor of any of its obligations hereunder shall not be limited and City shall have the right to institute legal proceedings to enforce such obligations as set forth herein and in the Vested Elements, including, but not limited to, the obligation to indemnify, defend, and hold harmless City. Such remedies shall include those available at law or in equity that may be needed to enforce defaults such as the failure to pay fees, taxes, monetary exactions or assessments levied against the Project Site to pay for the cost of improvements whether levied pursuant to this Agreement or otherwise stated in a separate agreement or undertaking under the Vested Elements or which is entered into in support of any community facilities or assessment district financing. City shall have the right to exercise such remedies as may be available at law or in equity to enforce the conditions stated in any conditional use permit, design review approval, zoning approval, entitlements for use or entitlements for construction of specific improvements on a specific parcel, or as are provided in the Subdivision Map Act (Gov't Code §§ 66400 et seq.) or City's subdivision ordinance as applied to subdivision improvement agreements. In addition to the right to give notice of intent to terminate this Agreement, Developer shall have the right to institute legal proceedings to enforce this Agreement in the event of a default by City.

7.C. No Waiver

Failure or delay in giving notice of default shall not constitute a waiver of default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by a party in asserting any of its rights or remedies as to any default by the other party shall not operate as a waiver of any default or of any rights or remedies of such party; nor shall it deprive such party of its right to institute and maintain any action or proceeding it may deem necessary to protect, assert or enforce any such rights or remedies.

7.D. Judicial Review of Termination

Any purported termination by the City of this Agreement for alleged default of Developer shall be subject to review in the Superior Court of the County of Solano pursuant to Code of Civil Procedure §1094.5(c).

7.E. Defaults by City

If City does not accept, review, approve or issue development permits, entitlements or other land use or building approvals, if any, for use in a timely fashion as provided in this Agreement or defaults in the performance of its obligations under this Agreement, Developer (or the owner of the Project Site, or portion thereof, to which such default applies) shall have the rights and remedies provided herein or available in law or in equity, including, without limitation, the right to seek specific performance under the appropriate circumstances.

7.F. Obligation and Default Limited to Affected Parcel

Notwithstanding anything to the contrary herein contained, when an obligation or duty hereunder to be performed, or a default has occurred, only with respect to a particular lot or parcel, such obligation or duty and any remedy or right of termination arising hereunder as a result of such failure to perform shall apply solely to such lot or parcel and shall affect only the owner and/or

the holders of the interest therein. No obligation, duty or liability will be imposed against or apply to any other parcel or portion of the Project Site for which no default has occurred.

7.G. Copies of Default Notices

The owner of any portion of the Project Site shall have the right to request in writing copies of notice of default given to the owner of any other portion of the Project Site. City and/or the owners of other portions of the Project Site to whom such request has been made shall honor such request and provide such notice in the manner and to the address specified in the request. City shall be entitled to recover from the person making the request City's reasonable cost of complying with such request.

SECTION 8. ANNUAL REVIEW

Good faith compliance by Developer with the provisions of this Agreement shall be subject to annual review ("Annual Review") pursuant to Government Code § 65865.1 and Section § 14.17.218.010 of the Vacaville Municipal Code, utilizing the following procedures:

8.A. Submission by Developer; Result of Failure to Submit

Review shall be conducted by City's Director of Community Development or his/her designee ("Director"), upon a submission made by Developer of a written report of good faith compliance, accompanied by the fee therefore, on behalf of all of the Project Site pursuant to Vacaville Municipal Code § 14.17.218.010 not less than forty-five (45) days nor more than sixty (60) days prior to each anniversary date of this Agreement. The Director may refer the review to the Planning Commission pursuant to Vacaville Municipal Code § 14.17.218.010.E. Should Developer fail to submit the annual draft report in a timely manner and City does not notify Developer of such failure within ninety (90) days following the anniversary date, then the annual review of this Agreement shall be deemed to have been satisfactorily completed for that year only. In such event, City shall not be deemed to have waived any allegation of default in subsequent review years.

8.B. Showing Required

During the annual review, Developer shall be required to demonstrate to City Developer's good faith compliance with the provisions of this Agreement and provide such documentation or evidence related thereto as the Director may reasonably request.

8.C. Notice of Staff Reports, Opportunity to Respond

Not less ten (10) days prior to the conduct of any such review, the Director shall deliver to Developer a copy of any publicly-available City staff reports and documentation that will be used or relied upon by City in conducting the review. Developer shall be permitted an opportunity to respond to the Director's evaluation of Developer's performance by written testimony. Developer may also respond to the Director's evaluation by oral testimony at any hearing held by the City related to the Annual Review or compliance with this Agreement.

8.D. Director's Findings: Appeal

At the conclusion of the annual review, the Director shall make written findings and determinations on the basis of substantial evidence, whether or not Developer or its successors have complied in good faith with the terms and conditions hereof. Any determination by the Director of a failure of compliance shall be subject to the notice requirements and cure periods stated in Section 7, above. Any interested person may appeal the decision of the Director under the provisions of section §14.17.218.010.D the Vacaville Municipal Code as may be amended from time to time.

8.E. Notice of Termination

If the Director determines that Developer (or other person, firm or entity owning the Project Site, or portion thereof) has not complied with the terms and conditions hereof, and after expiration of any cure period, the Director may recommend to the City Council that City give notice of termination or modification of this Agreement as provided in Government Code §§ 65867 and 65868 and Vacaville Municipal Code §14.17.218.030. If the Director recommends termination of this Agreement, such termination shall apply only to that portion of the Project Site (if less than all) affected by the failure to comply, subject to the cure provisions of Section 7, above. If the Director recommends a modification of this Agreement, the modification shall similarly apply only to that portion of the Project Site (if less than all) affected by the failure to comply.

8.F. Notice of Compliance

Upon Developer's request, City shall provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by the Director as to any year for which the annual review has been conducted or waived and Developer has been found or deemed to be in compliance with the provisions of this Agreement. Developer or any person owning a portion of the Project Site will have the right to a copy of such notice at his or her own expense.

8.G. No Damages

In no event shall either party, or its boards, commissions, officers, agents or employees, be liable in damages for any default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to either party for a breach or violation of this Agreement by the other party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other party under the terms of this Agreement including, but not limited to obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such party's choice in connection with, the rights and remedies of such party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on

the remedies provided for herein with respect to any breach of this Agreement by the other party. The parties shall bear their own costs of litigation including but not limited to, attorney fees and expert fees, in the event of litigation between the parties.

SECTION 9. MITIGATION MONITORING

Compliance with the various mitigation measures that are part of the Project and determined to be feasible in the EIR that is certified in connection with the Project shall be determined as follows: Compliance with those mitigation measures that are affected by and pertain to any development application or proposal for which approval is requested shall be considered and determined in connection with the processing of such application or proposal. The foregoing requirement does not require comprehensive monitoring for all mitigation measures specified in the MMRP or the Specific Plan during City's consideration of such application or proposal but shall only involve consideration and review of compliance of those mitigation measures that are directly related to the application or proposal under consideration.

SECTION 10. APPLICABLE LAWS; PERMITTED DELAYS; EFFECT OF SUBSEQUENT LAWS; OTHER PERMITS AND APPROVALS, WATER SUPPLY

10.A. Applicable Law and Venue

This Agreement shall be construed and enforced in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Solano or, where otherwise appropriate, exclusively in the United States District Court, Eastern District of California, Sacramento, California.

10.B. Permitted Delays

Performance by any party of its obligations hereunder (other than for payment of money) shall be excused during any period of "Excusable Delay" as hereinafter defined. For purposes hereof, Excusable Delay shall include delay beyond the reasonable control of the party claiming the delay (despite the good faith efforts of such party) including, but not limited to: (i) acts of God, (ii) civil commotion, (iii) riots, (iv) strikes, picketing or other labor disputes, (v) shortages of materials or supplies, (vi) damage to work in progress by reason of fire, floods, earthquake or other catastrophes, (vii) failure, delay or inability of the other party to act, (viii) as to Developer only, the failure, delay or inability of City to provide adequate levels of public services, facilities or infrastructure to the Project Site including, by way of example only, the lack of water to serve the Project Site, or any part thereof due to drought; (ix) delay caused by governmental restrictions imposed or mandated by other governmental entities, (x) enactment of conflicting state or federal laws or regulations, (xi) judicial decisions or similar basis for excused performance; (xii) litigation brought by a third party attacking the validity of this Agreement or any of the approvals, permits, ordinances, entitlements or other actions necessary for development of the Project Site or any portion thereof, which delay a party's performance hereunder; provided, however, that any party claiming an Excusable Delay shall promptly notify the other party (or parties) of any such delay as soon as possible after the same has been ascertained by the party delayed.

10.C. Effect of Subsequent Laws

In accordance with California Government Code Section 65869.5, if any governmental or quasi-governmental agency other than City adopts any law, statute, or regulation or imposes any condition (collectively "Law") after the date of execution of this Agreement that prevents or precludes a party from complying with one (1) or more provisions of this Agreement, and such provision is not entitled to the status of a vested right against such new Law, then the parties shall meet in good faith to determine the feasibility of any such modification or suspension of this Agreement based on the effect such Law would have on the purposes and intent of this Agreement and the Vested Elements. Following such meeting between the parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the parties, be modified or suspended, but only to the minimum extent necessary to comply with such Law. In such an event, this Agreement together with any required modifications shall continue in full force and effect. In the event that the Law operates to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement. In addition, Developer shall have the right to challenge (by any method, including litigation) the Law preventing compliance with, or performance of, the terms of this Agreement and, in the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, unless the parties mutually agree otherwise, except that if the Term of this Agreement would otherwise terminate during the period of any such challenge and Developer has not commenced with the development of the Project in accordance with this Agreement as a result of such challenge, the Term shall be extended for the period of any such challenge.

10.D. Building Regulations

"Building Regulations" consist of the California Code of Regulations Title 24 and amendments to Title 24 ("Title 24") as found in the Vacaville Municipal Code and any Public Works Standards as adopted in the Vacaville Municipal Code and any ordinances which interpret these codes where such ordinances establish construction and building standards that are intended to be applied ministerially to the construction of improvements on private property and public infrastructure. Building Regulations applicable to building and construction throughout the City at the time Developer applies for the applicable permits for construction of any portion of the Project shall be applicable to the building and construction authorized by such permit, except if such Building Regulations conflict in any manner with the Vested Elements (as conflict is defined in Section 2.D herein). In the event of such conflict, the particular Building Regulation which is in conflict with the Vested Elements shall not apply to or govern development or construction of the Project unless it is determined by City to be required by Title 24 regulations in effect at the time of building permit application. In the event of a dispute as to City's determination that a particular Building Regulation in conflict with the Vested Elements is required by Title 24, Developer shall have the right to have the City Council hear such dispute and make a determination evidenced through findings of fact based on substantial evidence as to whether such Building Regulation is so required by Title 24. Developer shall have no right to appeal any applicable Title 24 regulations adopted by the State of California in effect at the time of building permit application that may conflict with the Vested Elements except as permitted in this Subsection 10.D.

10.E. Written Verification of Sufficient Water Supply

Any and all tentative subdivision maps approved for the Project shall comply with Government Code Section 66473.7 if, and to the extent, required by Government Code Section 65867.5(c).

10.F. Prevailing Wages

For construction work performed by Developer or its contractors for which Developer is reimbursed by or receives fee credits or fee waivers from City or where any other public funds are used in whole or in part to construct such public works of improvement, Developer shall comply with Labor Code Part 7, Chapter 1, requiring, among other things, the payment of prevailing wages in certain circumstances. Nothing in this Section is meant to create an obligation to pay prevailing wages where one does not otherwise exist under federal, State, or local law.

SECTION 11. OTHER GOVERNMENTAL PERMITS AND APPROVALS: COOPERATION OF CITY

City shall cooperate with Developer in its efforts to obtain other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project Site or portions thereof (such as, for example, but not by way of limitation, public utilities or utility districts and agencies having jurisdiction over wetlands and air quality issues). City shall, from time to time, at the request of Developer join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency, so long as such participation will not involve the expenditure of City funds or the use of extensive staff time or expose City, in its sole judgment, to any legal liability. Permits and approvals required from other agencies may necessitate amendments to this Agreement and/or to one or more of the approvals or other approvals granted by City. City shall not unreasonably withhold its approval of amending this Agreement in order to comply with such other permits or approvals.

SECTION 12. MORTGAGEE PROTECTION

The parties hereto agree that this Agreement shall not prevent or limit Developer's right to encumber the Project Site or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing for development of the Project Site. City acknowledges that the lenders providing such financing may require this Agreement to be interpreted and modified and agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any person holding a mortgage or deed of trust on all or any portion of the Project Site made in good faith and for value (a "Mortgagee") shall be entitled to the following rights and privileges:

12.A. Impairment of Mortgage or Deed of Trust

Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Project Site made in good faith and for value.

12.B. Notice of Default to Mortgagee

The Mortgagee of any mortgage or deed of trust encumbering the Project Site, or any part thereof, which Mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

12.C. Right of Mortgagee to Cure

If City timely receives a written request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within fifteen (15) days of: (i) the date the notice of default was sent to Developer, or (ii) the date of receipt of Mortgagee's request, whichever is later. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period permitted under this Agreement, plus an additional sixty (60) calendar days if, in order to cure such default, it is necessary for the Mortgagee to obtain legal possession of the Project Site or any portion thereof (e.g. seeking the appointment of a receiver); provided, however, that during the cure period permitted under this Agreement, City receives from Mortgagee written notice stating the need to obtain legal possession of the Project Site or any portion thereof.

12.D. Liability for Past Defaults or Obligations

Any Mortgagee, including the successful bidder at a foreclosure sale, who takes title and possession of the Project Site, or any portion thereof, pursuant to such foreclosure, shall take the Project Site, or portion thereof, subject to the provisions of this Agreement; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of Developer arising prior to acquisition of title to the Project Site by such Mortgagee. Notwithstanding the preceding sentence, in no event shall any such Mortgagee or its successors or assigns be entitled to a building permit, final inspection, or occupancy certificate until all fees and other monetary obligations due under this Agreement have been paid to City and any other existing defaults under this Agreement that are reasonably subject to cure are cured.

12.E. Technical Amendments

City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Developer's negotiations with lenders.

SECTION 13. TRANSFERS AND ASSIGNMENTS

13.A. Right to Assign

Developer shall have the right to sell, assign or transfer its rights to any portion of the Project Site. All of its rights, duties and obligations under this Agreement with respect to the portion of the Project Site so transferred or assigned shall pass to the party acquiring fee simple title to such portion of the Project Site so transferred for the development thereof. "Developer" shall mean the entities so identified herein and such successors thereto as may be identified as being entitled to such designation in a notice of transfer provided for below. Reference to successors from time to time herein shall not imply that the word "Developer" does not include such designated successors in other instances.

13.B. Release upon Transfer

Upon sale, transfer or assignment, in whole or in part, of Developer's right and interest to all or any portion of the Project Site, Developer shall be released from its obligations hereunder with respect to the portion so conveyed provided: (i) Developer (or transferee) was not in default of this Agreement at the time of conveyance, (ii) Developer provided to City prior written notice of such transfer, and (iii) with respect to sale or transfer of any lot that has not been fully improved, the transferee executes and delivers to City a written assumption agreement in which: (i) the name and address of the transferee is set forth, and (ii) the transferee expressly assumes the obligations of Developer under this Agreement as to the portion of the Project Site conveyed. Failure to deliver a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement. Nothing herein contained shall be deemed to grant to City discretion to approve or deny any such transfer except as otherwise expressly provided herein.

13.C. Effect of Subsequent Approvals; Successor Owners

City's grant of the various approvals and consents referred to herein shall not constitute amendment hereof, nor shall the actions taken by City staff to implement the provisions hereof (e.g. The granting of minor modifications to approved plans, the Vested Elements or any other approval granted hereunder) shall constitute an amendment hereof.

No owner of less than all of the Project Site shall have the right to seek or consent to the amendment of the provisions hereof, to make an election hereunder, to terminate this Agreement or to enter into an agreement to rescind any provisions hereof in a manner that is binding upon, increases the burdens upon or reduces the rights of the owners of other portions of the Project Site, save and except for that portion that is owned in fee simple by said owner.

A person taking ownership of any portion of the Project Site may request that he or she be allowed to use such portion of the Project Site for a use not currently permitted under this Agreement. The City Council shall have the right, in its sole discretion, to approve, conditionally approve or deny such request. The City Council shall not approve the request unless it finds that such use is consistent with the Vested Elements and will not increase the burdens upon or reduce the rights of the owners of other portions of the Project Site. If approved

by the City Council, such use shall be subject to those restrictions and conditions deemed appropriate by the City Council for such use.

Any parcel or property that is not part of the Project Site and that might, at the parties' option, become subject to this Agreement through an amendment hereof may, as a condition thereof and at City's option, be required to become a part of any community facilities district or assessment district created to fund the design, construction and maintenance of the infrastructure, landscape and other improvements of such district to the same extent as if said parcel or property had been part of the Project Site as of the commencement of the Term of this Agreement. In becoming a part of such district, the owner of said parcel or property may, at City's option, be assessed an additional amount as may be set by City to compensate for the costs previously borne by other owners within the district so that the added parcel or property is in the position it would have been in had it been part of the district (and the planning for initiation and formation thereof) from its inception.

13.D. No Third Parties Benefited

No third party who is not a successor or permitted assign of a party hereto or who has not become a party by duly adopted amendment hereof may claim the benefits of any provision hereof.

SECTION 14. GENERAL PROVISIONS

14.A. Incorporation of Recitals

The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are incorporated herein as though set forth in full.

14.B. Rules In Effect at Time of Agreement

Except as expressly provided for in this Agreement to the contrary, Developer and the Project Site are subject to all rules, regulations, ordinances, procedures, standards, uniform codes, requirements, costs, exactions and processes of City applicable to development of property within City as the same are in effect at the time Developer seeks any land development approval including, but not limited to, subdivision of the Project Site, design review, zoning changes, building permits, or construction of on or off-site improvements or infrastructure.

14.C. Covenants

The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project Site, and the burdens and benefits of this Agreement shall bind and inure to all estates and interests in the Project Site and all successors in interest to Developer. From and after the date that certificates of occupancy have been issued (or a final inspection is completed when no certificate of occupancy is required) for all buildings and improvements to be constructed on a parcel within the Project Site (or with respect to a single-family residence on a single-family residential lot), such parcel shall not be burdened with the obligations of Developer under this Agreement. This provision shall not, however, affect any separate

covenants, conditions and restrictions that specifically pertain or apply to such parcel or the use thereof.

14.D. Amendment of Agreement

This Agreement may be amended from time to time by mutual consent of the parties or their successors in interest, in accordance with the provisions of Government Code Section 65867 and 65688, and section 14.17.218.020 of the Vacaville Municipal Code, and all amendments to this Agreement shall automatically become part of the Project Approvals, provided that any amendment to this Agreement which does not relate to the Term of this Agreement, permitted uses of the Project Site, provisions for the reservation or dedication of land, the conditions, terms, restrictions and requirements relating to subsequent discretionary approvals of City, or monetary exactions of Developer, shall be considered an "Administrative Amendment". The Director is authorized to execute Administrative Amendments on behalf of City and no action by the City Council (e.g. Noticed public hearing) shall be required before the parties may enter into an Administrative Amendment. However, if in the judgment of the Director or any member of the City Council that a noticed public hearing on a proposed Administrative Amendment would be appropriate, City's Planning Commission shall conduct a noticed public hearing to consider whether the proposed Administrative Amendment should be approved or denied. No part of the Vested Elements may be revised or changed during the Term hereof without the consent of the owner of the portion of the Project Site to which the change applies (or that would be affected by any reduction or decrease in rights or increase in burdens caused by such change), unless expressly stated to the contrary in other Sections of this Agreement.

Any amendment to a Vested Element that, in the opinion of the parties, substantially deviates from the development contemplated by this Agreement shall require an amendment to this Agreement. However, any amendment of City land use regulations including, but not limited to, the General Plan, applicable Specific Plan or City's zoning ordinance, shall not require amendment of this Agreement. Instead, any such amendment shall be deemed to be incorporated into this Agreement at the time that such amendment is approved by the appropriate City decision maker, so long as such amendment is consistent with this Agreement and does not reduce the development rights granted to Developer by this Agreement pursuant to Section 2.D of this Agreement.

14.E. Project Is a Private Undertaking

The development proposed to be undertaken by Developer on the Project Site is a private development. Except for that portion thereof to be devoted to public improvements to be constructed by Developer in accordance with the Vested Elements, City shall have no interest in, responsibility for or duty to third persons concerning any of said improvements, and Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

14.F. Hold Harmless; Indemnification of City

An owner of any portion of the Project Site shall hold and save City, its officers and employees, harmless and defend and indemnify them of and from any and all claims, losses, costs, damages,

injuries or expenses (including, but not limited to, attorney fees, expert witness and consultant fees, and other costs of litigation) (each a "Claim") arising out of (1) the failure or alleged failure of a person or entity, including but not limited to a general contractor , or its subcontractors, to pay prevailing wages as determined pursuant to Labor Code Sections 1720, et seq. to employ apprentices pursuant to Labor Code Sections 1777.5, and implementing regulations of the DIR or to comply with the other regulations of the DIR in connections with the development of such parcel; and (2) the injury to or death of persons or damage to property that arises during the development or construction of the Project, including any action or activity by City, on those portions of the Project Site owned by such owner; provided, however, that the foregoing hold harmless, defense and indemnity shall not include defense and indemnification against: (i) suits and actions brought by Developer by reason of City's default or alleged default hereunder, or (ii) suits and actions arising from the willful misconduct of the City, its officers and employees. Notwithstanding anything to the contrary in this Agreement, upon termination of this Agreement the obligations under this Section 14.F shall survive only as to Claims that accrued prior to termination of the Agreement.

14.G. Cooperation In The Event Of Legal Challenge

In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any Project Approval or Subsequent Approval, the parties shall cooperate in defending such action or proceeding. City shall promptly notify Developer of any such action against City. If City fails to cooperate with Developer in the defense of such action, Developer shall not thereafter be responsible for City's defense. The parties shall use their best efforts to select mutually agreeable legal counsel to defend such action, and Developer shall pay the fees and expenses for such legal counsel and any expert witnesses. Developer's obligation to pay for legal counsel and expert witness fees shall not extend to fees incurred on a City-requested appeal unless otherwise authorized by Developer. In the event City and Developer are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel at its own expense.

14.H. Notice

Any notice or communication required hereunder between the parties shall be in writing, and may be given either personally or by registered or certified mail (return receipt requested). If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto, and any person or entity who acquires a portion of the Project Site, may at any time, by giving ten (10) days written notice to the other party hereto, designate a different address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their respective addresses set forth below:

If to City: Community Development Director
City of Vacaville

650 Merchant Street
Vacaville, California 95688

With a copy to: City Attorney
City of Vacaville
650 Merchant Street
Vacaville, California 95688

If to Developer: Vacaville S2 Investors, LLC
c/o D.R. Stephens and Company
465 California Street, Suite 330
San Francisco, CA 94104
Attn: Donald Stephens

14.I. No Joint Venture or Partnership

Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as creating any joint venture or partnership between City and Developer.

14.J. Severability

If any provision of this Agreement is held to be invalid, void or unenforceable by a court of law but the remainder of this Agreement can be enforced without failure of material consideration to any party, then this Agreement shall remain in full force and effect, unless amended or modified in writing by mutual consent of the parties. If any material provision of this Agreement is held invalid, void or unenforceable, however, the owner of any portion of the Project Site affected by such holding shall have the right in its sole and absolute discretion, to terminate this Agreement as it applies to such portion of the Project Site, upon providing written notice of such termination to City.

14.K. Interpretation

To the maximum extent possible, this Agreement shall be construed to provide binding effect to the Vested Elements, to facilitate use of the Project Site as therein contemplated and to allow development to proceed upon all of the terms and conditions applicable thereto, including, without limitation, public improvements to be constructed and public areas to be dedicated.

14.L. Completion or Revocation

Upon completion of performance by the parties or termination of this Agreement, a written statement acknowledging such completion or termination, signed by the appropriate agents of City and Developer, shall be recorded in the Office of the Recorder of the County of Solano, California.

14.M. Estoppel Certificate

Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the best knowledge of the certifying party: (i) this Agreement is in full force and effect and a binding obligation of the parties; (ii) this Agreement has not been amended or modified either orally or in writing or, if so amended, identifying such written amendments; (iii) the requesting party is not in default in the performance of its obligations under this Agreement or, if in default, identifying the nature and amount of any such default; and or (iv) the Term of this Agreement. A party receiving a request hereunder shall execute and return such certificate or provide a written response explaining why it will not do so within thirty (30) days following the receipt thereof. Each party acknowledges that such a certificate may be relied upon by third parties acting in good faith. A certificate provided by City with respect to any portion of the Project Site shall be in recordable form and may be recorded by the requesting party with respect to the affected portion of the Project Site at the expense of the requesting party.

14.N. Construction

All parties have been represented by counsel in the preparation and review of this Agreement and no presumption or rule that ambiguity shall be construed against a drafting party shall apply to interpretation or enforcement hereof. Captions and section headings are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they apply.

14.O. City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise by this Agreement. Notwithstanding the foregoing, the City Manager may in his sole and absolute discretion, or upon the request of the City Council, present any action or approval requested under this Agreement to the City Council for its consideration, action, and direction.

14.P. Extension of Time Limits. The time limits (other than the Term) set forth in this Agreement may be extended by mutual consent in writing of the parties without amendment to this Agreement.

14.Q. Counterpart Execution

This Agreement may be executed in any number of counterparts and shall be deemed duly executed when each of the parties has executed such a counterpart.

14.R. Time

Time is of the essence of each and every provision hereof.

14.S. Exhibits

The following exhibits are referenced in this Agreement and are attached to and incorporated by reference into this Agreement:

EXHIBIT A – Legal Description

EXHIBIT B – Project Neighborhood Phasing

EXHIBIT C – Project Dedications

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

"CITY**"**

CITY OF VACAVILLE,
a Municipal Corporation

Approved as to form:

_____ _____

Len Augustine, Mayor

Melinda Stewart, City Attorney

"DEVELOPER**"**

Vacaville S2 Investors, LLC

By:_____

_

[ADD NOTARY CERTIFICATES]

Exhibit A: Legal Description

LEGAL DESCRIPTION
THE FARM PROPERTY

The land referred to is situate in the State of California, County of Solano, an unincorporated area, and is described as follows

The Northwest Quarter of Section 24, Township 6 North, Range 1 West, M.D.B.&M.

EXCEPTING THEREFROM:
All that portion thereof lying within the bounds of the Southern Pacific Railroad right-of-way.

ALSO EXCEPTING THEREFROM:
That certain Parcel of land described in the Deed from William H. Miller and wife, to Solano Irrigation District dated June 11, 1962 and recorded June 18, 1962 in Book 1146 of Official Records, Page 363, as Recorder's Instrument No. 1507.

ALSO EXCEPTING from the lands hereinbefore described, that certain 0.674 acre portion thereof conveyed in Deed from William H. Miller and wife, to Harold D. Miller and wife, dated November 7, 1961 and recorded -November 13, 1961 in Book 1108 of Official Records, Page 232, as Recorder's Instrument No. 24828.

EXCEPTING THEREFROM:
An undivided 1/3 interest in all of the oil, gas and mineral rights in and under said land as conveyed to Hazel P. Miller by Quitclaim Deed recorded June 3, 1965 in Book 1341, Page 47, Series No. 15123, Solano County Records.

ALSO EXCEPTING FROM the lands hereinbefore described, that certain Parcel of land described as follows:
Beginning at the intersection of the West line of Section 24, Township 6 North, Range 1 West, M.D.B.&M., with the North line of the Southern Pacific Railroad right-of-way (Rumsey-Elmira Branch) said West line also being the center line of County Road No. 131; thence from said point of beginning North along the West line of said Section 24 a distance of 257.00 feet; thence East 194.00 feet to the approximate center line of Alamo Creek; thence North 24° 37' 00" East along the approximate center line of said creek, 144.10 feet; thence West 254.00 feet to the West line of Section 24, as hereinbefore referred to; thence North along said West line, 199.82 feet; thence East 340.14 feet; thence South 508.26 feet to the North line of the Southern Pacific Railroad right-of way herein before referred to; thence North 88° 14' 30" West along the North line of said right-of-way, a distance of 340.30 feet to the point of beginning.

TOGETHER WITH:
All that portion of the Southwest Quarter of Section 24, Township 6 North, Range 1 West, M.D.B.&M., that lies North of the North line of the right-of-way of the Rumsey-Elmira Branch of the Southern Pacific Railroad Company.

EXCEPTING FROM the lands hereinbefore described, that certain Parcel of land described as follows:
Beginning at the intersection of the West line of Section 24, Township 6 North, Range 1 West, M.D.B.&M., with the North line of the Southern Pacific Railroad right-of-way (Rumsey-Elmira Branch), said West line also being the center line of County Road No. 131; thence from said point of beginning North along the West line of said Section 24 a distance of 257.00 feet; thence East 194.00 feet to the approximate center line of Alamo Creek; thence North 24° 37' 00" East along the approximate center line of said creek, 144.10 feet; thence West 254.00 feet to the West line of Section 24, as herein before to; thence North along said West line, 199.82 feet; thence East 340.14 feet; thence South 598.26 feet to the

North line of Southern Pacific Railroad right-of-way herein before referred to; thence North 88° 14' 30" West along the North line of said right-of-way, a distance of 340.30 feet to the point of beginning.

EXCEPTING THEREFROM:
An undivided 1/3 interest in all of the oil, gas and mineral rights in and under said land as conveyed to Hazel P. Miller by Quitclaim Deed recorded June 3, 1965 in Book 1341, Page 47, Series No. 15123, Solano County Records.

TOGETHER WITH:
Beginning at the intersection of the quarter section line between the East and West halves of Section 24, in Township 6 North, Range 1 West, Mount Diablo Base and Meridian, and the Northerly line of the right-of-way of the Rumsey Branch (at one time known as the Clear Lake Division) of the Southern Pacific Railroad, running thence along said Northerly line of said right-of-way Southeasterly 450 feet; thence at right angles North 09° 20' 00" East 39.00 feet to the middle of the bed of Alamo Creek; thence up stream along the middle of the bed of said creek in a Northwesterly direction 873.00 feet to the quarter section line running North and South through said Section 24; thence said quarter section line South 00° 07' 00" West 663.00 feet to the point of beginning.

EXCEPTING THEREFROM:
An undivided 1/3 interest in all of the oil, gas and mineral rights in and under said land as conveyed to Hazel P. Miller by Quitclaim Deed recorded June 3, 1965 in Book 1341, Page 47, Series No. 15123, Solano County Records.

TOGETHER WITH:
Commencing at a point in the center of Alamo Creek, where the line running North and South through the center of Section 24, Township 6 North, Range 1 West, M.D.B.&M., crosses said creek; running thence North 00°16' 00" East along said quarter section line, 12.04 chains to a post which is South 00° 16' 00" West 19.42 chains from a point where said quarter section line intersects the center of County Road No. 101; thence running due East 20.02 chains; thence North 00° 07' 00" East 4.85 chains to a post; thence North 88° 45' 00" East 20.015 chains to the center of County Road No. 165; thence South along the center of said county road 30 chains, more or less, to a point on the East Bank of Alamo Creek; thence Northwesterly to and along said Alamo Creek following the meanderings thereof, about 49.22 chains to the place of beginning, and being a portion of the East 1/2 of said Section 24, Township 6 North, Range 1 West, M.D.B.&M. for a more particular description reference is hereby made to a Map of Survey for M.J. Drobey, Lee Billings, C.P. Allison, et al, made by E.N. Eager, Surveyor, April 18, 1911 and filed for record in the Office of the County Recorder of Solano County, in Book 3 of Maps, Page 35.

EXCEPTING THEREFROM:
That certain Parcel of land described in Deed from William H. Miller and wife, to Solano Irrigation District, dated June 11, 1962 and recorded June 18, 1962 in Book 1146 of Official Records, Page 363, as Instrument No. 15107.

ALSO EXCEPTING FROM the lands hereinbefore described, that certain Parcel of land described as follows: Beginning at the intersection of the East line of Section 24, Township 6 North, Range 1 West, M.D.B.&M., with the North line of the Southern Pacific Railroad right-of-way (Rumsey-Elmira Branch); thence from said point of beginning, Northwesterly along the Northerly line of said railroad right-of-way on a curve to the right with a radius of 17988.95 feet and a central angle of 00° 15' 03" for a distance of 78.75 feet, said curve having a chord bearing a length of North 80° 48' 47" West, 78.74 feet; thence continuing along the Northerly line of said railroad right-of-way North 80° 41" 15" West, 540.06 feet; thence North 427.04 feet; thence East 610.67 feet to the East line of Section 24, said East line also being the center line of County Road No. 165; thence South along the East line of Section 24, a distance of 527.01 feet to the point of beginning.
ALSO EXCEPTING FROM all that land lying east of the west line of that Pacific Gas and Electric tower easement described in the deed recorded in Book 268 of Deeds at page 328.

EXCEPTING THEREFROM:
An undivided 1/3 interest in all of the oil, gas and mineral rights in and under said land as conveyed to Hazel P. Miller by Quitclaim Deed recorded June 3, 1965 in Book 1341, Page 47, Series No. 15123, Solano County Records.

TOGETHER WITH:
Beginning at a point on the North line of the right-of-way of the Clear Lake Division of the Southern Pacific Railroad in the Southeast Quarter of Section 24, Township 6 North, Range 1 West, M.D.B.&M., which point is 46 feet Westerly from the Mount Diablo Base Meridian; thence along the North line of said right-of-way, North 80° 40' 00" West 2192 feet to a point which is 450 feet Southeasterly along said railroad from the quarter section line; thence at right angles to railroad North 09° 20' 00" East 39.00 feet to the middle of the bed of Alamo Creek; thence down same in an Easterly and Southerly direction about 2560 feet to the point of beginning, and being part of the Southeast Quarter of Section 24, in Township 6 North, Range 1 West, M.D.B.&M.

EXCEPTING FROM the lands hereinbefore described that certain Parcel of land described as follows: Beginning at the intersection of the East line of Section 24, Township 6 North, Range 1 West, M.D.B.&M., with the North line of the Southern Pacific Railroad right-of-way (Rumsey-Elmira Branch); thence from said point of beginning, Northwesterly along the Northerly line of said railroad right-of-way on a curve to the right with a radius of 17988.95 feet and a central angle of 00° 15' 03" for a distance of 78.75 feet, said curve having a chord bearing and length of North 80° 48' 47" West, 78.74 feet; thence continuing along the Northerly line of said railroad right-of-way North 80° 41' 15" West, 540.06 feet; thence North 427.04 feet; thence East 610.67 feet to the East line of Section 24, said East line also being the center line of County Road No. 165; thence South along the East line of said Section 24, a distance of 527.01 feet to the point of beginning.

ALSO EXCEPTING FROM all that land lying east of the west line of that Pacific Gas and Electric tower easement described in the deed recorded in Book 268 of Deeds at page 328.

EXCEPTING THEREFROM:
An undivided 1/3 interest in all of the oil, gas and mineral rights in and under said land as conveyed to Hazel P. Miller by Quitclaim Deed recorded June 3, 1965 in Book 1341, Page 47, Series No. 15123, Solano County Records.
APN: 0138-010-030 & 0138-010-050

The land referred to is situated in the unincorporated area of the County of Solano, State of California and is described as follows;

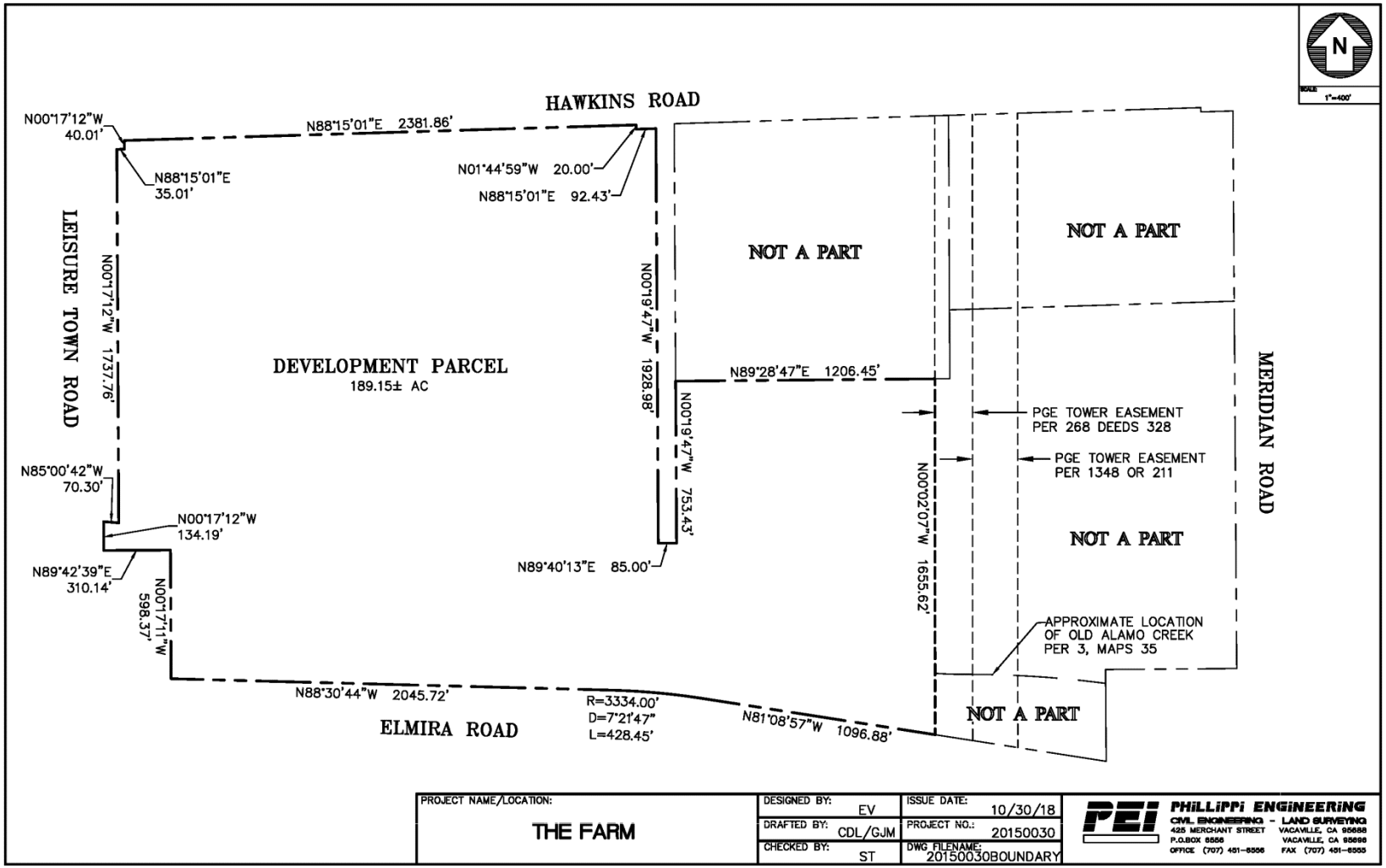
Containing 189.15 Acres, more or less.

See Exhibit, plat to accompany description, attached hereto and made a part hereof.

This Legal Description was prepared by or under the direction of:

10-30-18

Thomas A. Phillippi, RCE 32067 Date



PROJECT NAME/LOCATION: THE FARM	DESIGNED BY: EV	ISSUE DATE: 10/30/18	PHILLIPPI ENGINEERING
	DRAFTED BY: CDL/GJM	PROJECT NO.: 20150030	CIVIL ENGINEERING - LAND SURVEYING
	CHECKED BY: ST	DWG FILENAME: 20150030BOUNDARY	425 MERCHANT STREET VACAVILLE, CA 95688
			P.O.BOX 5556 VACAVILLE, CA 95696
			OFFICE (707) 451-8556 FAX (707) 451-8555

Exhibit B

Project Neighborhood Phasing

THE FARM
AT ALAMO CREEK

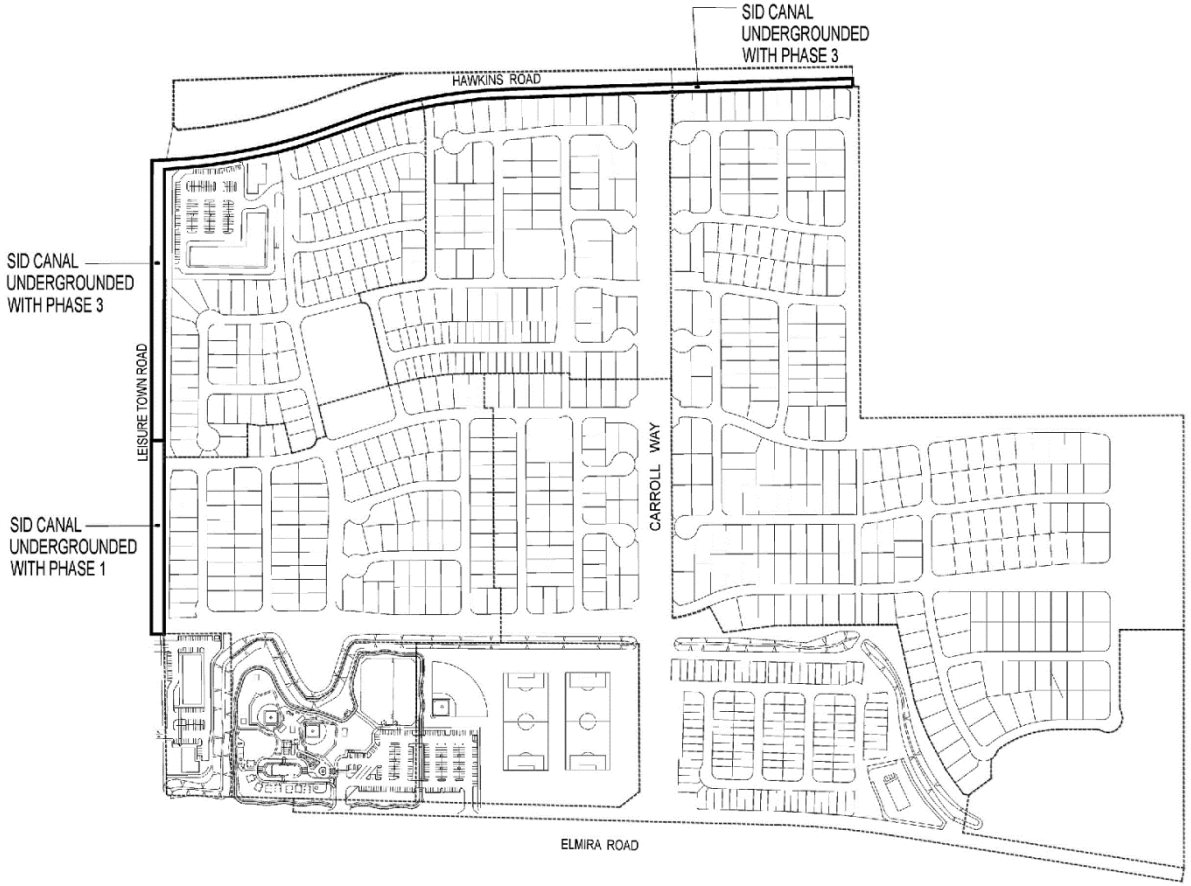
EXHIBIT B1 - SITE LAYOUT

07-24-2018

THE FARM
AT ALAMO CREEK

EXHIBIT B2 - NEIGHBORHOOD PHASING PLAN

07-16-2018



THE FARM
AT ALAMO CREEK

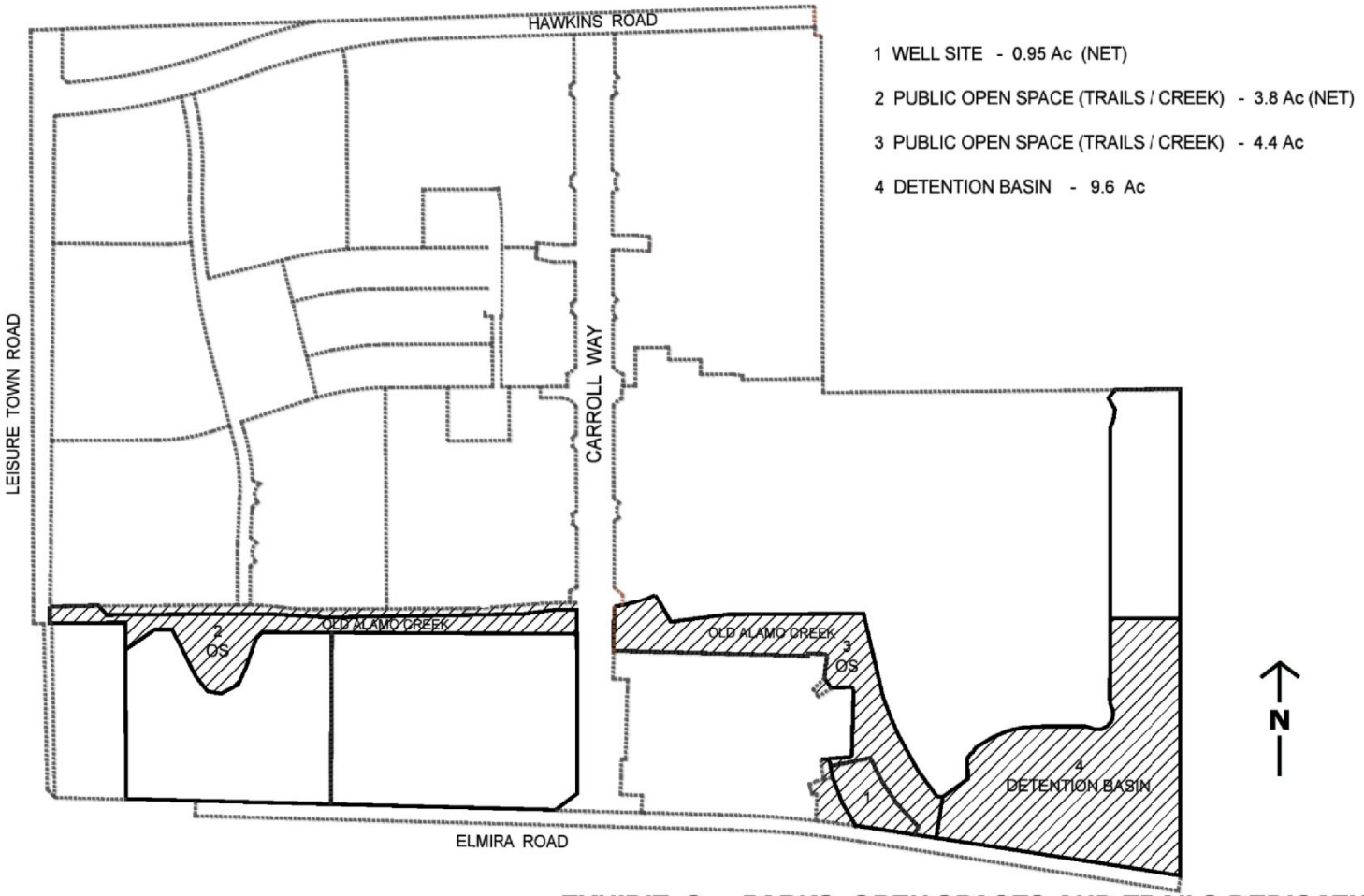
EXHIBIT B3 - SID PHASING PLAN

FOR UNDERGROUNDING IRRIGATION FACILITY ALONG LEISURE TOWN ROAD AND HAWKINS ROAD

07-16-2018

Exhibit C

Project Dedications



THE FARM
AT ALAMO CREEK

EXHIBIT C - PARKS, OPEN SPACES AND TRAILS DEDICATION

10-11-2018