

ORDINANCE NO. 1900

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VACAVILLE
APPROVING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF VACAVILLE AND FIVE PLUS, L.P. REGARDING THE DEVELOPMENT OF
THE REAL PROPERTY COMMONLY REFERRED TO AS MONTESSA
LOCATED SOUTH OF CALIFORNIA DRIVE AND WEST OF KEATING PARK
(APNS: 0128-060-110, 0128-060-120, 0128-070-010, 020, 030)**

THE CITY COUNCIL OF THE CITY OF VACAVILLE DOES ORDAIN AS FOLLOWS:

Section 1: The City Council reaffirmed the Montessa Subdivision Mitigated Negative Declaration in accordance with the findings in City Council Resolution No. 2016-074.

Section 2: The City Council adopted the Development Agreement between the City of Vacaville and Five Plus, L.P., for the Montessa Subdivision in accordance with the findings for approval.

Section 3: This Development Agreement is approved by the City Council in accordance with Chapter 14.17 Development Agreements of the Land Use and Development Code, as follows:

The Development Agreement between the City of Vacaville and Five Plus, L.P., attached hereto as Attachment A and incorporated herein, is supported by the following findings of fact:

1. That the Development Agreement is consistent with the goals, objectives, and policies of the General Plan, and any applicable specific plan or policy plan;
2. That the Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is or will be located;
3. That the Development Agreement would not be detrimental to the public health, safety, or welfare of the community;
4. That the Development Agreement would promote the public convenience, general welfare, and good land use practices, and is in the best interest of the community;
5. That the Development Agreement would not adversely affect the orderly development of property or the preservation of property values;
6. That the Development Agreement would promote and encourage the development of the proposed project by providing a greater degree of requisite certainty.

Section 4: The City Council of the City of Vacaville finds the Development Agreement, attached hereto as Attachment A, is necessary to ensure that said lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the City as a whole.

Section 5: If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more section, subsection, phrases or clauses be declared unconstitutional.

Section 6: This Ordinance shall be published in accordance with the provisions of Government Code Section 36933.

I HEREBY CERTIFY that this ordinance was **INTRODUCED** at a regular meeting of the City Council of the City of Vacaville, held on the 9th day of August, 2016, and **ADOPTED AND PASSED** at a regular meeting of the City Council of the City of Vacaville held on the 23rd day of August, 2016 by the following vote:

AYES: Councilmembers Harris, Hunt, Mashburn, Vice Mayor Rowlett, Mayor Augustine

NOES: None


ABSENT: None

ATTEST:


Michelle A. Thornbrugh, City Clerk

Dated: August 23, 2016

APPROVED:


Leonard J. Augustine, Mayor

RECORDING FEES EXEMPT
PURSUANT TO
GOVERNMENT CODE § 27383

RECORDING REQUESTED BY:
CITY OF VACAVILLE

WHEN RECORDED MAIL TO:

Michelle Thornbrugh
City Clerk
City of Vacaville
650 Merchant Street
Vacaville, CA 95688

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF VACAVILLE
AND FIVE PLUS, L.P. REGARDING
THE DEVELOPMENT OF THE REAL
PROPERTY COMMONLY REFERRED TO AS**

“MONTESSA”

August 23, 2016
(DATE)

This version printed on August 11, 2016.
File No.: 16-076 Montessa Development Agreement

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF VACAVILLE
AND FIVE PLUS, L.P., INC. REGARDING THE DEVELOPMENT OF THE REAL
PROPERTY COMMONLY REFERRED TO AS**

“MONTESSA”

THIS DEVELOPMENT AGREEMENT (hereinafter “Development Agreement or Agreement”) is entered into this ____ day of August ____, 2016, by and between FIVE PLUS, L.P., a California Corporation (“Developer”), and the CITY OF VACAVILLE, a municipal corporation (“City”), pursuant to the authority of §§ 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,”

DEFINITIONS

“**Developer**” shall mean Five Plus, L.P., Inc., its successor in interest, assignee, or any person or entity processing any subdivision map or application for building or grading permits or any other discretionary or ministerial permit for the Project Site or development authorized by this Agreement.

“**Director**” shall mean the City of Vacaville’s Director of Community Development or his or her designee.

“**Director of Public Works**” shall mean the City of Vacaville’s Director of Public Works or his or her designee.

“**Parties**” shall mean the City of Vacaville and Five Plus, L.P., or any successor in interest to this Development Agreement.

“**Project**”, “**Project Area**”, “**Project Site**”, “**Development**”, “**Development Site**”, and “**Montessa**” are synonymous and shall mean the development of the property shown in Exhibit A.

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 §§ 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 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 located at 1222 California Drive in the City of Vacaville, California, adjacent to Keating Park as shown in Exhibit A ("Project Site") and as described in Exhibit B ("Legal Description"), both exhibits being attached hereto and incorporated herein by reference:

Developer:	Five Plus, L.P.,
Assessor's Parcel Numbers:	128-060-110 & 120 and 128-070-010, 020 & 030
Area:	40± acres

C. Developer intends to develop the Project Site as a single family residence development with a maximum of 58 lots, and developed as a quality subdivision with such elements as public streets, open space, fire access roads, and other public and private improvements, all as more particularly described in the Project Approvals on file with the City herein and in the Subsequent Approvals as and when they are adopted, approved or issued, and certain off-site improvements to be constructed in connection therewith, hereinafter referred to as the "Project".

D. The parties now desire to set forth their understandings concerning the vesting of certain components of the Vacaville General Plan, the Planned Development Permit ("PD"), and the Tentative Subdivision Map 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 to the extent that they are known at the time this Development Agreement was adopted. Developer recognizes that Subsequent Approvals are subject to review by the City's planning staff, public hearings and discretionary approval by the appropriate decision-making body in accordance with the terms and conditions of this Agreement and the City of Vacaville Land Use and Development Code, and may be subject to the requirements of the California Environmental Quality Act, Public Resources Code §§ 21000, *et seq.*, the "CEQA Guidelines", Title 15 of the California Code of Regulations §§ 15000 *et seq.*, and City's local policies and guidelines (hereinafter collectively referred to as "CEQA"), to the degree that environmental impacts have not already been reviewed in accordance with CEQA such as the Mitigated Negative Declaration and Mitigation Monitoring Plan prepared for this Agreement and the Project.

E. City acknowledges that the commitments made herein by Developer further the City's efforts for development of the Project Site, and 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 the Project including, without [imitation, increased tax revenues, coordinated planning of development, installation of both on and off-site public infrastructure, creation of additional housing opportunities within the City, and the Developer's agreement to dedicate open space as provided for herein.

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 concerning the vesting of Developer's right to develop the Project Site in accordance with the Project Approvals. Developer will receive by this Agreement certain assurances concerning the conditions under which it may proceed with the Project and, therefore, desires to enter into this Agreement.

G. It is the intent of the City Council in approving this Agreement and all Subsequent Approvals that the existing residents of Vacaville and the City's General Fund will not bear any of the short or long-term costs resulting from any development of the Project Site. Developer shall ensure that the full cost to construct and maintain all public and private on-site and off-site infrastructure and to provide public services to the Project shall be borne by the Project through direct financial contributions such as the payment of development impact fees and through funding mechanisms such as Public Safety Districts, Mello-Roos Community Facilities Districts, Lighting and Landscaping Districts, Assessment Districts, and/or Benefit Districts.

H. Developer has secured or will secure 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) Reaffirmation of Mitigated Negative Declaration and updated Mitigation Monitoring and Reporting Plan. The potential environmental impacts of the Project contemplated and addressed by the adopted Mitigated Negative Declaration (City Council of the City of Vacaville Resolution 2007-74), including the Project Approvals and the Subsequent Approvals, have properly been reviewed and assessed by City pursuant to CEQA. Pursuant to CEQA and in accordance with the recommendation of City's Planning Commission, the City Council adopted a resolution reaffirming the Mitigated Negative Declaration with specific findings and a Mitigation Monitoring and Reporting Plan. December 12, 2014, the Community Development Director approved an updated Mitigation Monitoring and Reporting Plan that supercedes the previous plan. Resolution No. 2016-074

(2) Planned Development Permit ("PD" Permit). Following review and recommendation by the City's Planning Commission, and after a duly noticed public hearing and adoption of the Mitigated Negative Declaration, the City Council of the City of Vacaville, by resolution, approved the Time Extension for the existing Planned Development setting forth City land use regulations and development criteria relating to the development of the Project on the Project Site. On August 9, 2016, following a duly noticed public hearing, the City City Council of the City of Vacaville, by Resolution No. 2016-075, made the appropriate findings and approved a limited PD Permit for purposes of reinstating the development standards and design guidelines governing the architecture for the Project on the Project Site.

(3) Tentative Subdivision Map. Following review and recommendation of the City's Planning Commission, and after a duly noticed public hearing and reaffirmation of the Mitigated Negative Declaration, the City Council of the City of Vacaville, by Resolution 2016-075, approved the Time Extension for the existing Tentative Subdivision Map, dated November 11, 2006, creating 58 lots for residential development and parcels for agricultural hillside/open space and other public purposes.

(4) Conditions of Approval. Following review and recommendation of the City's Planning Commission, and after a duly noticed public hearing and reaffirmation of the Mitigated Negative Declaration, the City Council of the City of Vacaville, by Resolution No. 2016-075, approved Time Extesions for the Montessa Subdivision entitlements, subject to the revised Conditions of Approval.

(5) Development Agreement. On July 19, 2016, following a duly noticed public hearing, the City of Vacaville Planning Commission made the appropriate findings required by Division 14.17 of Vacaville Municipal Code, and recommended that the City Council of the City of Vacaville approve this Agreement. On August 23, 2016, the City Council adopted an Ordinance approving and authorizing the execution of this Agreement.

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

(1) Determined that the July 10, 2007 Mitigated Negative Declaration adequately addressed the environmental impacts of this Agreement and made the findings required by CEQA; and

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

J. 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 which are consistent with the Project (collectively, the "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, architectural and landscaping plan approvals), deferred, improvement agreements and other agreements relating to the Project, 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, rezonings, encroachment permits, and any amendments to, or repealing of, any of the foregoing.

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

AGREEMENT

SECTION 1. EFFECTIVE DATE AND TERM.

A. Effective Date. This Agreement shall become effective on the thirty-first (31) day following the adoption by the City Council of the ordinance approving this Agreement, or upon receipt of the certified results of a referendum election upholding this Agreement, whichever is later (the "Effective Date").

B. Term. This Agreement shall commence upon the Effective Date and shall remain in effect for a term of ten (10) years ("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.

C. **Termination of Agreement.** In the event Developer has not recorded a Final Map and commenced grading and site improvement activities on or before the fifth (5th) anniversary of the Effective Date, this Agreement shall terminate without further action by City and shall not be subject to the cure provisions of Section 5 of this Agreement relating to default. As used in this Subsection, "Commenced" is defined to mean that the improvement plans for all infrastructure have been approved by City and construction of infrastructure on the Project Site has begun and is diligently proceeding towards completion.

SECTION 2. PROPERTY SUBJECT TO THIS DEVELOPMENT AGREEMENT. All of the property described in Exhibit B ("Legal Description") shall be subject to this Agreement.

SECTION 3. OBLIGATIONS OF CITY.

A. **No Conflicting Enactments; Protection From Moratoria; Compliance with the Planned Growth Ordinance; Exception For Development Limitation Due To Lack Of Infrastructure Or Inability Of City To Provide Public Services; Timing Of Project Construction And Completion.** After the adoption of this Agreement, 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 of 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 Municipal and Land Use and Development Codes, ordinances, or regulations, or adoption of any provision of the Vacaville Municipal Code or Land Use and Development 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 proposed development as a condition of issuance of any City permit, approval or other land use entitlement sought by Developer for the Project Site.

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 and in conformance with any ordinance, resolution, rule, procedure or other measure that relates to the rate, timing or sequencing of development of the Project Site. 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 of utilities as a condition of permits or upon approval of other entitlements sought by Developer.

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, the zoning codes, and other rules, regulations, ordinances and official policies hereinafter adopted (and in effect at the time the application was deemed complete for processing) 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, as subsequently amended in 2016. And the associated and incorporated Energy Conservation Act Strategy (ECAS).
- (2) The Planned Development Permit for the Montessa Project from File No. 16-076.
- (3) The existing Zones of RL-6 and RL-10.
- (4) The Mitigation Monitoring and Reporting Plan adopted by City for the Project.
- (5) Parcel map waivers, tentative parcel maps, tentative subdivision maps, vesting tentative parcel maps, vesting tentative subdivision maps, 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 Subsection C below.

C. Term Of Subdivision Maps And Use Permits. The term of any parcel map waiver, tentative parcel map, tentative subdivision map, vesting tentative parcel map or vesting tentative subdivision map, relating to the Project Site, or any part thereof, and the term of any subdivision improvement agreement related to development of the Project Site, or any portion thereof, shall be the period of time specified in the approval of said parcel map waiver, tentative parcel map, tentative subdivision map, vesting tentative parcel map, vesting tentative subdivision map, or subdivision improvement agreement or, if no period of time is specified, then the term shall be ten (10) years. Developer may seek time extensions of tentative maps in accordance with the provisions of the Subdivision Map Act.

The term of any Planned Development permit, use permit, design review approval or other zoning entitlement or discretionary approval for development of any portion of the Project Site shall be ten (10) years from the approval date which period of time may be extended for an additional one (1) year period by the entity or governing body having decision-making authority

over such time extension requests. Any such permit, approval, or entitlement shall continue in effect and no time extension will be necessary if the building foundation for at least one (1) home is installed and completed prior to expiration of such permit, approval, or entitlement and, thereafter, construction of the Project diligently continues towards completion within the general time constraints of this Agreement.

D. Applicable Subdivision And Safety Regulations: No Conflicting Enactments. Except as expressly provided in the conditions of approval of an entitlement, every parcel map waiver, tentative parcel map, tentative subdivision map, design review application, use permit or other discretionary permit application shall be processed in accordance with the laws, ordinances, rules and regulations in effect on the date that the application therefore is determined by City to be complete. Further, 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, 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, City shall not impose upon the Project (whether by Subsequent Approval or other action by City or by initiative, referendum or other means) any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually referred to as a "City Law") that reduces the development rights granted to Developer by this Agreement. Without limiting the generality of the foregoing, any City Law shall be deemed to reduce the development rights provided hereby if such City Law would accomplish any of the following results in a manner inconsistent with or more restrictive than the Project Approvals or Subsequent Approvals consistent with the Project Approvals, 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) Limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed buildings or other improvements. 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 Planned Development Permit. City, however, agrees to cooperate with Developer in Developer's attempt to mitigate or minimize the impacts from such reductions in density on the over-all 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;

(3) Limit or control 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) Enforce or apply any City Law to the Project not otherwise allowed by this Agreement 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, (ii) not exclusively imposed upon or assessed against the Project, and (iii) City cannot encumber the Project with an affordable housing program unless such a program is mandated by the Legislature of the State of California or by court order; or

(5) Require Developer to obtain 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.

E. 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. City hereby agrees to reserve on behalf of Developer for the Project under City's Planned Growth Ordinance (Division 14.05 of the Vacaville Municipal Code), building permits as follows:

(1) Commencing in the calendar year in which the first tentative subdivision 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 up to Twenty-nine (29) building permits to Developer. 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.

F. Undergrounding Of Public Utilities. The City will, to the extent reasonably possible, and at no cost to the City, exercise its authority, if any exists, with Pacific Gas & Electric Company ("PG&E"), SBC, and Comcast of California/ Massachusetts/ Michigan/ Utah, Inc. ("Comcast"), and their successors and assigns to place their power, cable television, and telephone lines and equipment underground within the Project Site so as to minimize the Developer's cost of undergrounding utilities. Developer shall pay its fair share of the costs of undergrounding utilities along California Drive pursuant to City requirements.

G. Coordination Of Construction Of Off-site Improvements. Developer acknowledges that certain off-site improvements may be necessary to support development of the Project Site or may be required as environmental or other mitigation measures in connection with development of the Project Site. The cost of such off-site improvements shall be borne solely by Developer or other Developers in the area benefiting from such off-site improvements.

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 Mitigation Monitoring and Reporting Plan adopted for the Project Approvals, as authorized by the Vacaville Municipal Code. City shall not impose additional mitigation measures on the basis that the Mitigated Negative Declaration fully analyzes the environmental impacts of the Project, thereby alleviating the need for additional environmental review except in the circumstances described in Public Resources Code § 21166.

I. Benefit Districts. City agrees to take the appropriate measures to create a Benefit District, or Districts, or amend any existing Districts as may be needed to provide reimbursement to Developer for any infrastructure costs that may benefit other private property owners.

J. Lighting and Landscaping Districts. City and Developer will cooperate in creating or adding the project to an existing Lighting and Landscaping District to fund the on-going maintenance of any publicly owned lands or improvements, including, without limitation, landscaping, storm water detention basins, parks, trails, and open space and the cost for street lighting.

K. Processing Of Project Applications.

(1) 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 permits, approvals, or entitlements needed for the Project.

(2) City shall meet with Developer at Developer's written request and at a time mutually acceptable to the parties prior to Developer's submission of said applications in an effort to address Developer's questions so that Developer's applications, when submitted, will be accurate and complete. Upon submission by Developer of an application determined to be complete by City in its sole discretion, together with appropriate processing fees, City shall diligently process the application. If City is unable to timely process any such application, the City shall engage outside consultants to aid in such processing, provided Developer promptly pays all of City's actual costs plus City's standard administrative overhead charge of fifteen percent (15%) related to the retention of such outside consultants, which may include an advanced deposit reasonably deemed appropriate by City. In this regard, Developer, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and Developer shall cause Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefore.

(3) If City denies an application, City shall specify the reasons therefore.

SECTION 4. DEVELOPER'S OBLIGATIONS.

A. No Obligation To Develop. Developer shall have no obligation to initiate or complete development of any phase of the Project Site within any period of time except (i) pursuant to 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, (ii) pursuant to the conditions for commencement of construction

stated in any use permit, design review approval or entitlement or approval for construction of specific improvements on a specific parcel, or (iii) as provided in the Subdivision Map Act (Gov't Code §§ 66400 et. seq.) or Divisions 14.11 ("Subdivisions") or 14.12 ("Dedications and Improvements") of the Vacaville Municipal Code, as applied to subdivision improvement agreements.

B. General Obligations.

(1) 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 Developer's acceptance of, and agreement to comply with, the terms and conditions of the Project Approvals and Subsequent Approvals.

(2) Developer shall construct all on-site and off-site infrastructure improvements necessary to support development of the Project Site in a timely manner in accordance with the Civil Improvement Plans and construction schedule approved by City. City shall review the plans of all infrastructure improvements including, without limitation, the phasing or sequencing of water lines, sewer lines, storm drainage lines, joint trenches, paving, street and intersection improvements and the construction of buildings prior to initiating construction of each phase of development. The City Engineer may impose additional on-site and off-site improvements or other measures, including, without limitation, traffic control and access, emergency access, and storm water management as may be needed to protect the health, safety, welfare, and convenience of surrounding properties.

(3) At the time of submittal of Developer's subdivision improvement plans, Developer shall also submit a construction schedule identifying the timing and sequencing of infrastructure improvements and what measures will be in place to ensure that there will be minimal disruption to surrounding properties. Such measures will be reviewed and approved by the City Engineer and, if applicable, coordinated with developments on such surrounding properties.

(4) During construction, Developer shall construct or install any temporary improvements necessary for the convenience and coordination of existing development and construction on adjoining or nearby properties. In the event Developer does not construct, install, provide, or maintain necessary temporary improvements, City shall have the right to withhold building permits, inspections, or occupancy approvals or stop all construction activities until such improvements are constructed, installed or provided to the satisfaction of the City Engineer or Director of Public Works.

C. Processing Charges. Development Impact Fees Applicable To Project Site. Every application for a Subsequent Approval and every Subsequent 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, without limitation, 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 part thereof, as a condition of approval of such development, including without

limitation, fees imposed to mitigate the Project's environmental impacts, subject to the following:

(1) New Development Impact Fees. Nothing herein contained shall be construed to prevent City from enacting new regulatory fees, development impact fees and/or development impositions that may be imposed on all or portions of the Project Site or development thereof provided: (a) the amount charged has been determined in accordance with all applicable laws; and (b) Following the fee credit requirements found in Chapter 11 of the Municipal Code, Developer is given credit for: (i) fees previously paid, (ii) the reasonable value of specific duplicative work performed as a result of such new development impositions, and (iii) the fair market value of land previously dedicated by Developer prior to the enactment of such regulatory fee requirements where such fees, work or land dedication requirement relate to or pertain to the same mitigation measures addressed by the new fee or imposition requirement.

(2) Development Impact Fees Defined. "Development Impact Fees" ("DIF's") shall include all charges, levies and impositions that are or would be so categorized as DIF's under applicable California law as of the Effective Date 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.

(3) Limitation on Development Impact Fees. Notwithstanding the provisions of Subsection (1) above, the Project Site shall not be subject to any new Development Impact Fee enacted after the Effective Date of this Agreement unless: (a) it applies on a City-wide basis (although zones of benefit may be designated by City with charges allocated among the properties within such zone based upon the benefit received by such properties); and (b) is not, directly or in practical effect, targeted against or limited to the Project Site, any portion thereof or the use to which the Project Site is put unless such fee is imposed and used to mitigate an impact caused by the development of the Project Site that has not been previously addressed in this Agreement.

(4) Processing Costs. Except to the extent that processing costs are Vested Elements, nothing herein contained shall exempt Developer from paying processing costs imposed by City for the processing of Developer's applications, including such funds 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: (a) the scope of work to be performed by such consultant; (b) the projected costs associated with such work; and (c) the particular consultant engaged to conduct such work.

(5) Change in Amount of Development Impact Fees. If the amount of any of City's development impact fees is reduced or eliminated by a state or federal legislative, executive, or judicial action, such action shall not relieve Developer of its obligation to pay such fee in the same manner and in the same amount required hereunder irrespective of such state or federal action.

D. Impact Mitigation: No Cost To City. Developer shall, without cost or expense to City, construct or install all public improvements (including, without limitation, landscaping) necessary to provide public services in support of development of the Project Site or that are constructed or installed as conditions of development as generally described in the Planned Development Permit.

E. Developer To Procure Financing For Major Infrastructure. Developer shall obtain any and all funding needed to construct on-site and off-site streets and intersection improvements, sewer collection systems, water distribution systems, storm water management systems, utilities, and roadway improvements on the Project Site without cost or expense to City, including any new improvements or up-sizing of existing facilities that may be needed to support the Project and any future development that will benefit from the improvement or upsizing. Developer shall not be required to pay for any improvements prior to the approval of the Final Map.

F. Assurances Concerning On-Site Improvements. Developer shall be responsible for the construction of improvements required within those portions of the Project Site to be subdivided and shall provide written assurance thereof in a form acceptable to City as a condition of filing the final subdivision maps or parcel maps for such portions of the Project Site. Such assurance shall be in the form of a written improvement agreement entered into in accordance with procedures established pursuant to Division 14.12 of the Land Use and Development Code, which shall include the posting of a bond or other surety acceptable to City provided as therein. All standards for construction of the surface streets, storm drains, sanitary sewers, curbs, gutters, sidewalks and utilities, the terms of contracts for provision thereof and other terms and conditions applicable to the work of construction as well as for dedication of property interests required to be dedicated shall be those standard conditions established by City through its Public Works Department and Community Development Department, as may be adopted and amended from time to time, that is in effect generally throughout the City when Developer seeks to develop a portion or portions of the Project Site.

G. Infrastructure Construction; Dedication Of Land. Rights of Way And Easements. Developer shall pay the full costs of all on-site infrastructure for the Project Site and all its proportionate share of off-site infrastructure necessary to serve the Project Site, subject to any oversizing requirements deemed appropriate by City. Any oversizing shall be reimbursed to Developer in accordance with the provisions of City's Benefit District Ordinance (Division 14.15 of the Vacaville Municipal Code); however, the term of any such reimbursement shall be twenty (20) years. No reimbursement shall be made to Developer after such twenty (20) year term, even though the oversized infrastructure may benefit other development occurring after that time. Developer shall be required to post financial security in an amount, form and manner acceptable to the City Engineer and City Attorney to ensure that adequate funds will be available to fund the construction of on-site and off-site infrastructure. Developer may utilize those financing mechanisms deemed appropriate by City in its sole discretion and reasonable judgment, which financing mechanisms shall not involve or require the payment of any City funds for such improvements.

Developer shall dedicate to City, without compensation, deduction, or credit, road rights-of-way, utility and other easements required for development of the Project Site in accordance with the Vested Elements.

H. Developer Funding of Infrastructure Shortfalls: 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, including, but not limited to, sewer, water, roadway and intersection improvements, and/or storm drain facilities needed to serve the Project Site, Developer shall have the option of proceeding with the development of such improvements upon Developer's procurement of a source of funds, reasonably acceptable to City, that is sufficient to make up the shortfall in funding for such improvements.

I. No Mineral Exploitation; Water Rights; Abandonment of Existing Water Wells; And Water System.

(1) No portion of the surface of the land and no portion of the Montessa Project Site 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 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.

(2) 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. Developer shall grant to City with the first Final Map for the Project Area, in perpetuity, 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 of the land.

(3) Prior to the issuance of building permits for development within the Project Area, all existing private wells on the property shall be abandoned and sealed in accordance with Solano County requirements and applicable State Department of Water Resources Bulletins.

J. Dedications Of Greenbelts. Buffers, Open Space, Parks. Landscaped Areas, And Trails Lying Within The Project Site.

(1) Greenbelts, buffers, open space areas, parks, landscaped areas, any fire protection buffer zones, pedestrian or bicycle trails, and other trails and access points as generally shown on the Planned Development and shown on the Subdivision Final Maps lying within the Project Site (not covered by any of the foregoing sections) shall be dedicated to City by grant or dedication in a form and manner acceptable to the City Attorney, as a condition, precedent to the recording of the Final Map for the portion of the Project Site where such item(s) are to be located; provided, however, that City shall have no obligation to accept such dedications. Greenbelts, buffers and open space areas may include wetlands, storm water detention basins, fire protection buffer zones, landscaping, and decorative planting areas that do not interfere with greenbelt, buffer and open space uses. Developer shall be responsible for any and all approvals, permits, or other entitlements required by any County, State, or Federal Agency with jurisdiction over any sensitive habitat or resources on the subject property.

(2) As a condition of acceptance of such dedications by City, Developer shall propose and demonstrate to City's reasonable satisfaction a permanent method or mechanism acceptable to City to maintain said greenbelts, buffers, open space areas, parks, landscaped area, fire protection buffer zones, fire protection buffer zones, and trails.

(3) The parties acknowledge that the City will not grant Development Impact Fee credit for any trails or for park land that will also serve as storm water detention facilities or for the lands dedicated as Hillside Open Space or for expansion of Keating Park.

K. Dedicated Property Shall Be Unencumbered. All real property or interests in land offered for dedication by Developer to City shall be free and clear of 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. The developer shall furnish a copy of a recent title report verifying these conditions are met prior to approval or acceptance of any dedications.

L. Developer To Provide Projections For Development Of The Project. In order to facilitate the timely development of the Project Site, Developer shall provide City with its projected timetable for the design and construction of the Project ("Development Projections") prior to the initiation of grading or infrastructure installation. In addition, Developer shall provide Development Projections with the documentation Developer is required to provide City in conjunction with the "annual review," as set forth in Section 6 of this Agreement.

M. Abandonment of Septic Systems. Prior to the commencement of grading activities in the Project Area, Developer shall demolish all private septic systems, including, without limitation, any cesspools, tanks, and leech fields, in accordance with City, Solano County, state and federal requirements. Tanks shall be cleaned and its contents disposed of in accordance with all applicable requirements.

N. Acquisition of Domestic Water Supply to Serve Project. Developer agrees to pay \$2,129.00 per dwelling unit as payment in full for the cost of acquiring additional domestic water to serve the residential uses contemplated by the Project. The cost will increase every March 1 at a rate based on the Construction Index published by Engineering News Record for construction costs in the San Francisco Bay Area. This cost is in addition to and payable with the standard water service connection fee assessed at the issuance of each building permit.

O. Roadway and Intersection Improvements.

(1) Developer shall pay the full cost of any new on-site and off-site roadway and intersection improvements necessary to accommodate the Project.

(2) Except as expressly noted in the Project Approvals, Conditions of Approval and on the Final Map, all public streets within the boundaries of the Project Site shall be designed and constructed in accordance with the City's standard specifications for streets, including right-of-way widths, street sections, construction standards, and materials.

(3) Developer shall install all improvements to those portions of California Drive fronting the Project Site, as required by the City Engineer, in the first phase of construction. The City will cooperate with Developer to form a Benefit District or amend an existing Benefit District to reimburse Developer for the cost of needed improvements fronting property owned by others for which a benefit will ultimately be derived. Developer shall also widen California Drive to its full width across the Keating Park frontage, not including the installation of any

sidewalk or under-grounding of any overhead utilities. The cost of this widening across the Keating Park street frontage shall be paid by Developer without any reimbursement from City.

(4) Developer shall construct a bicycle path and sidewalk a minimum of ten feet wide and paved to the satisfaction of the City Engineer, within the landscape setback along the Project's frontage of California Drive which shall connect with the internal street network.

P. Fire Protection. Developer shall comply with any applicable requirements of the Vacaville Fire Department Development Standards for New Construction Adjacent to Open Lands Where Wildfire is a Threat.

Q. Vacaville Unified School District Mitigation Fees. Developer agrees to pay to Vacaville Unified School District ("VUSD") a school mitigation fee which may exceed the statutory fee established by the State Allocation Board. Developer agrees to pay this mitigation fee prior to the issuance of each building permit

R. Drainage. Developer shall be responsible for the payment of all City Storm Water Conveyance and Detention fees in place at the time of recording of the Final Map. The Public Works Director shall grant Developer credit for certain off-site storm water improvements installed by Developer. Developer is responsible to secure any necessary permits to enter, drainage easements or any other rights to construct and maintain facilities on neighboring properties. If Developer is unable to secure the necessary permits or easements, the Developer shall modify the Tentative Map to show the necessary improvements on Developer property.

S. Montessa Tentative Subdivision Map Conditions of Approval. Developer shall comply with all Conditions of Approval of the Montessa Tentative Subdivision Map. In the event of a conflict between any provision of this Development Agreement and the Tentative Subdivision Map Conditions of Approval, this Agreement shall prevail.

T. Community Facilities District ("CFD") Formation. A single Community Facilities District (known as CFD #12) has been formed for residential infill projects located throughout the City. Developer shall apply for and procure adoption by City of such resolutions, ordinances, and other actions as may be required to amend CFD #12 to include the Montessa Project. The purpose of CFD #12 is to provide a funding mechanism to pay for the full cost of City Fire protection and police protection services for infill developments such as the Montessa Project, including the on-going costs for all salaries and benefits for the additional police and fire personnel required to serve said Project Area. Developer understands and agrees that assessments for the CFD will increase at a rate of the Consumer Price Index (CPI) for the San Francisco Bay Area per year. The Montessa Project Area shall be annexed into CFD #12 before recordation of the First Final Map for the Project Area. City acknowledges that time is of the essence and agrees to process and act upon such formation in good faith and with due diligence. Developer shall pay any costs associated with amending CFD #12 to include the Montessa Project Area.

SECTION 5. DEFAULT, REMEDIES. TERMINATION OF AGREEMENT.

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 thirty (30) 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 delivery of the 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 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. Any liability occasioned by such default shall be the responsibility of the owner(s) of the lot or parcel involving such default.

B. Remedies. Upon expiration of the cure period referenced above, if the default remains uncured, or for such cures that cannot be accomplished within such cure period the defaulting party has not commenced such cure during such period and/or 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 § 65868, or pursue such other remedies as may be available to such party. Notice of intent to terminate shall be given in writing by personal service or certified mail, return receipt requested. Upon delivery by City of notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within sixty (60) days in accordance with Government Code §§ 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 in Subsection 6 below. Any determination of default or any determination of failure to demonstrate good faith compliance as a part of 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. Notwithstanding any other provision of this Agreement to the contrary, remedies for a default by Developer or its successor or assigns 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 the obligations

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 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.

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.

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

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 its successor in interest to 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.

F. 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 6. ANNUAL REVIEW.

Good faith compliance by Developer with the provisions of this Agreement shall be subject to annual review pursuant to Government Code § 65865.1 and Chapter 14.17.218.010 of the Vacaville Municipal Code, utilizing the following procedures and subject to the fee established by the City Council for such annual review:

A. Submission By Developer; Result Of Failure To Submit. Review shall be conducted by the Director, upon a submission made by Developer of a draft report, 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 the anniversary date of this Agreement. The Director may refer the review to the Planning

Commission pursuant to Vacaville Municipal Code § 14.17.218.010E. 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.

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.

C. Notice Of Staff Reports, Opportunity To Respond. Not less than ten (10) days prior to the conduct of any annual 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 and oral testimony at a public hearing to be held before the Director, if the Developer elects to request such a hearing.

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 5, above. Any interested person may appeal the decision of the Director directly to the City Council, provided such appeal is filed and received by the City Clerk within ten (10) calendar days after the Director has rendered his or her decision in writing or issued a Certificate of Compliance. The appeal shall otherwise be governed by the provisions of Vacaville Municipal Code § 14.17.218.010, as amended from time to time.

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 provisions of Section 5, 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.

F. Notice Of Compliance. Upon Developer's written 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 and any successor in interest or assigns to all or any portion of the Project Site will have the right to record such notice at his or her own expense.

SECTION 7. MITIGATION MONITORING.

Compliance with the various mitigation measures that are determined to be feasible in the Mitigated Negative Declaration certified in connection with the Project shall be determined as follows:

A. Permits And Approvals. All mitigation measures adopted with the Mitigated Negative Declaration shall be implemented or incorporated into the Project plans prior to or concurrently with the commencement of grading activities unless a specific mitigation measure provides for some other milestone.

B. Annual Review. City will review Developer's compliance with the applicable mitigation measures no less often than annually at the time the annual review of this Agreement is conducted. The draft report regarding Developer's compliance with such measures shall be initially prepared by Developer and submitted to the Director for his/her review.

SECTION 8. APPLICABLE LAWS: EXCUSABLE DELAYS; EFFECT OF SUBSEQUENT LAWS.

A. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

B. Excusable 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; 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. Where the Parties mutually agree that an Excusable Delay has occurred, the Term of this Agreement shall be extended for the length of time that the Excusable Delay existed.

C. Effect Of Subsequent Laws. 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 provisions of this Agreement shall, to the extent feasible, be modified or suspended to the extent necessary to comply with such Law.

Immediately after the parties have knowledge about the enactment of any such Law, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. Developer shall have the right to contest such Law in a court of law and seek a declaration that such Law does not affect or diminish the provisions hereof. If any such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

SECTION 9. COOPERATION OF CITY: PROCESSING OF PERMITS.

A. Other Governmental Permits. 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 the action of that nature 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 Project Approvals or Subsequent approvals granted by City. City shall not unreasonably withhold its approval of amending this Agreement in order to comply with such governmental mandate.

SECTION 10. 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:

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.

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.

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 property (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 property.

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 part thereof, pursuant to such foreclosure, shall take the Project Site, or part 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. In no event, however, shall any such Mortgagee or its successors or assigns be entitled to a building permit or occupancy certificate until all fees and other monetary obligations due under this Agreement have been paid to City.

SECTION 11. TRANSFERS AND ASSIGNMENTS.

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. "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.

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 (A) the name and address of the transferee is set forth, and (B) the transferee expressly assumes the obligations of Developer under this Agreement as to the portion of the Project Site conveyed; provided further, however, that Developer shall not be relieved of any obligation for dedication or conveyance of land required to be conveyed or dedicated pursuant to the Vested Elements. 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.

C. Approval; Right Of Amendment; Supplements Establishing Specific Rights And Restrictions; Review. 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) 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.

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.

E. Covenants Run With The Land. All of the terms, provisions, covenants, conditions, rights, powers, duties and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project Site or any portion thereof or interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors and assigns. All other provisions of this Agreement shall be enforceable during the Term hereof as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to §1468 of the California Civil Code. Each covenant to do or refrain from doing some act on the Project Site hereunder or with respect to any City-owned property or property interest: (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

SECTION 12. GENERAL PROVISIONS.

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.

B. Limitation On Effect 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.

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. This provision shall not, however, affect any separate covenants, conditions and restrictions that specifically pertain or apply to such parcel or the use thereof.

D. Amendment Of Agreement. This Agreement, including all Exhibits attached hereto and Ordinances, Resolutions and other Approvals referenced herein, represent the entire understanding of the Parties as to those matters contained herein. No prior oral or written understandings shall be of any force or effect with respect to the matters covered hereunder. 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 §§ 65867 and 65688, and Division 14.17 of the Vacaville Municipal Code, provided that:

(1) **Procedural Exemptions.** 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, the Planning Commission shall conduct a duly noticed public hearing to consider whether the Administrative Amendment should be approved or denied. The Vested Elements may not be amended except by amendment of this Agreement; provided, however, that in the case of amendments affecting portions of the Project Site, only the consent of the owner of such portion shall be required so long as the amendment does not diminish the rights appurtenant to or increase the burdens upon any other portion of the Project Site.

(2) **Exemption For Amendments Of City Land Use Regulations.** Any amendment of City land use regulations including, but not limited to, the General Plan, Specific Plan, if applicable, and Zoning Ordinances, 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 City subject to the established procedures of the Municipal Code so long as such amendment is consistent with this Agreement.

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.

F. Hold Harmless; Indemnification and Defense of City. Developer shall hold and save City, its officers and employees, harmless and indemnify and defend them from, and against 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) arising out of or in any way related to injury to or death of persons or damage to property that may arise by reason of development of those portions of the Project Site owned by Developer pursuant to this Agreement or by any action or activity by City, whether caused by joint negligence of the City, its officers or employees; provided, however, that the foregoing hold harmless and indemnity shall not include 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 City, its officers and employees.

G. Cooperation In The Event Of Legal Challenge. Pursuant to Vacaville Municipal Code § 14.09.072.190, Developer shall defend, indemnify, and hold City, its officers, officials, and employees harmless from and against any action brought by a third party to overturn, set aside, or void any Project Approval, Subsequent Approval, this Agreement, or any other action taken by City related to the Project. 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. 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.

H. Notices. 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, to: 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, to: -Five Plus, L.P.
323 Richardson Drive
Mill Valley, CA 94947

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.

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.

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.

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.

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, and if so amended, identifying such written amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, the nature and amount of any such default. 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 with respect to the affected portion of the Project Site at the expense of the requesting party.

N. Construction. All parties have been represented by counsel in the preparation 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.

O. **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.

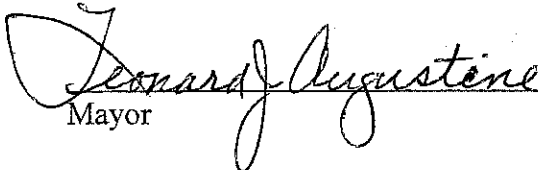
P. **Time.** Time is of the essence of each and every provision hereof.

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

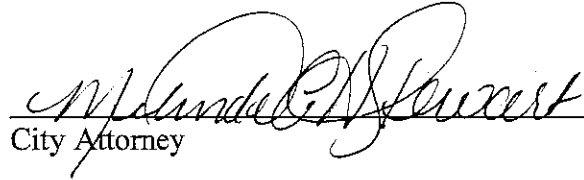
"CITY"

CITY OF VACAVILLE, a municipal corporation

Approved as to form



Mayor

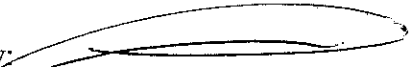


City Attorney

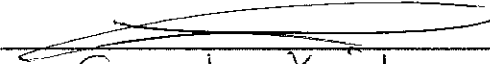
"DEVELOPER"

Five Plus, L.P., a ^{CA} California corporation

Approved as to form

By: 

Name: Carsten Kristensen
Its: President

By: 

Name: Carsten Kristensen
Its: ~~Secretary~~ Partner

Attachments: Exhibit A: Project Site and Montessa Tentative Map
Exhibit B: Legal Description

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Solano)

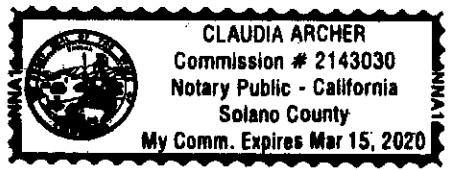
On August 23, 2016 before me, Claudia Archer, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Carsten Kristensen
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Claudia Archer
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Development Agreement Between City of Vacaville + Five Plus, LP Document Date: August 23, 2016

Number of Pages: 34 ^{incl. cover page} this Signer(s) Other Than Named Above: —

Capacity(ies) Claimed by Signer(s)

Signer's Name: Carsten Kristensen
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: Five Plus, LP

~~Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____~~

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

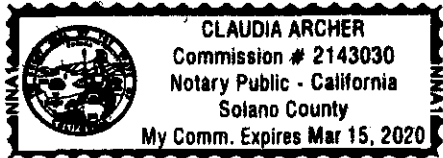
State of California _____)
County of Solano _____)

On August 24, 2016 before me, Claudia Archer, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Leonard J. Augustine
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Claudia Archer
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Development Agreement Between City of Vacaville & Five Plus LLP Document Date: August 23, 2016
Number of Pages: 35 (incl. this page) Other Than Named Above: Carsten Kristensen (signed on Aug. 23, 2016)

Capacity(ies) Claimed by Signer(s)

Signer's Name: Leonard J. Augustine
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: Mayor
Signer Is Representing: City of Vacaville

~~Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____~~

EXHIBIT A

EXHIBIT B

EXHIBIT B

DESCRIPTION:

The land referred to herein is situated in the State of California, County of Solano, City of Vacaville, and is described as follows:

PARCEL ONE:

"NEW LOT TWO" AS SET FORTH IN THAT CERTAIN CERTIFICATE OF COMPLIANCE FOR WAIVER OF PARCEL MAP (LOT LINE ADJUSTMENT) WAIVER NO. 04-08 RECORDED DECEMBER 30, 2004 AS INSTRUMENT NO. 200400189403, SOLANO COUNTY RECORDS, BEING DESCRIBED AS FOLLOWS:

ALL OF LOTS 40 AND 41 AND A PORTION OF LOTS 42, 43 AND 47 AS SHOWN WITHIN THE MAP KNOWN AND DESIGNATED AS ELIZABETH P. BUCKINGHAM'S SUBDIVISION OF THE ARAQUIPA RANCHO, FILED APRIL 26, 1888 IN BOOK 9 OF MAPS, AT PAGE 12, SOLANO COUNTY RECORDS, FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 47 OF SAID MAP (9 M 12); THENCE ALONG THE NORTH LINE OF SAID LOT 47 AND LOT 40 OF SAID MAP (9 M 12) NORTH 89° 36' 19" WEST, 650.69 FEET; (A BEARING TAKEN FOR THE PURPOSE OF THIS DESCRIPTION), SAID LINE ALSO BEING THE CENTERLINE OF "CALIFORNIA DRIVE"; THENCE CONTINUING ALONG LAST SAID NORTH LINE AND CENTERLINE NORTH 49° 32' 18" WEST, 112.14 FEET TO THE NORTHWEST CORNER OF SAID LOT 40 OF SAID MAP (9 M 12), SAID CORNER ALSO BEING THE NORTHEASTERLY CORNER OF AN EXISTING 40 FOOT WIDE PRIVATE ROAD SHOWN ON THAT CERTAIN PARCEL MAP OF THE "GONZALES PROPERTY", FILED JULY 14, 1981 IN BOOK 22, PARCEL MAPS, AT PAGE 53, SOLANO COUNTY RECORDS; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LOT 40 OF SAID MAP (9 M 12) AND THE SOUTHEASTERLY LINE OF SAID PRIVATE ROAD AS SHOWN ON SAID MAP (22 PM 53) SOUTH 40° 27' 42" WEST, 818.60 FEET TO THE MOST NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED WITHIN THAT CERTAIN "CERTIFICATE OF COMPLIANCE", FILED MAY 12, 1988 IN BOOK 1988 OFFICIAL RECORDS, AT PAGE 54272, SOLANO COUNTY RECORDS; THENCE ALONG THE NORTHEASTERLY LINE OF LAST SAID PARCEL (1988 OR 54272) SOUTH 33° 26' 14" EAST, 248.65 FEET TO AN ANGLE POINT LYING ON THE WESTERLY LINE OF LOT 43 OF SAID MAP (9 M 12); THENCE ALONG LAST SAID WESTERLY LINE THE FOLLOWING COURSES; SOUTH 07° 21' 14" EAST, 15.17 FEET; THENCE SOUTH 12° 40' 05" WEST, 166.75 FEET; THENCE SOUTH 23° 56' 06" WEST, 131.79 FEET; THENCE SOUTH 18° 21' 39" EAST, 71.25 FEET; THENCE SOUTH 00° 09' 10" WEST, 38.90 FEET; THENCE SOUTH 24° 56' 12" WEST, 151.55 FEET; THENCE SOUTH 43° 28' 11" WEST, 122.53 FEET; THENCE SOUTH 53° 29' 21" WEST, 164.67 FEET; THENCE SOUTH 70° 31' 22" WEST, 73.12 FEET; THENCE SOUTH 40° 57' 54" WEST, 69.18 FEET; THENCE SOUTH 55° 14' 34" WEST, 65.87 FEET; THENCE SOUTH 34° 57' 14" WEST, 88.28 FEET; THENCE SOUTH 57° 44' 52" WEST, 141.62 FEET; THENCE SOUTH 45° 13' 23" WEST, 69.17 FEET TO THE NORTHEASTERLY CORNER OF PARCEL 4 OF SAID "PARCEL MAP OF SAID "GONZALES PROPERTY" (22 PM 53); THENCE ALONG THE EASTERLY LINE OF LAST SAID PARCEL 4 OF SAID MAP (22 PM 53) SOUTH 16° 51' 36" EAST, 484.20 FEET TO THE MOST SOUTHERLY CORNER OF LOT 43 OF SAID MAP (9 M 12); THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF SAID LOTS 43 AND 42 THE FOLLOWING COURSES; NORTH 48° 58' 49" EAST, 297.00 FEET; NORTH 74° 00' 00" EAST, 757.02 FEET; NORTH 20° 20' 00" EAST, 469.38 FEET; THENCE LEAVING LAST SAID SOUTHEASTERLY LINE OF LOTS 43 AND 42 SOUTH 81° 22' 50" WEST, 280.02 FEET; THENCE NORTH 08° 22' 26" WEST, 258.67 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 1651.81 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 89° 06' 23" WEST; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09° 28' 04", AN ARC LENGTH OF 272.95 FEET TO THE INTERSECTION OF A BARB WIRE FENCE; THENCE NORTH 84° 44' 45" EAST, 253.19 FEET TO THE CENTER OF A POWER POLE; THENCE NORTH 83° 35' 26" EAST, 244.47 FEET TO THE SOUTHWEST CORNER OF LOT 47 OF SAID MAP (9 M 12); THENCE ALONG THE SOUTH LINE OF SAID LOT 47 (9 M 12) SOUTH 89° 40' 00" EAST, 198.07 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED WITHIN A "GRANT DEED" TO CLIFTON EVON GRADY AND JANE ALICE GRADY

FILED JULY 31, 1962 IN BOOK 1154 OF OFFICIAL RECORDS, AT PAGE 138. SOLANO COUNTY RECORDS; THENCE ALONG THE WEST LINE OF LAST SAID DEED (1154 OR 138) NORTH 00° 16' 00" EAST, 209.00 FEET TO THE NORTHWEST CORNER OF SAME SAID DEED (1154 OR 138); THENCE ALONG THE NORTH LINE OF SAID DEED (1154 OR 138) SOUTH 89° 40' 00" EAST, 208.00 FEET TO A POINT LYING ON THE EAST LINE OF SAID LOT 47 OF SAID MAP (9 M 12); THENCE ALONG LAST SAID EAST LINE NORTH 00° 16' 00" EAST, 669.51 FEET TO THE NORTHEAST CORNER OF SAID LOT 47 OF SAID MAP (9 M 12) AND THE POINT OF BEGINNING FOR THIS DESCRIPTION.

PARCEL TWO:

THAT PORTION OF LOT 47, AS LAID DOWN ON THE MAP KNOWN AND DESIGNATED AS ELIZA P. BUCKINGHAM'S SUBDIVISION OF THE ARAQUIPA RANCHO, SITUATED NEAR VACAVILLE, AS SURVEYED, PLATTED AND SUBDIVIDED BY E.N. EAGER, COUNTY SURVEYOR, MARCH 1888 AND MAP AND PLAT HAVING BEEN FILED IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY, APRIL 26, 1888, AS SHOWN AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 47, GOING THENCE IN A NORTHWESTERLY DIRECTION ALONG THE NORTHEASTERLY BOUNDARY OF SAID LOT, A DISTANCE OF 209 FEET; THENCE AT A RIGHT ANGLE IN A SOUTHWESTERLY DIRECTION ON A LINE PARALLELING THE SOUTHEASTERLY BOUNDARY OF SAID LOT, A DISTANCE OF 208 FEET; THENCE AT A RIGHT ANGLE IN A SOUTHEASTERLY DIRECTION ON A LINE PARALLELING THE NORTHEASTERLY BOUNDARY OF SAID LOT, A DISTANCE OF 209 FEET; THENCE IN A NORTHWESTERLY DIRECTION ALONG THE SOUTHEASTERLY BOUNDARY OF SAID LOT, A DISTANCE OF 208 FEET TO THE PLACE OF BEGINNING.

APN: 0128-060-110; 0128-070-010 and 020 as to Parcel One & 0128-070-030 as to Parcel Two