

Marc C. Tonnesen
Assessor/Recorder

**RECORDING FEES
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GOVERNMENT CODE §27383**

P City of Vacaville

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Taxes	0.00
other	0.00
PAID	\$0.00



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City of Vacaville

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

APN 135-080-070

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF VACAVILLE
AND BRIGHTON LANDING VACAVILLE LLC
REGARDING THE DEVELOPMENT OF REAL PROPERTY COMMONLY
REFERRED TO AS BRIGHTON LANDING**

March 12, 2013

DATE

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AND BRIGHTON LANDING VACAVILLE LLC
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THIS DEVELOPMENT AGREEMENT (hereinafter "Agreement") is entered into this 12th day of March, 2013, by and between **BRIGHTON LANDING VACAVILLE**, a California limited liability company ("Developer") and the **CITY OF VACAVILLE**, a municipal corporation ("City"), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code, and Division 14.17 of the Vacaville Municipal Code. City and Developer are also referred to hereinafter individually as "party" or collectively as the "parties."

RECITALS

This Agreement is made with reference to the following facts:

- A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California enacted Section 65864 et. seq. of the California Government Code (the "Development Agreement Legislation"). The Development Agreement Legislation authorizes City to enter into a development agreement for the development of property with any person having a legal or equitable interest in real property. City has authorized the undertaking of development agreements within the City of Vacaville and has established procedures for entering into development agreements through the adoption of Division 14.17 of the Vacaville Municipal Code.
- B. Developer has a legal and/or equitable interest in certain real property consisting of approximately 210 acres commonly referred to as Brighton Landing located east of Leisure Town Road and south of Elmira Road, Vacaville, California, as generally shown in Exhibit A attached hereto and incorporated herein by reference, and more particularly described in Exhibit A-1 attached hereto and incorporated herein by reference ("Project Site").
- C. Developer intends to develop the Project Site as a master planned community, consisting of approximately 769 single-family dwelling units, together with an approximately 50 acre private college preparatory high school site, a trail system, a neighborhood park, a public school site and an agricultural buffer along the eastern edge of the Project Site and other uses all as more specially described in the Project Approvals (as hereinafter defined) and in the Subsequent Approvals (as hereinafter defined) as and when they are adopted, approved or issued, and certain off-site improvements to be constructed in connection therewith ("Project").
- D. The parties now desire to set forth their understandings and agreement concerning the vesting of certain rights including the Vacaville General Plan ("General Plan") and the Brighton Landing specific plan ("Specific Plan") for the Project. In executing this Agreement, Developer recognizes that the use and development of the Project Site are subject to the grant of certain Subsequent Approvals, which are hereinafter defined and identified. Developer recognizes that the Subsequent Approvals are subject to review by the City's planning staff, public hearings and

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

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

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

G. Developer has entered into a purchase and sale agreement with the Roman Catholic Bishop of Sacramento (the "Catholic Diocese") under which Developer is obligated to convey a portion of the Project Site to Catholic Diocese, which, contingent on Developer receiving the necessary land use entitlements, intends to construct and operate a private college preparatory high school.

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

I. On December 18, 2012, City's Planning Commission ("Planning Commission"), the initial hearing body for purposes of development agreement review, recommended approval of this Agreement pursuant to Resolution No. 2010-118. On March 12, 2013, City's City Council ("City Council") adopted its Ordinance No. 1852 approving this Agreement and authorizing its execution.

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

(1) EIR. The Environmental Impact Report (State Clearinghouse No. 2011022044), which was prepared pursuant to CEQA, was recommended for certification by the Planning Commission on December 18, 2012, and certified with findings by the City Council on February 26, 2013, by Resolution No. 2013-014 (certifying EIR and adopting findings) (the "EIR").

(2) General Plan Amendments. On February 26, 2013, following Planning Commission review and recommendation, and after a duly-noticed public hearing, the City Council, by Resolution No. 2013-015, approved amendments to the City General Plan (the "General Plan Amendments").

(3) Specific Plan. On February 26, 2013, following Planning Commission review and recommendation, and after a duly-noticed public hearing, the City Council, by Resolution No. 2013-016, approved the *Brighton Landing Specific Plan* (the "Specific Plan").

(4) Zone Change. On March 12, 2013, following Planning Commission review and recommendation, and after a duly-noticed public hearing, the City Council, by Ordinance No. 1851, approved the rezoning of the Project Site (the "Zone Change").

(5) Tentative Map. On February 26, 2013, following Planning Commission review and recommendation, and after a duly-noticed public hearing, the City Council, by Resolution No. 2013-017, approved Tentative Map No. 10-118 for the Project Site (the "Tentative Map").

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

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

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

L. Applications for land use approvals, entitlements, and permits other than the Project Approvals that are necessary to or desirable for the development of the Project and that are consistent with the Project (collectively, "Subsequent Approvals") have been or will be made by

Developer. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals, design review approvals (including site plan, architectural and landscaping plan approvals), deferred improvement agreements and other agreements relating to the Project, conditional use permits, grading permits, building permits, lot line adjustments, sewer and water connections, certificates of occupancy, subdivision maps (including tentative, vesting tentative, parcel, vesting parcel, and final subdivision maps), preliminary and final development plans, re-zonings, encroachment permits, re-subdivisions, and any amendments to, or repealing of, any of the foregoing. At such time as any Subsequent Approval applicable to the Project Site is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be treated as a "Project Approval" under this Agreement.

M. Developer and City agree that phased final maps may be recorded in substantial conformance with the Tentative Map. These final maps will likely include at least one large lot final map that does not create individual residential lots as well as multiple small lot final maps that create the individual residential lots that will make up the Project's "Villages."

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

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

P. An amendment to the Master Water Agreement between the City and the Solano Irrigation District ("SID"), dated May 25, 1995, as amended on November 20, 2001 ("First Amendment") and February 28, 2010 ("Second Amendment") (collectively, the "MWA") is necessary in order to comply with the MWA. The City and the SID have reviewed the Project and the City's goal is to ensure that the District is aware of plans for development on the Project Site and in the area east of Leisure Town Road. During the planning process and during the analysis of the proposed Project, the City has supported and provided regular communications with SID to discuss the procedures for amending the MWA and to advise Developer of the status of the City's General Plan Update and the Project. The City and SID have entered into formal discussions on a third amendment to the MWA to consider the extension of the Urban Services Area to the P.G.&E. power line easement, as contemplated in Section 3.E. of the MWA. The City and Developer understand that a third amendment to the MWA or a revised MWA must address development in new growth areas, including the Project Site ("Water Agreement

Amendment”) and that, in the absence of a Water Agreement Amendment, the cost to the City to provide water to the Project under the MWA will increase.

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

AGREEMENT

SECTION 1. EFFECTIVE DATE AND TERM

A. Effective Date

This Agreement shall become effective on the thirty-first (31st) day following the later of (1) the adoption by the City Council of the ordinance approving this Agreement; or (2) upon receipt of the certified results of a referendum election (the “Effective Date”).

B. Term

This Agreement shall commence upon the Effective Date and shall remain in effect for a term of ten (10) years after the Effective Date (“Term”), unless said Term is terminated, modified or extended as expressly set forth in this Agreement, or by the mutual written agreement of the parties.

C. Termination Of Agreement

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

(1) **Survival of Obligations.** Upon the termination or expiration of this Agreement as provided herein, neither party shall have any further right or obligation with respect to the Project Site under this Agreement except with respect to any obligation that is specifically set forth in this Subsection as surviving the termination or expiration of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals (other than this Agreement) for the Project, except that the Developer shall continue to comply with the following obligations of this Agreement until implementation of the Project Approvals is complete: Sections 5.F. Processing Charges, Development Impact Fees Applicable to Project Site, 5.G. No Cost to City for Specific Plan Improvements, 5.N. Developer Neighborhood Park Obligations, 5.O. Temporary Sewer Connection, 5.P. Community Benefit Contribution, 5.Q. Participation in General Plan Cost Recovery, 5.R. Water Annexation Fee, 5.S. Additional Cost to Provide Water in Absence of Water Agreement Amendment, and 5.T Agricultural Land Mitigation.

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

- a. City complies with all termination procedures set forth in the Development Agreement Legislation,
- b. there is an alleged default by Developer and such default is not cured pursuant to Section 7 of this Agreement,
- c. Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council, and
- d. this Agreement is terminated only with respect to that portion of the Project Site to which the default applies.

SECTION 2. OBLIGATIONS OF CITY

A. No Conflicting Enactments; Protection From Moratoria; Exception For Development Limitation Due To Lack Of Infrastructure Or Inability Of City To Provide Public Services; Timing Of Project Construction And Completion

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

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

However, this Subsection shall not limit City's right to impose requirements concerning the timing or commencement of construction when related to the need for infrastructure or utilities as a condition of permits or upon approval of other entitlements sought by Developer.

B. Vested Elements

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

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

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

- (1) The General Plan, approved by the City Council on August 21, 1990, including any amendment thereto enacted prior to the execution of this Agreement.
- (2) The Specific Plan.
- (3) The Zone Change.
- (4) Mitigation measures proposed (and not rejected as infeasible) in the EIR certified with respect to the Specific Plan and related development project actions for the Project Site.
- (5) Parcel map waivers, tentative parcel maps, tentative subdivision maps, vesting tentative parcel maps, vesting tentative subdivision maps, conditional use permits, design review approvals and other zoning entitlements or discretionary reviews granted with respect to portions of the Project Site, subject to the provisions of Subsections 2.C and 2.D, below.

C. Subdivision And Parcel Maps

Developer shall have the right from time to time to file applications for subdivision maps, parcel map waivers and/or parcel maps with respect to some or all of the Project Site in order to re-configure the parcels comprising the Project Site as may be necessary or desirable to develop a particular phase of the Project Site or to lease, mortgage or sell a portion of the Project Site.

Nothing herein contained shall be deemed to authorize Developer to subdivide or use the Project Site, or any portion thereof, for purposes of sale, lease or financing in any manner that conflicts with the provisions of the Subdivision Map Act, Government Code §§ 66410 et seq., or with the Vacaville Municipal Code; nor shall this Agreement prevent City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not preclude or materially burden or delay Developer's realization of the rights conferred under the Vested Elements.

D. Applicable Subdivision And Safety Regulations; No Conflicting Enactments

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

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

- (1) Limits or reduces the density or intensity of the Project, or any part thereof, or otherwise 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 Specific Plan. City, however, agrees to cooperate with Developer in Developer's attempt to mitigate or minimize the impacts from such reductions in density on the overall development of the Project Site. As used in the preceding sentence, City's duty to "cooperate" with Developer does not include the obligation to contribute financially to such attempts by Developer;

- (2) Change any land uses or other permitted uses of the Project Site until the Project, or portion thereof, has been completed as evidenced by issuance of a certificate of occupancy by City (or completion of final inspection if no certificate of occupancy is required);
- (3) Limits or controls the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all necessary infrastructure adequate to serve such development or construction is constructed or provided by Developer, unless otherwise expressly provided for in this Agreement;
- (4) Except as otherwise allowed by this Agreement, enforce or apply any City Law to the Project that is not uniformly applied on a City-wide basis to substantially similar types of development projects and project sites with similar land use designations; the foregoing notwithstanding, City shall be allowed to establish zones of benefit, rate zones, benefit districts, assessment districts or similar financing mechanisms, which may apply to the Project Site, so long as the costs associated with such zones, districts or mechanisms are: (i) uniformly applied to all similar uses within the affected zone, district or area, and (ii) not exclusively imposed upon or assessed against the Project;
- (5) Require the obtainment of additional discretionary permits or approvals by City other than those required by applicable law or which City is required to impose by the authority of the state or federal government or of special districts or agencies that are not subject to the authority of City and whose jurisdiction extends to the Project Site; or
- (6) Impose or enforce any City ordinance or regulation, which controls commercial rents charged within the Project Site.

E. Processing Of Project Applications

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

- (1) **Due Diligence by City.** City will accept, make completeness determinations, and process, promptly and diligently, to completion all applications for Subsequent Approvals for the Project, in accordance with the terms of this Agreement, including, but not limited to, the following:
 - a. the processing of applications for and issuance of all discretionary approvals requiring the exercise of judgment and deliberation by City, including without limitation, the Subsequent Approvals;
 - b. the holding of any required public hearings; and
 - c. the processing of applications for and issuing of all ministerial approvals.

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

(3) **Relocation of Easements.** Upon Developer's request, City shall use its best efforts to assist Developer in:

- a. locating any new public easements required for the Project so as to minimize interference with development of the Project, and
- b. Developer's efforts to relocate or remove easements to facilitate development of the Project.

F. Relationship And Integration With City's Planned Growth Ordinance; Building Permit Allocations; Obligation Of Developer To Designate Persons To Whom Permits Are To Be Allocated

This Section shall be considered an approved "Phasing Plan" that satisfies Vacaville Municipal Code § 14.05.030.A.5. The City hereby exempts seven hundred sixty seven (767) residential building permits from the building permit allocation process of City's Planned Growth Ordinance (Vacaville Municipal Code, Division 14.05), as follows:

(1) Commencing in the calendar year in which the first 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 three hundred (300) assignable building permits to Developer. If in any calendar year, Developer fails to use the total allocation of permits for that year up to one hundred fifty (150) building permits of the unused portion of such annual allocation shall be carried over and added to Developer's succeeding year's allocation. Each "carry-over" shall apply to that year only and shall not be carried over to any succeeding year. The allocations provided for in this Section shall automatically apply and shall not require any formal request by Developer for such annual reservation of building permits.

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

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

G. Undergrounding Of Public Utilities

City will, to the extent reasonably possible, and at no cost to City, exercise its authority with P.G. & E. and PACTEL in undergrounding power and telephone lines so to minimize or reduce the cost of undergrounding these lines to Developer.

H. Coordination Of Construction Of Offsite Improvements

Developer acknowledges that certain offsite 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.

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

J. Infrastructure

(1) **Infrastructure Phasing Flexibility.** Notwithstanding the provisions of any phasing requirements in the Project Approvals, Developer and City recognize that economic and market conditions may necessitate changing the order in which the infrastructure is constructed. Therefore, City and Developer hereby agree that should it become necessary or desirable to develop any portion of the Project's infrastructure in an order that differs from the order set forth in the Project Approvals, Developer and City shall collaborate and City shall permit any modification requested by Developer so long as the modification continues to ensure adequate infrastructure is available to serve that portion of the Project being developed and there are no adverse impacts to existing infrastructure or proposed infrastructure for future portions of the Project, the determination of which shall be made solely by City's Director of Community Development.

(2) **Infrastructure Capacity.** Subject to Developer's installation of infrastructure in accordance with the requirements of the Project Approvals and payment of the appropriate development impact fees, City hereby acknowledges that it will have, and shall reserve, sufficient capacity in its infrastructure, services and utility systems, including, without limitation, traffic circulation, storm drainage, flood control, sewer collection, sewer treatment, sanitation service and, except for reasons beyond City's control, water supply, treatment, distribution and service, as and when necessary to serve the Project as it is developed. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no

restriction on hookups or service for the Project except for reasons beyond City's reasonable control.

K. Model Homes

Prior to recordation of any small lot final map that creates individual residential lots, City agrees to issue, to the extent permissible by any relevant laws, building permits and certificates of occupancy (or completion of a final inspection if no certificate of occupancy is required) for the construction of model homes (and related model home complex structures) that will be used by Developer for the purpose of promoting sales of single family residential units within the Project, subject to City's standard design review and building permit procedures; provided, however, in no event shall City be required to issue more than five (5) building permits for the construction of model homes in each residential phase of the Specific Plan (*i.e.* phases 1 through 12 as identified in the Specific Plan's "Phasing Diagram Plan") and in no event shall Developer be permitted to sell or transfer any model home until a small lot final map has been recorded on that portion of the Project where the model home is located.

SECTION 3. PROPERTY SUBJECT TO THIS DEVELOPMENT AGREEMENT

A. Property Subject To This Agreement

All of the property described in Exhibit A-1 shall be subject to this Agreement.

B. Term Of Subdivision Maps And Other Project Approvals

(1) The term of any parcel map waiver, tentative parcel map, tentative subdivision map, vesting tentative parcel map 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 ten (10) years. In no event shall the term of such maps or agreements be for a term longer than ten (10) years without the amendment of this Agreement.

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

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

Notwithstanding anything to the contrary herein contained, the Term of this Agreement shall be subject to termination by City (but not by Developer) for failure on the part of Developer to

achieve the objectives stated below, subject to the provisions of this Agreement relating to permitted delays and delaying causes. Developer's performance in achieving these objectives shall be considered and evaluated as part of the annual review as provided for in this Agreement. The objectives to be achieved by Developer are:

A. Community Facilities District Formation

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

B. Landscaping and Lighting Assessment Districts

Developer shall apply for and procure adoption by City of such resolutions and actions as may be required to form lighting and landscaping districts ("LLD's") prior to the recording of the first small lot final map creating individual residential lots on the Project Site. The purpose of the LLD's are to pay for the full maintenance cost of City services for the Project, including: (i) the neighborhood park, (ii) the setback landscaping, (iii) the street lighting, and (iv) the detention basin. The LLD's shall be formed by City before the recordation of the first final map on the Project Site. City agrees to process and act upon such application with due diligence.

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

A. No Obligation To Develop

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

B. General Obligations

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

agreement to comply with, the terms and conditions of the Project Approvals and Subsequent Approvals.

C. 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 its proportionate share of off-site infrastructure necessary to serve the Project, subject to any over-sizing requirements deemed appropriate by City. Any over-sizing 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. In order to fund the construction of on-site "backbone" infrastructure, such as sewer and drainage improvements, Developer may utilize those financing mechanisms deemed appropriate by City, which shall not involve or require the payment of any City funds for such improvements.

Developer may be obligated to dedicate land for parks and schools. The value of said dedication, if any, shall be deducted from, or be a credit towards, the portion of the development impact or mitigation fees applicable to parks and schools. The amount of such credit will be determined in accordance with the land values established in a park and school mitigation fees study conducted by and paid for by Developer. Developer, however, will dedicate and construct, without compensation, deduction, or credit, street frontage and improvements to street frontages adjacent to schools and park sites within or abutting the Project Site. Further, Developer shall, without compensation, deduction, or credit, rough grade and level the land for such school and park sites and will place utility stubs to serve such school and park sites to the parcel/lot line of such school and park sites at such places mutually agreed to by City and Developer during Developer's construction of utility improvements for the Project.

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

D. 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, school facilities needed to serve the Project, Developer shall have the option of proceeding with the development of such improvements at Developer's cost 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.

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

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

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

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

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

(1) **New Regulatory Or Development Impact Fees.** Nothing herein contained shall be construed to prevent City from enacting new regulatory fees or development impact fees that may be imposed on all or portions of the Project Site or development thereon provided: (i) the amount charged has been determined in accordance with all applicable law; and (ii) Developer is given credit for: (a) fees previously paid, and (b) the fair value of improvements and land previously dedicated by Developer prior to the enactment of such regulatory or development impact fee requirements where such fees, improvements or land dedications relate to or pertain to the same mitigation measures addressed by the new regulatory or impact fee requirement.

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

(3) **Limitation on Development Impact Fees.** The Project Site shall not be subject to any development impact fee enacted after the effective date of this Agreement unless it applies on a City-wide basis (although zones of benefit may be designated by City with charges allocated among the properties within such zones based upon the benefit received by such properties). Any development impact fees levied against or applied to the Project must be consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 *et seq.* (“AB 1600”). Developer retains all rights to protest an imposition, fee, dedication, reservation, or other exaction, as set forth in California Government Code Section 66020. Nothing in this Agreement shall diminish or eliminate any of Developer’s rights set forth in such Section 66020.

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

G. No Cost to City for Specific Plan Improvements

All public improvements (including, without limitation, landscaping) that are constructed or installed as conditions of development as generally described in the Specific Plan, shall be constructed or installed by Developer without cost to City.

H. Developer Procures Financing For Major Infrastructure

Developer shall obtain any and all funding needed to construct on-site streets and “backbone improvement work” (e.g. sewer and drainage improvements) on the Project Site without cost to City, and Developer’s assurance thereof shall be required as a condition of construction of some or all of the improvements on the Project Site, either in the form of a bonded contract for construction of such streets and backbone improvement work or a contract for the acquisition of them in a form acceptable to City.

I. 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 City ordinance (which shall include the posting of a bond or other surety acceptable to City as provided therein), unless a community facilities district has been formed for the purpose of constructing or acquiring such improvements, in which case no further assurance or surety shall be required. All standards for construction of the surface streets, storm drains, sanitary sewers, curbs, gutters,

sidewalks and utilities, the terms of contracts for the 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.

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

Greenbelts, buffers, agricultural buffers, open space areas, parks, landscaped areas, bicycle trails, and other trails and access points as shown on the Specific Plan or Tentative Map 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 subdivision map or parcel map, as the case may be. Greenbelts, buffers and open space areas may include wetlands, storm water detention basins, landscaping and decorative planting areas that do not interfere with greenbelt, buffer and open space uses.

As a condition of acceptance of such dedications by City, Developer shall propose and demonstrate to City's satisfaction a method or mechanism acceptable to City to maintain said greenbelts, buffers, open space areas, parks, landscaped area, and trails such as, by way of example, an LLM district.

K. Dedicated Property Shall Be Free of Hazardous Wastes and Encumbrances

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

L. Developer To Provide Projections For Development of The Project

In order to facilitate the timely development of the Project Site, Developer, or the "Master Developer" designated by Developer, shall provide City with reports of its projected timetable for the design and construction of the Project ("Development Projections") each time there is a material change in Developer's or the Master Developer's anticipated progress in developing the Project. In addition, Developer or the Master Developer shall provide Development Projections with the documentation Developer is required to provide City in conjunction with the Annual Review, as defined in Section 9.B of this Agreement.

M. Payment for City Wide Infrastructure

As part of the Public Benefits of this Agreement and to provide the City the opportunity to develop city-wide public infrastructure related to stormwater management, Developer shall transfer two million-five-hundred-and-fifty thousand dollars (\$2,550,000.00) (the "Payment") by wire transfer to City. The Payment shall become due upon the later of: (1) the date that is the earlier of (i) thirty (30) days after the first conveyance of fee title to the portion of the Project Site designated in the Specific Plan as an approximately 50-acre private college preparatory high

school site (phase 13 as identified in the Specific Plan's "Phasing Diagram Plan"); or (ii) August 1, 2013; or (2) thirty (30) days after the Project Approvals' Final Approval (as hereinafter defined) and approval of the Water Agreement Amendment by both SID and the City or, in lieu of such Amendment, Developer is required to pay the additional cost to provide water to the Project, as provided in Subsection S of this Section. The Payment shall only be used to fund the construction of city-wide stormwater infrastructure or to acquire property related to stormwater management. City shall provide Developer a credit for the dollar value of the Payment (the "Payment Credit"), which shall be credited against the specific impact fees identified in Exhibit B as Developer's obligations to pay such impact fees accrue until the Payment Credit is exhausted.

As used in this Agreement, the Project Approvals shall be deemed to have been "Finally Approved" or shall have received "Final Approval" at such time as the City Council of the City and all other applicable governmental bodies and authorities have issued their final approval of each of the Project Approvals, subject to terms and conditions acceptable to Developer in its sole discretion, which shall not be unreasonably withheld, and all appeal periods for such Final Approvals have expired without the filing of any Challenge or Appeal (as hereinafter defined) or, if a Challenge or Appeal has been filed, including subsequent appeals that may be filed, then on the date the Challenge or Appeal has been resolved on terms reasonably satisfactory to Developer in Developer's sole discretion.

As used in this Agreement, a "Challenge or Appeal" means, individually or collectively, if any of the Project Approvals are challenged or appealed (either administratively or pursuant to other legal process), or if the Project Site or any of the Project Approvals become the subject of any initiative, referendum, rescission or development moratorium, or if there is any challenge or appeal alleging the failure of the City or other required parties to comply with CEQA or other law in connection with the Project Approvals.

N. Developer Neighborhood Park Obligations

(1) **Dedication of Park Land.** Upon the recording of the first final map for the Project, Developer shall make an irrevocable offer of dedication to the City on such final map of the land designated on the approved Tentative Map as a neighborhood park and all necessary easements and rights-of-way designated on the approved Tentative Map to serve such future neighborhood park (collectively, the "Park Land").

(2) **Reimbursement for Dedication.** Developer may be reimbursed for the value of the Park Land beyond its proportionate share through a benefit district formed at its own cost (the "Park Benefit District"). The Park Benefit District may include other public improvements related to the Project. The governing documents of the Park Benefit District shall set forth the formulas for reimbursement for the value of the Park Land and for the determination of Developer's proportionate share of the Park Land. The Park Benefit District may only include lands determined to benefit from the provision of the neighborhood park as approved by the City. Alternatively, Developer may pursue, in its discretion, an investment tax credit for the dedication of the Park Land. No credit towards Developer's obligation to pay park and recreation development impact fees to City shall be given for the value of the Park Land dedication.

(3) **Developer Improvements.** Developer shall be responsible for the construction of all park frontage improvements, utility services, street lighting, masonry walls, and rough grading on the neighborhood park site as needed at its sole cost. Native top soil shall be retained on the park site to the extent required by the Project's MMRP.

(4) **Park Planning and Construction.**

a. City shall prepare and complete a master plan for the neighborhood park through City's normal park planning process. City may fund the development and approval of the master plan by using the park and recreation development impact fees paid by Developer. However, City shall not expend more than \$25,000 from such fees for such purpose. City shall commence the park master planning process after has paid the park and recreation development impact fees for the seventh residential unit of the Project. Developer shall work in good faith with City in the master planning process so that final approval of the master plan, approval of a name for the new park, and any necessary environmental documents are completed in a timely manner.

b. City shall rely on the approved master plan to prepare construction drawings for the neighborhood park prior to the date of recording of the small lot final map that creates the lot for the 400th residential unit of the Project. The construction drawings shall substantially reflect the design elements of the approved park master plan. City's failure to complete the drawings by such date shall not be cause by City to delay the filing or recording of such final map. City may use the park and recreation development impact fees paid by Developer to pay for the cost of developing and approving of the construction documents. However, City shall not expend more than \$125,000 from such fees for such purpose.

c. The fee owner, or its agent, of the land to be subdivided by the small lot final map that creates the lot for the 500th residential unit of the Project (the "Park Developer") shall enter into a park development agreement ("Park Agreement") with City and post a surety bond for the construction of the park prior to the recording of the small lot final map that creates the lot for the 500th residential unit. Park Developer shall commence construction of the neighborhood park concurrently with construction of the public infrastructure within the small lot final map that creates the lot for the 500th residential unit of the Project so long as the construction drawings for the neighborhood park have been approved by the City. The neighborhood park shall be completed and ready for use by park visitors prior to the occurrence of the earlier of: (i) the issuance of building permits for the 400th residential unit of the Project, or (ii) the recording of the small lot final map that creates the lot for the 600th residential unit of the Project; or (iii) two (2) years following the later of: (a) the execution date of the Park Agreement, or (b) the approval of the construction drawings of the neighborhood park. However, if the same small lot final map creates both the lots for the 500th and 600th residential unit, the neighborhood park shall be complete and ready for use within two (2) years of the date of recording of such final map. Should

Developer, including the Park Developer, desire to have the park complete and ready for public use prior to the date of recording of the small lot final map that creates the lot for the 600th residential unit of the Project, Developer shall maintain the park completely at its own cost until the date the small lot final map creating the lot for the 600th residential unit is recorded.

d. Developer is responsible to inform all home buyers of the timing for construction of the neighborhood park. At a minimum, this notification shall be provided as follows:

- (i) By written disclosure acknowledged by the home-buyer at time of escrow;
- (ii) By prominent display at each model home complex of information on the timing of park construction; and
- (iii) By placement of one (1) information sign on each street frontage adjacent to the park site at the time of installation of street improvements for these phases of the Project. The size and location of the information signs will be determined at the time of, and as part of, the design review approval for the model home complexes.

(5) Park Maintenance.

Once the neighborhood park is complete and accepted by the City Council, Developer shall continue to pay for all maintenance of the neighborhood park (developed or undeveloped) until City issues the occupancy permit for the 600th residential unit of the Project, after which such obligations shall transfer to the Project's LLD. The City agrees to prepare and execute all documents necessary to transfer financial responsibility for maintenance of the neighborhood park to the Project's LLD by the date City issues the certificate of occupancy (or completion of final inspection if no certificate of occupancy is required) for the 600th residential unit of the Project.

(6) Park and Recreation Development Impact Fee Credits and Reimbursements.

Upon Park Developer posting surety bonds for the neighborhood park construction, City shall:

- a. Reimburse Park Developer with all park and recreation development impact fees that have been collected for Project residential units up to and including the date that the surety bond has been posted, except for the amount of such fees expended by City for the development of the master park plan, park naming, environmental approvals, development of construction drawings, permits (as described in Sections 5.M.4.a and b above), and City's plan check and inspection fees, and;
- b. Provide Park Developer the park and recreation development impact fee credits and reimbursements as agreed to in the Park Agreement. The Park Agreement shall include terms that require City to: (i) provide Park Developer a

credit for all park and recreation development impact fees associated with the small lot final map creating the lot for the 500th residential unit of the Project (i.e. the credit shall be in the amount otherwise due for all residential units on lots created by such final map); and (ii) make annual reimbursements to Park Developer from park and recreation development impact fees collected from the Project area until Park Developer. Such credits and reimbursements shall not exceed the total cost of construction of the neighborhood park.

O. Temporary Sewer Connection

(1) **Temporary Sewer Connection to be Allowed by City.** City's existing 54-inch diameter trunk sewer main located in Elmira Road (the "Elmira Trunk Sewer") has a full pipe capacity (Qf) of 39.8 million gallons per day (mgd), and a maximum allowed design flow (Qd) of 35.8 mgd. The current peak wet weather design flow is approximately 26.5 mgd. Current planning documents would permit 223 new residential unit sewer connections in the general Project area to the Elmira Trunk Sewer. City will allow Developer to make a temporary sewer main connection to the Elmira Trunk Sewer for the first 386 Project residential units so long as Elmira Sewer Trunk peak wet weather design flow is less than or equal to 35.0 mgd. If the Elmira Trunk Sewer peak wet weather design flow exceeds 35.0 mgd, no more Project temporary sewer connections beyond 223 connections will be allowed.

(2) **Timing of Construction of Trunk Sewer.** Prior to filing of the Project final map which creates the lot for the 387th residential unit of the Project, Developer shall commence construction of the Brighton Landing trunk sewer main proposed to connect with the existing California State Prison - Solano sewer trunk main. No additional units will be allowed to flow to temporary sewer connections to the Elmira Trunk Sewer beyond the initial 386 connections.

(3) **Permanent Sewer Connections.** Upon completion of the Brighton Landing trunk sewer main, all of the 386 residential units temporarily connected to the City's existing 54-inch diameter trunk sewer in Elmira Road shall be disconnected from the Elmira Trunk Sewer and connected to the Brighton Landing trunk sewer. After the Brighton Landing trunk sewer becomes active, all Project sanitary sewer connections shall be made to the Brighton Landing trunk sewer.

P. Community Benefit Contribution

Notwithstanding any other term of this Agreement, Developer agrees to pay City a "Community Benefit Contribution" of \$7,224 for each dwelling unit at the time a building permit is issued for such dwelling unit within the Project Site. The parties agree that there may be an adjustment to the Community Benefit Contribution per unit in response to the City Council reviewing what improvements or programs should be funded by the Community Benefit Contribution versus an impact fee, meaning that the amount of the Community Benefit Contribution may be reduced. In addition, the City agrees that at no time shall the Community Benefit Contribution imposed on the Project Site during any calendar year be higher than the community benefit contribution, or other similar contribution that funds the same types of improvements or programs, imposed on

any future development project that includes single family homes in the same calendar year that is: (i) east of Leisure Town Road; (ii) in a growth area identified in the City's future General Plan Update (including, but not limited to, the East of Leisure Town Road Growth Area and the Northeast Growth Area identified as part of the approval of the City's 2008 Urban Growth Boundary); or (3) within the Vanden Meadows Specific Plan area. Developer shall have a right to a reduction in the Community Benefit Contribution so that Developer is no longer obligated to pay an amount higher than the amount imposed on other development projects that include single family homes in these areas. The Community Benefit Contribution shall be automatically adjusted by the percentage change, if any, in the Engineering News Record San Francisco Bay Area Construction Cost Index on January 1 of each year for the Term of this Agreement. The Community Benefit Contribution funds shall be used by City for capital improvements and/or acquisition of lands that the City Council considers to be of community-wide benefit.

Q. Participation in General Plan Cost Recovery

Notwithstanding any other term of this Agreement, Developer agrees that the Project shall participate in a future "General Plan Update Cost Recovery Fee" program if such program is adopted by the City Council following adoption of the current General Plan Update. The General Plan Update Cost Recovery Fee shall be assessed in accordance with the terms of the future General Plan Update Cost Recovery Fee program. The fee shall be paid at the time of recordation of a final map. If the fee has not been adopted by the time of recordation of a final map, then the fee shall be paid at the time of building permit issuance by City. If the fee has not been adopted by the time of building permit issuance, then the fee shall not be required for that particular building permit.

R. Water Annexation Fee

Notwithstanding any other term of this Agreement, Developer agrees to pay City \$2,402 per dwelling unit as payment for the cost of acquiring additional domestic water to serve the residential uses contemplated by the Project (the "Water Annexation Fee"). This cost shall be in addition to the standard water service connection fee assessed by City at the time of issuance of a building permit. The Water Annexation Fee shall be paid prior to the issuance of each small lot final map that creates individual residential lots. This fee will be adjusted March 1 of every year, beginning in 2013, based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, not seasonally adjusted, with a reference base of 1967 = 100, as published by the U.S. Department of Labor, Bureau of Labor Statistics, for the prior year (hereinafter referred to as the "Cost of Living Index" or "Index"). The base Index for water rate adjustments shall be the CPI-W for December 31, 2009, which was 630.600, and adjustments for the change in the Index shall be measured by the Index on subsequent dates of December 31 and applied to the payments for the following water year. This cost shall be in addition to the standard water service connection fee assessed by City at building permit issuance. The Water Annexation Fee shall be paid prior to the issuance of each small lot final map that creates individual residential lots.

S. Additional Cost to Provide Water in Absence of Water Agreement Amendment

Developer acknowledges and accepts that the City has and continues to negotiate in good faith with SID for consummation of a Water Agreement Amendment that is acceptable to the City and SID. If, however, after a reasonable period of time, the City determines in good faith that such negotiations are not likely to result in a Water Agreement Amendment that is acceptable to the City and SID, the City may, at its option or at the request of Developer, require Developer to pay to City the additional cost to provide water to the Project. Such additional costs shall be those costs provided for under Subsection 10.D.2 of the MWA. Developer shall pay to City such additional costs as such costs are incurred by the City pursuant to said Subsection 10.D.2 of the MWA.

T. Agricultural Land Mitigation

Developer shall preserve a total of 254.54 acres of agricultural land that is viable for farming operations. This amount represents the sum of the area of: (i) the 385-foot wide portion of the agricultural buffer outside of the Brighton Landing Specific Plan area (19.73 acres), (ii) the proposed detention basin area (17.6 acres), and (iii) the entire Brighton Landing Specific Plan area (217.21 acres, including residential parcels). Developer can satisfy this condition by purchasing fee title to the land and encumbering the land with an agricultural conservation easement in perpetuity or by purchasing an agricultural conservation easement in perpetuity encumbering land not owned by Developer.

U. Project Detention Basin

(1) **Amendment**. Notwithstanding any other provision of this Agreement, deviations to this Section of the Agreement may be permitted with the approval of the Director of Public Works.

(2) **Detention Basin Implementation**. The land for the detention basin required for Project build-out shall be offered for dedication with the first final map. The detention basin shall be phased and constructed in accordance with the Tentative Map's conditions of approval. The first phase of the detention basin shall be operational prior to issuance of any building permits. If Developer is unable to acquire the necessary rights of way or property for the proposed off-site detention basin, it will be obligated to provide property onsite within Area J (or an onsite alternative acceptable to the Director of Public Works). Developer acknowledges that locating the detention basin on the Project site may reduce the amount of feasible development. Once any phase of the detention basin is accepted by the City Council, the Project's LL District shall pay for all maintenance of that phase of the detention basin. The Project's LLD shall include developed and undeveloped properties to fund the maintenance costs.

(3) **Detention Basin Pump Agreement**. City and Developer shall enter into a detention basin pump station design and implementation agreement (the "Detention Basin Pump Agreement") within 90 days of the Effective Date of this Agreement. The Detention basin Pump Agreement shall include terms regarding the City contracting directly with an engineering firm to develop a preliminary design report, improvement plans and project specifications for the mechanical, electrical and building portions of the detention basin including, but not limited to, the pumps, piping, concrete pad, vaults,

buildings, generator, SCADA controls, Motor Control Centers, etc. (together, the "Design Plans"). The Detention Basin Pump Agreement shall include Developer's right to assign its existing contract with Phillippi Engineering, Inc. to satisfy the City's right to directly contract with an engineering firm to develop the Design Plans. The Detention Basin Pump Agreement shall also include terms relating to Developer and City's obligation to jointly decide on the engineering firm that the City will contract with to develop the Design Plans, in the event that Developer does not assign its existing contract with Phillippi Engineering, Inc. for the Design Plans to City. The Detention Basin Pump Agreement shall include terms obligating Developer to fund, at its sole cost, the contract for the Design Plans and the City's management costs of such contract. The Detention Basin Pump Agreement shall include a preliminary schedule for production of the preliminary design report (3 months), production of plans specifications (6 months), bid period to award (2 months), and authorization to proceed to acceptance (10 months).

(4) **Detention Basin Pump Construction.** The Detention Basin Pump Agreement shall also include terms obligating City to obtain competitive bids for the construction of the works contemplated by the Design Plans and obligating Developer to transfer to City, on a mutually acceptable payment schedule, the amount necessary to pay the contractor with the winning bid and the City's estimated contingency, inspection and management costs (together, the "Estimated Total Construction Costs").

(5) **Detention Basin and Detention Basin Pump Credits.**

City shall provide Developer a credit for the dollar value of the cost of the design and construction of the detention basin and detention basin pump, which shall be credited against the specific impact fees identified in Exhibit B as Developer's obligations to pay such impact fees accrue until these credits are exhausted.

SECTION 6. PROVISIONS RELATING TO ASSESSMENT PROCEEDINGS

A. Construction And Acquisition Proceedings

Developer may propose or initiate proceedings for the formation of an assessment and/or community facilities district (including the proposed "Brighton Landing Benefit District") for the purpose of financing the payment of all or a portion of the design, acquisition and construction costs required for any on-site or off-site improvements that are designed and constructed by Developer in connection with its development of the Project Site (or portions thereof) pursuant to the Vested Elements. City shall diligently process such proposal provided: (i) the proposal complies with law, (ii) is otherwise regular in form, (iii) is consistent with City's standards, (iv) provides for a lien-to-value ratio and other financial terms that are reasonably acceptable to City, (v) the person, firm or entity initiating the proceedings advances such funds as City requires to provide for staff and outside consultants to undertake such proceedings, and (vi) City has reviewed and approved the consultants proposed by Developer for such undertaking including, but not limited to, bond counsel and the financial advisory underwriter, which approval shall not be unreasonably withheld. City shall diligently seek to sell any bonds to be issued and secured by such assessments upon the best terms reasonably available in the marketplace; provided, however, that City's duty to market such bonds shall be suspended during any period when

marketing conditions render the issuance of such bonds economically infeasible. Developer may initiate improvement and assessment proceedings utilizing assessment mechanisms authorized under the law of the State of California where the property subject to assessment provides primary security for payment of the assessments. Developer (or any successor of Developer as to any portion of the Project Site as to that portion) may initiate such assessment proceedings with respect to that portion of the Project Site to provide financing for the design or construction of improvements for such portion of the Project Site. City shall allocate shortfalls or cost overruns in the same manner as the special taxes or assessments for construction of improvements (as opposed to assessments for maintenance) are allocated in a community facilities district or other similar financing mechanism so that each lot and/or parcel within the benefited area (including the Project Site) shall bear its appropriate share of the burden thereof and construction or acquisition of needed improvements shall not be prevented or delayed.

B. Maintenance District Proceedings

(1) **City-Initiated Proceedings.** City is authorized to, and presently contemplates, the creation and establishment of maintenance districts to fund maintenance and operating costs for wetlands mitigation areas, storm water drainage and detention areas; landscape medians, parks, landscaping areas, open space maintenance, street lighting and other improvements. If City creates such a maintenance district, City may, in its sole discretion, allow Developer (or a designated successor, agent or homeowners association, collectively referred to as "Developer" for the purpose of Subsections C through F of this Section) to perform some or all of such maintenance work, provided such work is performed to City's satisfaction and standards and Developer agrees to indemnify and hold City harmless from any injury or damage resulting from such performance of work. City shall credit Developer the value of such work performed against the assessment that Developer would otherwise pay to the maintenance district. If, at anytime, City, in its sole discretion, determines that the work is not being performed to City's satisfaction or standards, City may notify Developer of such substandard performance, and if not cured within thirty (30) days of such notice, City may, through a maintenance district, take responsibility for such work and, thereafter, maintain the areas in question and assess Developer for the value of the work performed.

(2) **Developer-Initiated Proceedings.** Developer may submit requests to City to create and establish the maintenance districts contemplated under Subsection (1), above. City shall consider such requests, provided the requests comply with law and are otherwise regular in form.

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

(4) **Portion of Project Site.** Developer and/or City may initiate proceedings for formation of such maintenance districts with respect to a portion of the Project Site to provide for maintenance of improvements for such portion without the consent of the owners of other portions of the Project Site provided the assessments are not levied upon

such other owners and the formation of such district does not interfere with the ability to form other maintenance districts to maintain improvements on other portions of the Project Site.

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

C. City's Good Faith In Processing

City shall accept, process and review in a timely manner (subject to receipt of all applicable application fees as may be required by City) all applications submitted by Developer for development or use of the Project Site, pursuant to the terms of this Agreement and all applicable law.

D. Right Of Reimbursement From Assessment Proceeds

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

E. Right Of Reimbursement From Others Benefited

If City requires Developer to plan, design or construct excess improvements not required by City for development of the Project Site or is required to make dedications, provide mitigation measures or incur costs in connection with public improvements in excess of those required to develop the Project Site, City shall seek to require other property owners not included within the initial boundaries of the financing district whose property is directly benefited thereby and who utilize the improvements within twenty (20) years after Developer constructs the same, by seeking to either add such property to the financing district or to otherwise require the property owner (as a condition of development of such owner's land) to reimburse Developer for its proportionate share of such costs in accordance with the adopted method of spreading assessments for construction of such improvements, together with interest thereon at the rate being charged on the principal amount of the assessments for which the reimbursement is made or at such other rate, as determined by City, that will fairly compensate Developer for the use of such funds.

SECTION 7. 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 sixty (60) days measured from the date of personal service or delivery by certified mail of the written notice of default. During any such cure period or during any period prior to notice of default, the party charged shall not be considered in default for the purpose of terminating this Agreement or instituting legal proceedings.

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

B. Remedies

Upon expiration of the cure period referenced above, if the default remains uncured, or if such cure cannot be accomplished within such cure period and the defaulting party has not commenced such cure during such period and diligently prosecuting such cure thereafter, the non-defaulting party may, at its option, give notice of intent to terminate this Agreement pursuant to Government Code Section 65868, or pursue such other remedies as may be available to such party. Notice of intent to terminate shall be by certified mail, return receipt requested. In the event the notice of intent to terminate is given by City, the matter shall be scheduled for consideration and review by the City Council within sixty (60) days in accordance with Government Code Sections 65867 and 65868 and Vacaville Municipal Code § 15.60.080. After considering the evidence presented, the City Council shall render its decision to terminate or not terminate this Agreement. If the City Council decides to terminate this Agreement, City shall give written notice thereof to the defaulting party.

Evidence of default of this Agreement may also be taken during the regular annual review of this Agreement as described below. Any determination of default (or any determination of failure to demonstrate good faith compliance as a part of 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 §§ 15.60.070 and 15.60.080. Notwithstanding any other provision of this Agreement to the contrary, remedies for a default by Developer or its successor of any of its obligations hereunder shall not be limited and City shall have the right to institute legal proceedings to enforce such obligations as set forth herein and in the Vested Elements, including, but not limited to, the obligation to indemnify, defend, and hold harmless City. Such remedies shall include those available at law or in equity that may be needed to enforce defaults such as the failure to pay fees, taxes, monetary exactions or assessments levied against the Project Site to

pay for the cost of improvements whether levied pursuant to this Agreement or otherwise stated in a separate agreement or undertaking under the Vested Elements or which is entered into in support of any community facilities or assessment district financing. City shall have the right to exercise such remedies as may be available at law or in equity to enforce the conditions stated in any conditional use permit, design review approval, zoning approval, entitlements for use or entitlements for construction of specific improvements on a specific parcel, or as are provided in the Subdivision Map Act (Gov't Code §§ 66400 et. seq.) or City's subdivision ordinance as applied to subdivision improvement agreements. In addition to the right to give notice of intent to terminate this Agreement, Developer shall have the right to institute legal proceedings to enforce, this Agreement in the event of a default by City.

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 of Termination

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

E. Defaults By City

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

F. Obligation And Default Limited To Affected Parcel

Notwithstanding anything to the contrary herein contained, when an obligation or duty hereunder to be performed, or a default has occurred, only with respect to a particular lot or parcel, such obligation or duty and any remedy or right of termination arising hereunder as a result of such failure to perform shall apply solely to such lot or parcel and shall affect only the owner and/or the holders of the interest therein. No obligation, duty or liability will be imposed against or apply to any other parcel or portion of the Project Site for which no default has occurred.

G. Copies Of Default Notices

The owner of any portion of the Project Site shall have the right to request in writing copies of notice of default given to the owner of any other portion of the Project Site. City and/or the

owners of other portions of the Project Site to whom such request has been made shall honor such request and provide such notice in the manner and to the address specified in the request. City shall be entitled to recover from the person making the request City's reasonable cost of complying with such request.

SECTION 8. ANNUAL REVIEW

Good faith compliance by Developer with the provisions of this Agreement shall be subject to annual review ("Annual Review") pursuant to Government Code § 65865.1 and Chapter 15.60.70 of the Vacaville Municipal Code, utilizing the following procedures:

A. Submission By Developer; Result Of Failure To Submit

Review shall be conducted by City's Director of Community Development or his/her designee ("Director"), upon a submission made by Developer of a draft report, accompanied by the fee therefore, on behalf of all of the Project Site pursuant to Vacaville Municipal Code § 15.60.070.B not less than forty-five (45) days nor more than sixty (60) days prior to each anniversary date of this Agreement. The Director may refer the review to the Planning Commission pursuant to Vacaville Municipal Code § 15.06.070.F. 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 ten (10) days prior to the conduct of any such review, the Director shall deliver to Developer a copy of any publicly-available City staff reports and documentation that will be used or relied upon by City in conducting the review. Developer shall be permitted an opportunity to respond to the Director's evaluation of Developer's performance by written and oral testimony at a public hearing to be held before the Director, if the Developer elects to conduct 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 7, 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 Chapter 15.60.070.E of the Vacaville Municipal Code, as may be 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 § 15.60.080. 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 7, above. If the Director recommends a modification of this Agreement, the modification shall similarly apply only to that portion of the Project Site (if less than all) affected by the failure to comply.

F. Notice Of Compliance

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

G. No Damages

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

SECTION 9. MITIGATION MONITORING

Compliance with the various mitigation measures that are part of the Project and determined to be feasible in the EIR that is certified in connection with the Project shall be determined as follows:

A. Permits And Approvals

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

B. Annual Review

City will review Developer's compliance with the applicable mitigation measures no less often than annually when 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 10. APPLICABLE LAWS; ATTORNEYS' FEES; PERMITTED 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. Permitted Delays

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

C. Effect Of Subsequent Laws

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

D. Building Regulations

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

E. Written Verification of Sufficient Water Supply

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

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

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

SECTION 12. MORTGAGEE PROTECTION

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

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 portion thereof, pursuant to such foreclosure, shall take the Project Site, or portion thereof, subject to the provisions of this Agreement; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of Developer arising prior to acquisition of title to the Project Site by such Mortgagee. In no event 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 13. 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 for the development thereof. "Developer" shall mean the entities so identified herein and such successors thereto as may be identified as being entitled to such designation in a notice of transfer provided for below. Reference to successors from time to time herein shall not imply that the word "Developer" does not include such designated successors in other instances.

B. Release Upon Transfer

Upon sale, transfer or assignment, in whole or in part, of Developer's right and interest to all or any portion of the Project Site, Developer shall be released from its obligations hereunder with respect to the portion so conveyed provided: (i) Developer (or transferee) was not in default of this Agreement at the time of conveyance, (ii) Developer provided to City prior written notice of such transfer, and (iii) with respect to sale or transfer of any lot that has not been fully improved, the transferee executes and delivers to City a written assumption agreement in which: (i) the name and address of the transferee is set forth, and (ii) the transferee expressly assumes the obligations of Developer under this Agreement as to the portion of the Project Site conveyed; 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) shall constitute an amendment hereof.

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

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

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

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 Section 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, (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 (iv) shall benefit each party and its property hereunder and each other person or entity succeeding to an interest in such properties.

SECTION 14. 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. From and after the date that certificates of occupancy have been issued (or a final inspection is completed when no certificate of occupancy is required) for all buildings and improvements to be constructed on a parcel within the Project Site (or with respect to a single-family residence on a single-family residential lot), such parcel shall not be burdened with the obligations of Developer under this Agreement. This provision shall not, however, affect any separate covenants, conditions and restrictions that specifically pertain or apply to such parcel or the use thereof.

D. Amendment Of Agreement

This Agreement may be amended from time to time by mutual consent of the parties or their successors in interest, in accordance with the provisions of Government Code Section 65867 and 65688, and Division 14.17 of the Vacaville Municipal Code, and all amendments to this Agreement shall automatically become part of the Project Approvals, provided that any amendment to this Agreement which does not relate to the Term of this Agreement, permitted uses of the Project Site, provisions for the reservation or dedication of land, the conditions, terms, restrictions and requirements relating to subsequent discretionary approvals of City, or monetary exactions of Developer, shall be considered an "Administrative Amendment". The Director is authorized to execute Administrative Amendments on behalf of City and no action by the City Council (e.g. noticed public hearing) shall be required before the parties may enter into an Administrative Amendment. However, if in the judgment of the Director or any member of the City Council that a noticed public hearing on a proposed Administrative Amendment would be appropriate, City's Planning Commission shall conduct a noticed public hearing to consider whether the proposed Administrative Amendment should be approved or denied. No part of the Vested Elements may be revised or changed during the Term hereof without the consent of the owner of the portion of the Project Site to which the change applies (or that would be affected by any reduction or decrease in rights or increase in burdens caused by such change), unless expressly stated to the contrary in other Sections of this Agreement.

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

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 of City

Developer shall hold and save City, its officers and employees, harmless and indemnify them of and from any and all claims, losses, costs, damages, injuries or expenses (including, but not limited to, attorney fees, expert witness and consultant fees, and other costs of litigation) 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

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

H. Notice

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

If to City: Community Development Director
 City of Vacaville
 650 Merchant Street
 Vacaville, California 95688

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

If to Developer: Brighton Landing Vacaville, LLC
 C/O Steven Porath
 VP General Counsel
 24151 Ventura Boulevard

Calabasas, California 91302

With a copy to: Brighton Landing Vacaville, LLC
C/O Robert Holmes
Sares-Regis Group
1800 Third Street, Suite 250
Sacramento, CA 95811

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

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.

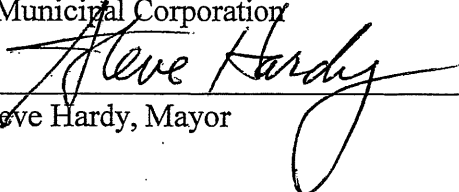
P. Time

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.

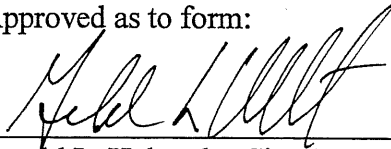
“CITY”

CITY OF VACAVILLE,
a Municipal Corporation



Steve Hardy, Mayor

Approved as to form:



Gerald L. Hobrecht, City Attorney

“DEVELOPER”

BRIGHTON LANDING-VACAVILLE, LLC,
a Delaware Limited Liability Company

Approved as to form:

By: Vacaville Investors, LLC,
a Delaware Limited Liability Company
Managing Member

By: Hearthstone, Inc.,
a California corporation
Manager



Charles Schetter
President



Steven Porath
VP General Counsel

[ADD NOTARY CERTIFICATES]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Solano

On May 31, 2013 before me, Rochelle L. Martin, Notary Public

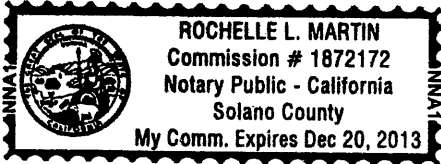
personally appeared Steve Hardy

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: Rochelle L. Martin



Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement - Brighton Landing

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

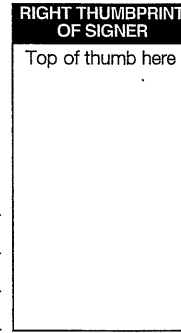
Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES }

On APRIL 22, 2013 before me, CHERYL A. STUDLEY, NOTARY PUBLIC.
Date Here Insert Name and Title of the Officer

personally appeared CHARLES SCHETTER and STEVEN C. PORATH
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 Cheryl A Studley
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: DEVELOPMENT AGREEMENT

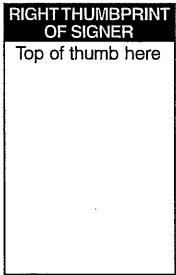
Document Date: MARCH 12, 2013 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

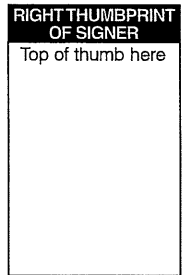
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

EXHIBIT A

BRIGHTON LANDING SITE VICINITY MAP

CITY OF
VACAVILLE



BRIGHTON
LANDING
PROJECT

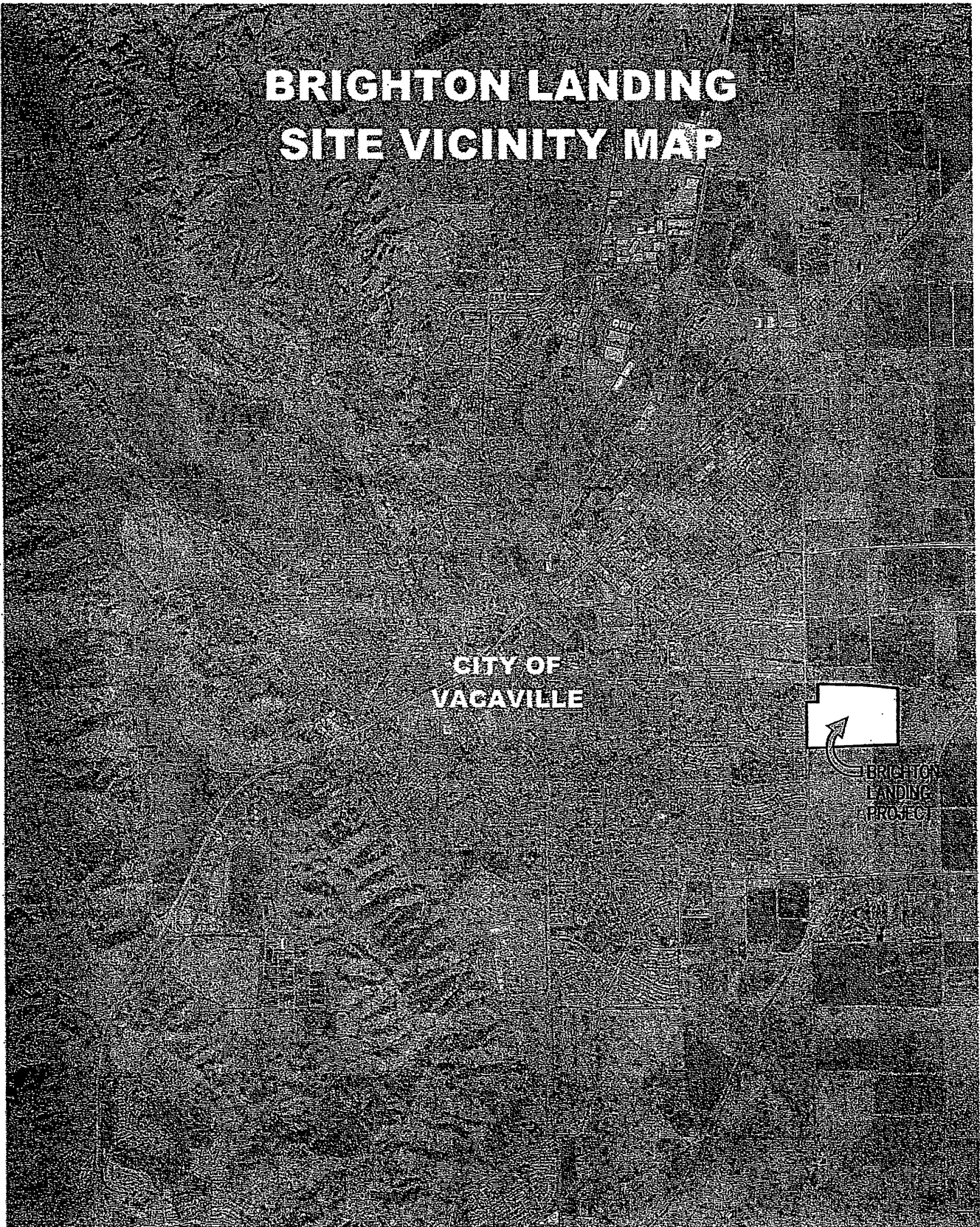


EXHIBIT A1

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of Solano, State of California, described as follows:

BEING PARCEL 1 AND A PORTION OF PARCEL 2 AS SAID PARCELS ARE SHOWN ON THE RECORD OF SURVEY FILED IN BOOK 27, OF SURVEYS, AT PAGE 5, SOLANO COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF SECTION 24, TOWNSHIP 6 NORTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN THAT LIES EASTERLY OF LEISURE TOWN ROAD AS LAST SAID ROAD IS DESCRIBED IN COUNTY ROAD PETITION NUMBER 131, SOUTHERLY OF ELMIRA ROAD AS LAST SAID ROAD IS DESCRIBED IN COUNTY ROAD PETITION NUMBER 477 AND WESTERLY OF THE 175 FOOT WIDE PACIFIC GAS AND ELECTRIC COMPANY EASEMENT AS SAID EASEMENT IS DESCRIBED IN BOOK 272 OF DEEDS, AT PAGE 82, EXCEPTING THEREFROM THAT PORTION OF THE SOUTHWEST QUARTER OF SAID SECTION 24 THAT WAS RESERVED IN THE DEED RECORDED IN BOOK 1043 OF OFFICIAL RECORDS, AT PAGE 214 AND FURTHER EXCEPTING THEREFROM THOSE PORTIONS OF SAID SECTION 24 THAT ARE DESCRIBED IN THE DEEDS RECORDED IN BOOK 204 OF DEEDS, AT PAGE 250, AND BOOK 1153 OF OFFICIAL RECORDS OF SOLANO COUNTY, AT PAGE 120, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SECTION 24 WITH THE WEST LINE OF SAID PAGAC GAS AND ELECTRIC COMPANY EASEMENT; THENCE ALONG SAID WEST LINE, NORTH 00° 02' 07" WEST, 2208.73 FEET TO THE SOUTHERLY LINE OF SAID ELMIRA ROAD; THENCE ALONG SAID SOUTHERLY LINE NORTH 81° 08' 57" WEST, 1110.86 FEET; WESTERLY ALONG A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 3274.00 FEET, A CENTRAL ANGLE OF 07° 21' 47" AND AN ARC LENGTH OF 420.74 FEET, AND NORTH 88° 30' 44" WEST, 1931.84 FEET TO THE EAST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED RECORDED IN BOOK 204 OF DEEDS, AT PAGE 250; THENCE ALONG SAID EAST LINE AND THE EAST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED RECORDED IN BOOK 1043 OF OFFICIAL RECORDS AT PAGE 214, SAID EAST LINES ALSO BEING PARALLEL WITH THE WEST LINE OF SAID SECTION 24, SOUTH 00° 18' 44" EAST, 690.52 FEET TO THE SOUTHEAST CORNER OF LAST SAID PARCEL (1043 O.R. 214); THENCE ALONG THE SOUTHERLY LINE OF LAST SAID PARCEL, LAST SAID LINE BEING PARALLEL WITH THE SOUTH LINE OF SAID ELMIRA ROAD NORTH 88° 30' 44" WEST, 417.52 FEET TO THE EASTERLY LINE OF SAID LEISURE TOWN ROAD, LAST SAID LINE BEING PARALLEL WITH AND DISTANT 30 FEET EASTERLY OF THE WEST LINE OF SAID SECTION 24; THENCE ALONG LAST SAID EASTERLY LINE SOUTH 00° 18' 44" EAST, 1901.03 FEET TO THE SOUTH LINE OF SAID SECTION 24; THENCE ALONG LAST SAID LINE NORTH 88° 19' 12" EAST, 2632.96 FEET TO THE WEST LINE OF THE SOLANO IRRIGATION DISTRICT'S 40 FOOT WIDE FROST CANAL (1153 O.R. 120); THENCE ALONG THE PERIMETER OF SAID FROST CANAL NORTH 00° 33' 11" WEST, 39.66 FEET, NORTH 89° 26' 49" EAST, 40.00 FEET AND SOUTH 00° 33' 11" EAST, 38.88 FEET TO THE SOUTH LINE OF SECTION 24; THENCE ALONG LAST SAID LINE, NORTH 88° 19' 12" EAST, 1180.88 FEET TO THE POINT OF BEGINNING.

THE REAL PROPERTY DESCRIBED ABOVE IS ALSO SHOWN AS "PARCEL A" IN THE CERTIFICATE OF COMPLIANCE RECORDED NOVEMBER 23, 2005, AS INSTRUMENT NO. 2005-00181528, OFFICIAL RECORDS OF SOLANO COUNTY.

APN: 0135-080-070

EXHIBIT B

Credit of Impact Fees for Payment for City Wide Infrastructure

Developer payment for City Wide Infrastructure shall be credited against the following Developer's Obligation to pay:

- Up to 100% of the "Drainage Detention Zone Fee: Zone 2"
- Up to 48% of the "Drainage Conveyance Fee"

Developer shall still be responsible for the Water Quality (30%) and the Water System Studies (22%) portions of the Drainage Conveyance Fee.

END OF
DOCUMENT