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Marc C. Tonnesen
Assessor/Recorder

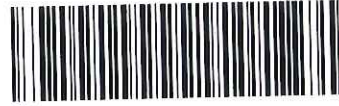
**RECORDING FEES
EXEMPT PURSUANT TO
GOVERNMENT CODE §27383**

P CITY OF VACAVILLE

RECORDING REQUESTED BY:
City of Vacaville

Doc#: 201600061917

Titles: 1 Pages: 32



Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

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

APNs: 128-020-130, 128-020-150, 128-040-320, 128-040-330, 128-040-340,
128-040-350, 128-040-360, 128-040-370, 128-040-380, 128-020-390, 128-050-130,
128-080-020, 128-080-030, 128-080-050, 128-080-060, 128-090-010, 128-090-020,
128-090-030, 128-090-040, 128-090-050

**PHASING AND DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF VACAVILLE
AND
LAGOON VALLEY RESIDENTIAL, LLC
FOR THE LOWER LAGOON VALLEY POLICY PLAN
IMPLEMENTATION PROJECT**

April 13, 2016
DATE

**PHASING AND DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF VACAVILLE
AND
LAGOON VALLEY RESIDENTIAL, LLC
FOR THE LOWER LAGOON VALLEY POLICY PLAN
IMPLEMENTATION PROJECT**

THIS PHASING AND DEVELOPMENT AGREEMENT (the “Agreement”) is entered into this 13th day of April, 2016, by and between **LAGOON VALLEY RESIDENTIAL, LLC**, a California limited liability company (the “Developer”) and the **CITY OF VACAVILLE**, a municipal corporation (the “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.** Developer has a legal and/or equitable interest in certain real property consisting of approximately 868 acres situated in an area commonly referred to as Lower Lagoon Valley, located in Vacaville, California, as generally shown in **Exhibit A**, entitled “Project Site.”
- B.** The City has previously approved the project commonly known as the “Lower Lagoon Valley Policy Plan Implementation Project” consisting of 1,025 residential units, a championship-level golf course, and approximately 750,000 square feet of commercial and office space uses, subject to various Project Approvals as hereinafter defined and identified (the “Project”).
- C.** The parties now desire to set forth their understandings and agreement as to the phasing of development, the extension of certain vested rights, and other obligations related to 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 City staff, public hearings and discretionary approvals by the appropriate decision-making body(ies) and are further subject to the requirements of the California Environmental Quality Act, Public Resources Code §§21000, *et seq.*, the CEQA Guidelines, 14 California Code of Regulations §§15000 *et seq.*, and City’s local regulations, policies and guidelines (collectively referred to as “CEQA”) to the degree the environmental impacts of the Subsequent Approvals have not already been reviewed in accordance with CEQA such as the environmental impact report and addenda developed for this Agreement and the Project Approvals. City has also adopted a mitigation monitoring and reporting program (the “MMRP”) to ensure those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed.

D. 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 specifically as set forth in the Project Approvals 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, housing and recreational opportunities, the economic and social benefits associated with development of City's roadway network within the Project area, and funding for community benefits and public safety (collectively, the "Public Benefits").

E. In exchange for the Public Benefits, together with other benefits that will result from the development of the Project Site, the parties now desire to set forth their understandings and agreements concerning the phasing of development of the Project and the vesting of Developer's right to develop the Project Site in accordance with the Project Approvals. Developer will receive by this Agreement certain assurances concerning the conditions under which Developer may proceed with the Project and, therefore, desires to enter into this Agreement.

F. 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.

G. On February 16, 2016, City's Planning Commission (the "Planning Commission"), the initial hearing body for purposes of development agreement review, recommended approval of this Agreement. On April 12, 2016, City's City Council (the "City Council") adopted its Ordinance No. 1894 approving this Agreement and authorizing its execution.

H. Developer (or Developer's predecessor(s)), has secured various environmental and land use approvals, entitlements, permits, agreements, supporting documents and reports relating to the development of the Project (the "Project Approvals"). These Project Approvals include, without limitation, the following:

(1) The Lower Lagoon Valley Policy Plan, approved by the City Council on December 18, 1990, as amended March 26, 1991.

(2) Agreement to Settle Litigation Regarding Lower Lagoon Valley ("Settlement Agreement"). On December 7, 2004, after a duly-noticed public meeting, the City Council approved a Settlement Agreement between Greenbelt Alliance, Triad Communities L.P. ("Triad"), and the City of Vacaville related to a prior development project in Lower Lagoon Valley and including parameters on future development of the Project Site. Exhibit E to the Settlement Agreement consists of an agreement between the City and Triad setting forth Further

obligations of Developer and City for implementation of the Project (“Original Obligations Agreement”).

(3) Settlement Agreement Between Triad Communities, LP and Community Homes, Inc. Regarding the Lower Lagoon Valley Policy Plan Implementation Project. On July 7, 2005, Developer’s predecessor, Triad Communities, LP and a neighboring land owner entered into an agreement regarding settlement of a dispute arising from approval of the VTM and the impact on Community Homes’ property (the "CH Settlement Agreement").

(4) Vesting Tentative Map; Planned Development Permit; Conditions of Approval; Draft Design Guidelines. On February 22, 2005, following review and recommendation of the City’s Planning Commission, and after a duly-noticed public hearing, the City Council, by Resolution No. 2005-024, approved Developer’s request for a vesting tentative map and planned development permit (together referred to as the “VTM”) subject to conditions of approval and also approved Draft Design Guidelines.

(5) First Amended Obligations Agreement. On April 18, 2006, the City and Triad Communities, LP (as a predecessor to Developer) entered into the First Amended Agreement Regarding Further Obligations of Developer and City for Implementation of the Revised Project (“Obligations Agreement”). The Obligations Agreement superseded the Original Obligations Agreement.

(6) Amendment to the Lower Lagoon Valley Policy Plan Implementation Project Planned Development – Residential Phasing Plan. On December 12, 2006, the City Council approved a revised residential phasing plan for the Project establishing an anticipated build-out schedule for residential units within the Project.

(7) Lot Line Adjustment. On April 19, 2010, the Community Development Director approved three lot line adjustments to form portions of the boundary of the business village.

(8) Agreement for Exchange of Land and Use of Land for Mitigation Purposes (“Land Exchange Agreement”). On May 23, 2012, the City and Developer entered into the Land Exchange Agreement implementing certain provisions of the Obligations Agreement and allowing Developer to install and maintain some project mitigation features required by the resource agencies on City-owned or controlled land.

(9) Agreement for the Deferred Payment of Park Maintenance Fees for Lagoon Vally (sic) Park. On April 22, 2013, City and Developer entered into an agreement related to payment of park maintenance fees for Lagoon Valley Park as required by the Obligations Agreement.

(10) Director's Letter – Approval of Modifications to Conditions of Approval and Other Requirements of the Lower Lagoon Valley Policy Plan Implementation Project (“Director’s Letter”). On October 8, 2014, after a duly noticed administrative hearing, the Director of Community Development issued a letter approving modifications to the phasing schedule, conditions of approval, and other requirements for the Vesting Tentative Map and Planned Development.

(11) Large Lot Final Map (referred to herein as the “Master Final Map” and in the Obligations Agreement as the “Master Parcel Map”). On October 14, 2014, the City Council, by Resolution No. 2014-115 approved the revised Large Lot Final Map finding it in substantial compliance with the approved 2005 Vesting Subdivision Map.

(12) Final Planned Development and Design Guidelines. On November 18, 2014, following review and recommendation of the City’s Planning Commission, and following a duly noticed public hearing, the City Council adopted Resolution No. 2014-121 approving the Final Planned Development Permit and Design Guidelines for the Lower Lagoon Valley Policy Plan Implementation Project dated October 2014.

(13) Caltrans Cooperative Agreements. On July 11, 2014 and February 10, 2015, the City entered into two agreements with Caltrans related to improvements to the Lagoon Valley Road – 180 overcrossing improvements necessitated by the Project.

(14) Developer Mirror Cooperative Agreement. On February 26, 2015, the City and Developer entered into an agreement related to allocation of obligations under the Caltrans Cooperative Agreements.

(15) Development Agreement. On February 16, 2016, following a duly-noticed public hearing, City’s Planning Commission made the findings required by Division 14.17 of the Vacaville Municipal Code, and recommended that the City Council approve this Agreement. On April 12, 2016, the City Council made findings required by the Vacaville Municipal Code, the California Government Code and CEQA and adopted Ordinance No. 1894 approving and authorizing the execution of this Agreement.

(16) Geologic Hazard Abatement District. On —, 2016, following a duly-noticed public hearing, the City Council, acting on a properly submitted petition formed the Lower Lagoon Valley Geologic Hazard Abatement District.

(17) CEQA Compliance Documents. In adopting and approving the foregoing, City's Planning Commission and City Council certified, adopted findings based on, and otherwise relied on the following:

(A) EIR. The Lower Lagoon Valley Specific Plan Environmental Impact Report (State Clearinghouse No.2003032063), which was prepared

pursuant to CEQA, was recommended for certification by the Planning Commission on June 1, 2004, and certified with findings by the City Council on June 8, 2004, by Resolution No.2004-49 (the "EIR").

(B) 2005 Addendum. On February 22, 2005, the City Council adopted an Addendum to the Lower Lagoon Valley Specific Plan Final EIR by Resolution No. 2005-23.

(C) 2015 Addendum. On January 19, 2015, an addendum was prepared and submitted to the file addressing minor modifications to the Project infrastructure locations.

(D) 2016 Addendum. On March 8, 2016, the City Council adopted the 2016 Addendum to the Lower Lagoon Valley Specific Plan Final EIR by Resolution No. 2016-019.

(18) The Mitigation and Monitoring Program For the Lower Lagoon Valley Specific Plan project approved by the City Council on June 8, 2004, by Resolution No. 2004-49 and which is based on the EIR certified by the City Council on June 8, 2004 (State Clearinghouse No.2003032063) (see subsection H.(17 (A)), above).

- I. Immediately prior to the approval of this Agreement, the City Council took the following actions:
- (1) determined that the EIR, the 2005 Addendum, the 2015 Addendum and the 2016 Addendum, adequately evaluate the potential environmental impacts of 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.
- J. Applications for land use approvals, entitlements, and permits other than the Project Approvals that are necessary to or desirable for the development of the Project Site and that are consistent with the Project (collectively, the "Subsequent Approvals") have been or will be made by Developer. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals; design review approvals (including site plan, architectural and landscaping plan approvals); deferred improvement agreements and other agreements relating to the Project; formation of financing and assessment districts; conditional use permits; grading permits; building permits; lot line adjustments; sewer and water connections; certificates of occupancy; subdivision maps (including tentative, vesting tentative, parcel, vesting parcel, and final subdivision maps); preliminary and final development plans; re-zonings; encroachment permits; re-subdivisions; and any amendments to, or repealing of, any of the foregoing. At such time as any Subsequent Approval applicable to the Project Site is approved by City, then such Subsequent Approval shall be treated as a "Project

Approval” under this Agreement and shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals.

- K. Developer and City agree that phased final maps may be recorded in substantial conformance with the Vesting Tentative Map. These final maps may trigger the installation of infrastructure and public improvements by Developer to serve the Project based on the Project Approvals.
- L. Capitalized terms that are not defined in this Agreement shall have the meaning ascribed to them in the Project Approvals. In the event of any conflict between this Agreement and the Project Approvals, the Project Approvals shall control unless this Agreement expressly states to the contrary.
- M. 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 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 served by entering into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge and accept and in consideration of the promises, covenants and provisions set forth herein, the parties agree as follows:

AGREEMENT

SECTION 1. EFFECTIVE DATE; TERM OF AGREEMENT AND CORRESPONDING PROJECT APPROVALS

A. Effective Date

This Agreement shall become effective on the thirty-first (31st) day following the later of: (i) the adoption by the City Council of the ordinance approving this Agreement; or (ii) receipt of the certified results of a referendum election unsuccessfully challenging such ordinance or approval of this Agreement (the “Effective Date”).

B. Term

This Agreement shall commence upon the Effective Date and shall remain in effect for a term of twelve (12) years after the Effective Date (the “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. Any period during any extension shall constitute part of the Term for purposes of this Agreement.

C. Termination Of Agreement

(1) **Expiration of Term.** 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 Subsection 1.B of this Agreement.

(2) **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 Agreement as surviving the termination or expiration of this Agreement or as having a term that is different from the term of this Agreement (see e.g., Section 1.D. below) or any Project Approval, the term of which is independent of this Agreement. Notwithstanding expiration or termination of this Agreement Developer shall continue to comply with the following obligations of this Agreement to the extent applicable: Sections 7.F. "No Damages"; 11.E. "Hold Harmless; Indemnification of City; 11.F. "Cooperation in the Event of Legal Challenge";

(3) **Limit on Termination Remedy for Default.** Provided Developer has satisfied the milestone set forth in Section 6.A(1), below, City shall not terminate this Agreement or the VTM, as defined herein, for any reason, except upon mutual written agreement of the Parties.

D. Term Of Subdivision Maps And Other Project Approvals And Project-Related Agreements

(1) Except as set forth in subsections 1.D.(2), D.(3), and D.(4) below, the term of any tentative subdivision map or Project Approval existing as of the effective date of this Agreement shall coincide with the Term of this Agreement. Upon the termination or expiration of this Agreement the term of such map or Project Approval shall expire. Should the Term of this Agreement be extended, the term of such map or Project Approval shall likewise be extended to coincide with the extended Term of this Agreement subject to any processing requirements required therefore.

(2) The term of any subdivision improvement agreement related to development of the Project Site, or any portion thereof, shall be as set forth in the term of the particular agreement.

(3) The term of any Subsequent Approval shall have the life as set forth in the City of Vacaville Land Use and Development Code ("LUDC") or as stated in the particular approval, however, the term of any Subsequent Approval shall not extend past the term of this Agreement unless expressly provided for in the Subsequent Approval. Except as set forth in subsection (4) immediately below, if no term is set forth in the LUDC or in the specific approval then the term of the approval shall coincide with the Term.

(4) The following agreements or approvals shall survive the expiration or termination of this Agreement: the Settlement Agreement; the CH Settlement Agreement; the Obligations Agreement; the Developer Mirror Cooperative Agreement; the Indemnity and Responsibility Agreement if and when approved as a Subsequent Approval; the Master Final Map; all other final maps; conditional use permits; approvals that run with the land pursuant to the Vacaville Municipal Code or state law; and the Geologic Hazard Abatement District and any other financing or assessment districts.

SECTION 2. PROPERTY SUBJECT TO THIS PHASING AND DEVELOPMENT AGREEMENT

All of the property shown in Exhibit A as the "Project Site," and more particularly described in Exhibit A-1 entitled "Legal Description of the Project Site" shall be subject to this Agreement. Exhibits A and A-1 are made a part hereof and are incorporated into this Agreement by this reference.

SECTION 3. PROJECT DESCRIPTION

The Lower Lagoon Valley Policy Plan Implementation Project covers an approximately 868-acre site and includes: (1) approximately 323 acres of residential development to include 1,025 homes with a variety of housing types, organized in three villages with an integrated golf course and club house with recreational amenities; (2) approximately 458 acres of open space and recreational uses including a golf course, neighborhood and linear parks, and riparian and hillside open space; (3) a Business Village and Town Center on approximately 60 acres and (4) approximately 23 acres of public uses and roadways including an approximately 1.5 acres fire station site.

SECTION 4. OBLIGATIONS OF PARTIES

A. The respective obligations of the parties are set forth in detail in the Project Approvals which remain in full force and effect except as deliberately and specifically modified herein. The full language of each is on file with the City's Community Development Department and is made a part hereof and incorporated herein by this reference.

B. The Parties acknowledge and agree that the Project Approvals set forth above specifically address (in addition to other items):

- (1) Detailed Project description, including permitted uses;
- (2) Provisions for financing districts;
- (3) Various fees, waivers and payment schedules.

C. The Parties agree that following recordation of the initial residential final map, Developer shall proceed in good faith, given market conditions, to build-out the project in a consistent and expedient manner and in compliance with the phasing agreements in this

Agreement and in various Project Approvals, including, but not limited to the Obligations Agreement, Settlement Agreement, Final Master Phasing Plan dated September 17, 2014, and the Director's Letter.

SECTION 5. VESTED ELEMENTS

A. 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 elsewhere in 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 elsewhere in this Agreement. The foregoing notwithstanding, applications for permits, entitlements, and other approvals shall be subject to such changes in the General Plan, the Vacaville Municipal Code, City's zoning code, and other rules, regulations, ordinances and official policies hereinafter adopted (and in effect at the time of the application) that do not conflict with the Vested Elements or materially deprive Developer of the benefits thereof. The Vested Elements shall be effective against, and shall not be amended by, any subsequent ordinance or regulation, whether adopted or imposed by the City Council or through the initiative or referendum process. The Vested Elements are:

- (1) The General Plan, approved by the City Council on August 11, 2015, by Resolution #2015-074, including any amendment thereto enacted prior to the execution of this Agreement;
- (2) The Project Approvals; and
- (3) The Subsequent Approvals.

B. 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 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 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 Sections 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.

Any tentative map prepared for the Project pursuant to this Agreement will comply with California Government Code Section 66473.7.

C. Applicable Subdivision And Safety Regulations; No Conflicting Enactments

Nothing herein 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 CEQA 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 amendments 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 one or more 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) Limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed buildings or other improvements. However, this provision shall not require City to increase the density of allowable development on the Project Site to offset or compensate for a reduction in density resulting from state or federal laws including, but not limited to, laws relating to airport safety or wetlands, species or habitat protection, preservation or restoration. The foregoing provision is not intended to limit Developer’s legal rights against state or federal authorities imposing such laws, but is intended to disallow suit against City due to the impact of such state or federal 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 Policy Plan and the Vesting Tentative Map, provided, however, that nothing in this subsection 5.C. shall prohibit City from increasing the density of development on the Project Site to the extent the Project Approvals permit. City 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's Building Division (or completion of final inspection if no certificate of occupancy is required).

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

(4) Except as otherwise permitted 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, geologic hazard abatement 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 uniformly applied to all similar uses within the affected zone, district or area.

(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.

SECTION 6. PROJECT PHASING; PARK FEE CREDIT; DEFAULT; PLANNED GROWTH ORDINANCE

A. Phasing Schedule

Developer shall comply with the following phasing schedule milestones:

- (1) No later than July 1, 2017, Developer shall commence construction of all of the following projects: Lagoon Valley Lift Station, Lagoon Valley Water Storage Reservoir, and the Lagoon Valley Booster Pump Station.
- (2) No later than December 1, 2018, Developer shall record the initial residential final map.
- (3) No later than April 1, 2023, Developer shall submit a performance bond or other form of security acceptable to the Community Development Director for the completion of the golf course, and submit preliminary design and preliminary specifications for the golf course, as set forth more specifically in the Director's Letter, Item 9.D.

The milestones set forth in this phasing schedule are in addition to and shall not supersede any other phasing plan(s), including, but not limited to, the Final Master Phasing Plan dated September 17, 2014, submitted in conjunction with the Master Final Map, the golf

course and fire station phasing plans set forth in the Director's Letter, and any phasing obligations in the Obligations Agreement and/or Conditions of Approval, to the extent they have not been modified by later Project Approvals.

B. Park Fee Credit

Pursuant to Section II.A.2. of the Obligations Agreement, Developer is entitled to a two million dollar (\$2,000,000) credit against the portion of the building permit fees attributable to park and recreation in connection with Developer's dedication to the City of the approximately 71-acre area north of Lagoon Valley Road ("71-Acre PR Fee Credit"). The Obligations Agreement anticipates that Developer shall receive the 71-Acre PR Fee Credit in the full amount of the park and recreation fees due with each building permit until the total amount is reached, rather than on a pro-rata basis.

This Phasing and Development Agreement specifically amends section II.A.2. of the Obligations Agreement, and any other section of the Obligations Agreement or any of the other Project Approvals that relate to allocation of the 71-Acre PR Fee Credit as follows:

Developer shall be entitled to begin receiving the 71-Acre PR Fee Credit against the full amount of the park and recreation fees due with each building permit upon submitting the required performance bond or other security for the completion of the golf course, as contemplated in Item 9.D of the Director's Letter, and shall continue receiving the PR fee credit against the full amount of the park and recreation fees due with each building permit until the total amount of the fee credit is reached. In the event the PR Fee Credit (or any reduced PR Fee Credit as set forth herein) is not exhausted by the time the Project has been issued permits for all one thousand fifteen (1015) residential units, City will reimburse Developer the outstanding balance of the PR Fee Credit within sixty (60) days of receipt of Developer's written request. This subsection 6.B. specifically addresses the 71-Acre PR Fee Credit. Nothing in this subsection 6.B. shall affect Developer's right to receive any other fee credit or similar benefit provided pursuant to the Project Approvals, including, but not limited to, the park and recreation fee credit for Developer's anticipated dedication and construction of the approximately eight-acre Village Green public park near the Business Village.

C. Default

(1) Default

If Developer fails to meet any of the milestones set forth in subsection 6.A.(1) through 6.A.(3) above as a result of Developer's action or inaction, and such failure is not excused by the Excusable Delay provisions herein, the following cure and remedy provisions shall apply:

(2) Cure

Upon the occurrence of default under this Section, City shall give Developer written notice thereof, specifically stating that it is a notice of default under this Section and giving Developer no less than thirty (30) days to cure the default

measured from the date of personal service or delivery by certified or overnight mail of the written notice of default. Developer is entitled to only one cure period for each milestone in subsection 6.A.(1) through 6.A.(3), notwithstanding any post-default extension the parties may agree to.

(3) Remedies

For each milestone set forth in Section 6.A.(1) through 6.A.(3) that Developer fails to meet and fails to cure the failure to meet the milestone as allowed under this Agreement, City shall reduce the PR Fee Credit by six hundred sixty-seven thousand dollars (\$667,000). Provided Developer has satisfied the milestone in Section 6.A.(1), City shall have no remedy of termination of this Agreement or termination of the VTM for any reason, including, but not limited to breach or default hereunder, unless the Parties mutually agree in writing to terminate this Agreement.

City shall provide written notice to Developer of imposition of the PR Fee Credit reduction and the notice may provide a reasonable date for compliance with the milestone, following consultation with Developer.

(4) Extension of Time

If Developer fails to meet a milestone, either due to an Excusable Delay or to a default, the parties to this Agreement shall meet and confer in good faith to determine if an adjustment to the date of performance of any future milestone is warranted. If after conferring with Developer, City approves an extension of any milestone(s), the parties may enter into an Administrative Amendment to this Agreement. If the parties cannot mutually agree upon the extension of any milestone(s) the current milestone(s) shall remain in effect.

The default and remedy provisions in this Section 6.C. are in addition to the remedies set forth in Section 7 and are limited by any applicable limitation on the remedies set forth in Section 7.

D. Relationship And Integration With City's Planned Growth Ordinance; Building Permit Allocations

This Section shall be considered an approved "Phasing Plan" that satisfies Vacaville Municipal Code § 14.05.044.030.A.5 and modifies the Lower Lagoon Valley Policy Plan Implementation Project Residential Phasing Plan adopted City Council Resolution 2006 -145. City hereby exempts one thousand fifteen (1,015) building permits for the Project 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 Initial Final Map (also referred to in various Project Approvals as the "Initial Residential Final Map") for the Project, or any portion thereof, is approved by City, and for each calendar year thereafter (effective on January 1 of each such year) during the Term of this

Agreement, City shall allocate two hundred fifty (250) assignable residential building permits for the Project to Developer as necessary until the Project is completed. Completion of the Project requires at least 838 total allocations. There shall be no carryover of any unused allocations. The allocations provided for in this Subsection shall automatically apply and shall not require any formal application or request by Developer for such annual reservation of building permits.

(2) For each calendar year in which Developer anticipates using all two-hundred fifty (250) residential building permit allocations, Developer may request from City's Director of Community Development up to one hundred (100) additional residential building permit allocations. Upon making the request Developer shall submit a progress report detailing the Project status, compliance with this Agreement and anticipated progress. Upon Director's request, Developer shall consult with Director regarding the progress report and address any areas of concern. Thereafter, upon Director's determination that Developer is in compliance with the requirements of this Agreement and the Project Approvals, or is addressing any areas of non-conformance, which shall not be unreasonably withheld, conditioned or delayed, Director shall grant the requested additional allocations. For purposes of this subsection 6.D.(1), a finding of Default as set forth in Sections 6 and 7 herein, is not required for the Director to determine that Developer is not in compliance and therefore to deny a request for additional building permit allocations. If Director denies such request Developer may appeal the denial to the City Council.

(3) Up to a total of thirty (30) building permits for model homes and all building permits for the age-restricted and custom homes are exempt from the Phasing Plan allocation limits and building permits may be issued at any time for such units.

(4) Should Developer propose to assign the allocation, or any portion thereof, to a project builder other than Developer, Developer shall submit to City's Director of Community Development an application for assignment identifying such other builder(s) and the number(s) of permits proposed to be allocated. The application shall be submitted to the Director within the time period specified by and approved by the Director and shall not be unreasonably denied, conditioned or delayed. If multiple project builders apply for building permits for the project in the same calendar year, the building permits will be issued on a first come-first served basis.

SECTION 7. DEFAULT AND REMEDIES

In addition to the default and remedies specifically set forth in Section 6 above, the following default and remedy provisions shall apply to any material default of this 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 in which to cure said default, which 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 with default shall not be considered in default for the purpose of terminating this Agreement or instituting legal proceedings.

If a dispute arises regarding any claim of default under this Agreement, the parties shall continue to perform their respective obligations hereunder, to the maximum extent practicable irrespective of such dispute.

B. Remedies

Upon expiration of the cure period referenced above, if the default remains uncured, or if such cure cannot be accomplished within such cure period and the defaulting party has not commenced such cure during such period and diligently prosecuted such cure thereafter, the non-defaulting party may, at its option, give notice of intent to terminate this Agreement pursuant to Government Code Section 65868, or pursue such other legal or equitable remedies as may be available to such party, including, but not limited to specific performance, provided, however, that if Developer has satisfied the milestone set forth in Section 6.A(1), above, City shall not terminate this Agreement or the VTM. Any such notice of intent to terminate shall be given by certified mail, return receipt requested. If 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 days in accordance with Government Code Sections 65867 and 65868 and Vacaville Municipal Code Chapter 14.17.218. After considering the evidence presented, the City Council shall render its decision to terminate or not terminate this Agreement. If the City Council decides to terminate this Agreement, City shall give written notice thereof to the defaulting party.

Evidence of default of this Agreement may also be taken during the regular Annual Review of this Agreement as described in Section 9 below. Any determination of default (or any determination of failure to demonstrate good faith compliance as a part of the Annual Review) made by City against Developer or Developer's successor(s) 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 Chapter 14.17.218. Notwithstanding any other provision of this Agreement to the contrary, remedies for a default by Developer or its successor(s) 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 and Project Approvals, including, but not limited to, the obligation to indemnify, defend, and hold harmless City, provided, however, that if

Developer has satisfied the milestone set forth in Section 6.A(1), above, City shall not terminate this Agreement or the VTM. Such remedies shall include those available at law or in equity as 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 or other related financing.

Subject to the limitation on termination of this Agreement set forth in the preceding paragraph, 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 (Government Code Sections 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 City of this Agreement for alleged default by Developer shall be subject to review in the Superior Court of the County of Solano pursuant to Code of Civil Procedure Section 1094.5(c). During the pendency of any such judicial review the Parties shall meet and confer in good faith to determine whether the Agreement shall remain in full force and effect except that in any case, if the Term expires during such period this Agreement shall terminate unless extended by mutual agreement of the parties.

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 shall have the rights and remedies provided herein or available in law or in equity, including, without limitation, the right to seek specific performance.

F. No Damages

Unless specifically set forth herein, 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 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 or the Project Approvals, including, but not limited to, obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each party acknowledges, warrants and represents that it has been fully advised by counsel of such party's choice with respect to the rights and remedies of such party hereunder and the waivers herein contained, and that 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 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 14.17.218 of the Vacaville Municipal Code. The Annual Review shall include a review of compliance with this Agreement, approved mitigation measures, and all of the Developer's obligations as set forth in the Project Approvals.

Notwithstanding the Effective Date of this Agreement, the Annual Review shall take place between August 1 and October 31 of each year during the Term.

SECTION 9. 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. Attorney Fees

Each party shall bear its own attorney fees and other costs in connection with any action or proceeding brought to enforce this Agreement. The prevailing party in such action or proceeding shall not be entitled to recover its attorney fees and other costs from the other party.

C. 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 to include delay beyond the reasonable control of the party claiming the delay (despite the party's good faith efforts to avoid or mitigate the delay) 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 a decline in the housing market as defined by a fifteen percent (15%) or greater decline in average home prices in the Vacaville, California residential real-estate market over the immediately previous two-year period; (x) discovery of Native American artifacts or remains resulting in a delay or cessation of construction-related activities; (xi) delay caused by governmental restrictions imposed or mandated by other governmental entities; (xii) enactment of conflicting state or federal laws or regulations; (xiv) judicial decisions excusing performance; and (xiii) 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 of any such delay and the reason therefor as soon as possible after the same has been ascertained by the party delayed.

D. 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 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 and City may mutually agree in writing to 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 in writing, 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.

E. 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 or any ordinances that 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. 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 and 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.

F. Written Verification Of Sufficient Water Supply

The Vesting Tentative Map approved for the Project on February 22, 2005, is in compliance with Government Code Sections 66473.765867.5(c) requiring written verification of the applicable public water system’s ability to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivisions.

**SECTION 10. OTHER GOVERNMENTAL PERMITS AND APPROVALS:
COOPERATION OF CITY**

Developer understands and acknowledges that development of the Project and performance under this Agreement may require permits, licenses, and/or other approvals from other governmental agencies that are out of City’s jurisdiction and control (“Outside Approvals”). 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), so long as such cooperation 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. However, Developer is solely responsible for obtaining such Outside Approvals, and City shall have no obligation, responsibility or liability to Developer, nor shall City be compelled to allow Developer to proceed under this Agreement, if Developer is unable for any reason to secure the necessary Outside Approvals to perform this Agreement.

SECTION 11. TRANSFERS AND ASSIGNMENTS

A. Right To Assign

Developer shall have the right to sell, convey, transfer, or assign all or any portion of its rights to any portion of the Project Site subject to providing thirty (30) days prior written notice to City. Its rights, duties and obligations under this Agreement with respect to the portion of the Project Site so sold, conveyed, 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, conveyance, transfer or assignment, in whole or in part, of Developer's right and interest to all or any portion of the Project Site (hereinafter collectively referred to as "transfer"), Developer shall be released from its obligations hereunder with respect to the portion so transferred provided: (i) Developer (or transferee) was not in default of this Agreement at the time of transfer, (ii) Developer provided to City prior written notice of such transfer, and (iii) with respect to the transfer of any lot that has not been fully improved, the transferee executes and delivers to City a written assumption agreement in which: (a) the name and address of the transferee is set forth, and (b) the transferee expressly assumes the obligations of Developer under this Agreement as to the portion of the Project Site transferred; provided, however, that Developer shall not be relieved of any obligation for the dedication or conveyance of land required to be conveyed or dedicated pursuant to the Vested Elements or any obligations related to maintaining an endowment for maintenance of the conservation easement areas. 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.

In the case of the sale of an individual improved residential lot that has received its final inspection Developer shall be released from its obligations hereunder with respect to the lot so transferred and this Agreement shall have no further effect as to the particular improved lot.

C. Approvals; Right of Amendment;

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, Project Approvals, or any other approval granted hereunder) constitute an amendment hereof.

No party other than Developer or its express assignee for this purpose, 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.

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, geologic hazard abatement district, or assessment district created to fund the design, construction and maintenance of the infrastructure, landscape, open space, mitigation areas and other improvements funded by such district to the same extent as if said parcel or property had been part of the Project Site at the time of 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 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 the district's 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 a 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. Except that the provisions of this Agreement shall not run with the land, or be enforceable against, developed residential lots purchased or available for purchase by individual homeowners.

SECTION 12. GENERAL PROVISIONS

A. Incorporation Of Recitals

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

B. Limitation On Effect Of Agreement

Except as expressly provided for in this Agreement to the contrary, Developer and the Project Site are subject to all rules, regulations, ordinances, procedures, standards, uniform codes, requirements, costs, exactions and processes of City applicable to development of property within the city as the same are in effect at the time Developer seeks any land development approval or entitlement 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. Amendment And Termination Of Agreement

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, the Project Approvals, or any other approval granted hereunder) constitute an amendment hereof.

Nothing in this Agreement limits or alters the City's right to administratively approve changes in the Project or any Prior Approvals as set forth in the Director's Letter, the Obligations Agreement, and the Settlement Agreement.

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.

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 Sections 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 of Community Development 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 and/or referred to the City Council. 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 elsewhere in 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, the Policy Plan, and 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 does not reduce the development rights granted to Developer by this Agreement.

Nothing in this Agreement limits or alters the Parties' ability to mutually agree to terminate this Agreement in writing.

D. 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.

E. Hold Harmless; Indemnification of City

Developer shall hold and save City, its officers and employees, harmless and indemnify and defend 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 (i) the approval, validity and/or implementation of this Agreement, (ii) injury to or death of persons or damage to property that may arise by reason of development or use of those portions of the Project Site owned by Developer pursuant to this Agreement or (iii) 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.

This provision shall operate in addition to and shall not supersede or otherwise alter or decrease any hold harmless, indemnification or defense provisions set forth in the Project Approvals.

F. 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 this Agreement or 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, any expert witnesses, and other costs related to the action or proceeding. Developer's obligation to pay for legal counsel and other fees and costs 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.

G. Notices

Any notice or communication required hereunder between the parties shall be in writing, and shall be given by overnight (with tracking), 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) two business days after such notice, properly addressed, with postage prepaid, is deposited with the overnight carrier, or (iii) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail. Any party hereto, may at any time, by giving ten 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: Lagoon Valley Residential, LLC
c/o CalAtlantic Homes, East Bay Division
Attention: Division President
4750 Willow Road, Suite 150
Pleasanton, California 94588

With a copy to: Lagoon Valley Residential, LLC
c/o CalAtlantic Group, Inc.
Attention: General Counsel
15360 Barranca Parkway
Irvine, California 92618

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. Time

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

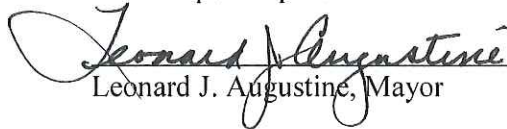
Signatures on following page.

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

“CITY”

CITY OF VACAVILLE,
a municipal corporation

Approved as to form:

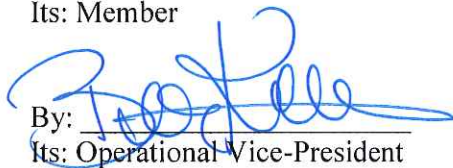

Leonard J. Augustine, Mayor

4-13-16 
Melinda C. H. Stewart, Assistant City
Attorney

“DEVELOPER”

Lagoon Valley Residential, LLC, a
California limited liability company

By: CalAtlantic Group, Inc., a Delaware
corporation
Its: Member

By: 
Its: Operational Vice-President

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

STATE OF CALIFORNIA

COUNTY OF Alameda

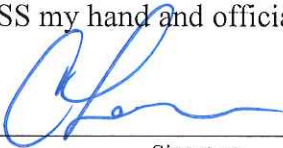
On March 4, 2016, before me, C. Leon, Notary Public
(here insert name and title of the officer)

personally appeared Bridgit Koller,

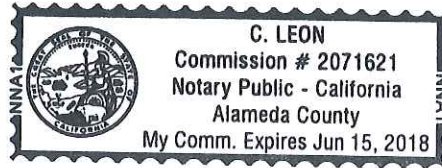
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

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

WITNESS my hand and official seal.



Signature



(SEAL)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of Solano)

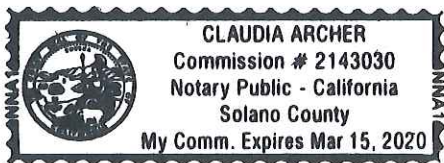
On April 13, 2016 before me, Claudia Archer, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Leonard J. Augustine
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature Claudia Archer
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

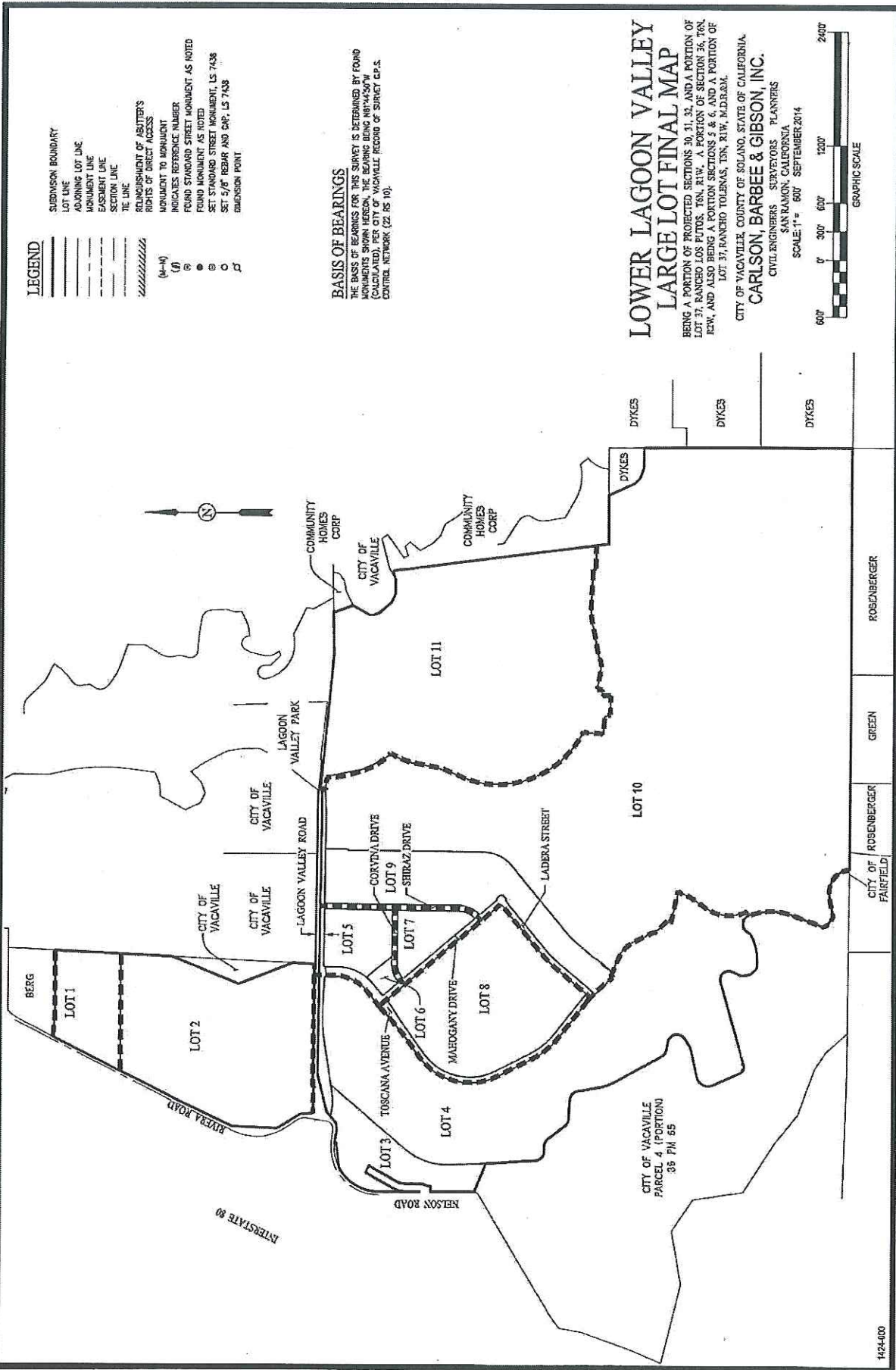
Description of Attached Document

Title or Type of Document: Phasing & Develop-Agreement between City of Vacaville and Lagoon Valley Residential, LLC Document Date: April 13, 2016
Number of Pages: 32 (incl. this page) Signer(s) Other Than Named Above: Bridgit Koller

Capacity(ies) Claimed by Signer(s)

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

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



LEGEND

- SUBDIVISION BOUNDARY
- LOT LINE
- ADJOINING LOT LINE
- MONUMENT LINE
- EASEMENT LINE
- SECTION LINE
- TIE LINE
- RELINQUISHMENT OF ADJUTER'S RIGHTS OF DIRECT ACCESS
- MONUMENT TO MONUMENT
- INDICATES REFERENCE NUMBER
- FOUND STANDARD STREET MONUMENT AS NOTED
- FOUND MONUMENT AS NOTED
- SET STANDARD STREET MONUMENT, LS 7438
- SET 5/8" REBAR AND CAP, LS 7438
- DIMENSION POINT

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS DETERMINED BY FOUND MONUMENTS, SHOWN HEREON, THE BEARINGS BEING CALCULATED (CALCULATED) PER CITY OF VACAVILLE RECORD OF SURVEY C.P.S. CONTROL NETWORK (22, RS 10).

**LOWER LAGOON VALLEY
LARGE LOT FINAL MAP**

BEING A PORTION OF PROJECTED SECTIONS 30, 31, 32, AND A PORTION OF LOT 37, RANCHO LOS PUTOS, T8N, R1W, A PORTION OF SECTION 36, T6N, R6W, AND ALSO BEING A PORTION SECTIONS 2 & 6, AND A PORTION OF LOT 37, RANCHO TOLENAIS, T8N, R1W, M.D.R.A.M.

CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA.

CARLSSON, BARBEE & GIBSON, INC.
CIVIL ENGINEERS SURVEYORS PLANNERS
SAN RAMON, CALIFORNIA
SCALE: 1" = 600' SEPTEMBER 2014



Attachment 1

FEBRUARY 11, 2016
JOB NO.: 1424-000

EXHIBIT A-1

**LEGAL DESCRIPTION
OF THE PROJECT SITE
VACAVILLE, CALIFORNIA**

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF THE LANDS EMBRACED WITHIN THE DISTINCTIVE BORDER AS SHOWN AND SO DESIGNATED ON THAT CERTAIN FINAL MAP ENTITLED, "LOWER LAGOON VALLEY LARGE LOT FINAL MAP," FILED DECEMBER 30, 2014 IN BOOK 88 OF MAPS, AT PAGE 87, IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY.

END OF DESCRIPTION



MARK H. WEHBER, P.L.S.
L.S. NO. 7960



**END OF
DOCUMENT**