

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF VACAVILLE  
AND R. W. HERTEL & SONS  
REGARDING THE DEVELOPMENT OF THE REAL PROPERTY  
COMMONLY REFERRED TO AS**

**“REYNOLDS RANCH”**

**THIS DEVELOPMENT AGREEMENT** (hereinafter "Agreement") is entered into this 11th day of May, 2004, by and between R. W. HERTEL & SONS, INC., a California Corporation ("Developer"), and the CITY OF VACAVILLE, a municipal corporation ("City"), pursuant to the authority of §§ 65864 through 65869.5 of the California Government Code, and Division 14.17 of the Vacaville Municipal Code. City and Developer are also referred to hereinafter individually as "party" or collectively as the "parties."

**RECITALS**

This Agreement is made with reference to the following facts:

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

**B.** Developers have a legal and/or equitable interest in certain real property consisting of the following properties, located adjacent to the northwester boundary of the City of Vacaville, California, all of which is commonly known as the Rice-McMurtry Area ", 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"):

Owner:	Assessor's Parcel Number	Acres:
Reynolds Ranch:		
Reynolds Ranch, LLC	0105-200-160; 0105-210-040	100.7
McMurtry Lane, LLC:	0123-040-120; 0123-040-130	49

**Knoll Creek:**

Richard Lamphere

James and Sandra Rodgers      0123-140-110      22.66

**Rogers Ranch:**

Bryant Stocking

Donald and Margaret Stocking      0123-040-060      44.96

**C.** Developers intend to develop the Project Site with three separate residential communities, including approximately 287 lots for single family residences with a rural feel and quality with such elements as non-standard public or private streets, low-level lighting, open space, roads, trails, and other public and private improvements, all as more particularly described in the Project Approvals and in the Subsequent Approvals as and when they are adopted, approved or issued, and certain off-site improvements to be constructed in connection therewith, hereinafter referred to as the "Project".

**D.** The parties now desire to set forth their understandings concerning the vesting of certain components of the Vacaville General Plan and the Planned Development Permit ("PD") for the Project. In executing this Agreement, Developer recognizes that the use and development of the Project Site are subject to completion of the annexation of the entire Property into the City and the grant of certain Subsequent Approvals which are hereinafter defined and identified to the extent that they are known at the time this Development Agreement was adopted. Developer recognizes that Subsequent Approvals are subject to review by the City's planning staff, public hearings and discretionary approval by the appropriate decision-making body in accordance with the terms and conditions of this Development Agreement and the City of Vacaville Land Use and Development Code, and may be subject to the requirements of the California Environmental Quality Act, Public Resources Code §§ 21000, *et seq.*, the "CEQA Guidelines", 15 California Code of Regulations §§ 15000 *et seq.*, and City's local policies and guidelines (hereinafter collectively referred to as "CEQA"), to the degree not already environmentally reviewed by existing documents such as the Environmental Impact Report developed for this Development Agreement and the Project.

**E.** City acknowledges that Developer's agreement to make the commitments herein furthers the City's efforts for development of the Project Site, and such commitments constitute a material factor in City's willingness to approve this Agreement. City also acknowledges that it is willing to provide Developer with the undertaking contained in this Agreement because City has determined that development of the Project Site will provide public benefits that could not be obtained without vested approval of 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 and the Developers agreement to pay full school mitigation fees as determined by the Vacaville Unified School District and the payment of Community Benefit Contribution as provided for herein.

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

**G.** It is the intent of the City Council in approving this Agreement and all Subsequent Approvals that the existing residents of Vacaville and the City's General Fund will not bear any of the short or long-term costs resulting from any development of the Project Site or developments commonly known as the "Reynolds Ranch Project", the "Knoll Creek Project" and the "Rogers Ranch Project". Developers shall ensure that the full cost to construct and equip facilities, to operate municipal facilities, and to provide services to the Project shall be borne by the Project through direct financial contributions such as the payment of development impact fees and the payment of the Community Benefit Contribution and through funding mechanisms such as Public Safety Districts, Mello-Roos Community Facilities Districts, Lighting and Landscaping Districts, Assessment Districts, and/or Benefit Districts.

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

(1) EIR. The potential environmental impacts of the Project contemplated and addressed by the EIR, including the Project Approvals and the Subsequent Approvals, and alternatives to the Project or its location, have properly been reviewed and assessed by City pursuant to CEQA. Concurrently with the adoption of this Agreement, pursuant to CEQA and in accordance with the recommendation of City Planning Commission, the City Council adopted Resolution 2004-39, certifying the environmental impact report, entitled the "Rice McMurtry Project Final Environmental Impact Report", No. EIR- 04-048, State Clearinghouse No. 2003072092, regarding the Project (the "EIR"), adopted certain Statements of Overriding Considerations, and adopted findings and a mitigation monitoring program (the "Mitigation Monitoring Program").

(2) General Plan Amendment. Immediately prior to adoption of this Agreement, following review and recommendation by the City Planning Commission, and after duly noticed public hearing and certification of the EIR, the City Council, by Resolution 2004-39 approved an amendment to the City's General Plan.

(3) Planned Development Permit ("PD" Permit). Concurrent with the adoption of this Agreement, following review and recommendation by the City Planning Commission, and after a duly noticed public hearing and certification of the EIR, the City Council, by Resolution 2004-39, approved the PD Permit providing City land use regulations and development criteria relating to the development of the Project on the Project Site.

(4) Zone Change. Concurrent with the adoption of this Agreement, following review and recommendation of the City Planning Commission, and after a duly noticed public hearing and certification of the EIR, the City Council, by Resolution 2004-39 approved the rezoning of the Project Site (the Zone Change).

(5) Development Agreement. On March 30, 2004, following a duly noticed public hearing, the City Planning Commission, by Resolution No. 04-048, made the appropriate findings required by Division 14.17 of Vacaville Municipal Code, and recommended that the City Council approve this Agreement. On May 11, 2004, the City Council adopted Ordinance No. 1716, approving and authorizing the execution of this Agreement.

I. Immediately prior to the adoption 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 Vacaville Municipal Code, that the provisions of this Agreement are consistent with the General Plan.

J. Applications for land use approvals, entitlements, and permits other than the Project Approvals that are necessary to or desirable for the development of the Project and which are consistent with the Project (collectively, the "Subsequent Approvals") have been or will be made by Developer. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals, design review approvals (including site plan, architectural and landscaping plan approvals), deferred improvement agreements and other agreements relating to the Project, use permits, grading permits, building permits, lot line adjustments, sewer and water connections, certificates of occupancy, subdivision maps (including tentative, vesting tentative, parcel, vesting parcel, and final subdivision maps), preliminary and final development plans, rezonings, encroachment permits, and any amendments to, or repealing of, any of the foregoing.

**NOW, THEREFORE,** in consideration of the 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 adoption by the City Council of the ordinance approving this

Agreement, or upon receipt of the certified results of a referendum election upholding this Agreement, whichever is later (the "Effective Date").

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

**C. Termination of Agreement.** In the event Developer has not commenced the "Phase I Infrastructure" (as hereinafter defined) on or before the Third (3rd) Anniversary of the Effective Date, this Agreement shall terminate without further action by City and shall not be subject to the cure provisions of Section 7 of this Agreement relating to default. As used in this Subsection, "Commenced" is defined to mean that the improvement plans for all Phase I Infrastructure (as hereinafter defined) have been approved by City and construction of Phase I Infrastructure on the Project Site has begun and is diligently proceeding towards completion. If the Project Site is not annexed to the City prior to the second anniversary of the Effective Date of this Agreement, this Agreement shall terminate and shall be null and void without further action by City and shall not be subject to the cure provisions of Section 7 of this Agreement relating to default.

**D. Definitions.**

**"Developer"** shall mean any person or entity processing any subdivision map or application for building or grading permits or any other discretionary or ministerial permit authorized by this Agreement.

**"Director"** shall mean the City of Vacaville Director of Community Development/Deputy City Manager or his designee.

**"Director of Public Works"** shall mean the City of Vacaville Director of Public Works or his designee.

**"Phase I Initial Infrastructure"** shall include, but not be limited to, the water, sewer, storm drain, roadway and intersection improvements, telecommunications, and other backbone infrastructure needed to support the Project allowed by the first Tentative Subdivision Map approved for the Reynolds Ranch, Rogers Ranch, or Knoll Creek properties. Phase I Initial Infrastructure shall be established at the time of approval of the first Subdivision Tentative Map within the Project Area.

**"Phase I – Interim Water System"** shall include main zone and upper pressure zone improvements described as "Phase I" in the EIR prepared for the Rice-McMurtry Project Area. These improvements will provide interim service to homes below elevation 222 from the main Zone. Upon completion of the upper pressure zone system, the interim water system will be converted to be served from the upper pressure zone.

**"Rice - McMurtry Project Area"** shall include any or all of the three separate properties that are parties to the development within the Rice – McMurtry Project Area known as Reynolds Ranch, Knoll Creek, and Rogers Ranch, as more particularly shown on Exhibit A.

**SECTION 2. PROPERTY SUBJECT TO THIS DEVELOPMENT AGREEMENT.** All of the property described in Exhibit A (Site Plan) and Exhibit A-1 (Legal Description) shall be subject to this Agreement.

**SECTION 3. OBLIGATIONS OF CITY**

**A. No Conflicting Enactments; Protection From Moratoria; Exemption From Planned Growth Ordinance; Exception For Development Limitation Due To Lack Of Infrastructure Or Inability Of City To Provide Public Services; Timing Of Project Construction And Completion.** Neither City nor any agency of City shall enact any ordinance, resolution, rule, procedure or other measure that relates to the rate, timing or sequencing of development of the Project Site. Except as specifically provided herein to the contrary and in accordance with the purpose of the Development Agreement Legislation, the development agreement provisions of Division 14.17 of the Vacaville Municipal Code, and in consideration of the benefits derived by City as recited herein, no future modification of City's 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 insure that Developer timely constructs and provides all necessary infrastructure to serve proposed development as a condition of issuance of any City permit, approval or other land use entitlement sought by Developer for the Project Site. Further, except for extensions granted by the mutual written agreement of the parties or pursuant to Section 9 of this Agreement relating to permitted delays, Developer shall install required infrastructure improvements in accordance with the Planned Development Permit's implementation schedule.

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, the zoning codes, 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, as amended in 1999 or as later amended before or concurrent with the approval of this Agreement, including that General Plan Amendment approved by City immediately prior to the approval of this Agreement.

(2) The Planned Development Permit for the Reynolds Ranch Project, the Knoll Creek Project, or the Rogers Ranch Project.

(3) The Zone Change.

(4) Mitigation measures adopted by City for the Project.

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

(6) Fee schedules and rates as follows:

(a) Fee schedules and rates for processing discretionary permit applications and all traffic, sewer, and park development impact fees shall be those in effect as of the Effective Date, except that annual increases as provided for in the enabling ordinance for each such application or

development impact fee shall apply. Such fee schedules and rates shall be considered part of the Vested Elements.

b) Sewer and water connection fees and building permit and inspection fees shall not be part of the Vested Elements and shall be those sewer and water connection fees and building permit and inspection fees in effect at such time as a complete building permit application is submitted for each dwelling unit authorized by this Agreement.

**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 reconfigure the parcels comprising the Project Site as may be necessary or desirable in order to develop a particular phase of the Project Site or to lease, mortgage or sell a portion of the Project Site. All such subdivision maps shall not be approved unless City finds each to be consistent with the Vacaville General Plan. 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. Term Of Subdivision Maps And Use Permits.** The term of any parcel map waiver, tentative parcel map, tentative subdivision map, vesting tentative parcel map or vesting tentative subdivision map, relating to the Project Site, or any part thereof, and the term of any subdivision improvement agreement related to development of the Project Site, or any portion thereof, shall be the period of time specified in the approval of said parcel map waiver, tentative parcel map, tentative subdivision map, vesting tentative parcel map or vesting tentative subdivision map or, if no period of time is specified, then the term shall be five (5) years. Developer may seek time extensions of tentative maps in accordance with the provisions of the Subdivision Map Act.

The term of any 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 from the approval date, which period of time may be extended for two additional one (1)-year periods by the entity having decision-making authority over such time extension requests. Any such permit, approval, or entitlement shall continue in effect and no time extension will be necessary if: (i) in the case of a residential use, the building foundation for at least one (1) home is installed and completed and, thereafter, construction diligently continues towards completion or, (ii) in the case of a non-residential use, a building permit has been issued and construction has been initiated and is on-going.



**E. Applicable Subdivision And Safety Regulations; No Conflicting**

**Enactments.** Except as expressly provided in the conditions of approval of an entitlement, every parcel map waiver, tentative parcel map, tentative subdivision map, design review application, use permit or other discretionary permit application shall be processed in accordance with the laws, ordinances, rules and regulations in effect on the date that the application therefor is determined by City to be complete. Further, nothing herein contained shall be deemed to prevent City from amending the laws, ordinances, uniform codes, rules or regulations pertaining to or imposing health and safety, fire protection, mechanical, electrical, grading and/or building requirements or other requirements that would be defined as "ministerial" under the California Environmental Quality Act, Public Resources Code §§ 21000 *et seq.* pertaining to new construction or development in the City, including the Project, when such amendments are enacted or adopted prior to the issuance of a building permit for the Project (or portion thereof), in which case such amendment shall apply to the Project (or portion thereof).

Except as set forth above, City shall not impose upon the Project (whether by Subsequent Approval or other action by City or by initiative, referendum or other means) any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually referred to as a "City Law") that reduces the development rights granted to Developer by this Agreement. Without limiting the generality of the foregoing, any City Law shall be deemed to reduce the development rights provided hereby if such City Law would accomplish any of the following results in a manner inconsistent with or more restrictive than the Project Approvals or Subsequent Approvals consistent with the Project Approvals, either by specific reference to the Project or as part of a general enactment that applies to or affects construction or development in the City:

(1) Limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed buildings or other improvements. However, this provision shall not require City to increase the density of allowable development on the Project Site to offset or compensate for a reduction in density resulting from state or federal laws including, but not limited to, laws relating to airport safety or wetlands, species or habitat protection, preservation or restoration. The foregoing provision is not intended to limit Developer's legal rights against state or federal authorities imposing such laws, but is intended to disallow suit against City due to the impact of such laws upon the Project and to free City from any obligation to increase the density of development, whether commercial or residential or otherwise, in one area of the Project Site due to reduction in available, developable lands in other areas of the Project Site other than as set forth in the Planned Development Permit. City, however, agrees to cooperate with Developer in Developer's attempt to mitigate or minimize the impacts from such reductions in density on the over-all development of the Project Site. As used in the preceding sentence, City's duty to "cooperate" with Developer does not include the obligation to contribute financially to such attempts by Developer;

(2) Change any land uses or other permitted uses of the Project Site;

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

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

(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.

**F. Processing Of Project Applications.**

(1) City shall use its best efforts to commit the necessary time and resources of City staff to work with the Developer on the timely processing of the necessary applications for entitlements needed for the Project. Such applications shall include, but not be limited to, assisting Developer in processing the application for annexation of the Project Site to the City.

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

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

**G. Relationship And Integration With City's Planned Growth Ordinance; Building Permit Allocations; Obligation Of Developer To Designate Persons To Whom Permits Are To Be Allocated.** City hereby agrees to reserve on behalf of Developer for the Project under City's Planned Growth Ordinance (Division 14.05 of the Vacaville Municipal Code), building permits as follows:

(1) Commencing in the calendar year in which the first tentative subdivision map for the Project, or any portion thereof, is approved by City and for each calendar year thereafter (effective on January 1 of each such year) during the Term of this Agreement, City shall allocate a total of fifty (50) building permits to the R. W. Hertel property, Reynolds Ranch.. 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) For purposes of complying with the Planned Growth Ordinance, Division 14.15 of the Vacaville Municipal Code, the Knoll Creek and Rogers Ranch properties will be considered "In-fill" projects.

(3) The allocation of building permits set forth in Subsection (1), above, shall not restrict the property owners from applying for additional building permits as permitted under City's Planned Growth Ordinance in accordance with the application process then in effect.

**H. Undergrounding Of Public Utilities.** The City will, to the extent reasonably possible, and at no cost to the City, exercise its authority with Pacific Gas & Electric Company ("PG&E") and Comcast of California/ Massachusetts/ Michigan/ Utah, Inc. ("Comcast") to place their power and telephone lines and equipment underground within the Project Site so as to minimize the Developer's cost of undergrounding utilities.

Developer shall pay its fair share of the costs of undergrounding utilities along Browns Valley Road and McMurtry Lane per City requirements.

**I. Coordination Of Construction Of Off-site Improvements.** Developer acknowledges that certain off-site improvements may be necessary to support development of the Project Site or may be required as environmental or other mitigation measures in connection with development of the Project Site.

**J. 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 CEQA. 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.

**K. Benefit Districts.** City shall create Benefit Districts in accordance with the Subdivision Map Act and Division 14.15 of the Vacaville Municipal Code for the purpose of establishing a mechanism to reimburse developer for any and all improvements constructed by developer that benefit private property owned by others. Such improvements shall include without limitation street, sidewalks, water mains, street lights, traffic signals, landscaping, medians and public utilities.

**L. Lighting and Landscaping Districts.** The City and Developer will cooperate in creating a Lighting and Landscaping District to fund the on-going maintenance of any publicly owned lands or improvements, including but without limitation, landscaping, storm water detention basins, parks, trails, and open space.

#### **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 that relate to permitted delays and delaying causes. Developer's performance in achieving these objectives shall be considered and evaluated as part of the process of annual review provided for in this Agreement. The objectives to be achieved by Developer are:

**A. Public Safety District ("PSD") Formation.** A single Public Safety District ("PSD") will be formed for the Reynolds Ranch, Knoll Creek, and Rogers

Ranch Project Areas. Property Owners and/or Developers shall apply for and procure adoption by City of such resolutions and actions as may be required to form the PSD. The purpose of the PSD is to provide a funding mechanism to pay for the full cost of City fire protection and police protection services for the Reynolds Ranch, Knoll Creek, and Rogers Ranch Project Areas, including the on-going costs for all salaries and benefits for the additional police and fire personnel required to serve the Reynolds Ranch, Knoll Creek, and Rogers Ranch Project Areas. Developer understands and agrees that assessments for the PSD will increase at a rate of the Consumer Price Index (CPI) for the San Francisco Bay Area per year. City shall form the PSD before recordation of the First Final Map in either the Reynolds Ranch, Rogers Ranch, or Knoll Creek Project Areas. City acknowledges that time is of the essence and agrees to process and act upon such formation with good faith and due diligence.

**B. Formation and Participation in Area Assessment District; Limitation On Ability To Develop Prior to Formation Of Assessment District.** Should the developers of the Reynolds Ranch, Rogers Ranch, or Knoll Creek Project Areas collectively desire to fund the public improvements needed to support development within the Reynolds Ranch, Rogers Ranch, or Knoll Creek Project Areas, including but not limited to roadway and intersection improvements; sewer lines; water lines; pedestrian and bicycle trails; parks and open space; fire buffer zones, and storm drainage system improvements, the Developers shall fund all efforts of the City and otherwise assist in the formation of and shall take all actions necessary to form an area-wide Assessment District. Such actions shall include, but not be limited to, the filing of a petition for the formation of such District, which shall be formed for the purpose of financing the Developer's obligations under this Subsection. Should the Developers desire to participate in the formation of an Assessment District to fund the public improvements, Developers may not seek, nor shall City issue, any building permit for the Project Site until such Assessment District is formed.

The developers shall also annex into existing Ridgeview Park maintenance district for the maintenance of the neighboring City park.

**C. Commencement Of Construction Of Phase I Infrastructure.** Not later than the third anniversary (3rd) anniversary date of the Effective Date, Developer shall have commenced and be diligently pursuing construction of the public improvements and infrastructure necessary for development of the first phase of the Project, adequate in size to support said first phase in accordance with the requirements of the Planned Development Permit. Failure to commence and diligently pursue construction of the Phase I Infrastructure in accordance with the requirements of this Section shall constitute a material breach and default of this Agreement.

**D. Privately Funded Maintenance.** Prior to the recordation of any Final Map, the Owner, Developer, or any successor-in-interest shall establish a maintenance entity acceptable to the Community Development and Public Works Directors to provide funding for the maintenance, repair and replacement (if necessary) by private contractors of landscape improvements including but not limited to, greenbelts, parks,

trails, buffers, open areas, landscaping in right-of-ways and fire protection buffer zones. Owner, Developer, and any successor in interest acknowledge that the City will establish one or more Lighting and Landscaping Districts to accomplish the same maintenance responsibilities in the event the entity created by owner, developer or any successor in interest fails to maintain the specified improvements in a manner satisfactory to the Community Development and Public Works Director. During the time the private entity provided for herein is performing the required maintenance activities there will be a "zero assessment" to the residential property owners. There shall be language included in the Disclosure Statements and Conditions, Covenants, and Restrictions acknowledging the purpose and intent of this provision and precluding the residential owners from protesting and otherwise not accepting reasonable assessments to provide the maintenance.

**E. Annexation.** The Parties to this Agreement acknowledge that the Developers will submit an application and Property Owners Petition for Annexation to the Solano County Local Agency Formation Commission (LAFCO). Following the execution of this Agreement by City and Developer and the filing of an application with LAFCO by Developer for annexation of the Project Site or any portion thereof (including payment by Developer of any annexation fees in effect at the time of such application), City staff shall work diligently to assist the Developer in pursuing all necessary proceedings to annex the Project Site to City pursuant to the Cortese Local Government Reorganization Act of 1985 (California Government Code §§ 56000, et seq.). City shall give all necessary approvals, written consents and any other requested assistance to accomplish such annexation, and specifically agrees not to protest such annexation before the Solano County Local Agency Formation Commission (LAFCO) so long as the annexation is consistent with the provisions of this Agreement. Concurrently with such annexation proceedings, City staff shall, upon receipt from Developer of application therefor, commence and diligently pursue to completion such proceedings as are necessary to change the zoning of the Project Site to the zoning classification(s) required to enable development of the Project. City and Developer shall support and cooperate with each other in any manner reasonably required to ensure completion of such annexation and the Zone Change. Developer shall provide all supporting information and maps as may be requested by City to complete application in a timely and comprehensive manner. Developer acknowledges and understands that City staff's commitment to pursue and complete such tasks with due diligence does not ensure that the decision-making body or board, such as LAFCO, will approve the applications since the power to approve or deny the applications vests solely with such body or board.

City's obligation to assist in the annexation of the Project Site to the City is subject to the condition that the Developer can demonstrate to the City's satisfaction the new or express water entitlements to supply the Project Site have been obtained by Developer.

**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 Site within any period of time except (i) as provided in Subsection 4.C 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) conditions for commencement of construction stated in any use permit, design review approval or entitlement or approval for construction of specific improvements on a specific parcel, or (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.

**B. General Obligations.**

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

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

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

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

**C. Processing Charges, Development Impact Fees Applicable To Project Site.**

Every application for a Subsequent Approval and every Subsequent Approval and issuance of permits or entitlements thereafter shall be subject to all application fees, processing fees, development impositions, development impact fees and regulatory fees, set by or within the control of City (including, 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 part thereof, as a condition of approval of such development or including fees imposed to mitigate the Project's environmental impacts, subject to the following:

(1) **Limitations on fee or rate increases for fees that are part of the Vested Elements.**

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

(3) **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.

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

(5) **Processing Costs.** Except to the extent that processing costs are Vested Elements, nothing herein contained shall exempt Developer from paying processing costs imposed by City for the processing of Developer's applications, including such



funds as may be necessary to hire consultants and conduct studies required to develop the Project, subject to the provisions of this Section. Prior to engaging the services of any consultant or authorizing the expenditure of any funds for such consultant, City shall consult with Developer, to seek mutually agreeable terms regarding: (a) the scope of work to be performed by such consultant; (b) the projected costs associated with such work; and (c) the particular consultant engaged to conduct such work.

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

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

**E. Developer Procures Financing For Major Infrastructure.** Developer shall obtain any and all funding needed to construct on-site and off-site streets and intersection improvements and "backbone improvement work" (specifically, sewer collection systems, water distribution systems, and storm water management systems) on the Project Site without cost to City, including any new improvements or up-sizing of existing facilities that may be needed to support the Southtown and or Moody Projects and any future development that will benefit from the improvement or upsizing. City agrees to create a Benefit District or Districts as may be needed to provide reimbursement to Developer for any costs that may benefit other private property owners.

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

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

Developer shall dedicate, without compensation, deduction, or credit, road rights-of-way, utility and other easements, and the fee title to a well site or sites required for development of the Project Site 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 therefor without cost or expense to City, either from bond sales proceeds, cash payments, or any combination thereof.

**H. Developer Funding of Infrastructure Shortfalls.** In the event a public agency responsible for making certain area-wide infrastructure improvements lacks sufficient funds to complete such improvements that are required to be constructed as part of the Vested Elements, including, but not limited to, sewer, water, roadway and intersection improvements, and/or storm drain facilities needed to serve the Project Site, Developer shall have the option of proceeding with the development of such improvements upon Developer's procurement of a source of funds, reasonably acceptable to City, that is sufficient to make up the shortfall in funding for such improvements.

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

(1) 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.

(2) No portion of the Project Site may be utilized for the placement of water wells or the extraction of water by Developer or any successor in interest. Providing this Agreement is in effect and Developer has secured the benefits of the Project, 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.

(3) Prior to the issuance of building permits for the development within the Rice – McMurtry Project Area, all existing private wells on the property shall be abandoned and sealed in accordance with Solano County requirements and Department of Water Resources Bulletin prior to the issuance of the first building permit. Any private well actively used for a residential or agricultural use shall be permitted to remain in use until such time as the site work for the Project is completed.

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

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

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

(3) The parties acknowledge that the City will not grant credit for any trails or for park land that will also serve as storm water detention facilities.

(4) All new development within the Rice – McMurtry Project Area will annex into the Ridgeview Neighborhood Park Assessment District.

**K. Dedicated Property Shall Be Unencumbered.** All real property or interests in land offered for dedication by Developer to City shall be free and clear of all liens, encumbrances, and clouds on title other than recorded easements or restrictions that do not interfere with or preclude the use of such property for its intended purpose as reasonably determined by City. The developer shall furnish a copy of a recent title report verifying these measures prior to approval or acceptance of any dedications.

**L. Developer To Provide Projections For Development Of The Project.** In order to facilitate the timely development of the Project Site, Developer, 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") prior to the initiation of the Phase I Improvements as defined herein and 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 Subsection 10.B of this Agreement.

**M. Abandonment of Septic Systems.** Prior to the approval of the first subdivision map in the Project Area, the developer shall demolish all private septic systems, including cesspools, tanks, and leech fields, in accordance City and Solano County requirements. Tanks shall be cleaned and contents disposed of in accordance with all applicable regulations. Any private septic system actively used for a residential use shall be permitted to remain in use until such time as a grading permit is issued for the property on which such septic system is located.

**N. Acquisition of Domestic Water Supply to Serve Project.** Developer agrees to pay \$1,829.00 per dwelling unit as payment in full for the cost of acquiring additional domestic water to serve the residential uses contemplated by the Project. This cost is in addition to the standard water service connection fee assessed at the issuance of a building permit.

**O. Subsequent Infrastructure Analyses.** The Environmental Impact Report prepared for the Rice – McMurtry Projects concluded that there is adequate domestic water supply, wastewater treatment capacity, storm water runoff capacity, and public roads available to serve all development anticipated in the Rice – McMurtry Project Areas provided certain mitigations or improvements are constructed. Conceptual domestic water, wastewater, and storm water collection and distribution systems were analyzed and traffic study completed in the EIR. The parties acknowledge that the ultimate development of the property through the approval of subdivision maps and Civil Improvement Plans may result in changes or improvements to the storm drain, sanitary sewer, and domestic water systems and public streets that were analyzed in the Environmental Impact Report. Therefore the following shall be submitted with any subdivision map for any portion of the property:

(1) A storm water drainage study shall be prepared for the Horse Creek and Gibson Canyon Creek watersheds that identifies the proposed on-site and off-site storm water drainage system needed to support the proposed development. At a minimum the drainage study shall include but not necessarily be limited to the amount of existing run-off; the amount of post-development run-off; the calculations showing the off-site drainage will not exceed 90% of the pre-development quantities of run-off; the size, phasing, and location of all on-site storm water collection systems; the size and location of any on-site detention facilities; the impact of the proposed on-site and off-site storm water improvements and quantities on any downstream facilities; a financing plan to show how the on-site and off-site system will be maintained and funded. The developer will be responsible for all costs associated with the preparation and verification of the drainage study. A Benefit District may be formed to reimburse the Developer for any over-sizing of the storm water collection system needed to support future development. The Developer shall be responsible for all costs associated with the preparation and formation of the Benefit District which costs shall be incorporated and made a part of the Benefit District. A Lighting and Landscaping District will be established to fund ongoing maintenance of the storm water detention and conveyance system.

(2) A sanitary sewer study shall be prepared that verifies the sizing, phasing, and location of all on-site and off-site components of the sanitary sewer collection system. The developer will be responsible for all costs associated with the preparation and verification of the sanitary sewer study. A Benefit District will be formed to reimburse the Developer for any over-sizing of the sanitary sewer system needed to support future development. The Developer shall be responsible for all costs associated with the preparation and formation of the Benefit District which costs shall be incorporated and made a part of the Benefit District.

(3) An analysis shall be prepared that identifies the sizing, phasing, and location of the on-site and off-site domestic water supply and distribution system. This analysis shall address the proposed subdivision as well as any subsequent phases of development that will be served by the supply and distribution system. The developer will be responsible for all costs associated with the preparation and verification of the domestic water supply and distribution system study. A Benefit District will be formed to reimburse the Developer for any over-sizing of the domestic water system needed to support future development. The Developer shall be responsible for all costs associated with the preparation and formation of the Benefit District which costs shall be incorporated and made a part of the Benefit District.

Each study prepared pursuant to this Section shall demonstrate that adequate capacity exists, is available for, and or will be constructed concurrently with Phase I of the Project and each Phase.

**P. Zone 2 Water System.** The majority of the Reynolds Ranch, Knoll Creek, and the Rogers Ranch Project Areas are within a Zone 2 water service area. As such a new water storage reservoir and distribution system will be needed to serve the Reynolds Ranch, Knoll Creek, and the Rogers Ranch Project Areas. Issuance of building permits

for the lots above elevation 222 is contingent upon completion of the construction of the booster pump station, distribution system, and reservoir. Siting of the Zone 2 Reservoir will be subject to review under the requirements of the California Environmental Quality Act.

(1) Developers of the Reynolds Ranch, Knoll Creek, and the Rogers Ranch Project Areas shall:

- (a) Pay all costs associated with the land acquisition, pre-design, environmental, geotechnical, design, and construction by City of a Zone 2 reservoir and booster pump and all other water system improvements as identified in the EIR prepared for the Project Area and the Water Supply Investigation – Rice McMurtry Annexation and Development Project Technical Memorandum dated December, 2003;
- (b) Dedicate a site or sites as identified in the Service Area Master Plan and Reservoir Siting Study for the reservoir and booster pump station per the Nolte Associates technical memorandum with the recordation of the first subdivision map.
- (c) Developer shall prepare and include in all home purchase documents forms for buyer acknowledgement of the construction and operation of the five million gallon (5 mg) McMurtry Reservoir and 0.5 mg upper zone reservoir located near the west side of the developments.

(2) City commits to forming a Benefit District to reimburse Developer for costs of needed improvements for which a benefit to lands outside the Reynolds Ranch, Knoll Creek, and Rogers Ranch properties will ultimately be derived.

(3) City shall initiate pre-design, design, and construction of the booster pump station and reservoir upon receipt of funding of from Developers. The amount of funds to be provided shall be determined by the Director of Public Works, based upon the actual consultant fees and City's standard administrative overhead charge of fifteen percent (15%) related to the retention of such outside consultants.

(4) City further agrees to allow certain residential units, identified as Phase I in the Nolte Technical Memorandum, to be served from the Main Zone until the completion of the Zone 2 reservoir and distribution system.

(5) Upon completion of the Zone 2 reservoir and system, all units within the Project Area shall be connected to the Zone 2 system. Facilities used in the Main Zone system shall be converted to use in the Zone 2 system or otherwise abandoned or demolished as required by the Director of Public Works.

(6) In the event the Zone 2 reservoir and system has not been completed and operational by the time the Developer is ready to develop dwellings that will require

water service from this reservoir and system, City and Developer will work cooperatively to design and install at the Developers sole expense a feasible interim supply and distribution system to provide water to those lots.

**Q. Sewer Collection System.**

(1) Development in the Rice-McMurtry area will trigger the need to install new and/or upgrade or upsize existing wastewater collection infrastructure and improve, modify, or expand the Allison lift station as identified in the EIR, the West Yost Associates Technical Memorandum prepared for this development (“Impacts of the Proposed Rice – McMurtry Development on the City of Vacaville Sanitary Sewer Facilities”), and the Sewer Master Plan.

(2) In order to identify the nature and extent of any required improvements, modifications, or expansion of the existing wastewater collection system, including but without limitation the Allison Lift Station to accommodate the development within the Project Area and foreseeable growth in the immediate area that will likely use the Allison Lift Station and associated infrastructure, City will commission an additional study of the operation and capacity of the Allison Lift Station, to be funded entirely by Developer. City, shall in its sole discretion, shall direct the selected Consultant preparing the Study as to the assumptions and basis for any analyses based upon adopted City wastewater generation rates. City shall have final approval of the study, interpretation of its contents, and the implementation of any and all recommendations contained therein.

(3) If improvements, modifications, or expansion to the Allison Lift Station or associated infrastructure are found to be necessary by City in its sole discretion based upon this study and any other Technical Memoranda or analyses, funding of engineering pre-design and design, and construction of the expansion shall be phased as follows:

(a) Should it be determined that no development may occur unless and until the Allison Lift Station or associated infrastructure is improved, modified, or expanded, Developer shall fund all engineering pre-design and design of the improvements, modifications, or expansion at the time the first final subdivision map is approved. All required improvements, modifications, or expansion shall be completed and accepted by City prior to the issuance of the first Certificate of Occupancy for any dwelling unit.

(b) Should it be determined that some number of new residential dwelling units may be constructed prior to the completion of the required improvements, modification, or expansion of the Allison Lift Station or associated infrastructure, Developer shall fund all engineering pre-design and design as determined to be necessary by City on or before the issuance of the building permit allocation one hundred (100) units prior to the unit number that is determined by the study at which occupancy will

require improvement, modification, or expansion of the Allison Lift Station or associated infrastructure.

(c) Developer shall fund construction of the improvement, modification, or expansion on or before the release of the building permit allocation fifty (50) units prior to the unit number that is determined by the study at which occupancy will require completion and operation of the required improvement, modification, or expansion of the Allison Lift Station or associated infrastructure.

(d) In the event land acquisition is necessary to provide sufficient land for the required improvement, modification, or expansion of the Allison Lift Station or associated infrastructure. Developer shall acquire all required land prior to the issuance of the fiftieth (50<sup>th</sup>) building permit within the Reynolds Ranch Project Area.

(4) Portions of the new development within the Rice – McMurtry Project Area will utilize sewer lines installed by the Browns Valley Sewer Assessment District. Any development utilizing this sanitary sewer system shall pay its pro-rata share of the costs for the installation and operation of this sewer system.

(5) City commits to forming a Benefit District to reimburse Developer for cost of needed improvements benefiting lands outside of the development area, including the costs of up-sizing any pipes and any improvements, modifications, or expansion of the Allison Lift Station or associated infrastructure.

#### **R. Roadway and Intersection Improvements.**

(1) Developers will be responsible for all traffic and circulation system related mitigation measures identified in the Final EIR.

(2) Pay the full cost of any new internal and external roadway and intersection improvements that are necessary to accommodate the new development.

(3) The developer shall complete or provide funding for the preparation of plan lines of the interim and ultimate improvements to the widening of Browns Valley Road from Vaca Valley Parkway to Sheldon Road. The plan line shall include both new horizontal and vertical alignments of the ultimate two lane collector road in a 60 foot right of way. The plan lines shall show all proposed traffic lanes; intersections and needed transitions to existing and proposed lanes; shoulders on the east side, curb and gutter on the west side; sidewalks or trails on the west side; and a Class 1 bike path on each side of the street. This plan line shall also include exhibits identifying any needed right of way from each adjacent property owner in the interim and ultimate road alignments.



(4) Developer shall be responsible for installing all interim improvements to Browns Valley Road from Vaca Valley Parkway to Shelton Lane to 36 feet in width in conjunction with the first phase of construction. City will cooperate with Developer to form a Benefit District to reimburse Developer for cost of needed improvements fronting property owned by others for which a benefit will ultimately be derived.

(5) Developer shall be responsible for the total costs of improvements to the intersection of Browns Valley Road and McMurtry Lane, and the intersection of Browns Valley Road and the northern Project entry road, including any transitional lanes and improvements between the two intersections on Browns Valley Road as may be necessary to comply with City standards. City commits to forming a Benefit District to reimburse Developer for costs of needed improvements fronting property owned by others for which a benefit will ultimately be derived.

(6) The developer shall complete or provide funding for the preparation of plan lines of the interim and ultimate improvements to the widening of McMurtry Lane from Browns Valley Road to the western terminus of the road. The plan line shall include both new horizontal and vertical alignments of the ultimate two lane road (40 foot curb to curb in a 60 foot right of way). The plan lines shall show all proposed traffic lanes; curb, gutter, and sidewalks or trails; a Class 1 bike path on each side of the street; and intersections and needed transitions to existing and proposed roads. This plan line shall also include exhibits identifying all needed right of way from each adjacent property owner in the interim and ultimate road alignments.

(7) Developer will be responsible for improving McMurtry Lane to full City Standards for a collector road from Browns Valley Road to the western boundary of the Rogers Ranch. Each Developer will be responsible for the improvements to the centerline of the road along their Project frontage. Developers will cooperate in sharing the costs of improvements on those portions of the road where frontage is owned by others. City commits to forming a Benefit District to reimburse Developer for costs of needed improvements fronting property owned by others for which a benefit will ultimately be derived.

(8) A pedestrian and bicycle path and or sidewalk allowing the residents in the new developments within the Rice – McMurtry area to have off-street access to the Ridgeview Park shall be dedicated to the City and constructed to City standards as generally shown on the Planned Development. The path shall be a minimum of ten feet wide and paved to the satisfaction of the City Engineer.

(9) All public interior streets shall be designed and constructed in accordance with the City standard specifications for streets, including right-of way widths, street sections, construction standards, and materials.

(10) Any private streets shall be constructed in accordance with the standard specifications for street construction and materials. Right-of-way widths for the private interior streets shall be fifty (50) feet with a minimum pavement width of thirty-two (32)

feet, measured curb-face to curb-face. Either rolled curbs or low-profile, angled curbs are acceptable. Other design specifications shall be approved as a part of the Planned Development. All private streets shall be designated as such on each final subdivision map. Home buyers shall be provided with appropriate disclosure statements identifying the private streets and acknowledging that the City bears no responsibility for maintenance or repairs or liability for any occurrence on such private streets. Any damage to any private street within the Project Area caused by emergency vehicles or by City repair or maintenance activities shall be restored as close as practical to its original condition. The City will not be responsible for a perfect match to any non-standard improvements.

(11) Developers acknowledge that ultimate development of the property within the Rice – McMurtry Project Area may result in changes to the roadway system analyzed in the EIR.

**S. Fire Protection.**

(1) Developer shall comply with all applicable requirements of the Vacaville Fire Department Development Standards for New Construction Adjacent to Open Lands Where Wildfire is a Threat.

(2) All residential units within the Reynolds Ranch, Knoll Creek, and the Rogers Ranch Project Areas shall have residential fire sprinklers.

(3) Developer shall contribute a pro-rata share of the costs for relocating the Fire Station 73 to reduce the emergency response times as determined by the Fire Chief. The Community Benefit Contribution will fund this contribution.

**T. Vacaville Unified School District Mitigation Fees.** Developer agrees to pay to Vacaville Unified School District ("VUSD) a school mitigation fee which may exceed the statutory fee established by the State Allocation Board. The amount of the fee shall be established by the City Council based, in part, on its review of "Justification Report for School Facilities Fees 2004-2008" prepared by VUSD. This fee shall automatically be annually adjusted by the change, if any, in the Engineering News Record San Francisco Bay Area Construction Cost Index on January 1st of each year. Developer agrees to pay this mitigation fee prior to the issuance of a building permit and shall provide to City evidence of fee payment.

**U. Community Benefit Contribution.** Developer agrees to pay a Community Benefit Contribution of \$5,800 for each unit at the time building permits are issued for each dwelling unit within the Project Area. The Community Benefit Contribution shall automatically be adjusted by the percentage change, if any, in the Engineering News Record San Francisco Bay Area Construction Cost Index on January 1<sup>st</sup> of each year for the Term hereof. Such 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.

**V. Drainage Mitigation.** Developer shall be responsible for the payment of all City Storm Water Conveyance and Detention fees. The Director of Public Works may recommend that credit may be given toward the Detention portion of the required fees for any on-site detention basins.

**SECTION 6. DEFAULT, REMEDIES, TERMINATION OF AGREEMENT.**

**A. Notice Of Default And Liability.** Subject to extensions of time mutually agreed to in writing by the parties or as otherwise provided herein, material failure or delay by any party to perform any term or provision of this Agreement constitutes a default hereunder. Upon the occurrence of such default, the party alleging such default shall give the other party written notice thereof, specifically stating that it is a notice of default under this Agreement, specifying in detail the nature of the alleged default and, when appropriate, the manner in which said default may be satisfactorily cured, and giving a reasonable time that shall be not less than thirty (30) days measured from the date of personal service or delivery by certified mail of the written notice of default. During any such cure period or during any period prior to 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.. 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. Upon delivery by City of notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within sixty (60) days in accordance with Government Code Sections 65867 and 65868 and Vacaville Municipal Code § 14.17.218.030. After considering the evidence presented, the City Council shall render its decision to terminate or not terminate this Agreement. If the City Council decides to terminate this Agreement, City shall give written notice thereof to the defaulting party.

Evidence of default of this Agreement may also be taken during the regular annual review of this Agreement as described below. Any determination of default (or any

determination of failure to demonstrate good faith compliance as a part of annual review) made by City against Developer, or any person who succeeds Developer with respect to any portion of the Project Site, shall be based upon written findings supported by evidence in the record as provided by Vacaville Municipal Code §§ 14.17.218.030. Notwithstanding any other provision of this Agreement to the contrary, remedies for a default by Developer or its successor 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 of this Agreement or the obligations otherwise stated in a separate agreement or undertaking under the Vested Elements or which is entered into in support of any community facilities or assessment district financing. City shall have the right to exercise such remedies as may be available at law or in equity to enforce the conditions stated in any use permit, design review approval, zoning approval, entitlements for use or entitlements for construction of specific improvements on a specific parcel, or as are provided in the Subdivision Map Act (Gov't Code §§ 66400 et. seq.) or City's subdivision ordinance as applied to subdivision improvement agreements. In addition to the right to give notice of intent to terminate this Agreement, Developer shall have the right to institute legal proceedings to enforce this Agreement in the event of a default by City.

**C. No Waiver.** Failure or delay in giving notice of default shall not constitute a waiver of default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by a party in asserting any of its rights or remedies as to any default by the other party shall not operate as a waiver of any default or of any rights or remedies of such party; nor shall it deprive such party of its right to institute and maintain any action or proceeding it may deem necessary to protect, assert or enforce any such rights or remedies.

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

**E. Defaults By City.** If City does not accept, review, approve or issue development permits, entitlements or other land use or building approvals, if any, for use in a timely fashion as provided in this Agreement or defaults in the performance of its obligations under this Agreement, Developer (or 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 7. ANNUAL REVIEW.**

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

**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 therefor, on behalf of all of the Project Site pursuant to Vacaville Municipal Code § 14.17.218.010 not less than forty-five (45) days nor more than sixty (60) days prior to the anniversary date of this Agreement. The Director may refer the review to the Planning Commission pursuant to Vacaville Municipal Code § 14.17.218.010E. Should Developer fail to submit the annual draft report in a timely manner and City does not notify Developer of such failure within ninety (90) days following the anniversary date, then the annual review of this Agreement shall be deemed to have been satisfactorily completed for that year only.

**B. Showing Required.** During 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 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 the Vacaville Municipal Code, as amended from time to time.

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

## **SECTION 8. MITIGATION MONITORING.**

Compliance with the various mitigation measures that are 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 at the time of 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 9. APPLICABLE LAWS; ATTORNEYS' FEES; PERMITTED DELAYS; EFFECT OF SUBSEQUENT LAWS.**

**A. Applicable Law/Attorneys' Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party to enforce any provision of this Agreement, or to obtain a declaration of rights hereunder, the prevailing party shall be entitled to reasonable attorneys' fees (including reasonable in-house counsel fees of City at private rates prevailing in Solano County), court costs, expert fees, and such other costs as may be fixed by the court.

**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.; 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.** If any governmental or quasi-governmental agency other than City adopts any law, statute, or regulation or imposes any condition (collectively "Law") after the date of execution of this Agreement that prevents or precludes a party from complying with one (1) or more provisions of this Agreement, and such provision is not entitled to the status of a vested right against such new Law, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended to the extent necessary to comply with such Law. Immediately after the parties have knowledge about the enactment of any such Law, the parties shall meet

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

#### **SECTION 10. COOPERATION OF CITY; PROCESSING OF PERMITS.**

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

#### **SECTION 11. MORTGAGEE PROTECTION**

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

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



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

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

**D. Liability For Past Defaults Or Obligations.** Any Mortgagee, including the successful bidder at a foreclosure sale, who takes title and possession of the Project Site, or any part thereof, pursuant to such foreclosure, shall take the Project Site, or part thereof, subject to the provisions of this Agreement; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of Developer arising prior to acquisition of title to the Project Site by such Mortgagee. In no event 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 12. TRANSFERS AND ASSIGNMENTS.**

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

**B. Release Upon Transfer.** Upon sale, transfer or assignment, in whole or in part, of Developer's right and interest to all or any portion of the Project Site, Developer shall be released from its obligations hereunder with respect to the portion so conveyed provided: (i) Developer (or transferee) was not in default of this Agreement at the time of conveyance, (ii) Developer provided to City prior written notice of such transfer, and (iii)

with respect to sale or transfer of any lot that has not been fully improved, the transferee executes and delivers to City a written assumption agreement in which (A) the name and address of the transferee is set forth, and (B) the transferee expressly assumes the obligations of Developer under this Agreement as to the portion of the Project Site conveyed; provided further, however, that Developer shall not be relieved of any obligation for dedication or conveyance of land required to be conveyed or dedicated pursuant to the Vested Elements. Failure to deliver a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement. Nothing herein contained shall be deemed to grant to City discretion to approve or deny any such transfer except as otherwise expressly provided herein.

**C. Approval; Right Of Amendment; Supplements Establishing Specific Rights And Restrictions; Review.** City's grant of the various approvals and consents referred to herein shall not constitute amendment hereof, nor shall the actions taken by City staff to implement the provisions hereof (e.g. the granting of minor modifications to approved plans, the Vested Elements or any other approval granted hereunder) 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.

**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, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any

portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

### **SECTION 13. 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 for all buildings and improvements to be constructed on a parcel within the Project Site, 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, provided that:

(a). **Procedural Exemptions.** Any amendment to this Agreement which does not relate to the Term of this Agreement, permitted uses of the Project Site, provisions for the reservation or dedication of land the conditions, terms, restrictions and requirements relating to subsequent discretionary approvals of City, or monetary exactions of Developer, shall be considered an "Administrative Amendment". The Director is authorized to execute Administrative Amendments on behalf of City and no action by the City Council (e.g. noticed public hearing) shall be required before the parties may enter into an Administrative Amendment. However, if in the judgment of the Director or any member of the City Council that a noticed public hearing on a proposed Administrative Amendment would be appropriate, the Planning Commission shall conduct a duly noticed public hearing to consider whether the Administrative Amendment should be approved

or denied. The Vested Elements may not be amended except by amendment of this Agreement; provided, however, that in the case of amendments affecting portions of the Project Site, only the consent of the owner of such portion shall be required so long as the amendment does not diminish the rights appurtenant to or increase the burdens upon any other portion of the Project Site.

(b). Exemption For Amendments Of City Land Use Regulations. Any amendment of City land use regulations including, but not limited to, the General Plan, Specific Plan, if applicable, and Zoning Ordinances, shall not require amendment of this Agreement. Instead, any such amendment shall be deemed to be incorporated into this Agreement at the time that such amendment is approved by the City subject to the established procedures of the Municipal Code so long as such amendment is consistent with this Agreement.

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

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

If to City, to:

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

With a copy to:

City Attorney  
City of Vacaville  
650 Merchant Street  
Vacaville, California 95688

If to Developer, to:

Vacaville Reynolds Ranch, LLC  
1350 Arnold Drive, Suite 201  
Martinez, CA 94553

Richard Lamphere  
P. O. Box 6671  
Vacaville, CA 95696

Bryant Stocking  
7500 Stagecoach Lane  
Vacaville, CA, 95688

With a copy to:

The Rover Law Firm  
44-875 Deep Canyon Road, Suite 3  
Palm Desert, CA 92260

**I. No Joint Venture Or Partnership.** Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as creating any joint venture or partnership between City and Developer.

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

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

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

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

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

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

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

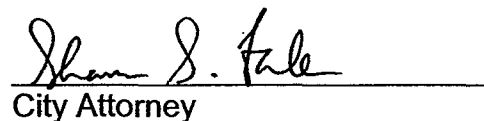
**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**"CITY"**

CITY OF VACAVILLE, a  
municipal corporation

  
\_\_\_\_\_  
Mayor

Approved as to form:

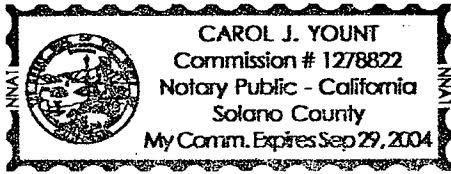
  
\_\_\_\_\_  
City Attorney

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of SOLANO } ss.

On JULY 1, 2004 before me, CAROL J. YOUNT, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared LEONARD J. AUGUSTINE  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



#1278822

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.

WITNESS my hand and official seal.

Carol J. Yount  
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: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

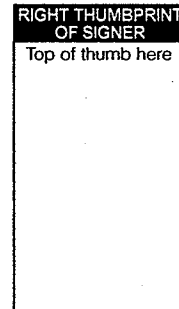
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_





**"DEVELOPER"**

R.W. Hertel & Sons, Inc. a  
California corporation

Approved as to form:

By: *Vincent J. Rover*  
PRES., NO. CALIF. DIVISION  
Vincent J. Rover  
President, Northern California Division

By: *Ronald W. Hertel*  
Ronald W. Hertel  
President

Richard Lamphere

By: *Richard Lamphere*  
Richard Lamphere

Bryant Stocking

By: *Bryant Stocking*  
Bryant Stocking

Attachments: Exhibit A: Project Site  
Exhibit A-1: Legal Description

**ALL-PURPOSE ACKNOWLEDGMENT**

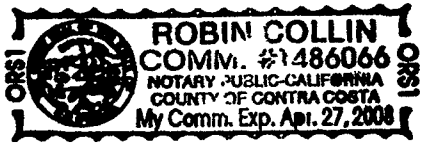
State of California

County of Contra Costa } ss.

On June 29, 2004 before me, Robin Collin, Notary,  
(DATE) (NOTARY)

personally appeared Vincent J. Rover, President  
SIGNER(S)

personally known to me - OR -  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 signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Robin Collin  
NOTARY'S SIGNATURE

**OPTIONAL INFORMATION**

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

**DESCRIPTION OF ATTACHED DOCUMENT**

INDIVIDUAL  
 CORPORATE OFFICER  
President  
TITLE(S)

Development Agreement  
TITLE OR TYPE OF DOCUMENT

PARTNER(S)  
 ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER: \_\_\_\_\_

40  
NUMBER OF PAGES

May 11, 2004  
DATE OF DOCUMENT

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)  
\_\_\_\_\_  
\_\_\_\_\_

OTHER  
\_\_\_\_\_

RIGHT THUMBPRINT  
OF  
SIGNER



**"DEVELOPER"**

R.W. Hertel & Sons, Inc. a  
California corporation

Approved as to form:

By: \_\_\_\_\_

Vincent J. Rover  
President, Northern California Division

By:  \_\_\_\_\_


Ronald W. Hertel  
President

Richard Lamphere

By:  \_\_\_\_\_

Richard Lamphere

Bryant Stocking

By:  \_\_\_\_\_

Bryant Stocking

Attachments: Exhibit A: Project Site  
Exhibit A-1: Legal Description

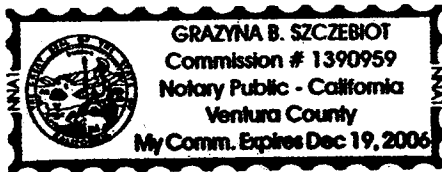
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Ventura } ss.

On May 10, 2004 before me, Grazyna Szczebiot - Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared RONALD H. HERTEL  
Name(s) of Signer(s)

- personally known to me
- 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.



WITNESS my hand and official seal.

Grazyna B. Szczebiot  
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

Document Date: May 10, 2004 Number of Pages: 40

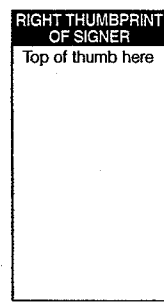
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_



# Government Code 27361.7

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary CAROL J. YOUNT

Commission Number 1278822

Commissioned in SOLANO COUNTY

Date Commission Expires 9-29-04

Vendor ID number NNA1

Date: 6-28-04

X Carol J. Yount  
By:

CITY OF VACAVILLE  
Firm Name (if any)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

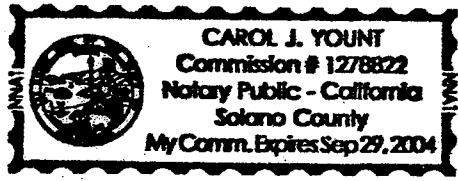
State of California }  
County of SOLANO } ss.

On MAY 14, 2004 before me, CAROL J. YOUNT, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared RICHARD D. LAMPHIER  
Name(s) of Signer(s)

- personally known to me
- 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.



WITNESS my hand and official seal.  
Carol J. Yount  
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.*

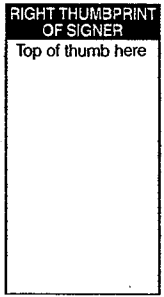
**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_  
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney-in-Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



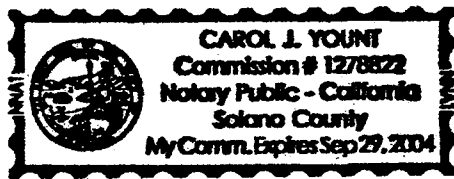
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of SOLANO } ss.

On MAY 14, 2004 before me, CAROL J. YOUNT, NOTARY PUBLIC  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared BRYANT STOCKING  
Name(s) of Signer(s)

- personally known to me
- 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.

WITNESS my hand and official seal.

Carol J. Yount  
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: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

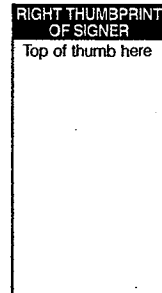
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_



Location Map

Reynolds Ranch

Rogers Ranch

Reynolds Ranch

City of Vacaville  
Calliquiri Preserve

Knoll Creek

Brown's Valley Rd

Mountain View Ln

Vacaville Blvd

0 0.3 Miles

0

EXHIBIT A

V city Limits





# EXHIBIT A1

**Reynolds Ranch:**

Reynolds Ranch, LLC      0105-200-160; 0105-210-040      100.7 acres

McMurtry Lane, LLC:      0123-040-120; 0123-040-130      49.0 acres

**Knoll Creek:**

Richard Lamphere

James and Sandra Rodgers      0123-140-110      22.66 acres

**Rogers Ranch:**

Bryant Stocking

Donald and Margaret Stocking      0123-040-060      44.96 acres

**ORDINANCE NO. 1716**

**ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF VACAVILLE AND R. W. HERTEL & SONS, RICHARD LAMPHERE, AND BRYANT STOCKING FOR THE PROPOSED DEVELOPMENT IN THE RICE – McMURTRY PROJECT AREA**

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

**SECTION ONE:** The City Council certifies the Environmental Impact Report for the Rice-McMurtry Project as adequate in accordance with the Findings in City Council Resolution 2004-39.

**SECTION TWO:** The subject development agreement, more particularly described in Exhibit A, attached hereto, is approved by the City Council in accordance with the requirements of Division 17, Development Agreements, of the Vacaville Land Use and Development Code, and in accordance with the following findings of fact:

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

**SECTION THREE:** The City Council of the City of Vacaville finds that the foregoing development agreement, attached hereto as Exhibit A, is necessary to ensure that said lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the City as a whole.

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

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

**SECTION FIVE:** This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

I HEREBY CERTIFY that this ordinance was introduced at a regular meeting of the City Council of the City of Vacaville, held on the 27<sup>th</sup> day April, 2004, and ADOPTED and PASSED at a regular meeting of the City Council of the City of Vacaville held on the 11<sup>th</sup> day of May, 2004, by the following vote:

AYES: Councilmembers Hardy, Slade, Wilkins, Vice-Mayor Clancy and Mayor Augustine

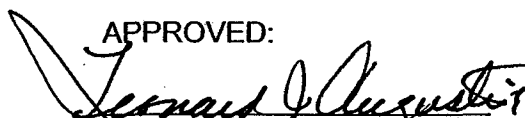
NOES: None

ABSENT: None

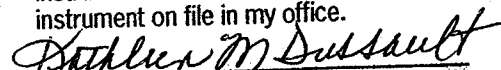
ATTEST:

  
Kathleen M. Dussault, City Clerk

APPROVED:

  
Leonard J. Augustine, Mayor

I hereby certify that the foregoing instrument is a true copy of the original instrument on file in my office.

  
City Clerk of the City of Vacaville, California

cc mtg 5/11/04

**B. Ordinance No. 1711 - ORDINANCE APPROVING THE ZONE CHANGES WITHIN AND ADJACENT TO THE SOUTHTOWN PROJECT AREA-Second Reading**

**Ordinance No. 1712 - ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF VACAVILLE AND WESTERN PACIFIC HOUSING, INC., STANLEY WANG; AND ALAMO GLEN PARTNERS FOR THE PROPOSED DEVELOPMENT WITHIN THE SOUTHTOWN PROJECT AREA-Second Reading**

**C. Ordinance No. 1713 - ORDINANCE APPROVING ZONE CHANGES ON THE MOODY PROPERTY-Second Reading**

**Ordinance No. 1714 - ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF VACAVILLE AND MILLER-SORG GROUP FOR THE PROPOSED DEVELOPMENT ON THE MOODY PROPERTY-Second Reading**

**D. Ordinance No. 1715 - ORDINANCE APPROVING ZONE CHANGES WITHIN THE RICE-McMURTRY PROJECT AREA - Second Reading**

**Ordinance No. 1716 - ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF VACAVILLE AND R. W. HERTEL & SONS, RICHARD LAMPHERE, AND BRYANT STOCKING FOR THE PROPOSED DEVELOPMENT IN THE RICE - McMURTRY PROJECT AREA - Second Reading**

**E. Resolution No. 2004-41 - RESOLUTION ACCEPTING PUBLIC IMPROVEMENTS AND AUTHORIZING FINAL PAYMENT TO CONTRACTOR - ORANGE DRIVE RESURFACING (LAWRENCE DRIVE TO LEISURE TOWN ROAD)**

**F. Resolution No. 2004-42 - RESOLUTION APPROVING FINAL MAP - HABITAT FOR HUMANITY**

**G. Removed for separate discussion.**

**Item 6a - ORDINANCE APPROVING A ZONE CHANGE FOR THE MAPLEWOOD SENIOR RESIDENTIAL COMMUNITY PROJECT-Second Reading**

Council member Hardy asked that this item be removed for separate vote. Mayor Augustine opened and closed the public hearing with no comment noted. Council member Slade, seconded by Council member Wilkins made a motion "to adopt the subject ordinance." Motion approved (4-1 Hardy no). The title of Ordinance 1710 was read by the City Clerk.

**Item 6g - RESOLUTION OF THE CITY COUNCIL SUPPORTING THE STATEWIDE REVISIONS OF CHAPTERS 11A AND 11B MODIFYING THE REQUIREMENTS FOR THE USE OF TRUNCATED DOMES IN THE CALIFORNIA BUILDING CODE**

Director of Community Development/Deputy City Manager Ron Rowland reviewed the staff report for the record. He noted that several local senior citizens have complained that they have difficulty negotiating truncated domes located on walking surfaces leading to public and private buildings. He stated that the resolution supports revisions to the language contained in the California Building Code to make requirements for truncated domes consistent with Federal regulations, i.e. a change in the pattern. Mayor Augustine asked for public comment and none was noted. Council member Slade, seconded by Council member Hardy made a motion "to adopt the subject resolution." Resolution No. 2004-43, "Resolution of the City Council Supporting the Statewide Revisions of Chapters 11A and 11B Modifying the Requirements for the Use of Truncated Domes in the California Building Code," was approved by the following vote:

AYES: Council members Hardy, Slade, Wilkins, Vice Mayor Clancy and Mayor Augustine  
NOES: None  
ABSENT: None

**ORDINANCE NO. 1716**

**ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF VACAVILLE AND R. W. HERTEL & SONS, RICHARD LAMPHERE, AND BRYANT STOCKING FOR THE PROPOSED DEVELOPMENT IN THE RICE – McMURTRY PROJECT AREA**

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

**SECTION ONE:** The City Council certifies the Environmental Impact Report for the Rice-McMurtry Project as adequate in accordance with the Findings in City Council Resolution 2004-39.

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1. That the development agreement is consistent with the goals, objectives, and policies of the General Plan, and any applicable specific plan or policy plan;
2. That the development agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use districts in which the real property is or will be located;
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**SECTION FOUR:** If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

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

**SECTION FIVE:** This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

I HEREBY CERTIFY that this ordinance was introduced at a regular meeting of the City Council of the City of Vacaville, held on the 27<sup>th</sup> day April, 2004, and ADOPTED and PASSED at a regular meeting of the City Council of the City of Vacaville held on the 11<sup>th</sup> day of May, 2004, by the following vote:

AYES: Councilmembers Hardy, Slade, Wilkins, Vice-Mayor Clancy and Mayor Augustine

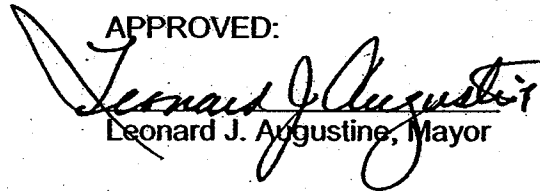
NOES: None

ABSENT: None

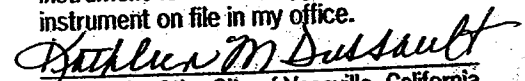
ATTEST:

  
Kathleen M. Dussault, City Clerk

APPROVED:

  
Leonard J. Augustine, Mayor

I hereby certify that the foregoing instrument is a true copy of the original instrument on file in my office.

  
Kathleen M. Dussault  
City Clerk of the City of Vacaville, California

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

**RECORDING REQUESTED BY:  
CITY OF VACAVILLE**

**WHEN RECORDED MAIL TO:**

**Kathleen M. Dussault  
City Clerk  
City of Vacaville  
650 Merchant Street  
Vacaville, CA 95688**

Recorded in Official Records,  
Solano County  
Doc#: 200400093310  
7/07/2004 8:21 AM

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF VACAVILLE  
AND R. W. HERTEL & SONS, INC., BRYANT STOCKING, AND RICHARD  
LAMPHERE REGARDING THE DEVELOPMENT OF THE REAL PROPERTY  
COMMONLY REFERRED TO AS**

**"REYNOLDS RANCH", "KNOLL CREEK", AND ROGER'S RANCH"**

**May 11, 2004**

**Ordinance No. 1716 – adopted 5-11-04 – Exhibit A**

**FILE COPY**