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RECORDING REQUESTED BY:
CITY OF VACAVILLE

WHEN RECORDED MAIL TO:

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

AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF VACAVILLE
AND WESTERN PACIFIC HOUSING, INC., STANDARD PACIFIC HOMES, AND
ROGERS RANCH, LLC REGARDING THE DEVELOPMENT OF THE REAL
PROPERTY
COMMONLY REFERRED TO AS
"REYNOLDS RANCH", "KNOLL CREEK", AND ROGERS RANCH"

MARC TONNESEN
Solano County
Assessor/Recorder
675 Texas Street, Suite 2700
Fairfield, CA 94533-6338
(707) 784-6230 / Vitals 784-6294

P City of Vacaville

AUGUST 12, 2014

Rcpt # 613081 09/12/14 09:25AM

Description Fee

DOC# 201400069569 \$0.00
AMEND AGREEMENT
No Fee \$0.00

Total Amount Due \$0.00

Total Paid

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THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (hereinafter "Agreement") is entered into this 12th day of August , 2014, by and between WESTERN PACIFIC HOUSING, INC., a Delaware Corporation ("Western Pacific"), STANDARD PACIFIC HOMES, a Delaware Corporation ("Standard Pacific"), ROGERS RANCH, LLC, a limited liability company ("Rogers") 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. Western Pacific, Standard Pacific and Rogers may each be referred to herein as a "Developer" and together as "Developers." City and Developers may also each be referred to herein as a "Party," and 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. In 2005, City adopted and issued various land use approvals and permits, including but not limited to subdivision maps, planned development permits, and development agreements, with three developers to provide for development of the following properties, located adjacent to the northwestern 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:

<u>Property</u>	<u>Assessor's Parcel Number</u>	<u>Acres</u>
Reynolds Ranch	0105-200-160; 0105-210-040 0123-040-120; 0123-040-130	100.7 49
Knoll Creek	A portion of 0123-040-110	12.1
Rogers Ranch	0123-040-200	12.97

The Reynolds Ranch property described above is more particularly described on Exhibit B attached hereto and incorporated herein by this reference. The Knoll Creek property described above is more particularly described on Exhibit C attached hereto. The Rogers Ranch property described above is more particularly described on Exhibit D attached hereto and incorporated herein by this reference. Collectively, the Reynolds Ranch, Knoll Creek, and Rogers Ranch properties are referred to herein as the "Project Site" and development of the Project Site as provided in the Project Approvals (defined below), including this Agreement, is referred to herein as the "Project."

C. The purpose and goal of the 2005 Approvals (defined below) was to provide for development of the Project Site with three separate residential communities, including approximately 288 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.

D. In 2005, Western Pacific acquired the Reynolds Ranch property and succeeded to R.W. Hertel & Son's interest in the Original Development Agreement (defined below) as it applied to the Reynolds Ranch property. Western Pacific re-named the Reynolds Ranch subdivision project and recorded the final map as "Cheyenne at Browns Valley" and commenced development pursuant to the 2005 approvals. To reflect Western Pacific's re-naming of the Reynolds Ranch subdivision project, the Reynolds Ranch property may be referred to herein as the "Reynolds Ranch/Cheyenne" property. DDC # 2004 004331D

E. In 2008, the collapse of the housing market and the subsequent recession resulted in a severe reduction in the value of the all the properties in the Rice-McMurtry Area, making it infeasible for the property owners to continue to develop their respective properties consistent with the 2005 approvals. As a result, all development in the Rice-McMurtry Area was halted by the property owners by 2008.

F. In 2002, Bryant and Curtis Stocking entered into an option agreement with Donald and Margaret Young to purchase 26+/- acres of land now known as McMurtry Lane, the City of Vacaville water tank site, and the Rogers Ranch development property. In 2004, the City acquired the City's Zone 1 tank site by exchanging a portion

of City property. On January 26, 2005, Rob Wood acquired the option to purchase the remainder of the property from Bryant and Curtis Stocking, and later acquired the Rogers Ranch property, described above by its Assessor's Parcel Number and more particularly described in Exhibit D, attached hereto and incorporated herein by reference.

G. On February 14, 2013, Williamsburg Ventures, LLC, Standard Pacific Homes' predecessor in interest with respect to the Knoll Creek property, entered into a land donation agreement with the City of Vacaville for the donation of the property identified as "Parcel 2" on Exhibit A of the Land Donation Agreement (the "Parcel 2 Property") resulting in the reduction in allowable dwelling units from 38 units to a total of 21 dwelling units on the Knoll Creek Property, and reducing the total number of allowable units on the overall Project Site to 271.

H. On March 17, 2013, Standard Pacific Homes acquired the Knoll Creek property, described above by its Assessor's Parcel Number and more particularly described in Exhibit C, attached hereto and incorporated herein by reference.

I. The Parties now desire to modify the 2005 Approvals to make continued development of their respective properties financially feasible, allow Developers to complete development of the Project Site, secure for City the public benefits from development of the Project Site as contemplated in the 2005 Approvals, and set forth their understandings concerning the vesting of certain components of the Vacaville General Plan and the Planned Development Permits ("PD") for the Project. In executing this Agreement, Developers recognize that the use and development of all or part of the Project Site may be subject to the grant of certain Subsequent Approvals which are hereinafter defined and identified to the extent that they are known at the time this Agreement was adopted. Developers recognize that Subsequent Approvals are subject to review by the City's planning staff, public hearings and discretionary approval by the appropriate decision-making body in accordance with the terms and conditions of this Agreement and the City of Vacaville Land Use and Development Code, and may be subject to the requirements of the California Environmental Quality Act, Public Resources Code §§ 21000, *et seq.*, the "CEQA Guidelines", 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 and certified for the 2005 Approvals.

J. City acknowledges that Developers' agreements to make the commitments herein further the City's efforts for development of the Project Site, and such commitments constitute a material factor in City's willingness to approve this Agreement. City also acknowledges that it is willing to provide Developers with the undertakings contained in this Agreement because City has determined that development of the Project Site will provide public benefits that could not be obtained without vested approval of large-scale development including, without limitation, needed community open space, increased tax revenues, coordinated planning of development,

installation of both on and off-site public infrastructure, creation of additional needed local employment opportunities, creation of additional housing opportunities, the payment of school mitigation fees as determined by the Vacaville Unified School District, and the payment of Community Benefit Contribution as provided for herein.

K. 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 Developers' rights to develop their respective properties within the Project Site in accordance with the modified project approvals, including this Agreement. Developers will receive by this Agreement certain assurances concerning the conditions under which they may proceed with development of their respective properties and, therefore, desire to enter into this Agreement.

L. It is the intent of the City Council in approving this Agreement 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. Developers shall ensure that the full cost to construct and equip facilities, to operate municipal facilities, and to provide services to the Project Site shall be borne by the properties within the Project Site 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.

M. Developers have secured or will secure various environmental and land use approvals, entitlements, and permits relating to the development of the Project Site. In 2005, the City issued the following approvals (the "2005 Approvals") applicable to the Project Site:

(1) EIR. In 2005, the City Council adopted Resolution 2004-29, certifying the environmental impact report, entitled the "Rice McMurtry Project Final Environmental Impact Report", No. EIR-04-048, State Clearinghouse No. 2003072092, which evaluated the potential environmental impacts of development of the entire Rice-McMurtry Area, including the Project Site (the "EIR"), adopted certain Statements of Overriding Considerations, and adopted findings and a mitigation monitoring program (the "Mitigation Monitoring Program").

(2) General Plan Amendment. 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 an amendment to the City's General Plan.

(3) Planned Development Permits ("PD Permits").

a. After a duly noticed public hearing the City Planning Commission approved a tentative map and PD permit for Knoll Creek (Resolution

No. 04-134), providing City land use regulations and development criteria relating to partial development of the Project Site.

- b. Following review and recommendation by the City Planning Commission, and after a duly noticed public hearing and certification of the EIR, the City Council approved vesting tentative maps and PD Permits for Reynolds Ranch/Cheyenne (Resolution No. 2005-37), and Rogers Ranch (Resolution No. 2005-38), providing City land use regulations and development criteria relating to the development of the Project Site.

(4) Zone Change. 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 Rice-McMurtry Area, including the Project Site (the "Zone Change").

(5) Original 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 that certain Development Agreement By And Between 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 "Rogers Ranch" (the "Original Development Agreement"). On May 11, 2004, the City Council adopted Ordinance No. 1716, approving and authorizing the execution of the Original Development Agreement. By its terms, the Original Development Agreement took effect on June 11, 2004 (the "Original Effective Date"), and was recorded on July 7, 2004 as document number 200400093310.

N. On July 8, 2014, after a duly noticed public hearing, the City Council took the following actions (the "Additional Approvals"):

(1) By Resolution 2014-070, approved and adopted an addendum to the EIR which memorialized the City's determination that the EIR adequately addressed the proposed modifications to the PD Permits and the proposed amendments to the Original Development Agreement and made all of findings required by CEQA;

(2) By Resolution 2014-071, approved and adopted modifications to the Reynolds Ranch/Cheyenne PD Permit (the "Modified Cheyenne PD Permit");

(3) By Ordinance [____], made all of the findings required by Division 14.17 of the Vacaville Municipal Code, including but not limited to finding that the provisions of this Agreement are consistent with the General Plan, and approved and adopted amendments to the Original Development Agreement, which amendments were effected by and contained in this Agreement.

Together, the 2005 Approvals and the Additional Approvals are referred to herein as the "Project Approvals."

O. 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), improvement agreements, 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"); provided, however, that this Agreement shall not become effective unless and until:

- (1) Developers and City have executed this Agreement, the improvement agreements and subdivision improvement agreements described in subsections (1), (3) and (5) of Section 5.F below; and
- (2) Developers execute a separate agreement addressing funding for the Zone 2 Water Tank and Booster Pump Station improvements as set forth more specifically in Sections 5.F(10) and 5.P, below.

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 pursuant to Division 14.11 of the City of Vacaville Municipal Code, as expressly set forth in this Agreement, or by the mutual written agreement of the parties.

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

termination or expiration of this Agreement. Unless specifically set forth herein, the termination or expiration of this Agreement shall not affect the validity of the Project Approvals (other than this Agreement), except that, for any project that has recorded an approved final map in conformance with the Subdivision Map Act and Division 14.11 of the City of Vacaville Municipal Code, the obligations of this Agreement shall continue to apply to such project until implementation of the Project Approvals is complete, including, but not limited to, payment of Community Benefit Contribution, payment of development impact fees, annexation into Community Facility District #10 (Cheyenne at Browns Valley Police and Fire Services), payment of the water annexation fee, and other obligations established by this Agreement.

C. Termination of Agreement. This Section is intentionally omitted.

D. Definitions.

“**Developer**” shall mean, with respect to the Reynolds Ranch/Cheyenne property described in Exhibit B hereto, Western Pacific; with respect to the Knoll Creek property described in Exhibit C hereto, Standard Pacific Homes; and with respect to the Rogers Ranch Property described in Exhibit D hereto, Rogers Ranch LLC; and shall also include all of their respective successors-in-interest to their respective properties.

“**Developers**” shall mean all of the three developers, collectively.

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

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

“**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 B (Reynolds Ranch/Cheyenne Property), Exhibit C (Knoll Creek Property), and Exhibit D (Rogers Ranch Property) 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 Developers timely construct and provide all necessary infrastructure to serve proposed development as a condition of issuance of any City permit, approval or other land use entitlement sought by Developers 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, Developers shall install required infrastructure improvements in accordance with this Agreement and the Project Approvals.

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 Developers shall have the right to develop the Project Site in such order and at such rate and at such times as Developers deem appropriate within the exercise of their respective and subjective business judgment. Developers 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 Developers.

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 a 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 Modified PD Permit.

(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 Original 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. Developers 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 Developers 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 a 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 (for purposes of this subsection "tentative map"), relating to the Project Site, or any part thereof, the term of any subdivision improvement agreement related to development of the Project Site, or any portion thereof, and the term of any use permit, design review approval, building permit, or other zoning entitlement or discretionary approval for development of any portion of the Project Site, including but not limited to the Modified PD Permit, shall be extended to run concurrently with the Term of this Agreement. In no event shall the term of tentative map or other related discretionary approval, including but not limited to the Modified PD Permit, be for a term longer than the life of this Agreement without the amendment of this Agreement.

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 Developers 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 Developers' 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 Developers in Developers' attempts 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 Developers does not include the obligation to contribute financially to such attempts by Developers;

(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 Developers, 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. Review And Processing Of Project Applications And Plans.

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

(2) City shall meet with any of the Developers or all of the Developers at such Developer's or Developers' written request and at a time mutually acceptable to the parties prior to a 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 a 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 a 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 therefore.

(4) Upon submission by a Developer of any improvement plans or architectural plans for City review and approval, City shall use its best efforts to complete such review according to the following schedule, assuming the resubmitted plans are complete and do not include significant changes or additions:

a. Completion of first plan check review within six (6) weeks of submission by Developer.

b. Completion of second plan check within three (3) weeks of submission by Developer.

c. Completion of third plan check, if necessary, within three (3) weeks of submission by Developer.

If City is unable to timely review any improvements plans or architectural plans according to the foregoing schedule, and upon written request by a Developer, City shall engage outside consultants to aid in such review, 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.

(5) City will provide Developers with a budget for the design and construction plans ("plans") for the Zone 2 Water Tank and Booster Pump Station within sixty (60)

days of the Effective Date. City shall complete the design of and approve the Zone 2 Water Tank and Booster Pump Station plans within six (6) months of receiving full funding for the design work as set forth in the budget from the Developers.

G. Relationship And Integration With City's Planned Growth Ordinance; Building Permit Allocations. As provided in the Original Development Agreement, City hereby confirms that Developers have been allocated and reserved building permits under City's Planned Growth Ordinance (Division 14.05 of the Vacaville Municipal Code) as set forth below, which allocations shall apply automatically and shall not require any formal request by any Developer provided that Developers remain in compliance with the remaining terms and conditions of this Agreement:

- (1) Western Pacific: Two hundred twenty-one (221) building permits for the Reynolds Ranch/Cheyenne property;
- (2) Standard Pacific: Twenty-one (21) building permits for the Knoll Creek property; and
- (3) Rogers: Twenty-nine (29) building permits for the Rogers Ranch property.

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 and Electric ("PG&E"), American Telephone & Telegraph ("AT&T") and Comcast of California/Massachusetts/Michigan/Utah, Inc. ("Comcast") to place their lines and equipment underground within the Project Site so as to minimize the Developers' costs of undergrounding utilities. Developers shall, at no cost to City, underground all the utilities in this subsection along the western frontage of Browns Valley Road from northern border of the Glen Eagle project to the northern border of Cheyenne and along McMurtry Lane in front of Reynolds Ranch/Cheyenne development. The undergrounding of public utilities in accordance with this Section shall be included in the Benefit District funded and formed by the Developers pursuant to Section 3(K), below.

I. Coordination Of Construction Of Off-site Improvements. Developers acknowledge 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.

(1) City shall create a Benefit District, in accordance with the Subdivision Map Act and Division 14.15 of the Vacaville Municipal Code, for the purposes of facilitating reimbursement to City and, to the extent allowed under Section 5.G.(1) b below to Western Pacific, of the costs of constructing the Allison Lift Station and such associated improvements necessary or desirable to serve the Project Site and creating such Benefit District.

(2) Developers shall fund, and Developers and City shall take, all actions necessary to create one or more Benefit Districts in accordance with the Subdivision Map Act and Division 14.15 of the Vacaville Municipal Code for the purpose of establishing mechanisms to reimburse each Developer that constructs improvements that benefit private property owned by others, including, but not limited to, private property owned by other developers. City shall not unreasonably withhold approval of such Benefit Districts. Such improvements shall include, without limitation, all sewer, water and storm drain infrastructure, facilities and equipment, including the undergrounding of existing telecommunications facilities pursuant to Section 3H, above; streets, sidewalks, street lights, traffic signals, landscaping and medians; and all other public utilities and public infrastructure, that benefit private property owned by others. The process for formation of the Benefit District(s) set forth in this subsection 3.K.(2) shall be initiated and completed to the point the item is fully prepared for presentation to the City Council prior to the issuance of any building permit(s) applied for by any of the Developers after the Effective Date of this Amended and Restated Development Agreement.

L. Lighting and Landscaping Districts. The City and Developers 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. The Developers shall annex into the existing Ridgeview Park maintenance district for the maintenance of the neighborhood City park.

SECTION 4. MATERIAL OBLIGATIONS OF DEVELOPERS; 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 Developers) for failure on the part of Developers to achieve the objectives stated below, subject to the provisions of this Agreement that relate to permitted delays and delaying causes. Developers' 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 Developers are:

A. Community Facilities District (“CFD”) Formation. A single Community Facilities District (“CFD”) has been formed for the Project Site commonly known as Community Facilities District #10 (Cheyenne at Browns Valley Police and Fire Services). The purpose of the CFD is to provide a funding mechanism to pay for the full cost of City fire protection and police protection services for the Project Site, including the on-going costs for all salaries and benefits for the additional police and fire personnel required to serve the Project Site. For background information purposes, as of the Effective Date, the Reynolds Ranch/Cheyenne property has already been annexed into the CFD #10, and Standard Pacific is currently in the process of annexing the Knoll Creek property into the CFD #10. All Developers understand and agree that assessments for the CFD will increase at a rate of the Consumer Price Index (CPI) for the San Francisco Bay Area per year.

B. Commencement of Construction of Phase I Infrastructure. This section has been intentionally omitted.

C. Privately Funded Maintenance. Prior to the recordation of any Final Map, the Developer seeking to record such Final Map 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 private improvements including but not limited to, private streets, private landscaping, private storm drainage, private street lighting and private fire protection buffer.

D. Annexation. The Parties to this Agreement acknowledge that the Developers completed the annexation process and the Developers’ respective Properties were annexed to the City in accordance with the provisions of the Original Development Agreement.

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

A. No Obligation To Develop. Developers 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 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 Rights and Obligations.

(1) As consideration for City entering into this Agreement, Developers agree that they 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 Developers' acceptance of, and agreement to comply with, the terms and conditions of the Project Approvals and Subsequent Approvals.

(2) Developers shall construct all on-site and off-site infrastructure improvements in a timely manner in accordance with the applicable conditions of approval, the applicable improvement agreements and any approved Project Infrastructure Schedule established by City and Developers pursuant to subsection 5.B.(3), below. 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 a Developer's subdivision improvement plans, such 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.

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

(1) All fees, fee schedules and rates, including but not limited to development impact fees, shall apply to the Project Site as set forth in Section 3.B.6 of this Agreement.

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

(3) Limitation on Development Impact Fees. The Project Site shall not be subject to any Development Impact Fee enacted after the Original Effective Date

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.

(4) Processing Costs. Except to the extent that processing costs are Vested Elements, nothing herein contained shall exempt a Developer from paying processing costs imposed by City for the processing of such 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 the Developer that has submitted the application or applications, to seek mutually agreeable terms regarding: (a) the scope of work to be performed by such consultant; (b) the projected costs associated with such work; and (c) the particular consultant engaged to conduct such work.

(5) Change in Amount of Development Impact Fees. If the amount of any of City's development impact fees is reduced or eliminated by a legislative, executive, or judicial action of a state or federal agency, such action shall not relieve Developers of their obligations 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. Developers shall construct or install all public improvements (including, without limitation, landscaping) necessary to provide public services in support of development of the Project Site as generally described in the applicable Planned Development Permit, without cost or expense to City.

E. Developer Procures Financing For Major Infrastructure. Developers 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. City agrees to assist in Developers' creation of a Benefit District or Districts as may be needed to provide reimbursement to Developers for any costs that may benefit other private property owners. City shall not unreasonably withhold approval of such Benefit District or Districts.

F. Assurances Concerning On-Site and Off-Site Improvements. Upon approval by City of the Modified Cheyenne PD Permit and this Agreement, City and Developers shall take the following steps to assure satisfactory completion of on-site and off-site improvements required by the Modified PD Permit and this Agreement:

(1) On or before the Effective Date of this Agreement, City and Western Pacific shall execute a mutually agreeable subdivision improvement agreement ("SIA") to provide for completion of all on-site and off-site improvements required by the

Modified Cheyenne PD Permit for the Reynolds Ranch/Cheyenne subdivision and this Agreement, except for the construction of the Zone 2 Water Tank and Booster Pump Station improvements required under Section 5.P below which shall be subject to a separate SIA pursuant to Section 5.F(3) below. The SIA required by this Section 5.F(1) shall be in substantially the form of Exhibit G-1 hereto, and shall replace and supersede that certain Subdivision Improvement Agreement entered into by City and Western Pacific Housing, Inc. on March 3, 2006, a copy of which is attached hereto as Exhibit E.

(2) On or before the Effective Date of this Agreement, Western Pacific shall provide to City performance, labor and material, and warranty bonds (the "New Bonds"), to secure Western Pacific's satisfactory completion of the work described in the SIA required by the preceding Section 5.F.(1), as provided by and in substantial conformance with the requirements of Government Code sections 66499, 66499.1, 66499.2, and 66499.3, which New Bonds shall replace the following bonds issued by Arch Insurance Company and currently held by City, referred to herein as the "Existing Bonds":

- a. Subdivision Bond – Faithful Performance
No. SU5018488, dated December 12, 2005
- b. Subdivision Bond
No. SU5017060, dated September 7, 2005

Copies of the Existing Bonds are attached hereto as Exhibit E. Upon City's and Western Pacific's execution of the SIAs, and concurrent with Western Pacific's provision of the New Bonds, City shall relinquish and release the Existing Bonds.

(3) On or before the Effective Date of this Agreement, Western Pacific and City shall execute a mutually-agreeable improvement agreement to provide for completion of the Zone 2 Water Tank and Booster Pump Station in accordance with the requirements of Section 5.P below, which improvement agreement shall be in substantially the form of Exhibit G-2 hereto.

(4) On or before the Effective Date of this Agreement, Western Pacific shall provide to City performance, labor and material, and warranty bonds to secure Western Pacific's satisfactory completion of the Zone 2 Water Tank and Booster Pump Station improvements in accordance with the requirements of Section 5.P below and the improvement agreement required by the preceding Section 5.F.(3), which bonds shall be in substantial conformance with the requirements of Government Code sections 66499, 66499.1, 66499.2, and 66499.3.

(5) On or before the Effective Date of this Agreement, City and Standard Pacific shall execute a mutually agreeable improvement agreement to provide for the construction of Standard Pacific's portion of on-site and off-site improvements set forth in Exhibit F-1, in substantially the form of the improvement agreement attached hereto as Exhibit H. Additionally, Standard Pacific shall be responsible for the construction

of on-site and off-site improvements required to complete development of the Knoll Creek property 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 the Knoll Creek Property. Such assurance shall be in the form of a written subdivision 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).

(6) On or before the Effective Date of this Agreement, Standard Pacific shall provide to City performance, labor and material, and warranty bonds (the "SP Bonds"), to secure Standard Pacific's satisfactory construction of the on-site and off-site improvements required by Exhibit F-1 of this Agreement and the improvement agreement required by the preceding Section 5.F.(5), as provided by and in substantial conformance with the requirements of Government Code sections 66499, 66499.1, 66499.2, and 66499.3.

(7) Provided that the other Developers have completed their respective off-site improvements set forth in Exhibit F-1, then prior to filing a final map or parcel map for the Rogers Ranch property, Rogers shall pay to City the full amount of the Rogers Ranch property's share of the costs of all off-site improvements required to complete development of the Rogers Ranch property and as set forth in Exhibit F-1, which payment City shall use to reimburse each Developer eligible for reimbursement for construction of such off-site improvements in accordance with Section 3.K. Additionally, Rogers shall be responsible for the construction of all on-site improvements required to complete development of the Rogers Ranch property, 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 the Rogers Ranch property. Such assurance shall be in the form of a written subdivision improvement agreement entered into in accordance with procedures established pursuant to City ordinance and shall also include the posting of bonds in substantial conformance with the requirements of Government Code sections 66499, 66499.1, 66499.2, and 66499.3, or other surety acceptable to City provided as therein.

(8) 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 a Developer seeks to develop a portion or portions of the Project Site.

(9) Contemporaneous with the Effective Date of this Agreement, Western Pacific and Standard Pacific shall provide to City separate letters of acknowledgement and understanding that City will exercise its rights to collect the security posted by Western Pacific and Standard Pacific under subdivisions (2), (4) and (6) of this Section

5.F, in the event that Developers fail to satisfy the requirements of the improvement agreements and subdivision improvement agreements described in subsections (1), (3) and (5) of this Section 5.F.

(10) On or before the Effective Date of this Agreement, Western Pacific, Standard Pacific and Rogers Ranch, LLC shall execute a mutually-acceptable agreement to provide for full funding of the Zone 2 Water Tank and Booster Pump Station in accordance with the requirements of Section 5.P below.

G. Infrastructure Construction: Dedication Of Land, Rights of Way And Easements.

- (1) Each Developer shall pay the full costs of all on-site infrastructure for its portion of the Project Site. Each Developer shall construct, or fund the construction of its proportionate share of, the following off-site infrastructure necessary to serve the Project Site, as provided in Exhibit F-1 hereto, subject to any oversizing requirements deemed appropriate by City. Developers shall construct the off-site infrastructure improvements described in Exhibit F-1 in accordance with the specific off-site infrastructure development schedules set forth herein. Except for the improvements to Shelton Lane described in Section 5.G.1.c and Section 5.R.4 below, to the extent that a Developer has previously constructed or will construct any such off-site infrastructure, such Developer shall be entitled to reimbursement for costs incurred in excess of its fair share, through a Benefit District formed pursuant to this Agreement and Division 14.15 of the Vacaville Municipal Code.
 - a. The Parties acknowledge that as of the Effective Date, the Reynolds Ranch/Cheyenne Developer has already acquired and dedicated to City the land, and provided funds for the improvement plans, for the Allison Lift Station; has already completed the Brown's Valley Rice Lane Gravity Sewer Line, the Allison Sewer Pipeline, and the Waterline Upsizing; and has already acquired and dedicated to City the land required for the Zone 2 Water Tank and Booster Pump Station.
 - b. Developers shall pay their fair shares and the City shall construct the Allison Lift Station in accordance with Section 5.Q below. The Allison Lift Station shall be included in a separate Benefit District (the "ALS Benefit District") to be formed by City to facilitate reimbursement to the City and, to the extent that Western Pacific's contributions exceed its fair share and are not exhausted by the credits described below, reimbursement to Western Pacific. The Reynolds Ranch/Cheyenne Developer shall receive ALS Benefit District credit for contributions to the development of the Allison Lift Station including the costs for the preliminary design, design, and land acquisition. The Reynolds Ranch/Cheyenne Developer shall use the ALS Benefit District credit against the number of existing homes already developed by the

Reynolds Ranch/Cheyenne Developer as of the Effective Date of this Agreement. If ALS Benefit District credit remains, the Reynolds/Cheyenne Developer may use the remaining credit against future ALS Benefit District payments. If Reynolds/Cheyenne Developer's ALS Benefit District credit is less than the ALS Benefit District payment due for the number of existing homes already developed by the Reynolds Ranch/Cheyenne Developer as of the Effective Date of this Agreement, the Reynolds/Cheyenne Developer must pay the difference with the first building permit for the next home constructed on the Reynolds Ranch/Cheyenne property.

- c. As provided in Exhibit F-1, Developers shall construct the Zone 2 Water Tank and Booster Pump Station in accordance with Section 5.P below, and shall construct Shelton Road in accordance with Section 5.R.(4) below.
 - d. By way of background and not as a Developer obligation under this Agreement, the Parties understand that the Rancho Rogelio developer is conditioned to construct the Rice-McMurtry Detention Pond in accordance with that project's entitlements;
 - e. As provided in Exhibit F-1, Developers shall construct Browns Valley Road in accordance with Section 5.R.(5) below in conformance with plans approved by City.
 - f. As provided in Exhibit F-1, Developers shall complete the McMurtry Lane improvements and the McMurtry Lane/South Horse Creek Culvert in accordance with Section 5.R.(8) below, in conformance with plans approved by City.
 - g. As provided on Exhibit F-1, Developers shall construct Bent Tree Way in accordance with Section 5.R.(9) below, in conformance with plans approved by the City.
- (2) To the extent that any Developer defaults on its infrastructure improvement obligation(s) set forth in the preceding Section 5.G.(1) and the attached Exhibit F-1, and in addition to any of City's enforcement rights provided by this Agreement and upon 10 business days written notice to City, any other Developer shall have the right to assume such infrastructure improvement obligation(s) of the defaulting Developer and satisfy the infrastructure improvements obligation(s), subject to reimbursement by the Benefit District; provided, however, that if the defaulting Developer has not deposited in to the Benefit District account its share of the costs of such improvements, a Developer assuming a defaulting Developer's construction obligation(s) shall be entitled to reimbursement by the defaulting Developer of all costs reasonably incurred by the assuming Developer to satisfy the defaulting Developer's infrastructure improvement obligation(s).
- (3) With the exception of Shelton Lane, all on-site and off-site improvements set forth above are subject to reimbursement through one or more Benefit

Districts to be formed at no cost to City pursuant to this Agreement and Division 14.15 of the Vacaville Municipal Code for costs determined to be in excess of Developers' fair share. Any oversizing shall be reimbursed to the eligible 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 period shall be that term approved by the City Council with its approval of the applicable Benefit District. In order to fund the construction of on-site "backbone" infrastructure, a 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.

- (4) Each 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 its portion of the Project Site in accordance with the Vested Elements. City shall cooperate with Developers and use its best efforts to bring about construction of the infrastructure required for the development contemplated in the Vested Elements that is beyond a 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.
 - a. If, after exercising reasonable, good faith efforts, any Developer responsible for construction of infrastructure improvements under Exhibit F-1 of this Agreement ("Responsible Developer") that is unable to obtain third party property interests necessary to construct such infrastructure improvements may notify City in writing of Developer's inability to obtain such property interests. Upon City's receipt of such notice from the Responsible Developer City shall have ten (10) business days to make a written determination that Responsible Developer has used reasonable, good faith efforts to obtain necessary third party property interests. If no written determination is provided, the Responsible Developer will be deemed not to have made reasonable good faith efforts in accordance with this Section. In the event no written determination is provided within the 10 business day period, the Responsible Developer may request in writing to meet and confer with City to address City's concern about the Responsible Developer's acquisition efforts. City and Developer shall make every effort to complete the meet and confer within ten (10) business days of City's receipt of the written request. During the meet and confer process all parties shall act in good faith to resolve the conflict.

- i. Within thirty (30) days of receipt of written notice of City's good faith determination, the Responsible Developer shall deposit with City sufficient funds, as reasonably determined by City, for City to acquire such property interests through the exercise of its eminent domain power at no cost to City ("Acquisition Funds"). Upon Responsible Developer's deposit of such funds, City shall have twenty four (24) months to acquire possession of the property necessary to construct the infrastructure improvements and to grant Responsible Developer access to the property to permit construction of such infrastructure improvements. If City does not acquire possession of and grant Responsible Developer access to such property within such 24-month period, then not later than thirty (30) days after the end of the 24-month period, City shall return the full amount of Responsible Developer's deposit to Responsible Developer less any amounts expended to acquire the property necessary within the 24-month period and Responsible Developer shall be relieved of the obligation to complete such infrastructure improvements. If City elects to exercise its power of eminent domain as provided in this Section 5.G.(4) a, all time periods established by this Agreement for the construction of such infrastructure improvements shall be extended for a period of time equal to the period from the date of the Responsible Developer's written notice to City of Developer's inability to obtain the necessary property interests to the date that City provides to Developer, in writing, access to the property sufficient to permit construction of such infrastructure improvements.
- ii. Each time the balance of the Acquisition Funds has declined to \$50,000 by reason of withdrawals by the City to pay for costs of acquisition, Responsible Developer shall deposit within ten (10) days after written demand from City to deposit an additional \$25,000 or such greater amount necessary to bring the Acquisition Funds up to \$50,000.
- iii. If at any time City decides that it will not exercise its power of eminent domain to acquire such property interests and the property interests have not otherwise been acquired, then upon receipt of written notice of City's decision, which will not be unreasonably delayed or withheld, Responsible Developer shall immediately be relieved of the obligation to complete such infrastructure improvements.
- iv. Costs of acquisition shall include but not be limited to all amounts paid to the property owner for acquisition of the

property interest necessary, including but not limited to any out-of-court settlement amount that may be higher than the appraisal amount, any and all City staff costs and expert and consultant costs incurred throughout the acquisition process, overhead costs, noticing costs, costs and payments incurred for attorneys fees, expert witness fees including appraisers, court costs; litigation expenses; relocation costs as provided for in Government Code section 7260 et seq. and related regulations (the Relocation Assistance Act), costs and fees charged by acquisition agents; any court awards including but not limited to compensation for the value of the property taken, interest on the award, interest for immediate possession of the property taken, as well as payment of sanctions, if any, awarded to the owner of the property being taken (except to the extent such sanctions are based on the intentional bad faith or intentional misconduct of the City), court costs awarded to the owner or payable to the Court; court costs, if any awarded to the owner for abandonment or dismissal or all or any part of any condemnation action, recordation fees, damages, claims or sanctions resulting from a decision not to proceed with a condemnation action, and any other cost or expense paid or incurred by City related to or arising from City's attempt to acquire such property interests as set forth in this Agreement.

H. Developers 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, each Developer shall have the option of proceeding with the development of such improvements, provided that a Developer choosing to exercise such option has procured 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 any Developer or any successor in interest. Provided this Agreement is in effect and Developers have 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 Knoll Creek and Rogers Ranch properties, all existing private wells on such properties 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 such properties 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 a 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 Project Site.

(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, fire protection buffer zones, and trails for their respective portions of the Project Site.

(3) The Developers acknowledge that the City will not grant park credit for open space dedicated to the City, for any trails, or for the storm water detention facilities.

(4) All new development within the Project Site 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 Developers 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. Each 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, each Developer shall provide City with reports of its projected timetable for the design, construction and completion of the Project on its property as approved in the applicable Modified PD Permit and this Agreement ("Development Projections") within ninety (90) days of the Effective Date of this Agreement and each time there is a material change in a Developer's anticipated progress in developing the Project. In addition, each 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 for the Knoll Creek and Rogers Ranch properties, Standard Pacific and Rogers Ranch, respectively, 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. Each Developer agrees to pay \$2,523 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. This cost shall be adjusted annually on March 1, beginning in 2015, based on the Consumer Price Index for the Engineering News Record (ENR) Construction Cost Index for 20 cities, using San Francisco as a baseline for this adjustment.

O. Completed Infrastructure Analyses. The EIR 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 EIR. The following infrastructure analyses have been completed to support the development of infrastructure on the Project Site:

(1) The Reynolds Ranch Drainage Study and Detention Storage Evaluation has been prepared by West Yost and Associates (Technical Memorandum No. 1, No. 2 and No. 3, dated December 7, 2004, January 25, 2005 and June 6, 2006 respectively)) that identifies the proposed on-site and off-site storm water drainage system needed to support the proposed development. A Benefit District shall be formed to reimburse and/or fund developers for any over-sizing of the storm water collection system needed to support future development. The Developers shall be responsible for their respective fair shares of 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 on-going maintenance of the storm water detention and conveyance system.

(2) Sanitary sewer studies have been prepared by West Yost and Associates ("Rice-McMurtry Area Sewer Service Plan", dated December 2006 and "Allison Parkway Lift Station Expansion Project Final Preliminary Design Report" dated February 2006), at the request of Western Pacific, that verify the sizing, phasing, and location of all on-site and off-site components of the sanitary sewer collection system. A Benefit District shall be formed to reimburse the Developers for any over-sizing of the sanitary sewer lines needed to support future development. The City shall form a separate Benefit District for the expansion of the Allison Parkway Sewer Lift Station. The Developers shall be responsible for their respective fair shares of 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 has been prepared by Nolte and Associates ("Rice McMurtry Water Service Area Master Plan and Tank Sizing Study" dated March 2005) at the request of Western Pacific, that identifies the sizing, phasing, and location of the on-site and off-site domestic water supply and distribution system. A Benefit District shall be formed to reimburse the Developers for any over-sizing of the domestic water system needed to support future development. The Developers shall be responsible for their respective fair shares of 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.

P. Zone 2 Water Tank and Booster Pump Station. The majority of the Project Site is within a Zone 2 water service area. As such, a new water storage reservoir and distribution system will be needed to serve the Project Site. The issuance of building permits for the lots above elevation 222 is contingent upon completion of the construction of the booster pump station, reservoir and associated transmission facilities (hereafter, the Zone 2 Water System and Booster Pump Station), in conformance with plans approved by City.

(1) Developers have completed or shall, as provided in Exhibit F-1, complete the following:

- a. Developers shall pay all costs associated with the land acquisition, pre-design, environmental, geotechnical, design, and construction of a Zone 2 Water Tank and Booster Pump Station and all other water system improvements as determined by City to be necessary to serve the Project Site;
- b. Developers shall complete construction of the Zone 2 Water Tank and Booster Pump Station in conformance with plans approved by City.
- c. Developers shall complete construction of the Zone 2 Water Tank and Booster Pump Station not later than four (4) years from the date of City's approval of the Zone 2 Water Tank and Booster Pump Station plans.
- d. Developers 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) Upon completion of the Zone 2 Water Tank, Booster Pump Station and distribution system, all units within the Project Site 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 by the Developer as required by the Director of Public Works.

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 Allison Parkway Lift Station Expansion Project Final Preliminary Design Report .

(2) Western Pacific has previously funded the Allison Parkway Lift Station Expansion Project Final Preliminary Design Report used by City to determine 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 Rice McMurtry Area, including but not limited to the Project Site, funded engineering pre-designs and designs for modifications to and

expansion of the Allison Lift Station, and acquired and dedicated to City sufficient land to complete the modifications to and expansion of the Allison Lift Station and associated infrastructure sufficient to accommodate proposed development in the Rice McMurtry Area.

(3) Developers shall fund their respective fair shares of the costs of construction of the improvements, modifications, or expansion of the Allison Lift Station and associated infrastructure, subject to credit for all prior contributions to such costs, including but not limited to Developers' prior contributions as they relate to the preliminary design, design, land acquisition, and construction of the Allison Lift Station. City shall form a Benefit District to fund the update of the Allison Lift Station improvement plans, for the construction of the Allison Lift Station and associated improvements, and to facilitate appropriate reimbursements, and City shall be responsible for construction of the Allison Lift Station and associated improvements.

(4) Portions of the Project have or utilize sewer lines installed by the Browns Valley Sewer Assessment District or other wastewater facilities. Any development utilizing such sanitary sewer system shall pay its pro-rata share of the costs for the installation and operation of such sewer system.

(5) Each Developer shall pay its proportionate share of the cost of the Sewer Collection System improvements, including the Allison Lift Station improvements, prior to issuance of any future building permits for production homes on its property (excluding building permits for model homes) or at time of final map if so designated in an approved benefit district. Payment of a Developer's proportionate share of such costs shall satisfy such Developer's obligations relating to the Sewer Collection System improvements and City shall issue building permits for such Developer as otherwise provided in this Agreement. Payment of the proportionate share of the cost of the Sewer Collection System improvements by a Developer shall be deemed to fully satisfy such Developer's Sewer Collection System obligations. Developers shall fund and participate in the formation of a Benefit District pursuant to this Agreement and Division 14.15 of the Vacaville Municipal Code to reimburse Developers for costs of Sewer Collection System improvements benefitting land outside the Project Site, including the costs of up-sizing any pipes and except for the Allison Lift Station improvements, which shall be subject to a separate Benefit District.

(6) City shall use reasonable efforts to form a separate Benefit District to fund the construction of the Allison Lift Station and associated improvements and facilitate reimbursement to City of eligible costs, and to construct the Allison Lift Station and associated improvements. City shall not delay or withhold the issuance of building permits in the event City fails to complete or is delayed in its completion of the Allison Lift Station improvements.

R. Roadway and Intersection Improvements.

(1) Developers will be responsible for all traffic and circulation system related mitigation measures identified in the Final EIR and this Agreement. Consistent with Section 5.G.1 above, and except for the improvements to Shelton Lane described in Section 5.R.4 below, to the extent that a Developer has incurred or will incur costs associated with any off-site roadway and infrastructure improvements described in this Section 5.R, such Developer shall be entitled to reimbursement for costs incurred in excess of its fair share, through a Benefit District to be formed at no cost to City pursuant to this Agreement and Division 14.15 of the Vacaville Municipal Code.

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

(3) As provided in Exhibit F-1 hereto, Developers shall complete plan lines of the improvements to the widening of Browns Valley Road from Vaca Valley Parkway to Shelton Lane. The plan line shall include both new horizontal and vertical alignments of the 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 west side of the street. This plan line shall also include exhibits identifying any needed right of way from each adjacent property owner in the road alignments.

(4)

a. As provided in Exhibit F-1 hereto, Developers shall complete the improvements to Shelton Lane in conformance with the plans approved by the City. Developers shall commence construction of such Shelton Lane improvements not later than ninety (90) days following the Effective Date of this Agreement and City's approval of all required plans. To date, the City has issued 62 building permits within the Reynolds Ranch/Cheyenne subdivision. Upon Developer's commencing such Shelton Lane construction work, and subject to complying with Section 5.P. above with respect to lots above elevation 222, and submitting the appropriate application, City shall issue up to five (5) additional building permits to the Reynolds Ranch/Cheyenne Developer and up to six (6) building permits to the Knoll Creek Developer, all eleven (11) of which shall be for the limited purpose of constructing model homes on the Reynolds Ranch/Cheyenne property and the Knoll Creek property. As part of such Shelton Lane improvements, Developer shall reconstruct drainage ditches and driveway aprons along east side as necessary to conform and to drain properly. Design speed for the reconstruction shall be based on 35 MPH as a minimum. To the extent this can be increased without significant impact, it should be considered. Upon Developers' completion of the Shelton Lane improvements and subject to complying with Section 5.P, above with respect to lots above elevation 222, and submitting the appropriate applications, City shall issue up to forty-four (44) additional building permits to Western Pacific for construction of dwelling units

within the Reynolds Ranch/Cheyenne subdivision and up to five (5) additional building permits to Standard Pacific and Rogers, collectively, for construction of dwelling units within the Knoll Creek or Rogers Ranch subdivisions.

b. Notwithstanding the foregoing Section 5.R.(4), if after a determination of good faith, the Responsible Developer deposits funds with City pursuant to Section 5.G.(4).a.i above for City to acquire property interests necessary to complete the Shelton Lane improvements required by this Section 5.R.(4)a, and City fails to grant to the Responsible Developer, within six months of such deposit, sufficient access to the property to enable the Responsible Developer construct the Shelton Lane improvements described in Section 5.R.(4) above then within five (5) business days of a written request from the applicable Developer and subject to complying with Section 5.P, above with respect to lots above elevation 222, City shall issue up to five (5) additional building permits to Western Pacific for construction of dwelling units within the Reynolds Ranch/Cheyenne subdivision, and up to six (6) building permits to Standard Pacific and Rogers, collectively, for construction of dwelling units within the Knoll Creek or Rogers Ranch subdivisions, all eleven (11) of which shall be for the limited purpose of constructing model homes on the Reynolds Ranch/Cheyenne property and the Knoll Creek property and such building permits issued pursuant to this Section 5.R.(4)b shall substitute for and replace the building permits to be made available for model home dwelling units under the preceding Section 5.R.(4)a.

c. Notwithstanding the foregoing Section 5.R.(4)a, if the Responsible Developer deposits funds with City pursuant to Section 5.G.(4)a.i above for City to acquire property interests necessary to complete the Shelton Lane improvements required by this Section 5.R.(4)a, and City fails to grant to the Responsible Developer, within ten (10) months of such deposit, sufficient access to the property to enable the Responsible Developer construct the Shelton Lane improvements described in Section 5.R.(4)a above then not later than five (5) business days of a written request from the applicable Developer and subject to complying with Section 5.P, above with respect to lots above elevation 222, City shall issue up to forty-four (44) additional building permits to Western Pacific for construction of dwelling units within the Reynolds Ranch/Cheyenne subdivision, and up to five (5) additional building permits to Standard Pacific and Rogers, collectively, for construction of dwelling units within the Knoll Creek or Rogers Ranch subdivisions, and such building permits issued pursuant to this Section 5.R.(4)c. shall substitute for and replace the building permits to be made available for non-model home dwelling units under the preceding Section 5.R.(4)a.

(5) As provided in Exhibit F-1 hereto, Developers shall be responsible for installing all improvements to Browns Valley Road. Developer shall commence construction of such improvements not later than December 1, 2014 and be completed no later than June 1, 2015. Construction shall conform to plans approved by City, and

shall include reconstructed drainage ditches and driveways along the east side of Browns Valley Road, as necessary to conform and to drain properly., Developers shall construct the west side Brown's Valley Road frontage (Frontage West), including the telecommunications line undergrounding along the Frontage West as described in Section 3.H above, and the Browns Valley Road Reconstruction (Center Section), in conformance with plans approved by City. These improvements shall also include a pedestrian path and bicycle path or sidewalk that connects the Project Site to the pedestrian pathways on Browns Valley Road near Vaca Valley Parkway allowing the residents in the new developments within the Rice – McMurtry area to have off-street access to the Ridgeview Park, which 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. An interim or permanent five (5) foot sidewalk along the west side of the street shall be constructed across the 'Hillview' Property. Landscaping along west side of Browns Valley Road is deferred until future development adjoining Browns Valley Road is developed. Upon Developers' completion of the Browns Valley Road improvements in conformance with the plans approved by the City and subject to complying with Section 5.P, above with respect to lots above elevation 222, completion of the improvements described in Section 5.R.(4)a above, and submitting the appropriate applications, the City shall issue up to forty-five (45) additional building permits to Western Pacific for construction of dwelling units in the Reynolds Ranch/Cheyenne subdivision and up to fifteen (15) additional building permits to Standard Pacific or Rogers for construction of dwelling units in the Knoll Creek or Rogers Ranch subdivisions.

a. Notwithstanding the foregoing Section 5.R.(5), if the Responsible Developer deposits funds with City pursuant to Section 5.G.(4).a.i above for City to acquire property interests necessary to complete the Browns Valley Road improvements required by Section 5.R.(5), and City fails to grant to the Responsible Developer, within ten (10) months of such deposit, sufficient access to the property to enable the Responsible Developer construct the Browns Valley Road improvements described in Section 5.R.(5) above, then upon Developers submitting the appropriate application(s), and subject to complying with Section 5.P, above with respect to lots above elevation 222 and completion of the improvements described in Section 5.R.(4)a above, City shall issue up to forty-five (45) additional building permits to Western Pacific for construction of dwelling units within the Reynolds Ranch/Cheyenne subdivision and up to fifteen (15) additional building permits to Standard Pacific or Rogers for construction of dwelling units within the Knoll Creek or Rogers Ranch subdivisions; and such building permits issued pursuant to this Section 5.R.(5)(a) shall substitute for and replace the building permits to be made available under the preceding Section 5.R.(5). Nothing in this Section 5.R.(5).a is intended to limit the discretion of the City's Director of Community Development to issue the building permits described herein earlier than ten months from the Responsible Developer's deposit or prior to completion of the Browns Valley Road improvements, provided that the Responsible Developer has commenced construction of such

improvements in a timely manner under this Agreement, as determined by the Director of Public Works.

(6) As provided in Exhibit F-1 hereto, Developers shall be responsible for the construction and total costs of improvements to the intersection of Browns Valley Road and McMurtry Lane, and the intersection of Browns Valley Road and Whispering Ridge Drive, including any transitional lanes and improvements between the two intersections on Browns Valley Road as may be necessary to comply with City standards, in conformance with plans approved by the City.

(7) As provided in Exhibit F-1 hereto, Developers shall complete the preparation of plan lines of the improvements to the widening of McMurtry Lane from Browns Valley Road to the existing western terminus of the road. The plan lines shall include both new horizontal and vertical alignments of the 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; on-street bike path on each side of the street; and intersections and needed transitions to existing and proposed roads. The plan lines shall also include exhibits identifying all needed right of way from each adjacent property owner in the road alignments.

(8) As provided in Exhibit F-1 hereto, Developers will be responsible for improving McMurtry Lane to an interim widening of 28-feet. Each Developer will be financially responsible for the improvements to the centerline of the road along their Project frontage. Developers will improve McMurtry to a 28-foot wide standard where frontage is owned by others, east of the Project Site. Developers will install the forty foot (40') McMurtry Lane improvements fronting on the Reynolds Ranch/Cheyenne, Knoll Creek, and Rogers Ranch properties. The McMurtry Lane improvements described in this Section 5.R.(8) shall include the McMurtry Lane/South Horse Creek Culvert. Upon Developers commencing such McMurtry Lane construction work and subject to complying with Section 5.P, above with respect to lots above elevation 222, and submitting the appropriate applications, City shall issue up to twenty-three (23) building permits to Western Pacific for construction of dwelling units within the Reynolds Ranch/Cheyenne subdivision and up to a total of seven (7) building permits to Standard Pacific and Rogers for construction of dwelling units within the Knoll Creek and Rogers Ranch subdivisions. Provided that City has approved all applicable plans, Developers shall complete construction of such improvements by September 2015 as set forth in the applicable Subdivision Improvement Agreements. Upon Developers' completion of Shelton Lane, Browns Valley Road, and McMurtry Lane construction work and continued compliance with the terms of this Agreement, as reasonably determined by the Director of Public Works, there shall be no further restrictions on the issuance of building permits to Developers for the Reynolds Ranch/Cheyenne, Knoll Creek, and Rogers Ranch properties.

(9) As provided on Exhibit F-1, Developers shall construct all improvements to Bent Tree Way, including utilities determined by the Director of Public Works to be

necessary to serve the Zone 2 Water Tank and Booster Pump Station, in conformance with plans approved by City.

(10) 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.

(11) 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.

S. Fire Protection.

(1) Developers 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 Project Site shall have residential fire sprinklers.

(3) Developers 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. Developers agree 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. Developers agree 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. Developers agree to pay a Community Benefit Contribution of \$7,224 (as of the Effective Date) for each unit at the time building

permits are issued for each dwelling unit within the Project Site. 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 1st 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. Developers shall be responsible for the payment of all City Storm Water Conveyance and Detention fees. A credit shall 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 Parties 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 only as to the defaulting Party or Parties. 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 or Parties.

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 a Developer, or any person who succeeds a 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 a 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, Developers 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, including but not limited to its obligations under

Section 3.F.(4) and Exhibit F-1, then Developers (or any 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 from the Director of Public Works (or his or her designee) an extension for the performance of Developer's obligation related thereto and specific performance under the appropriate circumstances, which request shall not be unreasonably denied.

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. Each Developer 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 each 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 Developers; 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 a 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 a Developer fail to submit the annual draft report in a timely manner and City does not notify such Developer of such failure within ninety (90) days following the anniversary date, then the annual review of such Developer's compliance with this Agreement shall be deemed to have been satisfactorily completed for that year only.

B. Showing Required. During review, each 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 each 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. Each Developer shall be permitted an opportunity to respond to the Director's evaluation of that 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 each 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 a 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 it applies to such Developer 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 a Developer's request, City shall provide such 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 such Developer has been found or deemed to be in compliance with the provisions of this Agreement. Any 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 apply to the Project Site, consistent with the EIR and the terms of this Agreement, 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 each 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 each Developer's compliance with such measures shall be initially prepared by each 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 Developers 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; or (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. Developers 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 Developers in their 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 a Developer, join with such 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 a 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 all or any portion 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 Developers 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 a Developer in the performance of such 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 a 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 such 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 a Developer arising prior to acquisition of title to all or any portion of 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. Each 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 a Developer's right and interest to all or any portion of the Project Site, such Developer shall be released from its obligations hereunder with respect to the portion so conveyed provided: (i) such Developer (or transferee) was not in default of this Agreement at the time of conveyance, (ii) such 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 the transferring Developer under this Agreement as to the portion of the Project Site conveyed; provided further, however, that such transferring 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, each 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 each Developer seeks any land development approval including, but not limited to, subdivision of all or any portion 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 Developers. 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 any 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 a 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, 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 developments proposed to be undertaken by Developers on the Project Site are private developments. Except for that portion thereof to be devoted to public improvements to be constructed by a 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 Developers shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developers contained in this Agreement.

F. Hold Harmless; Indemnification of City. Developers 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 Developers 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 each Developer of any such action against City.

If City fails to cooperate with Developers, or any of them, in the defense of such action, Developers or the affected 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 Developers shall pay the fees and expenses for such legal counsel and any expert witnesses. Developers' obligations to pay for legal counsel and expert witness fees shall not extend to fees incurred on an appeal initiated by City unless otherwise authorized by Developers. In the event City and Developers 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 Western Pacific, to:

Western Pacific Housing, Inc.
5050 Hopyard Road, Suite 180
Pleasanton, CA 94588
Attention:

With a copy to:

[Counsel]

If to Standard Pacific Homes, to:

Standard Pacific Homes
3825 Hopyard Rd, Suite 275
Pleasanton, CA 94588
Attention:

With a copy to:

Alicia Guerra
Buchalter Nemer
55 Second Street, Suite 1700
San Francisco, CA 94105

If to Rogers Ranch, LLC, to:

Rogers Ranch, LLC
403 Davis Street, Suite A.
Vacaville, CA 95688 Attention:

With a copy to:

John Gardner
Fitzgerald Abbott & Beardsley LLP
1676 N. California Blvd.,
Walnut Creek, CA 94596

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 Developers or any individual 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 each Developer, shall be recorded in the Office of the Recorder of the County of Solano, California.

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

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

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

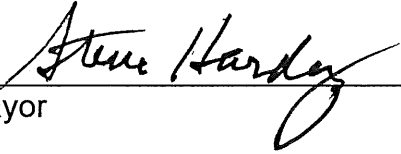
P. Time. Time is of the essence of each and every provision hereof.

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

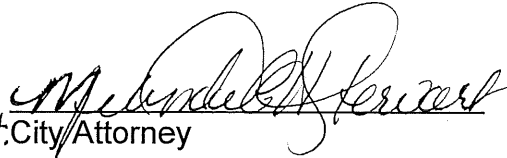
"CITY"

CITY OF VACAVILLE, a
municipal corporation

Approved as to form:



Mayor

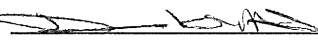


Asst. City Attorney

"WESTERN PACIFIC"

Western Pacific, Inc.
a Delaware corporation

Approved as to form:

By: 

DEAN EMILS
Aerobaut Vice President

"STANDARD PACIFIC"

Standard Pacific Homes, Inc.
a [STATE] corporation

Approved as to form:

By: _____

"ROGERS RANCH, LLC"

Rogers Ranch, LLC.
a [STATE] corporation

Approved as to form:

By: 

Robert Wade

- Attachments: Exhibit A: Rice-McMurtry Area
- Exhibit B: Reynolds Ranch/Cheyenne Property (Legal Description)
- Exhibit C: Knoll Creek Property (Legal Description)
- Exhibit D: Rogers Ranch Property (Legal Description)

- Exhibit E: Subdivision Improvement Agreement entered into by City and Western Pacific Housing, Inc. on March 3, 2006; Subdivision Bond No. SU5018488, dated December 12, 2005; and Subdivision Bond No. SU5017060, dated September 7, 2005
- Exhibit F-1: Allocation of Infrastructure Construction Obligations
- Exhibit G-1: Form of Subdivision Improvement Agreement between City and Western Pacific Housing relating to Reynolds Ranch/Cheyenne Subdivision.
- Exhibit G-2: Form of Subdivision Improvement Agreement between City and Western Pacific Housing relating to Zone 2 Water Tank and Booster Pump Station
- Exhibit H: Form of Subdivision Improvement Agreement between City and Standard Pacific related to Knoll Creek Subdivision

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189**

State of California

County of Solano }

On August 21, 2014 before me, Claudia Archer, Notary Public,
Date Here Insert Name and Title of the Officer

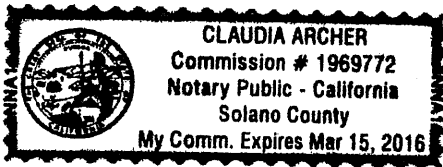
personally appeared Dean K. Mills
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature: Claudia Archer
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Amended + Restated Development Agreement Document Date: Aug. 12, 2014

Number of Pages: 128 (include this page) Other Than Named Above: City of Vacaville, Standard Pacific, Rogers Ranch Reps.

Capacity(ies) Claimed by Signer(s)

Signer's Name: Dean K. Mills

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

Signer's Name: _____

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

Signer Is Representing: Western Pacific Housing, Inc.

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Solano

On 09/11/2014 before me, Jeanne M. Casten, Notary Public

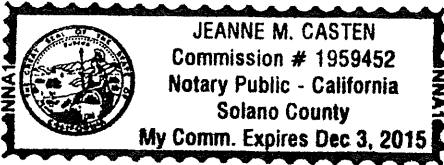
personally appeared Robert John Wood

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

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

WITNESS my hand and official seal.

Signature Jeanne M. Casten
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: Amended & Restated Development Agreement

Document Date: 09/12/2014 Number of Pages: 129

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Robert J. Wood

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

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: Rogers Ranch LLC

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Solano

On 09/11/2014 before me,

Jeanne M. Casten, Notary Public
Here Insert Name and Title of the Officer

personally appeared

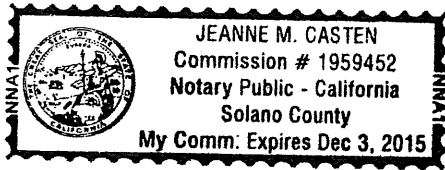
Stephen Hardy
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature Jeanne M. Casten
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: Amended & Restated Development Agreement

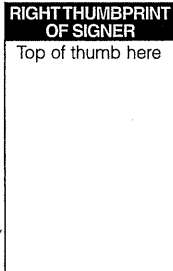
Document Date: 08/12/2014 Number of Pages: 130

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Stephen Hardy

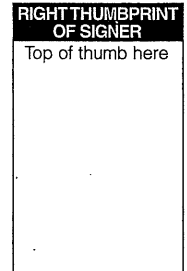
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: Mayor



Signer Is Representing: City of Vacaville

Signer's Name: _____

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



Signer Is Representing: _____

"CITY"

CITY OF VACAVILLE, a
municipal corporation

Approved as to form:

Mayor

City Attorney

"WESTERN PACIFIC"

Western Pacific, Inc.
a Delaware corporation


Approved as to form:

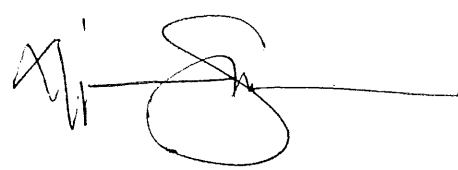
By: _____

"STANDARD PACIFIC"

Standard Pacific ^{Coop.} Homes, Inc.
a [STATE] corporation
DELAWARE

Approved as to form:

By: 
BRIDGET KOLLER
DIR. FORWARD PLANNING



"ROGERS RANCH, LLC"

Rogers Ranch, LLC.
a [STATE] corporation

Approved as to form:

By: _____

- Attachments: Exhibit A: Rice-McMurtry Area
- Exhibit B: Reynolds Ranch/Cheyenne Property (Legal Description)
- Exhibit C: Knoll Creek Property (Legal Description)
- Exhibit D: Rogers Ranch Property (Legal Description)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

On August 18, 2014, before me, Nancy S. Jong, Notary Public,
DATE NAME AND TITLE OF OFFICER (E.G. "JANE DOE, NOTARY PUBLIC")

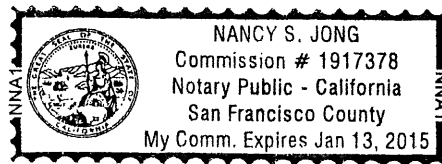
personally appeared Alicia Guerra,
NAME(S) OF SIGNER(S)

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

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

WITNESS my hand and official seal.

Signature Nancy S. Jong (Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

State of California

County of Alameda }

On August 20, 2014 before me, C. Leon Notary Public,
 Date Name and Title of the Officer

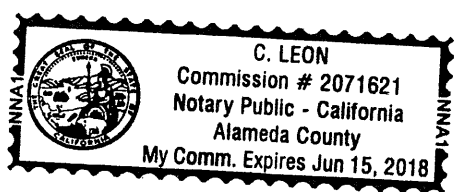
personally appeared Bridget Koller
 Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature: C. Leon
 Signature of Notary Public



Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

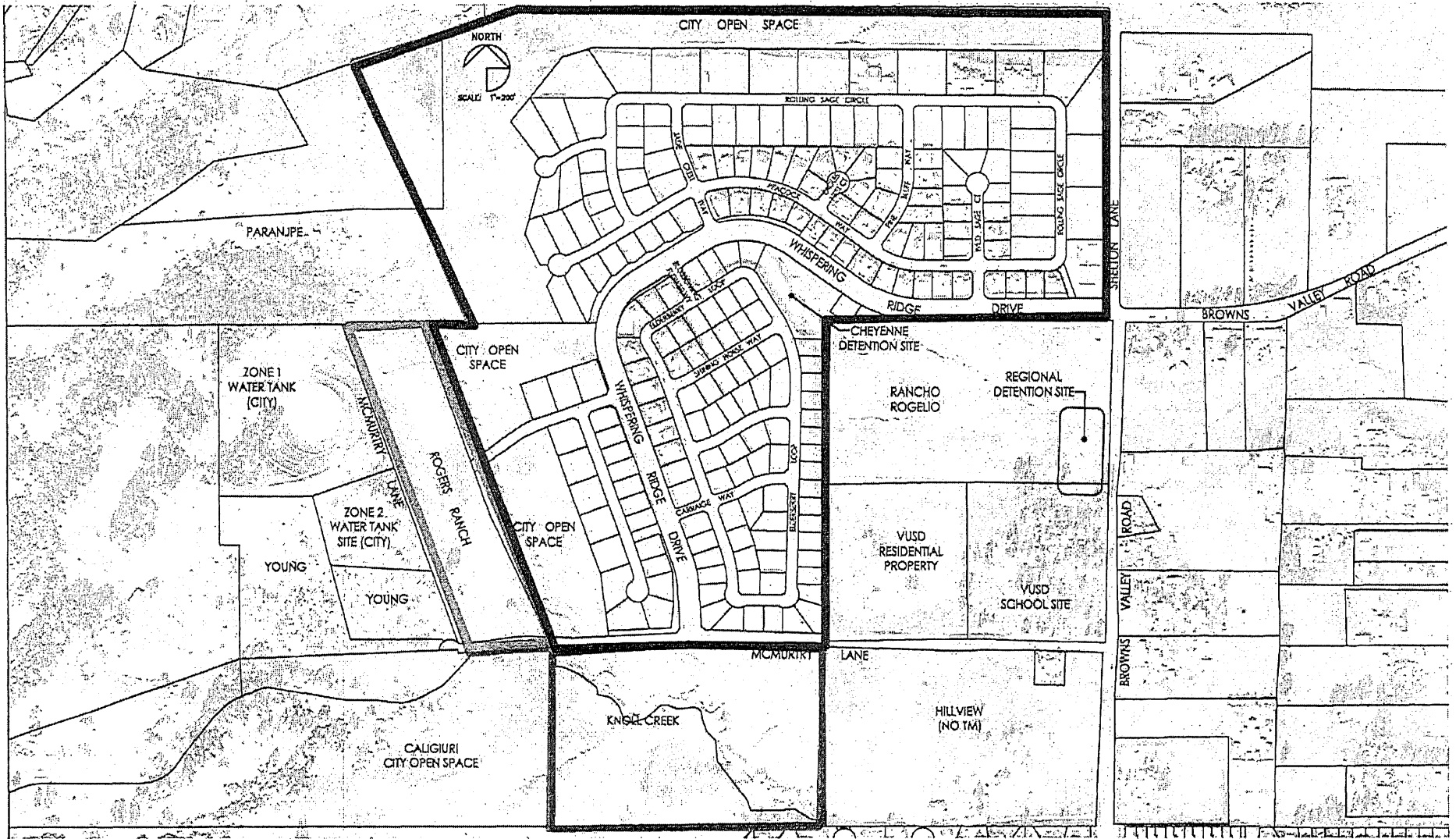
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

- | | |
|--|--|
| Signer's Name: _____ | Signer's Name: _____ |
| <input type="checkbox"/> Corporate Officer — Title(s): _____ | <input type="checkbox"/> Corporate Officer — Title(s): _____ |
| <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General | <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General |
| <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact | <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact |
| <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator | <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Other: _____ |

Signer Is Representing: _____

Signer Is Representing: _____



Reynolds Ranch, Rogers Ranch and Knoll Creek Development Agreement

Exhibit B: Reynolds Ranch/Cheyenne Property (Legal Description)

To be attached.

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

LOTS 1 THROUGH 221 AND LOTS K THROUGH S, AS SHOWN ON THE MAP ENTITLED: "FINAL MAP CHEYENNE AT BROWN'S VALLEY", FILED FOR RECORD MARCH 3, 2006 IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY, CALIFORNIA IN BOOK 82 OF MAPS; AT PAGE 23.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS THEREIN AND THEREUNDER, AS RESERVED IN DEED FROM BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION TO CHARLES E. SHELTON ET UX, DATED DECEMBER 2, 1937 AND RECORDED DECEMBER 17, 1937 IN BOOK 165, PAGE 162, INSTRUMENT NO. 6959, OFFICIAL RECORDS OF SOLANO COUNTY.

(The Mineral Exception above does not affect Lots 122-155, 159, 168-221, K and L)

ASSESSOR'S PARCEL NUMBERS: 123-481-01 through 08, 123-482-01 through 04, 123-483-01 through 09, 123-484-01 through 15, 123-491-01 through 08, 123-492-01 through 09, 123-493-01 through 20, 123-501-01 through 05, 123-502-01 through 08, 123-503-01 through 08, 123-504-01 through 03, 123-505-01 through 12, 123-506-02 through 05, 123-511-01 through 02, 123-512-01 through 05, 123-513-01 through 04, 123-515-01 through 06, 123-516-01 through 04, 123-516-06 through 07, 123-521-02 through 04, 123-522-01 through 02, 123-523-01 through 04, 123-524-01 through 08, 123-525-01 through 08, 123-526-01 through 12, 123-527-01 through 08, 123-531-01 through 09, 123-531-11 through 13, 123-532-01 through 10, 123-533-01 through 18, 123-541-01 through 08, 123-542-01 through 04, 123-543-01 through 09 & 123-544-01 through 15

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER LOTS K THROUGH S, AS SHOWN ON THE MAP ENTITLED: "FINAL MAP CHEYENNE AT BROWN'S VALLEY", FILED FOR RECORD MARCH 3, 2006 IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY, CALIFORNIA IN BOOK 82 OF MAPS, AT PAGE 23, PURSUANT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CHEYENNE AT BROWN'S VALLEY RECORDED APRIL 4, 2006, INSTRUMENT NO. 200600041151, OFFICIAL RECORDS OF SOLANO COUNTY.

Exhibit C: Knoll Creek Property (Legal Description)

To be attached.

LEGAL DESCRIPTION

Real property in the City of Vacaville , County of Solano, State of California, described as follows:

PARCEL ONE:

PARCEL 1, AS SHOWN ON FINAL MAP KNOLL CREEK PHASE 1, FILED IN THE OFFICE OF THE RECORDER OF SOLANO COUNTY, CALIFORNIA, MARCH 5, 2013, IN BOOK 87 OF MAPS, PAGE 30, SOLANO COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT AND RIGHT-OF-WAY AS AN APPURTENANCE TO PARCEL ONE ABOVE FOR THE CONSTRUCTION AND MAINTENANCE OF A ROADWAY AND FOR THE CONSTRUCTION AND MAINTENANCE OF UNDERGROUND UTILITIES, AS CREATED BY THAT CERTAIN GRANT OF EASEMENT EXECUTED BY JAMES A. ROGERS ET AL TO JAMES SCOTT ROGERS, RECORDED MARCH 24, 1989, SERIES NO. 890017414.

APN: 0123-040-110 (Affects this and other property); 0123-040-300 (New APN, Not yet Assessed)

Exhibit D: Rogers Ranch Property (Legal Description)

To be attached.

EXHIBIT D

**LEGAL DESCRIPTION
ROGERS DEVELOPMENT PROPERTY**

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

BEING LOT 3 AS SAID LOT IS SHOWN ON THE PARCEL MAP OF ROGER'S RANCH FILED IN BOOK 47 OF PARCEL MAPS AT PAGE 3, SOLANO COUNTY RECORDS.

END OF DESCRIPTION

THIS DESCRIPTION WAS PREPARED BY OR UNDER THE DIRECTION OF:

ALVIN LEUNG, PLS 6630
LICENSE EXPIRES 12/31/07

Exhibit E: Subdivision Improvement Agreement entered into by City and Western Pacific Housing, Inc. on March 3, 2006; Subdivision Bond No. SU5018488, dated December 12, 2005; and Subdivision Bond No. SU5017060, dated September 7, 2005