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

RECORDING REQUESTED BY:
City of Vacaville

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

Affects APN: 0132-320-170

Titles: 1	Pages: 51
Fees	\$0.00
Taxes	\$0.00
SB2 Fee	\$0.00
Other	\$0.00
Paid	\$0.00



**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF VACAVILLE
AND GASPARE ALAMO 1, LLC
REGARDING THE DEVELOPMENT OF REAL PROPERTY COMMONLY
REFERRED TO AS THE ALAMO MIXED USE PROJECT**

February 25, 2020

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BY AND BETWEEN THE CITY OF VACAVILLE
AND GASPARE ALAMO 1, LLC
REGARDING THE DEVELOPMENT OF REAL PROPERTY COMMONLY
REFERRED TO AS THE ALAMO MIXED USE PROJECT**

THIS DEVELOPMENT AGREEMENT (hereinafter “Agreement”) is entered into this 30th day of March, 2020, by and between **GASPARE ALAMO 1, LLC**, a California limited liability company (“Developer”) and the **CITY OF VACAVILLE**, a municipal corporation (“City”), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code, and Division 14.17 of the Vacaville Municipal Code. City and Developer are also referred to hereinafter individually as “party” or collectively as the “parties.”

RECITALS

This Agreement is made with reference to the following facts:

- A.** In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California enacted Section 65864 et. seq. Of the California Government Code (the “Development Agreement Legislation”). The Development Agreement Legislation authorizes City to enter into a development agreement for the development of property with any person having a legal or equitable interest in real property. City has authorized the undertaking of development agreements within the City of Vacaville and has established procedures for entering into development agreements through the adoption of Division 14.17 of the Vacaville Municipal Code.
- B.** Developer has a legal and/or equitable interest in certain real property consisting of approximately 9.5 acres commonly referred to as the Alamo Mixed Use Project located along Alamo Drive near its intersection with Peabody Road (across from Raleigh Drive) in the City of Vacaville, Solano County, California legally described in Exhibit A attached hereto and incorporated herein by reference and generally shown on Exhibit B (“Project Site”).
- C.** Developer intends to develop the Project Site as a mixed-use community, consisting of approximately 73 townhomes, 3.7 acres of commercial uses, surface parking, passive recreational features, club house, and other uses all as more specifically described in the Project Approvals (as hereinafter defined) and in the Subsequent Approvals (as hereinafter defined) as and when they are adopted, approved or issued, and certain off-site improvements to be constructed in connection therewith (“Project”). The Project will consist of two phases. The residential component and approximately 0.6 acres of commercial uses developed in the first phase (“Phase 1”). The second phase would consist of the remainder of the commercial component and would be permitted to develop as described in Recital D (“Phase 2”). The components of the Phase 1 and Phase 2 are depicted on Exhibit B.
- D.** As part of the Phase 1 build out, the Project will include a storm water detention basin that would provide storm water management for the Project Site. The City is currently evaluating the construction of a city-wide detention basin upstream of the Project Site within the Alamo

Creek watershed (the “City Detention Basin”). If the City Detention Basin, or other acceptable stormwater management solution/facility, is completed that mitigates the Project Site’s storm water flows such that the hydraulic grade line for the Project Site and drainage facilities downstream of the Project Site are reduced to pre- Project levels as identified in the technical memorandum for the Project prepared by West Yost and Associates dated December 3, 2019, then the Project detention basin may be removed and replaced with the commercial uses included in Phase 2. Although buildout of Phase 2 is contemplated by this Development Agreement, any build out of Phase 2 shall require a further Design Review approval to be processed as a Subsequent Approval once the development plans are prepared and submitted to City.

Developer acknowledges that at the time there is a request to remove the Project detention basin, Developer shall comply with the State of California MS4 storm drainage water quality permit requirements for both Phase 1 and Phase 2 of the project without utilizing facilities that would be demolished in Phase 2 of the project.

E. The parties now desire to set forth their understandings and agreement concerning the vesting of certain rights including the Vacaville General Plan (“General Plan”) and the City Development Code. In executing this Agreement, Developer recognizes that the use and development of the Project Site are subject to the grant of certain Subsequent Approvals, which are hereinafter defined and identified. Developer recognizes that the Subsequent Approvals are subject to review by the City’s planning staff, public hearings and discretionary approvals by the appropriate decision-making body(ies) in accordance with the terms and conditions of this Agreement, and are further subject to the requirements of the California Environmental Quality Act, Public Resources Code §§21000, et. seq., the CEQA Guidelines, 15 California Code of Regulations §§15000 et. seq., and City’s local regulations, policies and guidelines (collectively referred to as “CEQA”) to the degree that the environmental impacts of the Subsequent Approvals have not already been reviewed in accordance with CEQA such as the environmental evaluation developed for this Agreement and the Project Approvals. The City adopted a mitigation monitoring and reporting program (“MMRP”) for the General Plan EIR, which the Developer is required to comply with to the extent applicable to the Project. The Project also includes a condition of approval requiring the Developer to comply with the general Plan EIR MMRP to the extent applicable to the Project.

F. City acknowledges that Developer’s agreement to make the commitments herein furthers the City’s efforts for development of the Project Site, and that such commitments constitute a material factor in City’s willingness to approve this Agreement. City also acknowledges that it is willing to provide Developer with the undertaking contained in this Agreement because City has determined that development of the Project Site will provide public benefits that could not be obtained without vested approval of large-scale development including, without limitation, support for community open space and recreation opportunities, increased tax revenues, coordinated planning of development, installation of public infrastructure, creation of additional needed local employment opportunities, and the creation of additional housing opportunities and funding for public safety (collectively referred to as the “Public Benefits”).

G. In exchange for the Public Benefits to City described in this Agreement, together with other public benefits that will result from the development of the Project Site, the parties now desire to set forth their understandings and agreement concerning the vesting of Developer’s

right to develop the Project Site in accordance with the Project Approvals (as hereinafter defined). Developer will receive by this Agreement certain assurances concerning the conditions under which Developer may proceed with the Project and, therefore, desires to enter into this Agreement.

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

I. On January 21, 2020, City's Planning Commission ("Planning Commission"), the initial hearing body for purposes of development agreement review, recommended approval of this Agreement. On February 25, 2020, City's City Council ("City Council") adopted its Ordinance No. 1953 approving this Agreement and authorizing its execution.

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

(1) Modified Initial Study. The Modified Initial Study (State Clearinghouse No. 2011022043), which was prepared pursuant to CEQA, was recommended for approval by the Planning Commission on January 21, 2020, and approved with findings by the City Council on February 11, 2020, by Resolution No. 2020-024 (the "Modified Initial Study").

(2) Planned Development Approval. On February 11, 2020, following Planning Commission review and recommendation, and after a duly-noticed public hearing, the City Council, by Resolution No. 2020-024, approved the planned development of the Project Site (the "Planned Development Approval")

(3) Tentative Subdivision Map. In accordance with Government Code Section 66454, on February 11, 2020, following Planning Commission review and recommendation, and after a duly-noticed public hearing, the City Council, by Resolution No. 2020-024, approved the tentative subdivision map for the Project Site (the "Tentative Map").

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

(1) Determined that the Modified Initial Study adequately addressed this Agreement and made the findings required by CEQA; and

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

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

M. Developer and City agree that phased final maps may be recorded in substantial conformance with the Tentative Map.

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

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

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

1.A. Effective Date

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

1.B. Term

This Agreement shall commence upon the Effective Date and shall remain in effect for a term of fifteen (15) years after the Effective Date ("Term"), unless said Term is terminated, modified, or extended as expressly set forth in this Agreement, or by the mutual written agreement of the parties. The Term of this Agreement and any subdivision map or any of the other Project Approvals shall not include any period of time (up to a maximum of five (5) years) during which: (i) a development moratorium including, but not limited to, a water or sewer moratorium, is in effect; (ii) the actions of public agencies that regulate land use, development or the provision of services to the project site prevent, prohibit or delay either the construction, funding or development of the Project so long as Developer makes commercially reasonable efforts during such prohibition or delay to implement the Project; or (iii) there is any mediation, arbitration; litigation or other administrative or judicial proceeding pending involving the Vested Elements, or Project Approvals; if any of these events occur, the Term of this Agreement shall be extended by the length of time of such event up to a maximum of five (5) years. Developer or City shall notify the other party within sixty (60) days after the date Developer or City as applicable, has actual knowledge of the start of such (i) moratorium, (ii) delay or (iii) judicial proceeding.

1.C. Termination Of Agreement

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

(1) Survival of Obligations. Upon the termination or expiration of this Agreement as provided herein, neither party shall have any further right or obligation with respect to the Project Site under this Agreement except with respect to any obligation that is specifically set forth in this Subsection as surviving the termination or expiration of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals (other than this Agreement) for the Project, except that the Developer shall continue to comply with the following obligations of this Agreement until implementation of the Project Approvals is complete: 5.F. Processing Charges, Development Impact Fees Applicable to Project Site, 8.G. No Damages, 14.F. Hold Harmless; Indemnification Of City, and 14.G. Cooperation in the Event Of Legal Challenge.

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

- a. City complies with all termination procedures set forth in the Development Agreement Legislation,
- b. There is an alleged default by Developer and such default is not cured pursuant to Section 7 of this Agreement,
- c. Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council, and

d. This Agreement is terminated only with respect to that portion of the Project Site to which the default applies, if the alleged default and termination are of the kind and nature that allows for application of the default to only a segment of the Project Site.

SECTION 2. OBLIGATIONS OF CITY

2.A. City Enactments Affecting the Rate, Timing or Sequencing of Development

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 in Sections 2.D, 10.C, 10.D, and 14.D and in accordance with the purpose of the Development Agreement Legislation, the development agreement provisions set forth in Division 14.17 of the Vacaville Municipal Code, and in consideration of the benefits derived by City as recited herein, no future modification of City's codes or ordinances, or adoption of any code, ordinance, regulation or other action that purports to limit the rate of development over time or alter the sequencing of development phases (whether adopted or imposed by the City Council or through the initiative or referendum process) shall apply to the Project Site. However, this Subsection shall not limit City's right to ensure that Developer timely constructs and provides all necessary infrastructure to serve the proposed development as a condition of issuance of any City permit, approval or other land use entitlement sought by Developer for the Project Site if the Developer avails itself of the benefits of those entitlements.

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

2.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 as described in Section 2.D, 10.C, 10.D, and 14.D. 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), except as described in Sections 2.D, 10.C, 10.D, and 14.D. The foregoing notwithstanding, applications for permits, entitlements, and other approvals shall be subject to such changes in the General Plan, the Vacaville Municipal Code, City's zoning code, and other rules, regulations, ordinances and official policies hereinafter adopted (and in effect at the time of the application) that do not conflict with the Vested Elements or materially deprive Developer of the benefits thereof as described in Section 2.D below.

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

- (1) The General Plan, approved by the City Council on August 11, 2015, including any amendment thereto effective prior to the Effective Date.
- (2) The Mixed Use Ordinance(Ordinance 1927) and the Property's Mixed Use zoning designation
- (3) The Tentative Subdivision Map
- (4) The Project Approvals, including the Subsequent Approvals, including without limitation parcel map waivers, tentative parcel maps, tentative subdivision maps, vesting tentative parcel maps, vesting tentative subdivision maps, conditional use permits, design review approvals and other zoning entitlements or discretionary reviews granted with respect to portions of the Project Site, subject to the provisions of Subsections 2.C and 2.D, below.

2.C. Subdivision And Parcel Maps

Developer shall have the right from time to time to file applications for subdivision maps, parcel map waivers and/or parcel maps with respect to some or all of the Project Site in order to re-configure the parcels comprising the Project Site as may be necessary or desirable to develop a particular phase of the Project Site or to lease, mortgage or sell a portion of the Project Site. Nothing herein contained shall be deemed to authorize Developer to subdivide or use the Project Site, or any portion thereof, for purposes of sale, lease or financing in any manner that conflicts with the provisions of the Subdivision Map Act, Government Code §§ 66410 et seq., or with the Vacaville Municipal Code; nor shall this Agreement prevent City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not preclude or materially burden or delay Developer's realization of the rights conferred under the Vested Elements.

2.D. Applicable Subdivision And Safety Regulations; No Conflicting Enactments

Nothing herein contained shall be deemed to prevent City from amending the laws, ordinances, uniform codes, rules or regulations pertaining to or imposing health and safety, fire protection, mechanical, electrical, plumbing, grading and/or building requirements or other requirements that would be defined as "ministerial" under the California Environmental Quality Act, Public Resources Code §§21000 et seq. pertaining to new construction or development in the City,

including the Project, when such amendments are enacted or adopted prior to the issuance of a building permit for the Project (or portion thereof), in which case such amendment shall apply to the Project (or portion thereof).

Except as set forth above in this Section 2.D, any ordinance, resolution, rule, regulation, standard, directive, condition or other measure adopted or amended subsequently to the Effective Date (each individually referred to as a "City Law"), whether approved by Subsequent Approval or other action by City or by initiative, referendum or other means, that reduces the development rights granted to Developer by this Agreement shall not apply to the Project Site. For the purpose of this Agreement, any City Law shall be deemed to reduce the development rights provided hereby if such City Law would accomplish any of the following either by specific reference to the Project or as part of a general enactment that applies to or affects construction or development in the City:

- (1) Limits or reduces the density or intensity of the Project, or any part thereof, or otherwise requires any reduction in the square footage or number of proposed buildings or other improvements, or requires an increase in the portion of the Project Site required to be dedicated for public use (including the size of rights-of-ways or park and recreational uses). However, this provision shall not require City to increase the density of allowable development on the Project Site to offset or compensate for a reduction in density resulting from state or federal laws including, but not limited to, laws relating to airport safety or wetlands, species or habitat protection, preservation or restoration. The foregoing provision is not intended to limit Developer's legal rights against state or federal authorities imposing such laws, but is intended to disallow suit against City due to the impact of such laws upon the Project and to free City from any obligation to increase the density of development, whether commercial or residential or otherwise, in one area of the Project Site due to reduction in available, developable lands in other areas of the Project Site. City, however, agrees to cooperate with Developer in Developer's attempt to mitigate or minimize the impacts from such reductions in density on the overall development of the Project Site. As used in the preceding sentence, City's duty to "cooperate" with Developer does not include the obligation to contribute financially to such attempts by Developer;
- (2) Change any land uses or other permitted uses of the Project Site until the Project, or portion thereof, has been completed as evidenced by issuance of a certificate of occupancy by City's Building Division (or completion of final inspection if no certificate of occupancy is required);
- (3) Limits or controls the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all necessary infrastructure adequate to serve such development or construction is constructed or provided by Developer, unless otherwise expressly provided for in this Agreement;
- (4) Except as otherwise permitted by this Agreement, enforce or apply any City Law to the Project that is not uniformly applied on a City-wide basis to substantially similar types of development projects and project sites with similar land use designations; the

foregoing notwithstanding, City shall be allowed to establish zones of benefit, rate zones, benefit districts, assessment districts 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. Nothing in this Agreement shall be interpreted to prohibit Developer from participating in the administrative and judicial processes establishing zones, districts or mechanisms, including the right to object to the establishment of such zones, districts or mechanisms or the method of calculation of any assessment associated with such zones, districts or mechanisms;

(5) Require the obtainment of additional discretionary permits or approvals by City other than those required by applicable law or which City is required to impose by the authority of the state or federal government or of special districts or agencies that are not subject to the authority of City and whose jurisdiction extends to the Project Site; or

(6) Impose or enforce any City ordinance or regulation, which controls commercial or residential rents charged within the Project Site.

In the event of an irreconcilable conflict between the terms of the Vested Elements and a City Law, the provisions of the Vested Elements shall control. In the event of an irreconcilable conflict between the terms of the Vested Elements and this Agreement (on the other hand), the terms of this Agreement shall control.

2.E. Processing Of Project Applications

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

(1) Due Diligence by City. City will accept, make completeness determinations, and process, promptly and diligently, to completion all applications for Subsequent Approvals for the Project, in accordance with the terms of this Agreement, including, but not limited to, the following:

- a. The processing of applications for and issuance of all discretionary approvals requiring the exercise of judgment and deliberation by City, including without limitation, the Subsequent Approvals;
- b. The holding of any required public hearings; and
- c. The processing of applications for and issuing of all ministerial approvals.

(2) Fast Track Processing. The City has a Customer Service Plan (currently available at <https://www.ci.vacaville.ca.us/home/showdocument?id=10955>) with timelines for the processing of projects. The City will use its best efforts to process plan checks and permitting requests in compliance with such Plan, as may be amended from time to time.

(3) Relocation of Easements. Upon Developer's request, and after Developer has made its own best efforts to acquire, relocate or remove, easements or rights-of-way without City assistance, City shall use its best efforts, at no cost to City, to assist Developer in:

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

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

This Section shall be considered an approved "Phasing Plan" that satisfies Vacaville Municipal Code § 14.05.044.030.A.5 The City hereby exempts seventy three (73) residential building permits for the Project from the building permit allocation process of City's Planned Growth Ordinance (Vacaville Municipal Code, Division 14.05), as follows: Upon the City approving the first Final Map for the Project, or any portion thereof, City shall allocate seventy three (73) assignable building permits to Developer that shall carry over to subsequent calendar years until exhausted (i.e., the allocation shall not expire during the Term).

2.G. [Intentionally Left Blank]

2.H. Environmental Mitigation

To the extent permitted by law, City shall not impose upon the Project any mitigation measures other than those specifically imposed by the Project Approvals, and the General Plan EIR MMRP to the extent applicable to the Project, as authorized by the Vacaville Municipal Code. City shall not impose additional mitigation measures on the basis that the Modified Initial Study fully analyzes the environmental impacts of the Project, thereby alleviating the need for additional environmental review except in the circumstances described in Section 21166 of the Public Resources Code. To the extent permitted by law, City shall, in connection with any Subsequent Approval, adopt statements of overriding consideration recognizing the specific economic, social and other benefits of the Project that outweigh and make infeasible any additional mitigation measures.

2.I. Infrastructure

(1) Infrastructure Phasing Flexibility. Notwithstanding the provisions of any phasing requirements in the Project Approvals, Developer and City recognize that economic and market conditions may necessitate changing the order in which the infrastructure is constructed. Therefore, City and Developer hereby agree that should it become necessary or desirable to develop any portion of the Project's infrastructure in an order that differs from the order set forth in the Project Approvals, Developer and City shall collaborate and City shall permit any modification requested by Developer so long as the

modification continues to ensure adequate infrastructure is available to serve that portion of the Project being developed and there are no adverse impacts to existing infrastructure or proposed infrastructure for future portions of the Project, the determination of which shall be made solely by City's Director of Public Works.

(2) **Infrastructure Capacity.** Subject to Developer's installation of infrastructure in accordance with the requirements of the Project Approvals and payment to City of the appropriate development impact fees and service fees, City hereby acknowledges that it will have, and shall reserve, sufficient capacity in its infrastructure, services and utility systems, including, without limitation, traffic circulation, sewer collection, sewer treatment, sanitation service and, except for reasons beyond City's reasonable control, water supply, treatment, distribution and service, as and when necessary to serve both phases of the Project as they are developed. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no restriction on hookups or service for the Project except for reasons beyond City's reasonable control. City agrees that upon completion of the City Detention Basin or other stormwater management system that mitigates flows from the Project as described above, it shall cooperate in good-faith in issuing all necessary City approvals required to implement Phase 2.

2.J. Model Homes

Prior to recordation of any Project Final Map, City agrees to issue, to the extent permissible by any relevant laws, building permits and certificates of occupancy (or completion of a final inspection if no certificate of occupancy is required) for the construction of model homes (and related model home complex structures) that will be used by Developer for the purpose of promoting sales of residential units within the Project, subject to City's standard design review and building permit procedures; provided, however, in no event shall City be required to issue building permits for the construction of more than two Project structures containing a maximum of five (5) model homes and seven (7) non-model units unless a higher number of building permits is otherwise approved by the Director of Community Development and in no event shall Developer be permitted to sell or transfer any model home or non-model unit until a Final Map has been approved and recorded on that portion of the Project Site where the model home is to be located.

SECTION 3. PROPERTY SUBJECT TO THIS DEVELOPMENT AGREEMENT

3.A. Property Subject To This Agreement

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

3.B. Term Of Subdivision Maps And Other Project Approvals

(1) The term of any parcel map waiver, tentative parcel map, tentative subdivision map, vesting tentative parcel map, vesting tentative subdivision map, or subdivision improvement agreement relating to the any portion of the Project Site shall be coterminous with the Term of this Agreement. In no event shall the term of such maps or

agreements be for a term longer than the Term without the amendment of this Agreement.

(2) The term of any planned development approval, conditional use permit, design review approval or other zoning entitlement or discretionary approval for development of any portion of the Project Site shall be coterminous with the Term of this Agreement.

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

Notwithstanding anything to the contrary herein contained, the Term of this Agreement shall be subject to termination by City (but not by Developer) for failure on the part of Developer to achieve the objectives stated below, subject to the provisions of this Agreement relating to permitted delays and delaying causes. Developer's performance in achieving these objectives shall be considered and evaluated as part of the Annual Review as provided for in this Agreement. The objectives to be achieved by Developer are:

4.A. Community Facilities District Annexation

Developer shall apply for and procure adoption by City of such resolutions and actions as may be required to annex the Project Site into community facilities district ("CFD") No. 12. City agrees to process and act upon such application with reasonable due diligence. The Project Site must be annexed into CFD No. 12 before the recordation of the first small-lot final map. If Developer makes a good faith complete application to annex the Project Site into CFD No. 12 and the City, in its discretion, denies such application, Developer shall have no obligation to annex the Project Site into CFD No. 12 before the recordation of the first small-lot final map.

4.B. Lighting and Landscape Maintenance Districts

The Developer shall create a Lighting and Landscape Maintenance District for public street lights and the detention basin. Such Lighting and Landscape Maintenance Districts shall be responsible for the street light maintenance of City owned street lights and necessary maintenance for the proper operation of the detention basin. All other maintenance of the basin, including weed abatement, shall be conducted by the property owner. By way of example to better define the City's and property owner's respective obligations for basin maintenance: if a beaver builds a home in front in the basin, that would affect the operation of the basin and would be the City's responsibility to remove it. If a fence is built around the basin and the fence is rotting away, that would not affect the operation of the basin and therefore would be the owner's responsibility to repair; or, if the weeds in the basin are a fire danger that would be the owner's responsibility. If tule growth prevents the drainage from leaving or entering the basin, that would be the City's responsibility. If there is a dispute over the maintenance responsibility for a certain condition, City shall have the sole discretion to determine whether or not the condition affects the operation of the basin. Additionally, the Developer shall annex into the Fairmont-Beelard Park Maintenance District. Creation of the new Lighting and Landscape Maintenance Districts and annexing into the existing Fairmont-Beelard Park Maintenance District shall be completed prior to the recordation of the first small-lot final map. If Developer makes a good faith complete application to form a Lighting and Landscape Maintenance District for public street lights and the detention basin and to join the Fairmont-Beelard Park Maintenance District

and City, in its discretion, denies such application, Developer shall have no obligation to create and join such before the recordation of the first small-lot final map.

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

5.A. No Obligation To Develop

Developer shall have no obligation to initiate or complete development of any phase of the Project within any period of time except as provided in the Subdivision Map Act (Gov't Code §§ 66400 et. seq.) or Divisions 14.11 ("Subdivisions") or 14.12 ("Dedications and Improvement Requirements") of the Vacaville Municipal Code, as applied to subdivision improvement agreements. Failure to undertake and complete the matters identified in the subdivision improvement agreement may be considered a material breach of that agreement.

5.B. General Obligations

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

5.C. Infrastructure Construction; Dedication Of Land, Rights of Way And Easements

Notwithstanding anything to the contrary in this Agreement, Developer shall only be required to pay all standard development impact fees (DIF). If Developer agrees to install a DIF project, City and Developer shall enter into a reimbursement agreement related to such projects prior to the start of construction of such project.

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

5.D. Developer Funding of Infrastructure Shortfalls

In the event a public agency responsible for making certain area-wide infrastructure improvements lacks sufficient funds to complete such improvements that are required to be constructed as part of the Vested Elements, Developer shall have the option of proceeding with the development of such improvements subject to the reasonable approval by the Director of Public Works. City and Developer shall enter into a reimbursement agreement related to such improvements.

5.E. [Intentionally Left Blank]

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

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

(1) New Regulatory Or Development Impact Fees. Subject to the restrictions and exceptions in subsection 3 below, nothing herein contained shall be construed to prevent City from enacting new regulatory fees or development impact fees that may be imposed on all or portions of the Project Site or development thereof provided: (i) the amount charged has been determined in accordance with all applicable law; and (ii) Developer is given credit for: (a) the fees previously paid, and (b) the fair value of improvements and land previously dedicated by Developer prior to the enactment of such regulatory or development impact fee requirements where such fees, improvements or land dedications relate to or pertain to the same public benefit or mitigation measures addressed by the new regulatory or impact fee requirement.

(2) Development Impact Fees Defined. For purposes hereof, "development impact fees" and/or "DIF" 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 or revised after the Effective Date of this Agreement unless it applies on a City-wide basis (although zones of benefit may be designated by City with charges allocated among the properties within such zones based upon the benefit received by such properties). Any development impact fees levied against or applied to the Project must be consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 et seq. ("AB 1600"). Developer retains all rights to protest an imposition, fee, dedication, reservation, or other exaction, as set forth in California Government Code Section 66020. Nothing in this Agreement shall diminish or eliminate any of Developer's rights set forth in such Section 66020. If the City adopts a Quimby Act Fee pursuant to Government Code Section 66477, such fee shall not apply to Project residential units and/or lots that have paid for park and recreation impact fees. Also, any Quimby Act Fee adopted shall not apply to the Project until a reduction in the park and recreation fee is adopted related to the programs to be covered by the Quimby Act Fee. In other words, in no event shall the Project pay for the same public benefit through both the park and recreation fee and Quimby Act Fee.

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

5.G. Dedicated Property Shall Be Free of Hazardous Wastes and Encumbrances

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

5.H. Developer To Provide Projections For Development of The Project

In order to facilitate the timely development of the Project Site, Developer shall provide City with reports of its projected timetable for the design and construction of the Project ("Development Projections") each time there is a material change in Developer's anticipated progress in developing the Project. In addition, Developer shall provide Development Projections with the documentation Developer is required to provide City in conjunction with the Annual Review, as defined in Section 8 of this Agreement.

SECTION 6. PROVISIONS RELATING TO ASSESSMENT PROCEEDINGS

6.A. Construction And Acquisition Proceedings

Developer may, in its sole discretion, propose or initiate applications requesting the formation of an assessment and/or community facilities district (including participation in any potential Benefit District for the Project) for the purpose of financing all or a portion of the design, acquisition and construction costs required for any on-site or off-site improvements (which, in the event of formation of a community facilities district, comply with City's "Local Goals and Policies for Community Facilities Districts adopted on March 25, 2008) that are designed and constructed by Developer in connection with its development of the Project Site (or portions thereof) pursuant to the Vested Elements. In either case, City shall make the determination as to whether a proposed District will proceed under the Assessment Acts or the Mello-Roos Community Act. City shall consider such proposal following submission by the Developer of the initial application information and deposit required by the City. The City shall select all consultants necessary for the review of the Developer's proposal/application, the formation of the CFD and/or assessment districts and the issuance of bonds, including the underwriter(s), bond counsel, disclosure counsel, financial/municipal advisors, appraiser and the special tax consultant and/or assessment engineer. Prior consent of the Developer shall not be required in the determination by City of the consulting and financing team. Following initial approval of the application by City in its sole discretion, City may diligently process the proposal provided that

through formation of the bond issuance: (i) the proposal complies with law, (ii) it is consistent with City's standards, including, but not limited to, at least meeting the minimum requirements in the City's then current Local Goals and Policies for Community Facilities Districts and other relevant policies of the City, (iii) all terms and conditions of any bonds issued by the City, including, without limitation, the sizing, timing, term, amortization structure (i.e., level vs. ascending debt service, capitalized interest, interest rates, discount, redemption features, flow of funds, investment provisions, foreclosure covenants and any credit enhancement, including landowner credit enhancement requirements shall be established by the City and lien-to-value ratios and all other aspects of the sale and issuance of bonds that are reasonably acceptable to City, including, but not limited to, meeting at least the minimum standards in the City's then current Local Goals and Policies for Community Facilities Districts, and also meets then current underwriting standards for California land secured bonds, (iv) the person, firm or entity initiating the proceedings advances such funds as City periodically requires to provide staffing and outside consultants to undertake and continue such proceedings and bond issuance process, and (v) acquisition of completed improvements (or discrete, useable components) and payment therefor from financing district proceeds will be subject to an acquisition and funding agreement between the City and the Developer in form and content satisfactory to the City and other City standards and policies. Commencement of a formation process following initial review in no way assures the Developer/applicant, or other interested parties, that a financing district will be formed. Similarly, approval of a financing district formation in no way assures that bonds will be issued. Any risks inherent with any failure to form any proposed financing district and/or failure for any anticipated bond issuance to occur, including, without limitation, the amount and timing of issuance shall be borne entirely by the Developer/applicant and other CFD proponents and shall not be borne by the City or related entities.

Developer may propose financing through a conduit issuer rather than the City. Examples of conduit issuers include: (i) the California Statewide Communities Development Authority's (CSCDA) Statewide Community Infrastructure Program (SCIP); and (ii) the California Municipal Finance Authority's (CMFA) Bond Opportunities for Land Development (BOLD) Program. A conduit financing program, particularly for smaller scale projects, may be considered by the City, at the sole discretion of the City, and if such program is deemed acceptable (reference to the two programs above should not be construed as one or both being acceptable to the City), the Developer will be required to coordinate with the relevant agency and its designated representatives to execute district formation and financing. The first funding priority will be for applicant-project-required infrastructure/facilities to be dedicated to the City. The City in its sole discretion may determine whether any variations in program policies and practices relative to City policy and practices are deemed acceptable and the requirement for deposit(s) to the City shall apply. Notwithstanding anything to the contrary in this Section 6.A, if the proposed assessments associated with the proposed district's financing are unacceptable to Developer in its sole discretion, Developer may request termination of the formation proceedings and bond issuance and City shall take immediate good faith efforts to comply with such request.

6.B. Intentionally Left Blank

6.C. City's Good Faith In Processing

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

6.D. Right Of Reimbursement From Assessment Proceeds

In any assessment proceeding, special tax proceeding or other financing proceeding undertaken by City pursuant to the provisions of this Section 6, City shall reimburse Developer for any costs or fees reasonably incurred or paid for by Developer for the administration, design and construction of improvements, fulfillment of the requirements of the Vested Elements, or implementation of mitigation measures that can properly be included in such assessment proceedings, together with interest thereon at the rate being charged on the principal amount of the assessments from which said reimbursement is made or at such other rate as City determines fairly compensates Developer for the cost of the funds to be reimbursed. Developer shall be reimbursed through assessment district proceeds only and no reimbursement shall be required from the City's General Fund or any other City resources.

SECTION 7. DEFAULT, REMEDIES, TERMINATION OF AGREEMENT

7.A. Notice Of Default And Liability

Subject to extensions of time mutually agreed to in writing by the parties or as otherwise provided herein, material failure or delay by any party to perform any term or provision of this Agreement constitutes a default hereunder. Upon the occurrence of such default, the party alleging such default shall give the other party written notice thereof, specifically stating that it is a notice of default under this Agreement, specifying in detail the nature of the alleged default and, when appropriate, the manner in which said default may be satisfactorily cured, and giving a reasonable time in which to cure said default, that shall be not less than sixty (60) days measured from the date of personal service or delivery by certified mail of the written notice of default. During any such cure period or during any period prior to notice of default, the party charged with default shall not be considered in default for the purpose of terminating this Agreement or instituting legal proceedings.

If a dispute arises regarding any 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 and to the extent the alleged default is of a kind and nature that allows for application of the default to a specific lot or parcel, 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. Absent evidence to the contrary, any liability occasioned by such default shall be the responsibility of the owner(s) of the lot or parcel involving such default.

7.B. Remedies

Upon expiration of the cure period referenced above, if the default remains uncured, or if such cure cannot be accomplished within such cure period and the defaulting party has not commenced such cure during such period and diligently prosecuted such cure thereafter, the non-defaulting party may, at its option, give notice of intent to terminate this Agreement pursuant to Government Code Section 65868, or pursue such other remedies as may be available to such party. Notice of intent to terminate shall be by certified mail, return receipt requested. In the event the notice of intent to terminate is given by City, the matter shall be scheduled for consideration and review by the City Council within sixty (60) days in accordance with Government Code Sections 65867 and 65868 and Vacaville Municipal Code § 14.17.218.030. After considering the evidence presented, the City Council shall render its decision to terminate or not terminate this Agreement. If the City Council decides to terminate this Agreement, City shall give written notice thereof to the defaulting party.

Evidence of default of this Agreement may also be taken during the regular Annual Review of this Agreement as described in Section 8. Any determination of default (or any determination of failure to demonstrate good faith compliance as a part of the Annual Review) made by City against Developer, or any person who succeeds Developer with respect to any portion of the Project Site, shall be based upon written findings supported by evidence in the record as provided by Vacaville Municipal Code § 14.17.218.030. Notwithstanding any other provision of this Agreement to the contrary, remedies for a default by Developer or its successor of any of its obligations hereunder shall not be limited and City shall have the right to institute legal proceedings to enforce such obligations as set forth herein and in the Vested Elements, including, but not limited to, the obligation to indemnify, defend, and hold harmless City. Such remedies shall include those available at law or in equity as may be needed to enforce defaults such as the failure to pay fees, taxes, monetary exactions or assessments levied against the Project Site to pay for the cost of improvements whether levied pursuant to this Agreement or otherwise stated in a separate agreement or undertaking under the Vested Elements or which is entered into in support of any community facilities or assessment district financing. City shall have the right to exercise such remedies as may be available at law or in equity to enforce the conditions stated in any conditional use permit, design review approval, zoning approval, entitlements for use or entitlements for construction of specific improvements on a specific parcel, or as are provided in the Subdivision Map Act (Gov't Code §§ 66400 et seq.) or City's subdivision ordinance as applied to subdivision improvement agreements. In addition to the right to give notice of intent to terminate this Agreement, Developer shall have the right to institute legal proceedings to enforce this Agreement in the event of a default by City.

7.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. Notwithstanding the foregoing, a Party shall be deemed to have waived a claim of an alleged default of this

Agreement if a notice of default related to the alleged default is not provided within three (3) years after the date of claim of breach accrued.

7.D. Judicial Review of Termination

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

7.E. Defaults By City

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

7.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. This Section 7.F. applies only to the extent the obligation or duty, alleged default, and/or remedy or right of termination is of a kind and nature that allows for application to a specific lot or parcel.

7.G. Copies Of Default Notices

The owner of any portion of the Project Site shall have the right to request in writing copies of notice(s) 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 including, but not limited to, the cost of City staff time utilized to comply with the request.

SECTION 8. ANNUAL REVIEW

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

8.A. Submission By Developer; Result Of Failure To Submit

Each Annual Review shall be conducted by City's Director of Community Development or his/her designee ("Director"), upon a submission made by Developer of a written report of good faith compliance, accompanied by the fee therefore, on behalf of all of the Project Site pursuant to Vacaville Municipal Code § 14.17.218.010 not less than forty-five (45) days nor more than sixty (60) days prior to each anniversary date of the Effective Date. The Director may refer the review to the Planning Commission pursuant to Vacaville Municipal Code § 14.17.218.010.E. Should Developer fail to submit the annual draft report in a timely manner and City does not notify Developer of such failure within ninety (90) days following the anniversary date, then the annual review of this Agreement shall be deemed to have been satisfactorily completed for that year only.

8.B. Showing Required

During the Annual Review, Developer shall be required to demonstrate to City Developer's good faith compliance with the provisions of this Agreement and provide such documentation or evidence related thereto as the Director may reasonably request.

8.C. Notice Of Staff Reports, Opportunity To Respond

Not less than ten (10) days prior to the conduct of any such review, the Director shall deliver to Developer a copy of any publicly-available City staff reports and documentation that will be used or relied upon by City in conducting the review. Developer shall be permitted an opportunity to respond to such staff report(s) and documentation by written or oral testimony at any hearing to be held before Director, if the Developer elects to request such a hearing.

8.D. Director's Findings: Appeal

At the conclusion of the Annual Review, the Director shall make written findings and determinations on the basis of substantial evidence, whether or not Developer or its successors have complied in good faith with the terms and conditions hereof. Any determination by the Director of a failure of compliance shall be subject to the notice requirements and cure periods provided in Section 7, above. Any interested person may appeal the decision of the Director under the provisions of section §14.17.218.010.D the Vacaville Municipal Code as may be amended from time to time.

8.E. Notice Of Termination

If the Director determines that Developer (or other person, firm or entity owning the Project Site, or portion thereof) has not complied with the terms and conditions hereof, and after expiration of any cure period, the Director may recommend to the City Council that City give notice of termination or modification of this Agreement as provided in Government Code §§ 65867 and 65865.1 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, to the extent such termination is able to be segregated, subject to the cure 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 to the extent such modification is able to be segregated.

8.F. Certificate Of Compliance

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

8.G. No Damages

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

SECTION 9. MITIGATION MONITORING

Compliance with the various mitigation measures that are part of the Project and determined to be feasible in the Modified Initial Study that is approved in connection with the Project shall be determined as follows: 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 General Plan Update EIR MMRP 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.

SECTION 10. APPLICABLE LAWS; PERMITTED DELAYS; EFFECT OF SUBSEQUENT LAWS; OTHER PERMITS AND APPROVALS, WATER SUPPLY

10.A. Applicable Law and Venue

This Agreement shall be construed and enforced in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Solano or, where otherwise appropriate, exclusively in the United States District Court, Eastern District of California, Sacramento, California.

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

10.C. Effect Of Subsequent Laws

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

Developer may terminate this Agreement and shall have no obligation to proceed with the Project. In addition, Developer shall have the right to challenge (by any method, including litigation) the Law preventing compliance with, or performance of, the terms of this Agreement and, in the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, unless the parties mutually agree otherwise, except that if the Term of this Agreement would otherwise terminate during the period of any such challenge and Developer has not commenced with the development of the Project in accordance with this Agreement as a result of such challenge, the Term shall be extended for the period of any such challenge.

10.D. Building Regulations

“Building Regulations” consist of the California Code of Regulations Title 24 and amendments to Title 24 (“Title 24”) as found in the Vacaville Municipal Code, any Public Works Standards as adopted in the Vacaville Municipal Code or any ordinances that interpret these codes where such ordinances establish construction and building standards that are intended to be applied ministerially to the construction of improvements on private property and public infrastructure. Building Regulations applicable to building and construction throughout the City at the time Developer applies for the applicable permits for construction of any portion of the Project shall be applicable to the building and construction authorized by such permit, except if such Building Regulations conflict in any manner with the Vested Elements (as conflict is defined in Section 2.D herein). In the event of such conflict, the particular Building Regulation which is in conflict with the Vested Elements shall not apply to or govern development or construction of the Project unless it is determined by City to be required by Title 24 regulations in effect at the time of building permit application or is otherwise mandated by State law. In the event of a dispute as to City’s determination that a particular Building Regulation in conflict with the Vested Elements is required by Title 24, Developer shall have the right to appeal the City’s determination through the California Building Standards Commission to make a determination as to whether such Building Regulation is so required by Title 24. Developer shall have no right to appeal any applicable Title 24 regulations adopted by the State of California in effect at the time of building permit application that may conflict with the Vested Elements except as permitted in this Subsection 10.D.

10.E. Written Verification Of Sufficient Water Supply

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

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

City shall cooperate with Developer in its efforts to obtain other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project Site or portions thereof (such as, for example, but not by way of limitation, public utilities or utility districts and agencies having jurisdiction over wetlands and air quality). City shall, from time to time, at the request of Developer join with Developer in the applications for such permits and approvals as may be required to be entered into with any such other agency, so

long as such participation will not involve the expenditure of unreimbursed City funds or the use of extensive staff time or expose City, in its sole judgment, to any legal liability. Permits and approvals required from other agencies may necessitate amendments to this Agreement and/or to one or more of the approvals or other approvals granted by City. City shall not unreasonably withhold its approval of amending this Agreement in order to comply with such other permits or approvals.

SECTION 12. MORTGAGEE PROTECTION

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

12.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.

12.B. Notice Of Default To Mortgagee

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

12.C. Right Of Mortgagee To Cure

If City timely receives a written request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within fifteen (15) days of: (i) the date the notice of default was sent to Developer, or (ii) the date of receipt of Mortgagee's request, whichever is later. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period permitted under this Agreement, plus an additional sixty (60) calendar days if, in order to cure such default, it is necessary for the Mortgagee to obtain legal possession of the Project Site or any portion thereof (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 Project Site or any portion thereof.

12.D. Liability For Past Defaults Or Obligations

Any Mortgagee, including the successful bidder at a foreclosure sale, who takes title and possession of the Project Site, or any portion thereof, pursuant to such foreclosure, shall take the Project Site, or portion thereof, subject to the provisions of this Agreement; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of Developer arising prior to acquisition of title to the Project Site by such Mortgagee. In no event, however, shall any such Mortgagee or its successors or assigns be entitled to a building permit, occupancy certificate, or final inspection until all fees and other monetary obligations due under this Agreement have been paid to City.

12.E. Technical Amendments

City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Developer's negotiations with lenders.

SECTION 13. TRANSFERS AND ASSIGNMENTS

13.A. Right To Assign

Developer shall have the right to sell, convey, transfer, or assign 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 sold, conveyed, transferred for the development thereof. "Developer" shall mean the entities so identified herein and such successors thereto as may be identified as being entitled to such designation in a notice of transfer provided for below. Reference to successors from time to time herein shall not imply that the word "Developer" does not include such designated successors in other instances.

13.B. Release Upon Transfer

Upon sale, conveyance, transfer or assignment, in whole or in part, of Developer's right and interest to all or any portion of the Project Site (hereinafter collectively referred to as "transfer" or ("transferred"), Developer shall be released from its obligations hereunder with respect to the portion so transferred provided: (i) Developer (or transferee) was not in default of this Agreement at the time of transfer, (ii) Developer provided to City prior written notice of such transfer, and (iii) with respect to the transfer of any lot that has not been fully improved, the transferee executes and delivers to City a written assumption agreement in substance and form which is approved by City's City Attorney, which approval shall not be unreasonably denied, and in which: (i) the name and address of the transferee is set forth, and (ii) the transferee expressly assumes the obligations of Developer under this Agreement as to the portion of the Project Site transferred. A written assumption agreement substantially in the form of Exhibit C shall be deemed pre-approved by the City Attorney. 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.

13.C. Effect of Subsequent Approvals; Successor Owners

City's grant of the various approvals and consents referred to herein shall not constitute amendment hereof, nor shall the actions taken by City staff to implement the provisions hereof (e.g. the granting of minor modifications to approved plans, the Vested Elements or any other approval granted hereunder) constitute an amendment hereof.

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

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

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

13.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.

SECTION 14. GENERAL PROVISIONS

14.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.

14.B. Rules In Effect At Time Of Agreement

Except as expressly provided for in this Agreement to the contrary, Developer and the Project Site are subject to all rules, regulations, ordinances, procedures, standards, uniform codes, requirements, costs, exactions and processes of City applicable to development of property within City as the same are in effect at the time Developer seeks any land development approval including, but not limited to, subdivision of the Project Site, design review, zoning changes, building permits, or construction of on or off-site improvements or infrastructure.

14.C. Covenants

The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project Site, and the burdens and benefits of this Agreement shall bind and inure to all estates and interests in the Project Site and all successors in interest to Developer. From and after the date that certificates of occupancy have been issued (or a final inspection is completed when no certificate of occupancy is required) for all buildings and improvements to be constructed on a parcel within the Project Site, such parcel shall not be burdened with the obligations of Developer under this Agreement. This provision shall not, however, affect any separate covenants, conditions and restrictions that specifically pertain or apply to such parcel or the use thereof.

14.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 section 14.17.218.020 of the Vacaville Municipal Code, and all amendments to this Agreement shall automatically become part of the Project Approvals, provided that any amendment to this Agreement which does not relate to the Term of this Agreement, permitted uses of the Project Site, provisions for the reservation or dedication of land, the conditions, terms, restrictions and requirements relating to subsequent discretionary approvals of City, or monetary exactions of Developer, shall be considered an "Administrative Amendment". The Director is authorized to execute Administrative Amendments on behalf of City and no action by the City Council (e.g. Noticed public hearing) shall be required before the parties may enter into an Administrative Amendment. However, if in the judgment of the Director or any member of the City Council that a noticed public hearing on a proposed Administrative Amendment would be appropriate, City's Planning Commission shall conduct a noticed public hearing to consider whether the proposed Administrative Amendment should be approved or denied. No part of the Vested Elements may be revised or changed during the Term hereof without the consent of the owner of the portion of the Project Site to which the change applies (or that would be affected by any reduction or decrease in rights or increase in burdens caused by such change), unless expressly stated to the contrary in other Sections of this Agreement.

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

14.E. Project Is A Private Undertaking

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

14.F. Hold Harmless; Indemnification Of City

An owner of any portion of the Project Site shall hold and save City, its officers and employees, harmless and defend and indemnify them of, from and against any and all claims, losses, costs, damages, injuries or expenses (including, but not limited to, attorney fees, expert witness and consultant fees, and other costs of litigation) (each a "Claim") arising out of (1) the failure or alleged failure of a person or entity, including but not limited to a general contractor, or its subcontractors, to pay prevailing wages as determined pursuant to Labor Code Sections 1720, et seq. to employ apprentices pursuant to Labor Code Sections 1777.5, and implementing regulations of the DIR or to comply with the other regulations of the DIR in connections with the development of such parcel; (2) the injury to or death of persons or damage to property that arises during the development or construction of the Project, including any action or activity by City, on those portions of the Project Site owned by such owner; and (3) any claim or action brought by a third party to overturn, set aside, or void this Agreement or any project approvals or subsequent approvals, or otherwise in connection with or arising out of Developer's development of the Project including, but not limited to, the installation or construction of improvements thereon; provided, however, that the foregoing hold harmless, defense and indemnity shall not include defense and 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 the City, its officers and employees. This duty to indemnify and defend shall continue through such time as the implementation of the Project Approvals is complete and all related warranty periods have expired. Notwithstanding anything to the contrary in this Agreement, upon termination of this Agreement the obligations under this Section 14.F shall survive only as to Claims that accrued prior to termination of the Agreement, whether or not such Claim was filed or otherwise acted upon during the term of the Agreement.

14.G. Cooperation In The Event Of Legal Challenge

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

14.H. Notice

Any notice or communication required hereunder between the parties shall be in writing, and may be given either personally, overnight courier, 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 or if by overnight courier, two business days after courier takes possession of mailing. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto, and any person or entity who acquires a portion of the Project Site, may at any time, by giving ten (10) days written notice to the other party hereto, designate a different address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their respective addresses set forth below:

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

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

If to Developer: Martin and Keirstin Gaspare
 Gaspare Alamo I, LLC
 243 N Highway 101 Ste 11
 Solana Beach, CA 92075
 Telephone No.: (858) 755-7171
 Email: gasparetrust@msn.com

With a copy to: Patrick Costanzo, Jr.
3526 Villero Court
Pleasanton, CA 94566
(408) 888-4224
patcjr@comcast.net

14.I. No Joint Venture Or Partnership

Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as creating any joint venture or partnership between City and Developer.

14.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.

14.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.

14.L. Completion Or Revocation

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

14.M. Estoppel Certificate

Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the best knowledge of the certifying party: (i) this Agreement is in full force and effect and a binding obligation of the parties; (ii) this Agreement has not been amended or modified either orally or in writing or, if so amended, identifying such written amendments; (iii) the requesting party is not in default in the performance of its obligations under this Agreement or, if in default, identifying the nature and amount of any such default; and or (iv) the Term of this Agreement. 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 by the requesting party with respect to the affected portion of the Project Site at the expense of the requesting party.

14.N. Construction

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

14.O. City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise by this Agreement. Notwithstanding the foregoing, the City Manager may in his sole and absolute discretion, or upon the request of the City Council, present any action or approval requested under this Agreement to the City Council for its consideration, action, and direction.

14.P. Extension of Time Limits. The time limits (other than the Term) set forth in this Agreement may be extended by mutual consent in writing of the parties without amendment to this Agreement.

14.Q. 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.

14.R. Time

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

14.S. Exhibits

The following exhibits are referenced in this Agreement and are attached to and incorporated by reference into this Agreement:

EXHIBIT A – Legal Description

EXHIBIT B – Project Site Plan

EXHIBIT C – Form of Assignment and Assumption Agreement

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

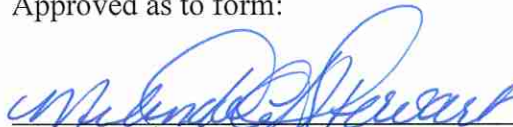
“CITY”

CITY OF VACAVILLE,
a Municipal Corporation



Ron Rowlett, Mayor 6/24/2020


Approved as to form:



Melinda Stewart, City Attorney

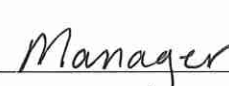
“DEVELOPER”

Gaspare Alamo 1, LLC

By: 

Its: 

By: 

Its: 

[ADD NOTARY CERTIFICATES]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California }
County of Solano }

On June 24, 2020 before me, Lorina T.Q. Fernandez, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Ronald Rowlett
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.



Place Notary Seal and/or Stamp Above

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 Lorina T.Q. Fernandez
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Development Agreement By and Between the City of Vacaville and Gaspare Alamo 1, LLC Regarding the Dvlp. of Real Property Commonly Referred to as the Alamo Mixed Use Proj.

Document Date: June 24, 2020 Number of Pages: 51 (including this page)

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Ronald Rowlett
 Corporate Officer – Title(s): _____
 Partner – Limited General
 Individual Attorney in Fact
 Trustee Guardian of Conservator
 Other: Mayor
Signer is Representing: City of Vacaville

Signer's Name: _____
 Corporate Officer – Title(s): _____
 Partner – Limited General
 Individual Attorney in Fact
 Trustee Guardian of Conservator
 Other: _____
Signer is Representing: _____

ACKNOWLEDGMENT

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

State of California
County of San Diego

On June 16, 2020 before me, YONGSIK PARK, A Notary Public
(insert name and title of the officer)

personally appeared MARTIN ANDREW GASPARE & KEIRSTIN DARLENE GASPARE
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 Yongsik Park (Seal)

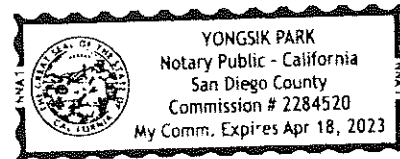


Exhibit A

Legal Description

PER PRELIMINARY TITLE REPORT NUMBER 3404-1913151, DATED MAY 6, 2005, PREPARED BY FIRST AMERICAN TITLE COMPANY 1610 ARDEN WAY, SUITE 190, SACRAMENTO, CA 95815.

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

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL 2 AS SHOWN ON THE PARCEL MAP OF THE LANDS OF ALBACETE, FILED OCTOBER 1, 1980 IN BOOK 21 OF PARCEL MAPS, PAGE 31, SAID POINT OF BEGINNING LIES ON THE NORTH LINE OF ALAMO DRIVE; THENCE ALONG SAID NORTH LINE OF ALAMO DRIVE, NORTH 89°48'08" WEST, 15.89 FT.; THENCE NORTH 00°11'52" EAST 690.74 FT.; THENCE NORTH 89°48'08" WEST, 156.72 FT.; THENCE NORTH 00°11'52" EAST, 166.25 FT. TO THE SOUTH LINE OF THE GREGORY PARK UNIT NO. 1 SUBDIVISION; THENCE ALONG SAID SOUTH LINE OF THE GREGORY PARK UNIT NO. 1 SUBDIVISION THE FOLLOWING COURSES: SOUTH 78°21'41" EAST, 136.07 FT.; SOUTH 77°13'56" EAST, 58.47 FT.; SOUTH 74°34'32" EAST, 117.96 FT.; SOUTH 73°13'30" EAST 83.00 FT.; SOUTH 77°40'00" EAST, 54.81 FT.; SOUTH 83°41'22" EAST, 54.80 FT.; SOUTH 89°48'08" EAST, 164.08 FT.; THENCE SOUTH 00°11'52" WEST, 745.25 FT. TO THE SAID NORTH LINE OF ALAMO DRIVE; THENCE ALONG SAID NORTH LINE OF ALAMO DRIVE, NORTH 89°48'08" WEST 483.36 FT. TO THE POINT OF BEGINNING, AS RECONFIGURED BY LOT LINE ADJUSTMENT NO. 88-10, RECORDED JUNE 29, 1988, BOOK 1988, PAGE 77258, SERIES NO. 36743.

EXCEPTING THEREFROM:

THAT PORTION OF SAID LAND WITH RESPECT TO WHICH THE FEE ESTATE WAS CONVEYED BY THE GRANT DEED TO THE CITY OF VACAVILLE, RECORDED JUNE 29, 1988, BOOK 1988, PAGE 77264, SERIES NO. 88-36744, SOLANO COUNTY RECORDS, WHICH SAID PORTION IS DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA, BEING TWO PARCELS OF LAND DESCRIBED AS FOLLOWS:

PARCEL ONE:

COMMENCING AT THE SOUTHEAST CORNER OF THAT CERTAIN 8.001+ ACRE PARCEL SHOWN AS PARCEL 1 ON THAT CERTAIN PARCEL MAP AS FILED IN BOOK 21 OF PARCEL MAPS AT PAGE 31, SOLANO COUNTY RECORDS, SAID SOUTHEAST CORNER OF SAID PARCEL 1 ALSO BEING ON THE NORTHERLY RIGHT OF WAY OF ALAMO DRIVE AS SHOWN ON SAID PARCEL MAP; THENCE ALONG SAID NORTHERLY RIGHT OF WAY OF SAID ALAMO DRIVE, NORTH 89°48'08" WEST 381.73 FT. TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY OF SAID ALAMO DRIVE NORTH 89°48'08" WEST 234.62 FT.; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 20.00 FT. THROUGH A CENTRAL ANGLE OF 89°52'06" FOR AN ARC LENGTH OF 31.37 FT. TO THE EASTERLY RIGHT OF WAY PEABODY ROAD AS SHOWN ON SAID PARCEL MAP; THENCE ALONG SAID EASTERLY RIGHT OF WAY OF SAID PEABODY ROAD NORTH 00°03'58" EAST 201.35 FT.; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH THE RADIUS OF 2947.00 FT. THROUGH A CENTRAL ANGLE OF 10°42'26" FOR AN ARC LENGTH OF 550.72 FT.; THENCE LEAVING SAID EASTERLY RIGHT OF WAY OF SAID PEABODY ROAD FROM A TANGENT BEARING OF SOUTH 09°55'08" WEST ALONG A CURVE TO THE LEFT WITH A RADIUS OF 2,966.00 FT. THROUGH A CENTRAL ANGLE OF 10°32'53" FOR AN ARC LENGTH OF 546.04 FT.; THENCE SOUTH 00°37'46" EAST 194.68 FT.; THENCE SOUTH 45°12'57" EAST 33.70 FT.; THENCE SOUTH 89°48'08" EAST 93.23 FT.; THENCE SOUTH 86°39'15" EAST 127.46 FT. TO THE TRUE POINT OF BEGINNING.

PARCEL TWO:

COMMENCING AT SAID SOUTHEAST CORNER OF PARCEL 1; THENCE ALONG THE SAID NORTH LINE OF ALAMO DRIVE SOUTH 89°48'08" EAST, 31.27 FT. TO THE TRUE POINT OF BEGINNING; THENCE ALONG A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FT. THROUGH A CENTRAL ANGLE OF 90°00'00" FOR AN ARC LENGTH OF 31.42 FT.; THENCE SOUTH 89°48'08" EAST, 50.00 FT.; THENCE FROM A TANGENT BEARING OF SOUTH 00°11'52" WEST, ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FT. THROUGH A CENTRAL ANGLE OF 90°00'00" FOR AN ARC LENGTH OF 31.42 FT. TO THE SAID NORTH LINE OF ALAMO DRIVE; THENCE NORTH 89°48'08" WEST, 90.00 FT. TO THE TRUE POINT OF BEGINNING.

APN: 0132-320-170

Exhibit B

Project Site Plan

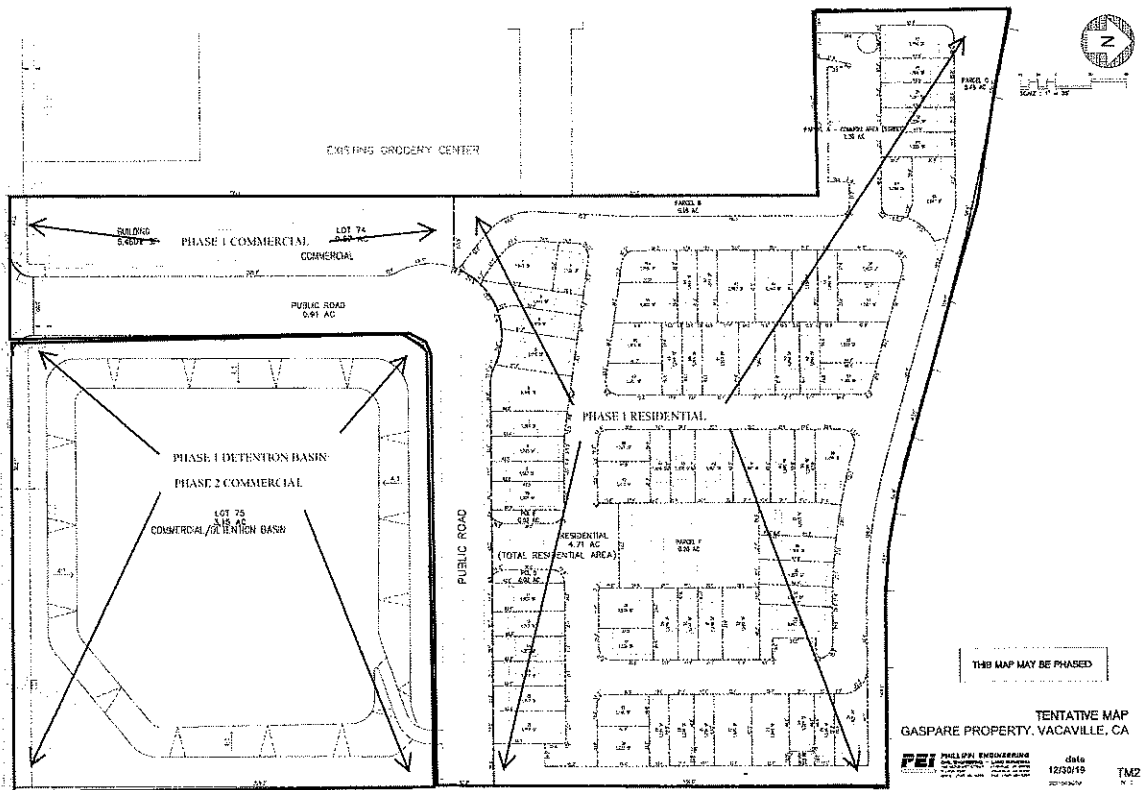


Exhibit C

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

**RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:**

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

(Space Above This Line For Recorder's Use)

**[PARTIAL] ASSIGNMENT AND ASSUMPTION
OF DEVELOPMENT AGREEMENT**

This [PARTIAL] ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT ("[Partial] Assignment") is entered into as of March 30, 2020 (the "Effective Date"), by and between _____ ("Assignor"), and _____ ("Assignee").

RECITALS

A. Gaspare Alamo 1, LLC, a California limited liability company ("Original Developer" [or "Assignor"]), and the City of Vacaville, a municipal corporation ("City") entered into that certain "Development Agreement By and Between the City of Vacaville and Gaspare Alamo 1, LLC Regarding the Development of Real Property Commonly Referred to as the Alamo Mixed Use Project", dated _____, and recorded on _____, as Document No. _____ of Official Records, Solano County (the "Development Agreement" or the "DA"), pursuant to which Original Developer agreed to develop certain property more particularly described in the Development Agreement subject to certain conditions and obligations set forth in the Development Agreement.

B. Assignor is [the owner of *or* Original Developer's successor-in-interest to] the property more particularly described on Exhibit A attached hereto (the "Assignor Land"), which is [all *or* a portion] of the property subject to the Development Agreement]

C. Assignee is purchasing [all *or* a portion] of the Assignor Land, as more particularly described on Exhibit B attached here to (the "Property"), from Assignor, in accordance with the terms of that certain [Purchase and Sale Agreement Description] (the "Purchase Agreement").

D. Pursuant to the terms of the Purchase Agreement, Assignor agreed to assign and Assignee agreed to assume certain rights, interests and obligations and other terms and conditions under the Development Agreement, as such right, interests and obligations relate to the Property.

E. The purpose of this [Partial] Assignment is to set forth the terms and provisions agreed upon between Assignor and Assignee with respect to the assignment of certain rights and interests and the delegation of certain duties and obligations of Assignor under the Development Agreement, as such rights, interests, duties and obligations relate to the Property.

AGREEMENT

NOW, THEREFORE, Assignor and Assignee agree as follows:

1. Assignment. Assignor hereby assigns, conveys and transfers to Assignee all rights and interests of Assignor, as the “Developer”, under the Development Agreement to the extent such rights and interests relate to the Property, and Assignee hereby accepts such assignment. [Notwithstanding the foregoing, Assignor shall retain (i) any and all rights under the Development Agreement necessary to perform the Retained Obligations, defined below; and (ii) those specific retained rights set forth on Exhibit C attached hereto (the “Retained Rights”).]

2. Assumption of Obligations. [Except with respect to those specific retained burdens and obligations of Assignor set forth on Exhibit C attached hereto (the “Retained Obligations”),] Assignee hereby assumes all of Assignor’s duties and obligations under the Development Agreement accruing after the date hereof, to the extent such obligations relate to the Property, regardless of whether the obligations originate in the Development Agreement itself or documents executed in connection therewith as a means to effectuate the intent of those provisions, including, without limitation: (a) any indemnity obligations, to the extent applicable to the Property or to Assignee by reason of its ownership of the Property, (b) any obligation to follow and be bound by all applicable rules, regulations and policies, (c) any obligation to pay any fees, assessments or exactions as may be imposed by the Development Agreement, and (d) any obligations arising under the Development Agreement by reason of a default of Assignee under the Development Agreement (with respect to any obligations assumed by Assignee hereunder). [Notwithstanding anything to the contrary in this Partial Assignment, Assignee acknowledges that the Development Agreement runs with the land, therefore nothing in this Partial Assignment shall be construed to excuse Assignee from compliance with the Development Agreement’s prohibitions, default and cure provisions, and other provisions to the extent applicable to the Property.]

3. Development Agreement Transfer Provision. Assignee understands and agrees that this Agreement is subject to Section 13 of the Development Agreement, which reads as follows:

“13.A Right To Assign

Developer shall have the right to sell, convey, transfer, or assign 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 sold, conveyed, transferred for the development thereof.

“Developer” shall mean the entities so identified herein and such successors thereto as may be identified as being entitled to such designation in a notice of

transfer provided for below. Reference to successors from time to time herein shall not imply that the word "Developer" does not include such designated successors in other instances.

13.B Release Upon Transfer

Upon sale, conveyance, transfer or assignment, in whole or in part, of Developer's right and interest to all or any portion of the Project Site (hereinafter collectively referred to as "transfer" or ("transferred")), Developer shall be released from its obligations hereunder with respect to the portion so transferred provided: (i) Developer (or transferee) was not in default of this Agreement at the time of transfer, (ii) Developer provided to City prior written notice of such transfer, and (iii) with respect to the transfer of any lot that has not been fully improved, the transferee executes and delivers to City a written assumption agreement in substance and form which is approved by City's City Attorney, which approval shall not be unreasonably denied, and in which: (i) the name and address of the transferee is set forth, and (ii) the transferee expressly assumes the obligations of Developer under this Agreement as to the portion of the Project Site transferred. A written assumption agreement substantially in the form of Exhibit C shall be deemed pre-approved by the City Attorney. 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."

4. Indemnity. Assignee agrees to indemnify, defend and hold harmless Assignor, its affiliated entities and persons, and their respective members, managers, partners, officers, directors, shareholders, employees and agents from any claims, demands, losses, liability, damages, causes of action, costs or expenses (including reasonable attorneys' fees) made against or suffered by Assignor with regard to any failure by Assignee to perform any term or condition of the Development Agreement, to the extent such term or condition relates to the Property, from and after the date hereof, and Assignor shall indemnify, defend and hold harmless Assignee, its affiliated entities and persons, and their respective members, managers, partners, officers, directors, shareholders, employees and agents from any claims, demands, losses, liability, damages, causes of action, costs or expenses (including reasonable attorneys' fees) made against or suffered by Assignee with regard to any failure by Assignor to perform any term or condition of the Development Agreement, as it relates to the Property, before the date hereof..

5. Miscellaneous.

5.1. Interpretation; Governing Law. This [Partial] Assignment shall be construed according to its fair meaning and as prepared by both parties hereto. This [Partial] Assignment shall be construed in accordance with and governed by the laws of the State of California.

5.2. Attorneys' and Other Fees. In the event of any dispute between the parties hereto or institution of any action or proceeding to interpret or enforce the provisions of this

[Partial] Assignment, or arising out of the subject matter of this [Partial] Assignment or the transaction contemplated hereby, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses incurred, including court costs and reasonable attorney's fees and expert witness fees.

5.3. Authority. Each of the parties hereto represents and warrants to the other that the person or persons executing this [Partial] Assignment on behalf of such party is or are authorized to execute and deliver this [Partial] Assignment and that this [Partial] Assignment shall be binding upon such party.

5.4. Further Assurances. Assignor and Assignee each agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably request to consummate, evidence, confirm or more fully implement the agreements of the parties as contained herein.

5.5. Execution in Counterparts. This [Partial] Assignment may be executed in several counterparts, and all originals so executed shall constitute one agreement between the parties hereto.

5.6. Conflict. Nothing in this [Partial] Assignment is intended to modify or amend the respective obligations of Assignor and Assignee under the Purchase Agreement between Assignor and Assignee which gave rise to this [Partial] Assignment and, in the event of any conflict between this [Partial] Assignment and the Purchase Agreement, as between Assignor and Assignee the provisions of the Purchase Agreement shall supersede and control over this Partial Assignment.

5.7. Recordation. The parties hereby authorize this [Partial] Assignment to be recorded in the records of Solano County upon the date hereof.

5.8. Successors and Assigns. This [Partial] Assignment shall be binding upon and inure to the benefit of the respective successors, assigns, personal representatives, heirs and legatees of Assignor and Assignee.

5.9. Notice. All notices to Assignee under the Development Agreement should be addressed as follows:

Attn: _____

With a copy to:

Attn: _____

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this [Partial] Assignment as of the date set forth below its name below.

“ASSIGNOR”

a _____

By: _____

Date: _____

By: _____

Date: _____

“ASSIGNEE”

a _____

By: _____

Date: _____

By: _____

Date: _____

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

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____
(insert name and title of the officer),

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

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

WITNESS my hand and official seal.

Signature: _____

[Seal]

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

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____
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personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

[Seal]

EXHIBIT "A"
TO [PARTIAL] ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF THE ASSIGNOR LAND

[TO BE INSERTED]

EXHIBIT "B"
TO [PARTIAL] ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

[TO BE INSERTED]

EXHIBIT "C"
TO [PARTIAL] ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

RETAINED RIGHTS AND OBLIGATIONS

[TO BE INSERTED]

END OF
DOCUMENT