

ORDINANCE NO. ~~20142010~~ \_\_\_\_\_

**AN ORDINANCE APPROVING THE  
MASTER DEVELOPMENT AGREEMENT BY AND AMONG THE MIDDLE  
GREEN VALLEY LANDOWNERS AND COUNTY OF SOLANO FOR THE  
MIDDLE GREEN VALLEY SPECIFIC PLAN**

The Board of Supervisors of the County of Solano ordains as follows:

**Section 1. Findings:**

The Solano County Board of Supervisors finds and determines, based on the entire administrative record, that:

1.1. On August 5, 2008, the County of Solano adopted a General Plan pursuant to Government Code section 65300 et seq., which contained a General Plan Goal, Policies and Implementing Program that directed that the County prepare a specific plan or master plan for the Middle Green Valley Special Study Area.

1.2. Between February 2009 and May 2010, a Citizen's Advisory Committee appointed by the Board held twelve publicly noticed meetings with County staff and the County's land planning consultant Hart Howerton and developed a draft Middle Green Valley Specific Plan (Specific Plan) for the County's consideration.

1.3. The Specific Plan refines the goal, policies, and implementation programs of the 2008 General Plan to provide more detailed guidance and a framework for future conservation and development of the Middle Green Valley Specific Plan, as is more fully described in the Middle Green Valley Specific Plan.

1.4. Following input from the Citizen's Advisory Committee and direction from the Board of Supervisors, County staff and consultants developed a draft Master Development Agreement by and Among the Middle Green Valley Landowners and County of Solano for the Middle Green Valley Specific Plan (Master Development Agreement) for consideration.

1.5. A Notice of Public Hearing was duly posted, mailed and published for consideration of the Specific Plan, Master Development Agreement, and related matters at the Solano County Planning Commission (Planning Commission) hearing on May 20, 2010, and on that date the public hearing was opened, held and closed and the Planning Commission recommended, by adoption of Resolution No. 4529, that the Board approve the Specific Plan and Master Development Agreement.

1.6. A Notice of Public Hearing was duly posted, mailed and published for consideration of the Specific Plan, Master Development Agreement, and related matters at the Board hearing of July 27, 2010 and on that date, the public hearing required by Government Code section 65867 was opened, held and closed.

1.7. On July 27, 2010, the Board of Supervisors adopted:

(a) Resolution No. 2010-175, certifying an Environmental Impact Report (EIR) that analyzed the environmental impact of the Middle Green Valley Specific Plan Project (Specific

~~Plan), and adopting a Statement of Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program;~~

~~(b) Ordinance No. 2010-1708, adopting the Middle Green Valley Specific Plan;~~

~~(c) Ordinance No. 2010-1709, approving the Master Development Agreement by and Among the Middle Green Valley Landowners and County of Solano for the Middle Green Valley Specific Plan (Master Development Agreement); and~~

~~(d) Ordinance No. 2010-1710, approving Interest Rate and Related Terms Pursuant to Section 3.12 of the Master Development Agreement.~~

~~Prior to taking action on the Middle Green Valley Specific Plan, and Master Development Agreement, the Board adopted Resolution No. 2010\_\_\_\_\_, certifying an Environmental Impact Report, which analyzes the environmental impact of the Middle Green Valley Specific Plan Project, and adopting Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program.~~

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~~1.8. The Master Development Agreement and its related Sales Participation Agreement were executed and, on November 19, 2010, were recorded in the Official Records of Solano County.~~

~~1.9. Pursuant to a March 21, 2012 Writ of Mandate issued by the Superior Court in *Upper Green Valley Homeowners v. County of Solano, et al.* (Case No. FCS036446), on May 22, 2012, the Board of Supervisors adopted Resolution No. 2012-105 repealing Resolution No. 2010-175, and introduced Ordinance No. 2012-1729 repealing Ordinance Nos. 2010-1708 and 2010-1709; on June 5, 2012, the Board of Supervisors adopted Ordinance No. 2012-1729.~~

~~1.10. A Recirculated Draft Environmental Impact Report was circulated for public review from August 27, 2013 to October 10, 2013.~~

~~1.11. A Revised Recirculated Draft Environmental Impact Report was circulated for public review from June 26, 2014 to August 11, 2014.~~

~~1.12. A Notice of Public Hearing was duly posted, mailed and published for consideration of the Specific Plan and related matters at the Board hearing of \_\_\_\_\_, 2014 and on that date, a public hearing required by Government Code section 65453 was opened, held and closed.~~

~~1.13. Prior to taking action on the Middle Green Valley Specific Plan, the Board adopted Resolution No. 2014-\_\_\_\_\_, certifying an Environmental Impact Report, which analyzes the environmental impact of the Middle Green Valley Specific Plan Project (Specific Plan), and adopting Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program.~~

~~1.814. On July 27, 2010 \_\_\_\_\_, 2014, following adoption of Resolution No. ~~20142010~~\_\_\_\_\_, the Board of Supervisors adopted Ordinance No. \_\_\_\_\_-~~20142010~~, adopting the Middle Green Valley Specific Plan.~~

~~1.815. The Master Development Agreement has been prepared, processed, reviewed, heard, and approved in accordance with applicable law, including but not limited to Section 65864 et seq. of the Government Code.~~

~~1.1610.~~ The Master Development Agreement is consistent with the goals, objectives, policies, implementation programs, and other provisions of the 2008 General Plan for the reasons set forth in: (1) the Staff Reports for the July 27, 2010 and November 25, 2014 meetings of the Board of Supervisors; (2) the Final Environmental Impact Report for the Middle Green Valley Specific Plan Project (State Clearinghouse No. 2009062048) (EIR); (3) Appendix C of the Specific Plan (General Plan Consistency Reference); and (4) other provisions throughout the Specific Plan describing the relationship between the Specific Plan and the General Plan.

~~1.147.~~ The Master Development Agreement is consistent with the provisions of the Middle Green Valley Specific Plan.

~~1.128.~~ The Master Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is or will be located, including any policy plan overlay applicable to the property.

~~1.139.~~ Approval of the Master Development Agreement could provide a substantial benefit to the community.

~~1.2014.~~ The Master Development Agreement would not be detrimental to the public health, safety, or welfare of the community.

~~1.2145.~~ The Master Development Agreement would promote the public convenience, general welfare, and good land use practices, and is in the best interest of the community.

~~1.4622.~~ The Master Development agreement would not adversely affect the orderly development of property and surrounding area, or the preservation of property values.

~~1.4723.~~ The Master Development Agreement would promote and encourage the development of the proposed project by providing a greater degree of requisite certainty.

~~1.4824.~~ The Master Development Agreement strengthens the public planning process, encourages private participation in comprehensive planning, and reduces the economic costs of development uncertainty.

## **Section 2. Approval of the Master Development Agreement**

2.1. The "Development Agreement by and Among the Middle Green Valley Landowners and County of Solano for the Middle Green Valley Specific Plan" is the Master Development Agreement and Sales Participation Agreement draft dated ~~\_\_\_\_\_~~ 2010November 25, 2014, which is attached as **Exhibit A**, and is incorporated by reference in this Ordinance.

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2.2. The Master Development Agreement is approved and shall be applicable to the area of the County of Solano as described in the Master Development Agreement.

2.3. The Board of Supervisors authorizes staff to prepare a final execution version of the Master Development Agreement, including the Sales Participation Agreement, that incorporates any changes to **Exhibit A** directed by the Board in approving this Ordinance, including final text, as well as final exhibits, figures, maps, diagrams, legal descriptions, and similar matters necessary to fully reflect the action of the Board of Supervisors in approving the Master Development Agreement, and including all necessary and appropriate clerical, typographical,

and formatting corrections so long as such corrections shall not alter the substance, effect, or effective date of any action taken by the Board of Supervisors in approving the Master Development Agreement.

2.4. The Department of Resource Management shall provide a report and a copy of the final corrected Master Development Agreement to the Board.

2.5. The Department of Resource Management is authorized and directed to take further implementing actions as contemplated in, and pursuant to the terms of, the Master Development Agreement.

2.6. No activities or actions may be taken pursuant this Ordinance that could result in adverse change or alteration to the physical environment until the Court's discharge of the Writ of Mandate or equivalent determination indicating that the approval of the EIR is in compliance with the Writ of Mandate such as by dismissal of the underlying case (Discharge of the Writ).

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**Section 3. Costs**

The provisions of Section 3.12 of the Master Development Agreement relating to Reimbursement for Initial County Costs shall survive the termination of the Master Development Agreement for any reason.

**Section 4. Execution, Effective Date and Allocation of Units**

4.1. The Board of Supervisors anticipates that the signatories to the Master Development Agreement and the Sales Participation Agreement will be those parties that signed the Master Development Agreement and Sales Participation Agreement recorded in the Official Records of Solano County on November 19, 2010, or their successors and assigns identified as participating as of the close of the July 27, 2010 public hearing (Anticipated Signatories). The Master Development Agreement and Sales Participation Agreement will require execution by the Anticipated Signatories after the date of adoption of this Ordinance July 27, 2010, in order to be legally binding. Execution of the Master Development Agreement and Sales Participation Agreement is required in order to finalize the Transfer of Development Rights Program provided for in Section 4.2.3 of the Specific Plan. Therefore, the Board of Supervisors authorizes the Department of Resource Management to do all of the following:

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4.1.1. The Department of Resource Management shall coordinate with the Anticipated Signatories to obtain the necessary signatures of all parties to the Master Development Agreement and Sales Participation Agreement within ninetysixty (9060) days of the date of approval of this Ordinance.

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4.1.2. In the event that one or more of the Anticipated Signatories has not executed the Master Development Agreement and Sales Participation Agreement by the ninetiethsixty (690th) day following the date of approval of this Ordinance, the Director of the Department of Resource Management may, for good cause, provide up to forty-five (45) additional days for execution by those participants to occur.

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4.1.3. If, by the end of that additional 45-day period any Anticipated Signatories have not executed and provided the documents necessary to record the Master Development Agreement and Sales Participation Agreement, the Department of Resource Management shall:

revise the Master Development Agreement and Sales Participation Agreement to remove reference to such participant(s); and revise the calculations in the Sales Participation Agreement accordingly.

**4.1.4.** The Department of Resource Management shall take the steps necessary to prepare, obtain, and assemble required documents and arrange for recording of the Master Development Agreement and Sales Participation Agreement. Following execution by the Chair of the Board of Supervisors, final submittal of the documents for recording shall be completed by the Clerk of the Board of Supervisors.

**4.2.** The Board of Supervisors authorizes and directs the Chair of the Board of Supervisors to execute the Master Development Agreement, including the Sales Participation Agreement, on behalf of the County of Solano, after it has been approved as to form by County Counsel, and further directs the Clerk of the Board of Supervisors to record the Master Development Agreement, including the Sales Participation Agreement, and this Ordinance with the County Recorder within ten (10) days of its Effective Date.

**4.2.1.** Provided, however, that the Chair of the Board of Supervisors is authorized and directed to execute the Master Development Agreement and Sales Participation Agreement only if the Master Development Agreement and Sales Participation Agreement first have been executed by landowners who are Anticipated Signatories owning property where, considered together, at least 300 new primary residential units may be developed under the Middle Green Valley Specific Plan (pursuant to the Specific Plan, and associated tables and figures, accompanying the July 27, 2010 Staff Report).

**4.2.2.** In the event that, within the time allowed by this Section 4, the Master Development Agreement and Sales Participation Agreement have not been executed by landowners who are Anticipated Signatories owning property where, considered together, at least 300 new primary residential units may be developed, the Chair of the Board of Supervisors shall not execute the Master Development Agreement and Sales Participation Agreement, and the Department of Resource Management shall prepare a report to the Board of Supervisors to obtain further direction.

**Section 5. Severability**

If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, including but not limited to being preempted by state law, that portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereof nor other applications of the ordinance which can be given effect without the invalid provision or application.

**Section 6. Effective Date**

This ordinance shall be effective thirty (30) days after its passage.

**Section 7. Publication**

A summary of this ordinance shall be published once within fifteen (15) days after its adoption, in the Fairfield Daily Republic, a newspaper of general circulation in the County of Solano.

Ordinance No. ~~2014~~2010- \_\_\_\_\_

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on \_\_\_\_\_ by the following vote:

AYES: Supervisors

NOES: Supervisors

EXCUSED: Supervisors

Linda J. Seifert~~John M. Vasquez~~, Chair  
Solano County Board of Supervisors

ATTEST:

Birgitta E. Corsello~~Michael D. Johnson~~, Clerk  
Solano County Board of Supervisors

By: Jeanette Bellinder~~Patricia J. Crittenden~~, Chief Deputy Clerk

**Introduced:**

**Adopted:**

**Effective:**

Exhibit A

to Ordinance No. 2014-\_\_\_\_\_

**Master Development Agreement and Sales Participation Agreement (November 25, 2014)**

Note: Revisions from the Master Development Agreement and Sales Participation Agreement recorded November 19, 2010 are shown in underline for additions and ~~striketrough~~ for deletions. Revisions to the Master Development Agreement and Sales Participation Agreement appear on the following pages (using the bate stamped page numbers on the bottom right of each page): 5, 6, 7, 8, 17, 20, 36, 37, 47, 51, 62, 65, 72, and 84.

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Solano County  
675 Texas St, Ste 6600  
Fairfield CA 94533  
Attention: County Counsel

Record for the Benefit of  
Solano County  
Pursuant to Government Code  
Section 27383

Space Reserved for Recorder's Use Only

**MASTER DEVELOPMENT AGREEMENT**

**By and Among**

**the Middle Green Valley Landowners**

**and**

**County of Solano**

**for the**

**Middle Green Valley Specific Plan Area**

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**MASTER DEVELOPMENT AGREEMENT  
Middle Green Valley Specific Plan Area**

This Master Development Agreement ("**Development Agreement**" and sometimes "**Agreement**"), dated as of November 9, 2010 ("**Effective Date**"), is entered into by and among County of Solano ("**County**"), a political subdivision of the State of California, and each of the parties identified on Exhibit A attached hereto (individually hereinafter referred to as a "**Landowner**" and collectively referred to as the "**Developers**"), pursuant to section 65864 *et seq.* of the California Government Code.

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

**RECITALS**

A. **Purpose.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 *et seq.* (the "**Development Agreement Statute**") which authorizes counties to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. In accordance with the Development Agreement Statute, the County on August 14, 2007 established procedures and requirements for the processing and approval of development agreements ("**Development Agreement Rules**"). (The provisions of the Development Agreement Statute and the County's development agreement policies set forth in the Development Agreement Rules are collectively referred to herein as the "**Development Agreement Law.**") This Agreement has been drafted and processed pursuant to the Development Agreement Law and all applicable law.

B. **Developers' Interest in Property.** Developers own real property within the Middle Green Valley Specific Plan Area in Solano County, State of California, as described in Exhibits A and B. The properties described in Exhibit B make up the property that is subject to this Agreement ("**Property**").

C. **Project.** Consistent with the County's land use planning objectives, including the 2008 General Plan Program SS.I-1, the proposed project is the build-out and implementation of the Middle Green Valley Specific Plan (defined below), including a mix of land uses, including up to three hundred and ninety (390) new primary residential units, agricultural tourism, local neighborhood retail and community facility uses and over 1,400 acres of protected agriculture open space as detailed in the Specific Plan on the Property ("**Project**").

D. **Environmental Review.** The Project was the subject of an environmental impact report under the California Environmental Quality Act ("**CEQA**") (set forth in Public Resources Code, section 21000 *et seq.*) which was certified by the Board of Supervisors on July 27, 2010, as recommended for certification by the Planning Commission by action taken at its regular meeting of May 20, 2010. The Board of Supervisors certified the Final Environmental Impact Report for the Middle Green Valley Specific Plan (~~"EIR"~~) by Resolution No. 2010-175 adopted July 27, 2010.

D1. 2010 Approvals. On July 27, 2010, the Board of Supervisors also adopted: (a) Ordinance No. 2010-1708, adopting the Middle Green Valley Specific Plan; (b) Ordinance No. 2010-1709, approving the Development Agreement; and (c) Ordinance No. 2010-1710, approving Interest Rate and Related Terms Pursuant to Section 3.12 of the Development Agreement.

D2. Execution and Recording. The Development Agreement and its related Sales Participation Agreement were executed and, on November 19, 2010, were recorded in the Official Records of Solano County.

D3. Litigation. Pursuant to a March 21, 2012 Writ of Mandate issued by the Superior Court in Upper Green Valley Homeowners v. County of Solano, et al. (Case No. FCS036446), on May 22, 2012, the Board of Supervisors adopted Resolution No. 2012-105 repealing Resolution No. 2010-175, and introduced Ordinance No. 2012-1729 repealing Ordinance Nos. 2010-1708 and 2010-1709; on June 5, 2012, the Board of Supervisors adopted Ordinance No. 2012-1729.

D4. Further Environmental Review. The Project was the subject of further environmental review in the form of a Recirculated Draft Environmental Impact Report which was circulated for public review from August 27, 2013 to October 10, 2013, and a Revised Recirculated Draft Environmental Impact Report which was circulated for public review from June 26, 2014 to August 11, 2014. The Board of Supervisors certified the Final Environmental Impact Report for the Middle Green Valley Specific Plan ("EIR") by Resolution No. 2014-\_\_\_\_, adopted \_\_\_\_\_.

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E. **Existing Approvals.** Following certification of the EIR, the County took the following actions:

(1) Mitigation Monitoring and Reporting Program adopted by the Board of Supervisors with the EIR by Resolution No. ~~2014-2010-175~~ adopted ~~2014 July 27, 2010~~ ("MMRP").

(2) Adoption of the Middle Green Valley Specific Plan by Ordinance No. ~~2014-2010-1708~~ introduced on ~~2014 July 27, 2010~~ and adopted by the Board of Supervisors on ~~2014 July 27, 2010~~ (the "Specific Plan").

F. **Developers' Assurance.** The complexity, magnitude and long-term build out of the Project would not be feasible if the County had not determined, through this Agreement, to provide a sufficient degree of certainty in the land use regulatory process to justify the Developers' substantial financial investment associated with development of the Project. As a result of the execution of this Agreement, all Parties can be assured that the Project can proceed without disruption caused by a change in County planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project.

G. **County Benefits.** County is desirous of advancing the socio-economic interests of the County and its residents by encouraging quality development, protecting agriculturally productive land, and implementing the goals and policies of the General Plan and Specific Plan for Middle Green Valley. Specifically, County is desirous of maintaining the rural character of Middle Green Valley and protecting important viewsheds, wildlife corridors and agricultural activities while allowing some opportunities for compatible residential and commercial development.

H. **Project Provides Substantial Benefits.** For the reasons recited herein, County and Developers have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding the Existing Approvals and Subsequent Project Approvals, thereby encouraging planning for, investment in and commitment to the use and development of the Property and ensuring the implementation of the Specific Plan as envisioned. Continued use and development of the Property will in turn provide housing, protect and support agricultural production, natural resources and scenic views, and provide other public benefits to County, and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

I. **Consistent with General Plan and Specific Plan.** County has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code section 65867 and the Development Agreement Rules. As required by Government Code section 65867.5, County has found that the provisions of this Development Agreement and its purposes are consistent with the goals, policies, standards, and land use designations specified in the General Plan and the Middle Green Valley Specific Plan.

J. **Enacting Ordinance.** On May 20, 2010, the County's Planning Commission (the "Planning Commission"), the initial hearing body for purposes of Development Agreement review, recommended approval of this Development Agreement pursuant to Resolution No. 4529. On \_\_\_\_\_, 2014~~July 27, 2010~~, the Board of Supervisors approved this Development Agreement and authorized its execution, and adopted Ordinance No. 2014-~~these Ordinances No. 2010-1709 and 2010-1710. These Ordinances~~ ("Enacting Ordinance") which became effective on \_\_\_\_\_, 2014~~August 27, 2010~~. The Enacting Ordinance incorporates this Agreement by reference.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration, the Parties hereby agree as follows:

## ARTICLE 1: ADMINISTRATION

### 1.1. Definitions.

"Administrative Adjustment" shall mean a written modification to this Agreement that does not (i) relate to the Term of this Agreement, (ii) relate to the provisions for the reservation or dedication of land or monetary exactions of Developers, including the Transfer Fee, TDR Program, Public Improvements and Reimbursement Agreement or (iii) increase the density or intensity of development on any individual portion of the Property that is designated as OL-N, AG-WS or AG-P as those terms are defined in the Specific Plan and required to be subject to a Conservation Easement or (iv) concurrently require an amendment to the Specific Plan pursuant to Section 4.4.5 of the Specific Plan.

"Agreement" shall mean this Development Agreement, including all exhibits.

"Applicable County Regulations" shall have the meaning set forth on Exhibit C.

"Applicable Law," where capitalized, shall mean the Applicable County Regulations, New County Laws, to the extent consistent with the limitations of Section 3.15 of this Agreement, and New Other Laws. If the term "applicable law" is not capitalized, it shall refer not only to Applicable Law, but also any and all applicable state and federal law and or regulations.

"Assignment" shall have the meaning given in Section 7.2.

"Association Governing Documents" means the declaration and any other documents, such as bylaws, operating rules of the association, articles of incorporation, or articles of association, which govern the operation of the Master Property Owners' Association.

"Benefitted Landowner" shall have the meaning given in Section 4.1.6.

"CCI" shall mean the total positive percent change in the level of the Construction Cost Index for the City of San Francisco as published by the Engineering News Record, or its successor index. In the event that the Engineering News Record makes a major revision or change to, or stops publishing, this CCI index, the County reserves the right to replace the use of CCI within this Agreement with another appropriate comparable index. Prior to replacing the use of CCI under this Agreement, the County will notify the Developers

of the intended replacement index and will provide a reasonable opportunity to meet and confer with any Landowner upon request.

"CC&Rs" shall mean any conditions, covenants or restrictions recorded in the Official Records related to the Property or a portion thereof.

"CEQA" shall mean the California Environmental Quality Act, California Public Resources Code section 21000, *et seq.*, and the State CEQA Guidelines, (California Code of Regulations, Title 14, section 15000, *et seq.*), as each is amended from time to time.

"Claims" shall have the meaning given in Section 6.4.

"Connection Fees" means those fees charged by County, or other non-County entities, to utility users as a cost for connecting to water, sewer and other applicable utilities.

"Conservancy" shall mean a tax-exempt nonprofit organization established pursuant to Section 4.5 of this Agreement, qualified under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, having its principal place of business and qualified to do business in California and that has as its primary purpose exempt purposes enabling it to engage in and accomplish the activities contemplated for the organization pursuant to Section 4.2.1 of the Specific Plan.

"Conservancy Formation Documents" shall have the meaning given in Section 4.5.

"Constructing Landowner" shall have the meaning given in Section 4.1.4.

"Consultant" shall have the meaning given in Section 3.11.

"Consultant Contract" shall have the meaning given in Section 3.11.

"Consultant Fees" shall have the meaning given in Section 3.11.

"County" shall mean the County of Solano.

"County Parties" shall have the meaning given in Section 3.22.

"County Services Area" shall mean any assessment district(s) established by the County pursuant to the County Services Area Law, Government Code Sections 25210.1 *et seq.* or other similar law to finance or carry out all or part of the ownership and operation of the Public Improvements through the imposition of assessments, fees or taxes on the benefitting land, including, but not limited to, the Property.

"Default" shall have the meaning given in Section 6.1.2.

"Default Hearing" shall have the meaning given in Section 6.1.4.

"Defaulting Landowner" shall mean a Landowner that commits a Default of any term, condition, or obligation of this Agreement.

**"Determination of Excused Delay"** shall have the meaning given in Section 2.2.2.

**"Developers"** shall mean, collectively, all the entities and or persons listed on Exhibit A, and their successors and assigns.

**"Development Agreement"** shall mean this Agreement and all Exhibits attached hereto.

**"Development Agreement Law"** shall have the meaning given in Recital A.

**"Development Agreement Rules"** shall have the meaning given in Recital A.

**"Development Agreement Statute"** shall have the meaning given in Recital A.

**"Development Project"** shall mean a development project as defined by section 65928 of the California Government Code.

**"Director"** shall mean the County's Director of Resource Management, or his or her designee.

**"District"** shall mean any assessment or financing district(s) established by the County pursuant to the Community Facilities District Act of 1982 (Mello-Roos), Government Code sections 53311 et seq. or other similar law to finance all or part of the Public Improvements through the issuance of bonds and the imposition of assessments, fees or taxes on the benefitting land, including, but not limited to, the Property.

**"Effective Date"** shall mean the date determined under Section 2.1.

**"EIR"** shall have the meaning given in Recital D.

**"Enacting Ordinance"** shall mean the Ordinance approving this Agreement as referenced in Recital J.

**"Enforcing Landowner"** shall have the meaning given in Section 6.1.4.

**"Exactions"** shall mean exactions that may be imposed by the County as a condition of developing the Project, including but not limited to in-lieu payments, requirements for acquisition, dedication or reservation of land, obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project as shown in the Specific Plan, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, measures imposed for the protection of the public health or safety, or impositions made under Applicable Law.

**"Excluded Transfers"** shall have the meaning given in Section 7.8.

**"Excused Delay"** shall mean delay or Defaults due to war; insurrection; terrorism; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; unusually severe

weather which prevents, limits, retards or hinders the ability to perform; environmental conditions, if such condition is unknown after the exercise of reasonable environmental due diligence and delays are due to necessary regulatory agency approvals; initiatives, referenda, litigation or administrative proceedings challenging the Existing Approvals or Subsequent Project Approvals, the Project or this Agreement (including the Sales Participation Agreement); acts or failures to act of any other public or governmental agency or entity (except that acts or the failure to act of the County shall not excuse performance by the County); a County imposed moratorium permitted by Section 3.17 [Moratorium Not Applicable], or a Material Condemnation as described in Section 4.6 [Condemnation].

"Existing Approvals" shall mean the approvals defined in Recital E.

"Existing Buildings" shall have the meaning given in Section 3.2.

"Existing Permitted Use" shall have the meaning given in Section 3.2.

"Fee Adjustment Date" shall have the meaning given in Section 3.10.

"Foothills Access Road" shall have the meaning given in Section 4.1.3.

"General Plan" shall mean the County's General Plan.

"Gross Sales Price" means the amount of the purchase price for Improved Real Estate or Unimproved Real Estate.

"Impact Fees" shall mean the monetary consideration charged by County in connection with a Development Project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the Development Project and development of the public facilities related to development of the Development Project, including, without limitation, any "Fee" as that term is defined by Government Code section 66000(b), special taxes or assessments, but not including "Connection Fees."

"Improved Real Estate" means any subdivided real estate interest, such as lot, unit or parcel, developed and intended for ownership or use, which development includes a new primary residential, or commercial, building(s) constructed after the Effective Date that is not a replacement of an Existing Building.

"Initial County Costs" shall have the meaning given in Section 3.12.

"Landowner" shall mean, individually, each of the entities and or persons listed on Exhibit A, and a successor or assign of a Landowner.

"Local Agency" shall mean a governmental agency whose legislative and administrative actions the County has the ability to control. Any entity not within the exclusive control of the County, including a joint powers authority, shall not be deemed a Local Agency for the purposes of this Agreement.

"Master CC&Rs" shall have the meaning given in Section 4.4.

"Master Property Owners' Association" shall mean a nonprofit corporation or unincorporated association created for the purpose of managing common interest development(s) for the Property in implementation of the Project Approvals and established pursuant to the requirements of Section 4.4.

"Material Condemnation" shall mean a condemnation of all or a portion of the Property that will have the effect of materially impeding or preventing development of the Project on a Landowner or Landowner's portion of the Property in accordance with this Agreement and the Project Approvals.

"MMRP" shall have the meaning provided in Recital E.

"Mortgage" shall have the meaning given in Section 8.2.1.

"Mortgagee" shall have the meaning given in Section 8.2.1.

"New County Laws" shall mean any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the County (including but not limited to any County agency, body, department, officer or employee) or its electorate (through their power of initiative or otherwise) after the Effective Date. New County Laws include amendments to Applicable County Regulations and New Other Laws.

"New Other Laws" shall mean New County Laws enacted after the Effective Date that are required to be applied to the Project pursuant to applicable State or Federal Laws. For purposes of this definition: (i) State or Federal Laws include not only enactments but also the decisional law applicable within California as determined and declared from time to time by the courts of California and of the United States; (ii) "enactments" means constitutional provisions, statutes, charter provisions, ordinances, and regulations; (iii) "regulations" means rules, regulations, orders, executive mandates, and standards, having the force of law, adopted by an employee or agency of the State of California or of the United States; (iv) "statute" means an act adopted by the California Legislature or by the Congress of the United States, or a state-wide initiative act; and (v) State or Federal Laws include enactments and regulations of applicable regional and local (other than County) governmental entities acting pursuant to State or Federal Laws as described in (i) through (iv) of this definition.

"Notice of Breach" shall mean the notice provided to a defaulting party specifying the nature of the alleged Default and the manner in which such Default may be satisfactorily cured.

"Notice of Excused Delay" shall mean the notice provided by a Landowner to the County notifying the County of its intent to claim an Excused Delay, the specific grounds for same, and the anticipated period of the Excused Delay.

"Notice of Subsequent Project Approval" shall mean a notice recorded in the Official Records that identifies the existence of a specific Subsequent Project Approval(s) approved pursuant to Section 5.3.

"Official Records" means the official records of the County of Solano.

"Parties" where capitalized, shall mean, collectively, the County and Developers. Where the term "parties" is not capitalized it shall mean the County and the specific Landowner (or Landowners) relevant to the implementation of a particular Section of this Agreement that does not involve Developers collectively.

"Permitted Uses" shall mean those permissible uses described in the Specific Plan.

"Planning Commission" shall have the meaning given in Recital J.

"Private Improvements" shall have the meaning given in Section 4.1.1.

"Processing Fees" shall have the meaning given in Section 3.9.

"Project" shall have the meaning given in Recital C.

"Project Approvals" means the Existing Approvals and all Subsequent Project Approvals.

"Property" shall have the meaning given in Recital B.

"Public Improvements" shall have the meaning given in Section 4.1.2.

"Reimbursement Agreement" shall have the meaning given in Section 4.1.6.

"Requesting Landowner" shall have the meaning given in Section 5.2.3.

"Sales Participation Agreement" shall mean that certain agreement set forth in Exhibit G and referenced in Section 3.23.

"School Fees" shall mean school fees imposed on Developers pursuant to state law.

"Specific Plan" shall have the meaning given in Recital E.

"Subdivision Map Act" means California Government Code, title 7, division 2, sections 66410 et seq., as may be amended from time to time.

"Submitting Landowner" shall have the meaning given in Section 4.5.

"Subsequent Project Approvals" shall mean additional future land use and construction approvals and permits from County in connection with development of Property which shall be deemed to be part of the Project Approvals as they are approved.

"TDR Program" shall have the meaning given in Section 3.23.

"Tentative Map" means a map created pursuant to the Subdivision Map Act and corresponding provisions of Chapter 26 of the Solano County Code.

"Term" shall have the meaning given in Section 2.2.

"Termination of Excused Delay" shall have the meaning given in Section 2.2.2.

"Transfer Fee" shall have the meaning set forth in Section 4.5.1.

"Transfer Fee Covenant" shall have the meaning given in Section 4.5.1.

"Transfer Fee Notice" shall have the meaning given in Section 4.5.1.

"Unimproved Real Estate" means any subdivided real estate interest, such as a lot, unit or parcel, which is not Improved Real Estate.

## ARTICLE 2: EFFECTIVE DATE, TERM & REPRESENTATIONS AND WARRANTIES

2.1. Effective Date. The Effective Date of this Agreement shall be the latter of the dates upon which both the Enacting Ordinance has become effective and full execution of this Agreement has occurred. The Effective Date is inserted at the beginning of this Agreement. The Parties acknowledge that section 65868.5 of the Development Agreement Statute requires that this Agreement be recorded with the County Recorder no later than ten (10) days after the Effective Date, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. Further, within five working days of the date of the Enacting Ordinance, the County shall file with the county clerk a Notice of Determination pursuant to CEQA regarding the Project.

### 2.2. Term.

2.2.1. Term of Agreement. The "Term" of this Agreement shall commence on the Effective Date and shall continue for a period of twenty five (25) years from and after the Effective Date, unless this Agreement is otherwise terminated or extended in accordance with the provisions of this Agreement. The Term has been established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Project and obtain the public benefits of the Project.

2.2.2. Extension of Term: Excused Delay. If a Landowner is deprived of a benefit under this Agreement as a result of an Excused Delay, then the Term of this Agreement shall be extended as to all Parties for the period of such Excused Delay; provided, however, that such extension shall commence to run from the time of the commencement of the cause of the Excused Delay. Any Landowner claiming the Excused Delay shall notify the County of its intent to claim an Excused Delay within thirty (30) days of the commencement of the cause, the specific grounds for same, and the anticipated period of the Excused Delay ("Notice of Excused Delay"), with a concurrent copy to Developers. After the County's receipt of such notice from a Landowner, the County may reasonably object in writing to Landowner's Notice of Excused Delay by delivering written notice to the Landowner and Developers setting forth reasons for the

County's objections. If the County objects in writing to Landowner's Notice of Excused Delay, the County and the Landowner seeking an extension of the Term on the grounds of an Excused Delay shall meet and confer within thirty (30) days of the date of Landowner's receipt of the County's written objection with the objective of attempting to arrive at a mutually acceptable solution as to whether the event constitutes an Excused Delay and whether the Term should be extended, and for how long. After the parties have met and conferred, the Director is authorized to determine if there are grounds for an Excused Delay or not. If the Director determines there are no grounds for an Excused Delay, the Director shall submit a written notice of such determination to Developers. If the Landowner claiming the Excused Delay disagrees with the Director's determination, such Landowner may appeal the Director's decision to the Board of Supervisors. If, after public hearing, the Board of Supervisors affirms the Director's determination, the appealing Landowner may seek remedies under Article 5 of this Agreement. If the Director determines there are grounds for Excused Delay, the Director shall promptly submit a report regarding such proposed Excused Delay to the Board of Supervisors, including the parties' estimation of the length of the proposed Excused Delay. If the Board of Supervisors confirms the Director's determination, the Excused Delay shall become effective upon the Board's acceptance of the Director's report but shall relate back to the time of the commencement of the cause of the Excused Delay. The Director shall record a notice in the Official Records that states the grounds for the Excused Delay and the estimated length of the Excused Delay ("Determination of Excused Delay"). Once the grounds for the Excused Delay no longer apply, the Landowner claiming such Excused Delay shall notify the Director and the Developers, and the Director shall record a notice of termination of Excused Delay in the Official Records ("Termination of Excused Delay"), provided that a Landowner's failure to provide such notice shall not extend the Term beyond the date when the grounds for Excused Delay no longer apply. Developers acknowledge that adverse changes in economic conditions, either of one or more Landowners specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing or other lack of funding to complete the Project shall not constitute grounds for Excused Delay. Developers expressly assume the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date. The time for County's performance of its obligations hereunder shall also be extended by the period of any Excused Delay.

2.3. Developers' Representations and Warranties. Each Landowner, individually on its sole behalf, represents and warrants to County that, as of the Effective Date:

2.3.1. Landowner, if not an individual, is duly organized and validly existing under the laws of the State of its incorporation or formation, and is in good standing and has all necessary powers under the laws of the State of California to own property interests and in all other respects to enter into and perform its respective undertakings and obligations under this Agreement.

2.3.2. No approvals or consents of any persons or entities are necessary for the execution, delivery or performance of this Agreement by Landowner, except as have been obtained.

2.3.3. The execution and delivery of this Agreement and the performance of the obligations of Landowner hereunder have been duly authorized by all necessary corporate,

partnership or company action and all necessary shareholder, partner and/or member approvals have been obtained.

2.3.4. This Agreement is a valid obligation of Landowner and is enforceable in accordance with its terms.

2.3.5. Landowner has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by such Landowner's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Landowner's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Landowner's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

2.3.6. Landowner owns that certain real property within the Middle Green Valley Specific Plan Area as described in Exhibit B as being owned by Landowner.

During the Term of this Agreement, each Landowner shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.3 not to be true, give written notice of such fact or condition to County within 10 (ten) days of learning such fact or condition.

### ARTICLE 3: DEVELOPMENT OF THE PROPERTY

3.1. Uses and Development Standards. Subject to the terms and conditions of this Agreement and the obligations and conditions required by the Project Approvals, the County hereby grants to each Landowner the present vested right to develop and construct on the Property all the improvements authorized by and subject to the requirements (including the requirement to obtain and comply with any Subsequent Project Approvals) of the Project Approvals and this Agreement. To the extent permitted by all applicable law, and except as otherwise provided herein, no future amendment, modification or repeal of the County's General Plan, Specific Plan, County Code, ordinances, policies or regulations shall apply to the Property that purports to (i) limit the Permitted Uses of the Property, the density and intensity of use (including but not limited to maximum number of dwelling units and floor area ratios of commercial/retail buildings), the maximum height and size of proposed buildings, (ii) impose Impact Fees, Exactions, requirements for reservation or dedication of land for public purposes, the subdivision of land, or requirements for infrastructure, public improvements, or public utilities, other than as provided in the Project Approvals, including but not limited to the Specific Plan, or pursuant to this Agreement, (iii) impose conditions upon development of the Property other than as permitted by the Applicable Law, the Project Approvals and this Agreement, or (iv) limit the rate of development of the Property; provided, however, that nothing in this Agreement shall prevent or preclude County from adopting any land use plans, ordinances, policies, regulations or amendments permitted herein.

3.2. Existing Buildings and Uses. During the Term of this Agreement, buildings on the Property that are lawful and in existence as of the Effective Date ("**Existing Buildings**") may be continued as legally conforming or non-conforming buildings pursuant to section 28-60 of the

County Code and shall be exempt from the requirements of the Project Approvals and this Agreement. Modifications (including, but not limited to replacement and reconstruction) to any nonconforming Existing Buildings authorized by section ~~28.114-60~~ of the County Code shall not trigger the application of the Project Approvals or the requirements of this Agreement. In addition, upon the Effective Date and in accordance with Government Code sections 65850(a) and 65853-65857, any lawfully established use or any use permitted as of the date immediately prior to the adoption of the Specific Plan that is non-conforming ("**Existing Permitted Use**"), may continue or be allowed as a legally non-conforming use in an Existing Building during the Term of this Agreement pursuant to section ~~28.114-60~~ of the County Code, including the continuation or establishment of such use by new tenants or existing tenants. Except as expressly provided in this Section 3.2, section ~~28.114-60~~ shall apply to Existing Buildings and Existing Permitted Uses on the Property.

3.3. Density and Intensity of Development. Developers shall have the vested right to develop the Property in conformance with and subject to the maximum density indicated in the Specific Plan. Minimum/maximum lot size, maximum gross lot coverage, maximum floor area, setbacks, authorized density transfers, and other development and design standards shall be as specified in Specific Plan.

3.4. Conflicts. In the event of any express conflict or inconsistency between the terms of this Agreement and any aspect, term or condition of Applicable Law or the Project Approvals, this Agreement shall control.

3.5. Tentative Maps. When a Landowner submits an application for approval of a Tentative Map, the County shall not require such Landowner to include any land not owned by such Landowner in such application, or as a condition of approval of a Tentative Map or final subdivision map.

3.6. Impact Fees, Exactions, Processing Fees and Taxes. Except as otherwise provided herein, each Landowner, individually, on its sole behalf, and only with respect to its real property and its applications for Subsequent Project Approvals, agrees to pay when due any required fees, taxes, assessments, impact fees, and other monetary and non-monetary exactions which may be levied or assessed against the Project in accordance with this Agreement, as and to the extent provided below related to such Landowner's portion of the Property. Each Landowner reserves the right to challenge whether such fees, special taxes, assessments, impact fees or other monetary and non-monetary exactions have been accurately and appropriately calculated, measured and/or applied to their portion of the Property in accordance with this Agreement. In the event that a Landowner challenges such fee, special tax, assessment, impact fee or other exaction, such Landowner shall timely pay under protest. The County shall not delay issuance of permits pending resolution of such protest as long as Landowner has timely paid under protest as provided in this Section 3.6.

3.7. Federal/State Compliance Fees. County may charge and each Landowner, individually, on its sole behalf, and only with respect to its real property, agrees to pay any new, increased or modified taxes, assessments, impact fees or other monetary or non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Project Approvals or otherwise, which are uniformly imposed and reasonably necessary to comply with

the requirements of any Federal or State statute, regulation, or legal requirement which is enacted or adopted or becomes effective or operative with respect to the Project after the Effective Date of this Agreement.

3.8. Non-Local Agency Compliance Fees. County may collect and each Landowner, individually, on its sole behalf, and only with respect to its real property, agrees to pay any new, increased or modified taxes, assessments, impact fees or other monetary or non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Project Approvals or otherwise, which are uniformly imposed and reasonably necessary to comply with the requirements of local governmental agencies other than a Local Agency and which (i) such local governmental agency has the independent legal authority to impose such tax, assessment, fee, or exaction without the permission or consent of the County and (ii) the County has agreed or is required to collect on behalf of such governmental agencies for administration purposes only.

3.9. Processing Fees. County may charge and each Landowner, individually, on its sole behalf, and only with respect to its real property, agrees to pay all processing fees, including without limitation application, permit processing, General Plan maintenance, plan checking (time and materials) and inspection and monitoring fees ("Processing Fees"), for land use approvals, grading and building permits, and other permits and entitlements, which are in force and effect on a County-wide basis at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

3.10. Impact Fees and Exactions. For the first ten (10) years of the Term, the County may charge and Developers agree to pay only those Impact Fees set forth in Exhibit D [Impact Fees] at the rates in effect as of the Effective Date, adjusted to reflect CCI from the Effective Date to the date a payment amount is due and payable. For the second ten (10) years, the County may charge and Developers agree to pay any and all impact fees applicable to the Property as of the date ten (10) years from the Effective Date ("Fee Adjustment Date") at the rates in effect as of the Fee Adjustment Date, adjusted to reflect CCI from the Fee Adjustment Date to the date a payment amount is due and payable. For the remainder of the Term, the County may charge and each Landowner, individually, on its sole behalf, and only with respect to its real property, agrees to pay any and all impact fees applicable to the Property at the rates in effect as of the time land use or development permits, approvals or entitlements are applied for on any or all portions of the Project. In addition, County may impose and each Landowner, individually, on its sole behalf, and only with respect to its real property, shall comply with those Exactions required by this Agreement; provided, however, the County will not impose and the Developers shall not be required to comply with and/or pay for any Exactions other than as provided in or contemplated by this Agreement, the Specific Plan or the Existing Approvals. As used in this Section, the County is not deemed to be "impos[ing]" an exaction or fee in circumstances wherein the County serves merely as a depository or fiscal agent to facilitate another entity's collection of such exactions, impact fees, or similar charges that the other entity may independently impose.

3.11. Consulting Fees. County may, in its sole discretion, contract with one or more outside planners, inspectors, engineers, architects, or consultants ("Consultant" and collectively "Consultants") to perform all or any portion of the planning, monitoring, inspection, testing and

evaluation services to be performed in connection with processing applications, construction and development of the Project, provided that the County agrees to use County staff to the extent practicable. At the time the County receives an application for a Subsequent Project Approval from a Landowner or other request for planning, monitoring, inspection, testing or evaluation services, if the County intends to contract with a Consultant or Consultants, the County shall promptly consult with the Landowner making such request in establishing a scope of work and budget(s) for any proposed service contract, including any substantial revision or change order thereto, with each Consultant ("Consultant Contract"); but the choice of Consultant and scope of work shall be determined by the County. If Landowner disagrees with the County's choice of Consultant or scope of work, the Landowner shall notify the County in writing within ten (10) days of learning of the County's choice and the basis for the disagreement (the "Landowner Objection"). If a Landowner Objection is timely submitted, the County shall make reasonable efforts to address the Landowner Objections prior to engaging, retaining or otherwise hiring a Consultant. If the County is unable to resolve the Landowner Objection and the Landowner still objects to the Consultant or scope of work after consultation with the County, the County shall provide the Landowner with a written notice of intent to engage the Consultant over the Landowner's Objection and the notice will provide ten (10) days from the date of the notice to confirm in writing that the Landowner still wants to proceed with the application or not. If the Landowner either (i) confirms that the Landowner still wants to proceed with the application or (ii) fails to timely respond to the notice, the County may proceed to execute the Consultant Contract. The Landowner reserves the right to withdraw the application that is the subject of the Consultant Contract at any time. If the Landowner withdraws after the County has entered into a Consultant Contract consistent with this Section 3.11, the Landowner will be responsible for any amounts owing to the Consultant prior to the date of withdrawal. If there is more than one requesting Landowner, the requesting Landowners shall specify the allocation of Consultant Fees. County agrees that the scope of work to be undertaken by the Consultant(s) shall be reasonable in light of the size, type and complexity of the application or request made by the requesting Landowner(s). Each Consultant Contract specific to this Project shall require Consultant to submit itemized invoices to County for moneys then owed ("Consultant Fees"). County shall provide the requesting Landowner(s) with copies of itemized invoices for such services promptly upon receipt of the invoice from the Consultant by County, provided, however, that County shall not be required to disclose any information on its attorneys' invoices that may be subject to attorney-client or work-product privilege. The requesting Landowner(s) shall pay to County, within thirty (30) days following County's written demand therefor, the full amount of all Consultant Fees; provided, however, the applicable Landowner shall have the right to dispute in writing any charges which it believes, in its reasonable business judgment, are incorrect, unreasonable or outside the scope of the approved Consultant Contract, within fourteen (14) days of County's provision of the itemized invoice. Failure to submit a written dispute within such fourteen (14) day period shall be deemed requesting Landowners' agreement to the accuracy and reasonableness of such charges. If a requesting Landowner timely disputes a charge, County shall require Consultant to provide a good faith, written explanation. If, after consultation with requesting Landowner(s), County finds the cost or fee is incorrect, unreasonable or outside the terms of the approved Consultant Contract, County shall require that Consultant reduce its charges accordingly. If County finds the cost or fee is correct, reasonable and within the scope of the approved Consultant Contract, then requesting Landowner(s) shall pay to County the full amount of such Consultant Fees within thirty (30) days following such

determination. Any reduction shall be credited against requesting Landowner's next invoice or promptly refunded in the event the dispute relates to a final invoice. If the requesting Landowner makes a timely objection to a final invoice, payment shall be withheld for up to thirty (30) days to permit County to determine, in light of requesting Landowner's objections, whether the charges will be rejected. The Consultant Fees shall be in addition to, and not in lieu of, the Processing Fees; provided, however, County agrees not to double charge Developers (through the imposition of both a Processing Fee and a Consultant Fee) for any individual monitoring, inspection, testing or evaluation service. As an example, and without limitation, the provision by County employees of supervisory, oversight, review, quality control, or similar functions relating to work performed by Consultants shall not be deemed double charging. The County may, in its sole discretion, choose to include in the scope of work for a service contract with a Consultant matters affecting topics or property other than property of a requesting Landowner; provided, however, the requesting Landowner shall only be responsible for the work related to the subject of its application. This provision shall not be interpreted to require a Landowner to pay to the County any amounts due to a Consultant, Consultants, or any outside attorney retained by the County for (1) matters unrelated to a pending application of a Landowner, or (2) legal disputes that may arise between a Landowner and the County under this Agreement, the Project Approvals or the Sales Participation Agreement.

3.12. Reimbursement for Initial County Costs. To reimburse the County for its actual costs to prepare, process, and publish (and, as to this Agreement, to execute and record) the Final EIR, Specific Plan, and this Agreement, including all third party consultants fees and costs and County staff time and costs ("**Initial County Costs**"), prior to issuance of each building permit for a new primary residential unit within the Property, the Landowner applying for such building permit(s) shall pay, per residential unit, the Reimbursement Amount multiplied by the applicable Interest Rate, as those terms are defined and calculated in ~~Exhibit H to Ordinance No. 2010-1710~~. ~~Exhibit H to Ordinance No. 2010-1710~~ shall set forth the terms for Interest Rate and calculation of interest that shall be applied pursuant to this Section 3.12. By this reference, the provisions of ~~Exhibit H to Ordinance No. 2010-1710~~ are fully incorporated into this Agreement. The County shall tabulate the amount of the Initial County Costs by the earlier of: (1) the date on which the Specific Plan is published following recordation of the Master Development Agreement; or (2) one hundred and twenty (120) days after the approval of the Enacting Ordinance. Within thirty (30) days following tabulation of the Initial County Costs, the County shall provide written notice of the amount of the Initial County Costs to the Developers. This Section shall not apply to building permits relating to Existing Buildings, including but not limited to reconstruction or replacement of Existing Buildings. Any Landowner has the right, in its sole discretion, to pay the amount due under this Section 3.12 at any time after the Effective Date.

3.13. Timing of Commencement of Construction and Completion. Except as expressly provided in this Agreement or the Existing Project Approvals, Developers shall have the vested right to develop the Project in such order, at such rate and at such times as each Landowner deems appropriate in the exercise of its business judgment. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. County 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. The Parties acknowledge that, except as otherwise provided for in this Agreement or the Specific Plan, Developers shall have the vested right to develop their respective portion of the Property in such order and at such rate and at such times as each Landowner deems appropriate in the exercise of its business judgment. Accordingly, except as provided in Section 3.15 of this Agreement, no New County Law shall constrain Landowner's vested right to proceed with development at such rate and at such times as each Landowner deems appropriate in the exercise of its business judgment.

3.14. Copies of Applicable County Regulations and Project Approvals. Prior to the Effective Date of this Agreement, the Parties shall prepare copies of the Project Approvals and Applicable County Regulations applicable to the Project as of the Effective Date, one (1) set for County and one (1) set for each Landowner who requests a copy, so that if it becomes necessary in the future to refer to any of the Project Approvals or Applicable County Regulations, there will be a common set available to the Parties. Failure to include in the sets of copies of Project Approvals and Applicable County Regulations any rule, regulation, policy, standard or specification that is within the Applicable County Regulations and Project Approvals as described in this Agreement shall not affect the applicability of such rule, regulation, policy, standard or specification.

3.15. New County Laws: Reservations of Authority. New County Laws shall not be applicable to the Property except as otherwise provided in this Section. The parties acknowledge and agree that County is restricted in its authority to limit its police power by Development Agreement and that the limitations, reservations and exceptions contained in this Section are intended to reserve to County all of its police power which cannot be so limited by Development Agreement. This Agreement shall be construed to reserve to County all such power and authority which cannot be restricted by Development Agreement. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Property:

3.15.1. Processing Fees and charges of every kind and nature imposed by County, including planning processing deposits, to cover the actual costs to County of processing applications for Project Approvals, or for monitoring compliance with any Project Approvals granted or issued, as such fees and charges are adjusted from time to time.

3.15.2. Ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines, procedures or other laws or regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided that such ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines, procedures or other laws or regulations are uniformly applied on a County-wide basis to Development Projects and properties.

3.15.3. Regulations governing construction standards and specifications for the physical construction of buildings and related improvements and infrastructure, including County's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in County at the time of permit application.

3.15.4. New County Laws which may be in conflict with this Agreement or the Project Approvals but which are necessary to protect persons or property from dangerous or hazardous conditions which create a threat to the public health or safety or create a physical risk, based on findings by the Board of Supervisors identifying the dangerous or hazardous conditions requiring such changes in the law, why there are no feasible alternatives to the imposition of such changes, how such changes would alleviate the dangerous or hazardous condition, and how the changes are narrowly tailored to address the dangerous or hazardous condition.

3.15.5. New County Laws applicable to the Property, which do not conflict with this Agreement and/or the Project Approvals, provided such New County Laws are uniformly applied on a County-wide basis to Development Projects and properties.

3.15.6. Connection Fees then applicable in the County.

3.15.7. New County Laws not relating to the permitted uses of the land, the density or intensity of use, the maximum height and size of proposed buildings, dimensions or locations of building areas, Impact Fees, Exactions, the subdivision of land, or requirements for infrastructure, public improvements, or public utilities, the rate of development of the Property, reservation or dedication of land for public purposes, parking requirements, development, design, improvement, or construction standards, provided such New County Laws do not conflict with Existing Approvals and are uniformly applied on a County-wide basis to Development Projects and properties.

3.15.8. New Other Laws.

3.16. Developers' Contest of Applicability of New County Laws. If a Landowner believes that the application of any New County Laws to the Project (i) prevents or precludes compliance with one or more provisions of the Project Approvals or this Agreement, or (ii) has the effect of materially impeding or preventing development of the Project in accordance with the Project Approvals or this Agreement, a Landowner wishing to contest the application of such New County Law shall give written notice to the County of such issue, including stating the basis upon which the landowner believes a New County Law is not applicable to the Property or to a portion of it. Landowner's written notice shall explain the factual and legal reasons how the application of New County Law would materially and adversely affect the Landowner's rights under this Agreement. The County shall respond in writing to the Landowner's notice within forty-five (45) days of receipt of such notice.

If the County does not provide a written response that resolves the issue, at the Landowner's request, the parties shall meet and confer in good faith within 30 days of Landowner's request. The parties shall meet and confer, as necessary and appropriate, for a period of sixty (60) days to determine whether any modification, extension or suspension of this Agreement is necessary to comply with such New County Laws. The period to meet and confer may be extended by mutual agreement of the parties. It is the intent of the Parties that any such modification or suspension be limited to that which is necessary, and to preserve to the extent possible the original intent of the Parties in entering into this Agreement.

If after meeting and conferring, the parties fail to find a mutually agreeable solution to modify, extend or suspend this Agreement in order to achieve compliance with such New County Laws or determine that the New County Laws are not applicable to the Project, then Landowner shall have the right, at its sole election, to either: (i) pursue litigation pursuant to Section 6.3 [Legal Actions], or (ii) to request that County cancel this Agreement as to Landowner's portion of the Property by mutual agreement, by giving a written request for cancellation to the County and Developers not earlier than sixty (60) days, nor more than one hundred eighty (180) days, after the last day of the period within which the parties are to meet and confer; provided, however, that before such Landowner shall submit such request for cancellation, the requesting Landowner shall give at least sixty (60) days written notice of its intent to request cancellation to the County. Nothing in this Agreement shall be deemed a waiver of Developers' right to challenge or contest the validity or applicability of any New Other Laws.

3.17. Moratorium Not Applicable. Notwithstanding anything to the contrary contained herein, in the event an ordinance, resolution or other measure is enacted, whether by action of the County, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development or a voter-approval-for-development requirement that affects the Project on all or part of the Property, the County agrees that such ordinance, resolution or other measure shall not apply to the Property or this Agreement unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code section 8558 or is within the reservations of authority set forth in Section 3.15, provided that any such moratorium shall extend only for the duration of such emergency.

3.18. Initiatives and Referenda. If any New County Law is enacted or imposed by an initiative or referendum, which New County Law would conflict with the Project Approvals, Applicable County Regulations or this Agreement or reduce the development rights or assurances provided by this Agreement, such New County Law shall not apply to the Property ; provided, however, the Parties acknowledge that County's approval of this Agreement is a legislative action subject to referendum. Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, use permits, building permits or other entitlements to develop or use the Property that are approved or to be approved, issued or granted by County shall apply to the Property unless the limitation is within the reservations of authority set forth in Section 3.15. Developers agree and understand that County does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project. County shall cooperate with each Landowner, and, at a requesting Landowner(s) expense, shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect according to its terms. County may take all appropriate actions to submit to vote of the electorate initiatives and referenda required by law to be placed on a ballot and to fulfill any legal responsibility to defend a ballot measure passed by its voters.

3.19. Regulation by Other Public Agencies. Developers acknowledge and agree that other public agencies not within the control of County, including but not limited to, the Fairfield-Suisun Unified School District, Bay Area Air Quality Management District, the San Francisco Bay Regional Water Quality Control Board, California Department of Fish and Game, United States Fish and Wildlife Service and/or United States Army Corps of Engineers, may possess

authority to regulate aspects of the development of the Property separately from or jointly with County, and this Agreement does not limit the authority of such other public agencies. Each Landowner shall, at the time required by Landowner in accordance with Landowner's construction schedule, apply for and obtain all such other permits and approvals as may be legally required by any other applicable governmental or quasi-governmental entities with jurisdiction over the Project in connection with the development of, or the provision of services to, the Project. Each Landowner shall also pay all required fees to such public agencies when due. To the extent required by the County to confirm compliance with Project Approvals, each Landowner shall provide proof of such permits/approvals and/or payment of such fees to County prior to or concurrently with issuance of building permits for any portion of the Project for which such permits or approvals are required and/or fees are due. Developers acknowledge that County does not control the issuance of permits or approvals or the amount of any such fees. County shall cooperate with Developers in Developers' effort to obtain such permits and approvals; provided, however, County shall have no obligation to incur any costs, without compensation or reimbursement, nor to amend any County policy, regulation or ordinance in connection therewith. In the event that School Fees are imposed upon a Landowner that the Landowner believes in good faith are in excess of, or not otherwise required by state law and such Landowner wishes to object to such School Fees, the Landowner may pay such fees under protest; if a Landowner objects and pays School Fees under protest, the County agrees not to delay issuance of permits under these circumstances.

3.20. Life of Specific Plan. After the Term of this Agreement expires, the Specific Plan shall remain in effect unless and until amended, terminated or replaced consistent with all applicable law and procedure.

3.21. Insurance Requirements. During any period of construction of Project Public Improvements on the Property, any Landowner whose portion of the Property requires subdivision improvements shall procure and maintain, or cause its contractor(s) to procure and maintain for the duration of this Agreement a commercial general liability, workers compensation, and other types of insurance in limit amounts and on such forms that may be required by the County in its reasonable discretion and then commonly available in the commercial insurance marketplace. Developers' insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-VII or a rating otherwise approved by the County Counsel in his or her sole discretion. Such Landowner shall furnish at County's request appropriate certificate(s) of insurance evidencing the insurance coverage required by such Landowner hereunder, and the County of Solano and its elected and appointed officials, officers, agents, employees, contractors and representatives (collectively, "County Parties") shall be named as additional insured parties under the policies required hereunder. The certificate of insurance shall contain a statement of obligation on the part of the carrier to notify County of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination (ten (10) days advance notice in the case of cancellation for nonpayment of premiums) where the insurance carrier provides such notice to the Landowner. Coverage provided hereunder by such Landowner shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by County, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for

the benefit of County and its insurers, if such waiver is available in the commercial insurance marketplace.

3.22. TDR Program. Developers hereby consent to (1) participate in the procedure for the reallocation of development rights set forth in section 4.2.3 of the Specific Plan that provides for the reallocation of certain development rights in consideration for development rights resulting from the Specific Plan and this Agreement, including but not limited to the identification of allowable building areas and the requirement to record conservation easements as provided in section 4.2.3 of the Specific Plan, and (2) the compensation of certain Landowners pursuant to the Sales Participation Agreement for the loss of development density that they might have otherwise enjoyed but for the Specific Plan in order to provide for a planned and orderly mechanism for the development of certain areas of Middle Green Valley and the preservation of the rural and open space character and agricultural viability of other areas of Middle Green Valley (the "TDR Program"). The Developers' consent to participate in and be subject to the requirements of the TDR Program shall survive the termination or cancellation of this Agreement, until the TDR Program is later amended, modified or repealed in the Specific Plan in accordance with all applicable law. In addition, concurrent with the execution and recordation of this Agreement, the County and those Landowners defined as "Participating Owners" in Exhibit G [Sales Participation Agreement] shall execute and record in the Official Records the Sales Participation Agreement in substantially the form attached as Exhibit G. For the term of this Agreement, a default under the Sales Participation Agreement shall be considered a Default under this Agreement. It is the Parties intent that neither the TDR Program nor the Sales Participation Agreement cause or result in the reassessment of any Landowner's portion of the Property for property tax purposes (except as would otherwise be required by a change in ownership, sale or other transfer pursuant to applicable law, ("Reassessment") nor assessment of any ad valorem taxes on the Reallocated Units (as that term is defined in the Sales Participation Agreement) ("Ad Valorem Taxes"). In the unlikely event that the County Tax Assessor finds that this Section 3.23, the TDR Program and/or the Sales Participation Agreement causes or results in Reassessment or Ad Valorem Taxes, any affected Landowner and the County shall meet and confer in good faith and determine what modifications to the TDR Program, this Section and/or the Sales Participation Agreement are necessary to avoid Reassessment and/or Ad Valorem Taxes while still meeting the basic intent of the Specific Plan, the TDR Program, the Sales Participation Agreement and this Agreement. If the affected Landowner and the County determine in good faith that there are no modifications that can achieve this result, the TDR Program, this Section 3.23, and the Sales Participation Agreement, as appropriate, may be terminated as to the affected Landowner. Any such termination shall not affect the applicability of the remainder of the Specific Plan or this Agreement to the affected Landowner.

#### ARTICLE 4: UTILITIES

##### 4.1. Project Improvements.

4.1.1. Construction of Private Improvements. Each Landowner shall, at its own expense and in accordance with the Project Approvals, construct and maintain any and all improvements on such Landowner's portion of the Property, including any and all infrastructure that is necessary to serve the portion of the Project on such Landowner's Property,

that are not and will not be offered for dedication to the County for ownership, operation and maintenance ("Private Improvements").

4.1.2. Construction of Public Improvements. Each Landowner shall, in accordance with the Project Approvals, construct the water, sewer or street improvements necessary to serve the portion of the Project on such Landowner's portion of the Property. These improvements are to be offered for dedication to the County for ownership, operation and maintenance consistent with section 4.3 of the Specific Plan ("Public Improvements"). The County may, in its reasonable discretion at the time it reviews an application for subdivision within the Property, require a Landowner to oversize Public Improvements and/or stub Public Improvements to neighboring portions of the Property to serve other components of the Project to implement the Specific Plan. At such time, the County and Landowner shall establish the Constructing Landowner's share of such improvements and identify any potential Benefitted Landowners and pursuant to Section 4.1.6 of this Agreement, shall enter into a Reimbursement Agreement, if and only to the extent such Public Improvements are not to be paid for by a District or Districts.

4.1.3. Elkhorn Foothills Primary Access Road. The road that provides primary access to the proposed residential units in the Elkhorn Foothills (as such area is defined in the Specific Plan) from existing Mason Road ("Foothills Access Road") shall be dedicated to the County as a public road, (a) in connection with and as part of the approval of the first Final Map for any portion of the Elkhorn Foothills property with respect to the portion of such road that is located within the Elkhorn Foothills property, and (b) in connection with and as part of the approval of the first Final Map for any portion of the Elkhorn Neighborhood property with respect to the portion of such road that is located within the Elkhorn Neighborhood property, in each case, unless the Landowners that own the Property designated as the Elkhorn Foothills and the Elkhorn Neighborhood in the Specific Plan submit evidence acceptable to the County Counsel that the parties have entered into legally adequate permanent easement(s) to authorize access to the Elkhorn Foothills from Mason Road prior to the recordation of the first Final Map that includes the Foothills Access Road, provided, however, that such Landowners shall have the right to elect, in each party's sole and absolute discretion, whether or not to enter, into any such private easement(s). If the Foothills Access Road is dedicated as a public road, it shall be maintained to County standards in perpetuity by property owners served by the Foothills Access Road.

4.1.4. Financing of Public Improvements. Each Landowner who constructs Public Improvements consistent with Section 4.1.2 of this Agreement ("Constructing Landowner") shall be reimbursed for either: (i) such Constructing Landowner's actual and reasonable costs from a District, if a District is formed pursuant to Section 4.1.5 and includes such Public Improvement(s) or (ii) costs in excess of such Constructing Landowner's fair share of actual and reasonable costs from Benefitted Landowners by means of a Reimbursement Agreement executed pursuant to Section 4.1.6.

4.1.5. Districts and County Service Area. The County and the Developers intend that the construction of the Public Improvements be financed by a District or Districts which will encompass the Property and, to the extent other landowners outside the Specific Plan are interested or benefit and are made part of such District in accordance with all

applicable law, such other lands. The County and the Developers also intend that a County Services Area will own and operate the Public Improvements, and that such County Services Area will encompass the Property and, to the extent other landowners outside the Specific Plan are interested or benefit and are made part of such County Services Area and will pay special taxes or assessments in proportion to their share of the cost of any Public Improvements of which they are benefitted, in accordance with all applicable law, such other lands. The County agrees, at any Landowner's request, to cause a District(s) to be formed, in accordance with the procedures governing the creation of a District, to finance some or all of the Public Improvements. The County also agrees, at any Landowners request, to cause a County Service Area to be formed, in accordance with the procedures governing the creation of a County Services Area, to own and/or operate some or all of the Public Improvements. If no Landowner requests the formation of a District and/or County Services Area, the County may form such District and/or County Services Area at any time. The Developers consent to formation of such District(s) and/or County Service Area, and to the assessments or taxes ratably allocated to each Landowner's portion of the Property by the District(s) and/or County Service Area. The Developers consent to having the Property included within the District and/or County Service Area. The County and the Developers agree to cooperate and use best efforts to assist in the County's formation of the District or Districts and in any District's performance of its responsibilities on behalf of the County. The County and Developers agree that, unless the County and a Landowner, with respect to such Landowner's portion of the Property only agree otherwise, the assessments or special taxes for any District formed will be collected from any parcels only after such parcel has at least received approval of a Tentative Map, and then only to the extent of the number of residential or commercial lots included in such Tentative Map. The Landowner(s) requesting formation of any District(s) shall pay for and/or reimburse the County for the actual costs related to formation of the District, and may recover such actual costs for formation of such District(s) from other Benefitted Landowners by means of a Reimbursement Agreement (as such terms are defined in Section 4.1.6. below). If the County, in its sole discretion, elects to forms a District(s) without the request of a Landowner(s), the actual costs for formation of such District shall be added to the amount of the Initial County Costs pursuant to Section 3.12.

4.1.6. Reimbursement Agreement. In the event that the County has not formed a District or Districts to finance some or all of the Public Improvements pursuant to this Agreement by the time a Constructing Landowner has constructed one or more Public Improvements that serve more than the Constructing Landowner's portion of the Property as may be required by the County under Section 4.1.2, at a Constructing Landowner's request, the County shall enter into a reimbursement agreement with the Constructing Landowner, in a form acceptable to the County Counsel, that provides for the County to require any future Landowner whose portion of the Property is benefitted by the Constructing Landowner's construction of Public Improvements ("Benefitted Landowner") to pay the County its share of the actual and reasonable costs of construction of such Public Improvements prior to recordation of a final map on the Benefitted Landowner's property for reimbursement by the County to the Constructing Landowner ("Reimbursement Agreement").

4.2. Acceptance of Public Improvements and Certificate of Satisfaction. Each Landowner's obligations with respect to construction of all Public Improvements, including performance and labor and materials security and warranty obligations, and County's obligations

with respect to acceptance thereof, shall be set forth in a Public Improvements agreement in a form reasonably acceptable to the County Counsel. Within sixty (60) days after a Landowner's written request which may be made at any time following acceptance of a Public Improvement by the County pursuant to such public improvements agreement, the County shall issue a certificate of satisfaction evidencing the satisfaction of the applicable Public Improvement obligation.

4.3. Infrastructure Easements and Rights of Way. The County and Developers shall cooperate in connection with any arrangements for granting, abandoning or relocating existing, or creating any new, utility or other easements, facilities, property rights or rights of way (collectively, "ROW"), necessary to effectuate the development of Public Improvements to implement the Specific Plan; and if any such ROW is owned by a Landowner, the County, or an agency of the County, then each Landowner, the County or such agency of the County shall, at the request of a Landowner, subject to the rights of any third Person with respect thereto, take such actions and execute such documents as may be necessary to grant, abandon, relocate and/or revest such ROW, as necessary in connection with the development Public Improvements to implement the Specific Plan. The Landowner requesting such cooperation from the County shall reimburse the County for all costs and expenses incurred by the County in connection with this Section 4.3. Any Landowner requesting any new ROW over another Landowner's property will cooperate with the affected Landowner to locate such new ROW such that it does not affect current or future development and/or uses of the property, to the maximum extent feasible. Any requested abandonment or relocation of a ROW pursuant to this Section 4.3 shall provide that any rights and/or benefits under such existing ROW shall be substantially and adequately replaced by any new ROW and/or the resulting Public Infrastructure (including, if necessary, any interim rights pending completion of the resulting Public Infrastructure). In no event shall the owner of the property designated in the Specific Plan as the Elkhorn Foothills be required to grant, abandon, relocate, or otherwise modify any existing ingress and egress easement benefitting the Elkhorn Foothill property without such landowner's consent, which may be granted or withheld in such landowner's sole and absolute discretion.

4.4. Master CC&Rs. Concurrent with submitting an application for the first Final Map on the Property that includes residential units, the Landowner submitting such application shall submit a set of Master Covenants, Conditions and Restrictions ("Master CC&Rs") to apply to the entire Property, together with proposed Association Governing Documents for a Master Property Owners' Association. The Master CC&Rs and Association Governing Documents shall be reviewed and approved by the Developers and the County Counsel prior to or concurrent with recordation of the first Final Map. Approval of the Master CC&Rs shall not be unreasonably delayed, conditioned or withheld. In the event that a reviewing Landowner does not provide comments in writing to the submitting Landowner within sixty (60) days of receipt of the proposed Master CC&Rs, then such reviewing Landowner shall be deemed to have approved the Master CC&Rs as submitted. In the event the submitting and any reviewing Landowners cannot reach agreement on any of the terms of the Master CC&Rs, either the submitting or a reviewing Landowner may provide written notice to the Director of the disagreement and request the Director make a determination to resolve the dispute. The Director, in consultation with the County Counsel and after consulting with the submitting and reviewing Landowners as necessary, shall review the request and shall promptly do one of the following, in his or her discretion: (i) decline to make the determination (ii) submit his or her

determination to the submitting and reviewing Landowners. If the Director declines to make the determination, then if the reviewing and submitting Landowner(s) cannot reach agreement in good faith, they may seek any remedy available under Section 6.3 [Legal Actions] of this Agreement. If the Director makes a determination, any affected Landowner may appeal such determination to Board of Supervisors. If the Board of Supervisors confirms the Director's determination over the objections of an affected Landowner, such affected Landowner may seek remedies under Section 6.3 [Legal Actions] of this Agreement if such Landowner has justifiable cause to believe such determination is inconsistent with this Agreement or the Existing Project Approvals. The Master CC&Rs shall include any conditions, covenants, or restrictions, disclosures or other provisions, and the Association Governing Documents shall include any provisions, determined by the County Counsel to be reasonably necessary to implement the Project Approvals, Applicable Law, and the provisions of this Agreement (provided, however, that the Master CC&Rs and Association Governing Documents shall not be required by County, to include any provision that is inconsistent with the requirements of the California Department of Real Estate in connection with a public report, the Subdivided Lands Act, or the Regulations promulgated thereunder and the County agrees to approve any amendments to the Master CC&Rs and Association Governing Documents that are required by the California Department of Real Estate), as well as such other matters as each Landowner may wish to include in the Master CC&Rs which the County Counsel determines will not interfere with implementation of the Project Approvals, Applicable Law and the provisions of this Agreement. The Master CC&Rs shall specifically include such conditions, restrictions, disclosures and other provisions, determined by the County Counsel to be reasonably necessary to ensure that future residents are fully notified of the existence, and continuance and/or expansion of, agricultural activities within the Property and to minimize the potential for future residents to interfere with such agricultural activities, consistent with the goals and policies of the Specific Plan. Once approved, the Master CC&Rs shall be filed of record by the Landowner recording the first Final Map on the portion of the Property included in such Final Map. Prior to their recordation, the Master CC&Rs shall be reviewed and approved by the County Counsel, whose signature shall be affixed to the Master CC&Rs. Each Landowner submitting applications for a Final Map after recordation of the Master CC&Rs shall annex the portion of such Landowner's Property to the Master CC&Rs concurrent with recordation of such Final Map.

Each Landowner retains the right to record additional CC&Rs specific to such Landowner's portion of the Property, so long as such CC&Rs are consistent with the Master CC&Rs and the Project Approvals, Applicable Law and the provisions of this Agreement. Prior to recordation of any such additional CC&Rs, such additional CC&Rs shall be reviewed and approved by the County Counsel, whose signature shall be affixed to the such additional CC&Rs.

4.4.1. Review And Alteration Of CC&Rs. Any amendments or revisions to any CC&Rs or Association Governing Documents shall be reviewed and approved by the County Counsel for the purpose of ensuring continued compliance with the Project Approvals, Applicable Law, and the provisions of this Agreement. No amendments or revisions to CC&Rs shall be recorded against the Property or any portion thereof, without written verification thereon by the County Counsel that the County has reviewed and approved such amendments or revisions for compliance with this Section 4.4.1. The County Counsel shall perform such review promptly upon request. The CC&Rs may specify sections which, once reviewed and approved by County Counsel, are subsequently exempt from this Section.

4.4.2. Enforcement of CC&Rs. The County shall have the power to enforce the CC&Rs, including the Master CC&Rs, without limiting other enforcement, to the extent the enforcement of provisions of such CC&Rs is necessary to ensure compliance with the Project Approvals, Applicable Law and this Agreement. The CC&Rs shall not grant to any person or entity any right of action against the County under the CC&Rs, and the County shall have no liability or obligation thereunder.

4.5. Formation of the Conservancy. The Parties acknowledge that prior to the Effective Date of this Agreement, certain Landowners have formed a non-profit organization that is intended to perform the role of the Conservancy. At least 120 days prior to approval of the first Final Map on the Property, the Landowner requesting approval for such Final Map ("Submitting Landowner") shall submit to the County all the existing formation documents for the Conservancy ("Conservancy Formation Documents"). The Submitting Landowner shall submit these Conservancy Formation Documents to all other Landowners concurrent with the submittal to the County and provide at least thirty (30) days to provide comments to the Submitting Landowner and the County. The Conservancy Formation Documents shall be reviewed and approved by the County Counsel for consistency with the Project Approvals, Applicable Law, and the provisions of this Agreement prior to recordation of the first Final Map. The County Counsel, prior to approval of the Conservancy Formation Documents, shall submit a report regarding the County Counsel's findings and proposed approval to the Board of Supervisors for consent. Upon receipt of the Board of Supervisors consent, the County Counsel shall issue written approval to the Submitting Landowner. The final Conservancy Formation Documents, revised as necessary to address the comments of the County Counsel pursuant to this Section 4.5, shall provide that the membership of the first Board of the Conservancy include representatives of Landowners of the majority of the ownership (by acreage) within the Property and shall include any provisions, determined by the County Counsel to be reasonably necessary to implement the Project Approvals, Applicable Law and the provisions of this Agreement.

4.5.1. Transfer Fees to Fund Conservancy. Prior to recordation of any final map on the Property, each Landowner agrees to record in the Official Records an enforceable, perpetual covenant ("Transfer Fee Covenant") as to all land within such final map to establish a transfer fee payable to and for the benefit of the Conservancy as follows: (i) three percent (3%) of the Gross Sales Price of the first sale of any Improved Real Estate following recordation of the Transfer Fee Covenant and one percent (1%) of every subsequent sale of such improved real estate and (ii) one percent (1%) of Gross Sales Price of any Unimproved Real Estate ("Transfer Fee"). It is the Parties' intent that upon the first sale of each new primary residential or commercial structure developed on the Property a Transfer Fee of three percent (3%) of the Gross Sales Price will be collected to fund the Conservancy. For example only, if a Landowner received approval of a subdivision that included a parcel of sixty acres and constructed a single new primary residential structure which was then sold with the entire parcel, a Transfer Fee of 3% would apply. If that sixty-acre parcel were later further subdivided into six ten-acre parcels, one parcel containing the original structure and an additional five primary residential structures were developed on the remaining five parcels, the portion containing the original residential structure would be subject to a Transfer Fee of 1% on future sales, and a Transfer Fee of 3% would be collected at the time of the first sale of the new additional five primary residential structures. In addition to the Transfer Fee Covenant, each Landowner shall concurrently record a "Payment of Transfer Fee Required" disclosure notice

(the "Transfer Fee Notice") which meets the requirements of California Civil Code section 1098.5. The Transfer Fee Covenant and Transfer Fee Notice may exempt certain transfers from the Transfer Fee such as (i) a transfer through foreclosure; (ii) a transfer pursuant to a reorganization or restructuring; (iii) a spousal transfer; (iv) a transfer resulting from a court order, dissolution of a marriage, or by operation of law; or (v) a transfer made in connection with estate planning, or by will, devise or bequest. The Transfer Fee Covenant and Transfer Fee Notice shall be reviewed and approved by the County Counsel prior to recordation of the Transfer Fee Covenant and Transfer Fee Notice.

4.5.2. Review and Amendment to Conservancy Documents. Once approved, any amendments or revisions to the Conservancy Formation Documents, the Transfer Fee Covenant or Transfer Fee Notice shall be reviewed and approved by the County Counsel for the purpose of ensuring continued compliance with the Project Approvals, Applicable Law and the provisions of this Agreement. No amendments or revisions to Conservancy Formation Documents, Transfer Fee Covenant or Transfer Fee Notice shall be made without written verification thereon by the County Counsel that the County has reviewed and approved such amendments or revisions for compliance with this Section 4.5.2. The County Counsel shall perform such review promptly upon request. The Conservancy Formation Documents and/or Transfer Fee Covenant may specify sections which, once reviewed and approved by County Counsel, are subsequently exempt from this Section.

4.6. Condemnation. In the event of a Material Condemnation, an affected Landowner may (i) request the County to amend this Agreement in accordance with the Development Agreement Law and/or to amend the Project Approvals or Applicable County Regulations; (ii) decide, in its sole discretion, to challenge the condemnation, or (iii) request that County agree to cancel this Agreement as to an affected Landowner's portion of the Property by mutual agreement, which agreement shall not be unreasonably withheld, by giving a written request for cancellation to the County. If the condemnation is not a Material Condemnation, then an affected Landowner shall have no right to request cancellation of this Agreement pursuant to this Section 4.6. If the condemnation is a Material Condemnation, but an affected Landowner chooses to challenge such condemnation, the Term of this Agreement shall be extended as set forth in Section 2.2.2. [Excused Delay]. The period of delay shall be measured from the date of the filing of the eminent domain complaint to the date a court issues an order of possession in favor of the County or such other condemning agency or the date the condemnation action is dismissed. If the court rejects any right to take challenges and issues an order of possession, an affected Landowner shall have the rights described in clauses (i) and (iii) above.

## ARTICLE 5: AMENDMENTS & SUBSEQUENT PROJECT APPROVALS

5.1. Amendment. Except as expressly provided in Section 5.2 below, this Agreement may be amended only by mutual written consent of all of the Parties hereto or their successors-in-interest or assignees. Any amendment shall require giving of notice and a public hearing before the Planning Commission and Board of Supervisors consistent with the Development Agreement Law and shall be recorded in the Official Records.

5.2. Modifications Delegated to the Director. The Director is delegated the authority to make the modifications to this Agreement expressly provided in Sections 5.2.1, 5.2.2 and 5.2.3 below.

5.2.1. Clerical and Conforming Revisions. The Director is authorized to correct typographical errors, references to draft documents, statutes, ordinances, page numbers, maps, and make similar clerical and conforming changes to this Agreement, the Specific Plan, or to any of the documents contemplated herein. If the Director elects to record any revised version of a previously-recorded document contemplated by this Agreement in order to reflect any clerical and conforming changes: (i) Director shall provide Developers with 30 days written notice of intent to record the revised document; (ii) the Parties agree that after 30 days notice Director may record the revised document; and (iii) the Parties agree that the date upon which the original version of the document was recorded shall remain and be deemed to be that document's date of recordation.

5.2.2. Incorporation and Identification of Subsequent Project Approvals. The Director is authorized to, upon request by any Landowner or at his or her discretion, execute and record in the Official Records a Notice of Subsequent Project Approval.

5.2.3. Administrative Adjustments. The Director is authorized, in his or her discretion, to enter into Administrative Adjustments. The Landowner requesting an Administrative Adjustment ("Requesting Landowner") shall provide written notice to all non-requesting Landowners and the Director of any proposed Administrative Adjustments citing this Section 5.2.3 and provide at least thirty (30) days for the non-requesting Landowners to object in writing to the Requesting Landowner and the Director that the proposed amendment does not qualify as a Administrative Adjustment. If the Director approves an Administrative Adjustment, the Director shall promptly submit a report regarding such Administrative Adjustment to the Board of Supervisors. If the Board of Supervisors confirms the Director's approval, the Administrative Adjustment shall become effective after both, and upon the later of, (y) the Board's acceptance of the Director's report and (z) the full execution of such Administrative Adjustment by the Requesting Landowner and the Director. If the Director approves an Administrative Adjustment over the written objection of a non-requesting Landowner(s), such Landowners may publicly oppose the Director's decision at the time the Director reports to the Board of Supervisors. If the Board of Supervisors confirms the Director's decision over the objections of a non-requesting Landowner, such objecting Landowner may seek remedies under Section 6.3 [Legal Actions] of this Agreement if such non-requesting Landowner has justifiable cause to believe such amendment does not qualify as an Administrative Adjustment pursuant to this Section 5.2.3. Any Administrative Adjustment shall only be recorded against the Requesting Landowner's portion of the Property.

5.3. County Processing of Subsequent Project Approvals. The County and Developers agree that Developers must be able to proceed efficiently with the development of the Property and that, accordingly, an efficient County review and land development and construction inspection process is necessary. Accordingly, the County agrees that upon submission by any Landowner of all appropriate applications and processing fees, County shall, to the full extent allowed by law, promptly and diligently, subject to Applicable Law, use all good faith efforts to commence and complete all steps necessary to act on any such Landowner's currently pending

applications for Subsequent Project Approvals, including: (i) providing at a requesting Landowner's expense reasonable overtime staff assistance and Consultants pursuant to Section 3.11 for expedited planning and processing of each pending application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such pending application. All Subsequent Project Approvals shall be deemed incorporated herein and vested as of the approval date of such approvals and shall be governed by the terms and conditions of this Agreement.

5.4. CEQA. The Parties acknowledge and agree that the mitigation measures identified in the EIR, as applicable, will be applied to each portion of the Project as enforceable conditions of approval. The Parties understand that the EIR is intended to be used not only in connection with the Existing Approvals, but also in connection with necessary Subsequent Project Approvals. However, the Parties acknowledge that, depending on the scope of the project described in any Landowner's application(s), certain discretionary Subsequent Project Approvals, may legally require additional analysis under CEQA. Notwithstanding any other provision of this Agreement, nothing contained herein is intended to limit or restrict the discretion of the County to comply with CEQA. However, the County shall not undertake additional environmental review nor impose new or additional mitigation measures on the Project other than as provided by Public Resources Code section 21166 and the CEQA Guidelines. To the extent supplemental or additional review is required in connection with Subsequent Project Approvals, Developers acknowledge that County may require additional mitigation measures necessary to mitigate significant impacts that were not foreseen at the time this Agreement was executed.

5.5. Term of Subsequent Project Approvals. The term of any Subsequent Project Approvals (including any amendments and modifications thereto) shall be the longer of: (i) ten (10) years, as measured from the Effective Date of this Agreement, (ii) such period established in the discretion of the County, at the time such approval is granted, but not beyond the Term of this Agreement, or (iii) the time period otherwise authorized by law for such Subsequent Project Approval if such authorized period would extend beyond the Term of this Agreement.

## ARTICLE 6: DISPUTES, DEFAULT, REMEDIES

### 6.1. Default.

6.1.1. Remedies In General. County and Developers agree that, following notice and expiration of any applicable cure periods, in the event of Default by County, the Parties intend that the primary remedy for Developers shall be specific performance of this Agreement. A claim by a Landowner for actual monetary damages against County may be considered only if specific performance is not granted by the Court and then only to the extent provided by law. In no event shall any Party be entitled to any consequential, punitive or special damages. In the event of any Default by a Landowner hereunder, County, following notice and expiration of any applicable cure periods, shall be entitled, in addition to its other rights and remedies specified herein, to pursue any remedies available at law or in equity, including recovery of actual damages from the defaulting Landowner.

6.1.2. Cure Period. Subject to extensions of time by mutual consent in writing of the parties and the provisions of Section 2.2.2 [Excused Delay] herein, breach of, failure, or delay by the County or any Landowner to perform any term or condition of this Agreement shall constitute a Default ("Default"). In the event of any alleged Default of any term, condition, or obligation of this Agreement, the party alleging such Default shall give the defaulting party notice in writing specifying the nature of the alleged Default and the manner in which such Default may be satisfactorily cured ("Notice of Breach"). In the event of Default by one of the Landowners to this Agreement ("Defaulting Landowner"), any non-defaulting Landowners will not be considered to be in Default under this Agreement. Enforcement actions against a Defaulting Landowner shall not be brought against any Landowners not in Default. The defaulting party (County or Defaulting Landowner) shall cure the Default within forty-five (45) days following receipt of the Notice of Breach, provided, however, if the nature of the alleged Default is such that it cannot reasonably be cured within such forty five (45) day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no Default shall exist and the noticing party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting party having alleged Default may exercise any of the remedies available under Section 6.1.3 [Procedure for Default by Defaulting Landowner] or Section 6.1.4 [Procedure for Default by the County].

6.1.3. Procedure for Default by Defaulting Landowner. If Defaulting Landowner is alleged to be in Default hereunder by one or more of the other Parties to this Agreement, then after notice and expiration of the cure period specified in Section 6.1.2 above, the County may institute legal proceedings against the Defaulting Landowner pursuant to this Agreement, and/or give notice of intent to terminate or modify this Agreement as to the Defaulting Landowner's portion of the Property to Defaulting Landowner pursuant to California Government Code section 65868. Following notice of intent to terminate or modify this Agreement as provided above, the matter shall be scheduled for consideration and review in the manner set forth in Government Code sections 65865, 65867 and 65868 by the Board of Supervisors within thirty (30) calendar days following the date of delivery of such notice (the "Default Hearing"). Following the consideration of the evidence presented in such review before the Board of Supervisors and a determination, on the basis of substantial evidence, by a majority vote of the Board of Supervisors that a Default by Defaulting Landowner has occurred, the County may give written notice of termination of this Agreement to Defaulting Landowner, and this Agreement shall be deemed modified or terminated as to the Defaulting Landowner and the Defaulting Landowner's portion of the Property only as of the date of delivery of such notice; provided, however, that, if such termination or modification occurs because of a Default of Defaulting Landowner hereunder after this Agreement has been assigned so that it applies to more than one entity as "Landowner" then such termination or modification shall relate only to that specific portion of the Property as may then be owned by the Defaulting Landowner that committed a Default hereunder and not to any other portion of the Property owned by a different entity. This Section shall not be interpreted to constitute a waiver of section 65865.1 of the Government Code, but merely to provide an element of the procedure by which the Parties may take the actions set forth in section 65865.1.

6.1.4. Procedure for Default by the County. If the County is alleged by one or more Landowners to be in Default under this Agreement, then after notice and expiration of the cure period specified in Section 6.1.2 above, the Landowner(s) may enforce the terms of this Agreement by an action at law or in equity, subject to the limitations of Section 6.1.1 [Remedies in General] and compliance with federal and state law. Any Landowner intending to enforce the terms of this Agreement by an action in law or equity ("Enforcing Landowner") shall, in addition to the requirements of Section 6.1.2, notify all other Landowners in writing and provide such Landowners thirty (30) days notice of their option to join in such action. Upon request, the Enforcing Landowner shall meet and confer in good faith with any other Landowners to determine if additional Landowners have any objections to such action, or should be a party to such action. If a Landowner has been notified of the right to enforce the terms of this Agreement against the County under this Section 6.1.4, and either does not timely respond to such notice, or expressly opts not to join in such action, such Landowner shall be conclusively deemed to have waived its right to enforce on the same factual and/or legal issues raised by the Enforcing Landowner's notice.

6.1.5. Annual Review. Evidence of Default may also arise in the course of the regularly scheduled annual review of this Agreement pursuant to California Government Code section 65865.1 as described in Section 6.2. [Annual Review] herein. If any Party alleges that another Party is in Default following the completion of the normally scheduled annual review, such Party may then give the other a written Notice of Breach, in which event the provisions of this Section 6.1 [Default] shall apply. In addition, the regularly scheduled annual review of this Agreement may, following compliance with the requirements of Section 6.1.2 [Cure Period], serve as the Default Hearing for any alleged Default by Developers as described in Section 6.1.3. [Procedure for Default by Defaulting Landowner] herein.

## 6.2. Annual Review.

6.2.1. Purpose. As required by California Government Code section 65865.1 and Article 5 of the Development Agreement Rules, the County and Developers shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months from the Effective Date to determine good faith compliance with this Agreement for the Term of this Agreement. Specifically, the County's annual review shall be conducted for the purposes of determining compliance by the respective Landowners with their individual obligations under this Agreement.

6.2.2. Conduct of Annual Review. The annual review shall be conducted as provided herein:

(a) No earlier than November 5th and no later than November 20<sup>th</sup> (or other such longer time period as may be provided in the Development Agreement Rules as may be amended from time to time) every year following the Effective Date, each Landowner shall provide documentation of its compliance with this Agreement during the 12 months preceding (November of the preceding calendar year to October of the year in which the form is submitted), including a completed Annual Review Form in the form provided in Exhibit F [Annual Review Form] and such other information as may be requested by the Director and a processing fee of TWENTY-FIVE DOLLARS (\$25.00) or of such successor amount as may

from time to time be set by resolution of the Board of Supervisors after the Effective Date. The County shall endeavor to mail a reminder notice to each owner between October 1<sup>st</sup> and October 31<sup>st</sup> of every year to the notice recipient listed in Section 8.5 of this Agreement; provided that any failure of the County to send a reminder shall not constitute a Default or waiver by the County of its rights to otherwise enforce the provisions of this Agreement nor shall a Landowner have or assert any defense to such enforcement by reason of any such failure to send a reminder letter.

(b) If the Director finds good faith compliance by a Landowner with the terms of this Agreement, the Director shall issue a certification of compliance, which shall be in recordable form and which may be recorded by such Landowner in the Official Records once the appeal period in subsection 6.2.2(e) below has expired with no appeal pending, and the review for that period shall be concluded for that year. If all Landowners are found to be in compliance, the Director shall issue one certificate of compliance that applies to the Property.

(c) If the Director, on the basis of substantial evidence, is not satisfied that one or more Landowners are performing in accordance with the terms and conditions of this Agreement, or if the Director has any doubts concerning a Landowner's performance, the Director shall specify in writing to such Landowner the terms with which the Landowner has failed to comply or for which the Director requires more information to confirm compliance and specify a reasonable time for the Landowner to provide such information and/or come into compliance. If the Landowner provides satisfactory information to confirm compliance in response to the Director's written request, the Director may issue a certification of compliance per subsection 6.2.2(a) above. If the Landowner does not timely provide satisfactory information to confirm compliance in response to the Director's written request, then the Director may, at his or her discretion, either refer the matter to the Planning Commission or make a determination of non-compliance and proceed with the County's remedies under Article 6 of this Agreement, including but not limited to, modification or termination of this Agreement, in accordance with California Government Code section 65865.1.

(d) If the Director refers the matter to the Planning Commission, the Director shall notify the Landowner in writing at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission. This notice shall include the time and place of public hearing, a copy of Director's report and recommendations, if any, and any other information the Director deems necessary to inform the Landowner of the nature of the proceeding. The Planning Commission shall conduct a public hearing on the referral in accordance with section ~~28,106-53~~ of the County Code and the Developers shall be given an opportunity to be heard at the hearing. The findings of the Planning Commission on whether one or more of Landowners have complied with this Agreement for the period under review shall be based upon substantial evidence in the record. If the Planning Commission makes a finding of good faith compliance the Planning Commission shall direct the Director to issue a certification of compliance pursuant to subsection 6.2.2(a) above and the review for the period shall be concluded. If the Planning Commission makes a finding of noncompliance, the Planning Commission may, in its discretion, either (i) issue a reasonable time for compliance to the Landowner and direct the Director to bring the matter back to the Planning Commission for further review under this subsection or (ii) direct the Director to proceed to undertake such remedies as the County determines to be appropriate with reference to the County's remedies

under Article 6 of this Agreement, including but not limited to modification or termination of this Agreement, in accordance with California Government Code section 65865.1.

(e) Any interested person may file an appeal of the Director's issuance of a certification of compliance to the Planning Commission within ten (10) days after such issuance. Any Landowner may also file an appeal of the Director's issuance of noncompliance to the Planning Commission within ten (10) days after such issuance. The determination of the Planning Commission may be appealed to, or reviewed by, the Board of Supervisors. The Board of Supervisors' consideration of any appeal or review shall be conducted in a public hearing on the referral in accordance with section ~~28,106-53~~ of the County Code and the Developers shall be given an opportunity to be heard at the hearing. The findings of the Board of Supervisors on whether one or more of Landowners have complied with this Agreement for the period under review shall be based upon substantial evidence in the record. If the Board of Supervisors makes a finding of good faith compliance the Board of Supervisors shall direct the Director to issue a certification of compliance pursuant to subsection (a) above and the review for the period shall be concluded. If the Board of Supervisors makes a finding of noncompliance, the Board of Supervisors may, in its discretion, either (i) issue a reasonable time for compliance to the Landowner and direct the Director to bring the matter back to the Board of Supervisors for further review under this subsection or (ii) direct the Director to proceed to undertake such remedies as the County determines to be appropriate with reference to the County's remedies under Article 6 of this Agreement, including but not limited to modification or termination of this Agreement, in accordance with California Government Code section 65865.1.

6.2.3. Failure to Conduct Annual Review. Failure of County to conduct an annual review shall not constitute a waiver by the County of its rights to otherwise enforce the provisions of this Agreement nor shall a Landowner have or assert any defense to such enforcement by reason of any such failure to conduct an annual review. Failure of the County to conduct an annual review shall not cause a Landowner to be in Default under this Agreement, but it does not relieve the obligation of the Landowner to submit the Annual Review form annually as required by Section 6.2.2.

### 6.3. Legal Actions.

6.3.1. By a Party. In addition to any other rights or remedies, any Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with the purpose of this Agreement except as limited herein. Any such legal action shall be brought in the Superior Court for Solano County, California.

6.3.2. Third Party Claims. County and Developers, at Developers' sole cost and expense, shall cooperate in the event of any court action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, any Existing Approvals or any Subsequent Project Approvals and County shall, upon request of one or more Landowners, appear in the action and defend its decision, except that County shall not be required to be an advocate for any Landowner. To the extent one or more Landowners determine to contest or defend such litigation challenges or requests that County cooperate in those defense efforts, the Landowner or Landowners opting to defend such challenges shall

reimburse County, within ten (10) business days following County's written demand therefor, which may be made from time to time during the course of such litigation, all costs incurred by County in connection with the litigation challenge, including County's administrative, legal and court costs, provided that County shall either: (a) elect to joint representation by Landowner's counsel; or (b) retain an experienced litigation attorney, require such attorney to prepare and comply with a litigation budget, and present such litigation budget to Landowner, for information purposes and not as a cap, prior to incurring obligations to pay legal fees in excess of Thirty Thousand Dollars (\$30,000). If one or more Landowners defends any such legal challenge, the Landowner or Landowners who opted to so defend shall indemnify, defend, and hold harmless County and its officials and employees from and against any claims assessed or awarded against County by way of judgment, settlement, or stipulation. Nothing herein shall authorize any Landowner to settle such legal challenge on terms that would constitute an amendment or modification of this Agreement, any Existing Approvals or any Subsequent Project Approvals, unless such amendment or modification is approved by County in accordance with applicable legal requirements, and County reserves its full legislative discretion with respect thereto. In addition, County shall have the right, but not the obligation, to contest or defend such litigation challenges, in the event that a Landowner elects not to do so. If County elects to contest or defend such litigation challenges in the event a Landowner elects not to do so, all related costs and expenses, including County's attorney fees and costs, and any and all claims assessed or awarded against County by way of judgment, settlement, or stipulation, shall be added to the Initial County Costs in Section 3.12. If the County elects to contest or defend such litigation in the event a Landowner elects not to do so, the County shall retain an experienced litigation attorney, require such attorney to prepare and comply with a litigation budget, and present such litigation budget to Developers, for information purposes and not as a cap, prior to incurring obligations to pay legal fees in excess of Thirty Thousand Dollars (\$30,000).

6.4. Indemnification. Each Landowner shall indemnify, defend (with counsel reasonably acceptable to County) and hold harmless County and County Parties from and against any and all actions, suits, claims, costs, liabilities, penalties, and damages (including but not limited to attorneys' fees and costs) (collectively, "Claims"), including Claims for any bodily injury, death, or property damage, arising or resulting directly or indirectly from the approval or implementation of this Agreement (including the provision of utilities to the Project), the development or construction of the Project or any portion thereof by or on behalf of such Landowner, Landowner's failure to maintain insurance as required by this Agreement, and/or from any acts, omissions, negligence or willful misconduct of a Landowner, whether such acts, omissions, negligence or willful misconduct are by such Landowner or any of such Landowner's contractors, subcontractors, agents or employees. The foregoing indemnity shall not apply to any Claims arising or resulting solely from the active negligence or willful misconduct of County or County Parties.

6.5. Dispute Resolution. As an alternative procedure, in an action by the County against a Defaulting Landowner or in an action by a Landowner against the County hereunder, the parties each in its own sole and absolute discretion may mutually agree that the action be heard by a referee pursuant to Code of Civil Procedure section 638 *et seq.* If the parties do so agree in their sole discretion, they shall use their best efforts to agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before

him or her. If a Landowner and County are unable to agree upon a referee within ten (10) days of a written request to do so by either Party, the Parties, each in its sole discretion, may mutually elect to have a referee appointed pursuant to section 640 of the Code of Civil Procedure. The cost of such proceeding (exclusive of the attorney's fees and cost of the Parties) shall be borne equally by the Parties. Any referee selected pursuant to this Section 6.5 shall be considered a temporary judge appointed pursuant to Article 6, section 21 of the California Constitution. In the event that an alternative method of resolving disputes concerning the application, enforcement or interpretation of a development agreement is provided by legislative or judicial action after the Effective Date, the Parties may, by mutual agreement, select such alternative method. Notwithstanding the foregoing, alternative dispute resolution, as described in this Section 6.5, is an optional remedy under this Agreement and where a Party asserting an action wishes to do so, that Party may bring a legal action as set forth in Section 6.3 [Legal Actions] without first engaging in alternative dispute resolution. Likewise, the Party against whom the action is asserted shall be under no obligation to have such action heard by a referee or to seek resolution of the action through any other alternative dispute resolution described above.

6.6. Termination of Agreement. This Agreement is terminable: (i) by mutual written consent of the Parties, or (ii) by any Party following an uncured Default by another Party under this Agreement, subject to the procedures and limitations set forth in this Agreement, except that in the event of Default by one Landowner, this Agreement shall continue with respect to the other non-defaulting Landowners in accordance with the terms hereof. Any obligations of indemnification and defense relating to matters arising before termination of this Agreement, by expiration of its Term or otherwise, shall survive termination of this Agreement. Except as otherwise set forth in this Agreement, if this Agreement is terminated by mutual written consent of the Parties, no Party shall have any further rights or obligations under this Agreement. All Parties waive, with respect to termination of this Agreement by mutual written consent of the Parties, any claims for damages arising out of the termination of this Agreement. Nothing herein contained shall release or excuse Developers in the performance of their respective obligations to indemnify and defend the County as provided in this Agreement. Upon termination of this Development Agreement, a written statement acknowledging such termination shall be recorded by County in the Official Records of Solano County, California.

## ARTICLE 7: ASSIGNMENTS

7.1. Subsequent Development Agreements. If requested by a Landowner, County may enter into a separate Development Agreement with an individual Landowner that will specify the rights and obligations applicable to the requesting Landowner, at such Landowner's sole cost, so long as such Development Agreement is consistent with and supplements the terms of this Master Development Agreement. Consistent with all requirements of the Development Agreement Law, such Development Agreement may be entered into at any time, including at such time as a Landowner's Subsequent Project Approvals have been granted.

7.2. Complete Assignment. Each Landowner shall provide the County with written notice of any proposed assignment of all or any portion of such Landowner's rights or obligations hereunder (each, an "Assignment") at least ten (10) business days prior to such Assignment. Each such notice of proposed Assignment shall be accompanied by evidence of assignee's assumption of the assigning Landowner's obligations hereunder in the form of Exhibit E [Form

Assignment and Assumption Agreement], and upon the County's receipt of the fully executed assignment and assumption agreement, the assigning Landowner's liability shall terminate as to the obligations assigned.

7.3. Partial Assignment to Purchasers. Each Landowner may assign less than all of its rights and obligations under this Agreement to those entities that acquire less than the entirety of that portion of the Property owned by the assigning Landowner. Each assigning Landowner will be released from its obligations under this Agreement with respect to such Assignment, subject to the following: (i) the assigning Landowners shall have given the County at least ten (10) business days prior written notice of the Assignment, which shall include the name and address for notice purposes; (ii) the assignee, pursuant to an assignment and assumption agreement substantially in the form of Exhibit E [Form Assignment and Assumption Agreement], shall have agreed in writing to be subject to all of the applicable provisions of this Agreement, and such assignment agreement shall provide for the allocation of responsibilities and obligations between the assigning Landowner and the assignee, and (iii) such assignment agreement shall be recorded in the official records of Solano County on that portion of the Property owned by such assignee. Additionally, subject to requirements regarding prior notice to County and the form of written assignment assumption provided in this Section 7.3, one Landowner may freely assign its rights and duties under this Agreement to another Landowner who acquires the Property of the assigning Landowner.

7.4. Assignment to Master Property Owners' Association or Conservancy. The County and Developers agree that any of the Developers' on-going ownership, operation and maintenance obligations with respect to private streets, common areas, open space, and other onsite public improvements described in the Project Approvals may be assigned to one or more Master Property Owners' Association(s) and/or the Conservancy to be established by the Developers; provided, however, that such on-going obligations shall be documented in recorded conditions, covenants and restrictions in a form reasonably acceptable to the County and approved by County and further provided that such assignment to a Master Property Owner's Association and/or Conservancy shall be accompanied by evidence that such assignee has the capacity and financial ability to assume and commitment to perform the Developers' obligations hereunder.

7.5. Assignment to Financial Institutions. Notwithstanding any other provisions of this Agreement, each Landowner may assign all or any part of its rights and duties under this Agreement to any financial institution from which any Landowner has borrowed funds for use in constructing the improvements contemplated in this Agreement or otherwise developing the Property. The assigning Landowner shall provide a complete copy of any such financing assignment to County within fourteen (14) days following execution thereof. Assignments pursuant to this Section 7.5 shall not require the County's consent.

7.6. Assumption of Assigned Obligations; Release of Assignor. Subject to the provisions and conditions of this Section 7.6, upon the Assignment of any or all of the rights, duties, obligations or interests under this Agreement or other of the Project Approvals and receipt by County of the fully executed assignment and assumption agreement as provided for herein, the assignor (e.g., Landowner) shall be released from those obligations under this

Agreement and the Project Approvals that are specified in the assumption agreement as having been assigned to and assumed by the assignee.

Upon providing such assignment and assumption agreement to the County, (i) any Default by an assignee of any rights, duties, obligations or interests so assigned and assumed by the assignee shall not thereby constitute a Default by the assignor with respect to the rights, duties, obligations or interests not assigned and (ii) any Default by the assignor of any rights, duties, obligations or interests not so assigned shall not thereby constitute a Default by the assignee with respect to the rights, duties, obligations or interests so assigned and assumed. The parties to the assignment and assumption agreement shall address in detail whether and how each obligation and right set forth in this Agreement and in the other Project Approvals shall be divided, allocated, assigned or otherwise assigned, in whole or in part, among the assignor and assignee; if requested by an assignor and assignee, County agrees to assist the assignor and assignee (including attendance at meetings), at assignor's expense, in determining how each obligation and right set forth in this Agreement and the other Project Approvals can be described and allocated in the assignment and assumption agreement so as to avoid confusion later regarding what obligations and rights have and have not been assigned. The assignment and assumption shall be in the form attached as Exhibit E [Form Assignment and Assumption Agreement] and shall be recorded on the portion of the Property to which the assignment applies.

7.7. Successive Assignment. In the event there is more than one Assignment under the provisions of this Article 7, the provisions of this Article 7 shall apply to each successive Assignment and Assignee.

7.8. Excluded Transfers. Notwithstanding the foregoing, no sale of an individual dwelling unit, other than Existing Building(s), to a homeowner or grant or dedication of related rights or easements ("Excluded Transfers") shall require assignment of this Agreement. As to such Excluded Transfers, this Agreement shall not run with the land, but shall be automatically terminated.

## ARTICLE 8: GENERAL PROVISIONS

8.1. Compliance With Laws. Each Landowner, at its sole cost and expense, shall comply with the requirements of, and obtain all permits and approvals required by local, State and Federal agencies having jurisdiction over the Project. Furthermore, each Landowner shall carry out the Project work in conformity with all applicable law and applicable state or federal labor laws and standards; applicable building, plumbing, mechanical and electrical codes; and all applicable disabled and handicapped access requirements, including as applicable the Americans With Disabilities Act, 42 U.S.C. section 12101, *et seq.*, Government Code section 4450, *et seq.*, Government Code section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code section 51, *et seq.*

8.2. Mortgagee Protection.

8.2.1. Mortgagee Protected. This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding

the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed or trust beneficiary or mortgagee ("Mortgagee"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Developers shall have the right, at any time and from time to time, to grant one or more Mortgages encumbering all or a portion of Developers' interest in the Property or portion thereof as security for one or more loans. County acknowledges that the lenders providing such financing may require certain Agreement interpretations and upon request, from time to time, County shall meet with Landowners and representatives of such lenders to consider any such request for interpretation. County shall not unreasonably withhold its consent to any such requested interpretation provided such interpretation is consistent with the intent and purposes of this Agreement. Developers shall provide the County with a copy of the deed of trust or mortgage within ten (10) days after its recording in the official records of Solano County; provided, however, that the Developers failure to provide such document shall not affect any Mortgage, including without limitation, the validity, priority or enforceability of such Mortgage.

8.2.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 8.2.1 above, no Mortgagee (including one who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, eviction or otherwise) shall have any obligation to construct or complete construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with this Agreement and the other Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals. Except as otherwise provided in this Section 8.2.2 [Mortgagee Not Obligated] and Section 7.8, all of the terms and conditions contained in this Agreement and the other Project Approvals shall be binding upon and effective against and shall run to the benefit of any person or entity, including any Mortgagee, who acquires title or possession to the Property, or any portion thereof.

8.2.3. Notice of Default to Mortgagee. If County receives a notice from a Mortgagee requesting a copy of any Notice of Default given to any Landowner hereunder and specifying the address for service thereof, then County agrees to use its diligent, good faith efforts to deliver to such Mortgagee, concurrently with service thereon to such Landowner, any Notice of Default given to any Landowner. Each Mortgagee shall have the right during the same period available to such Landowner to cure or remedy, or to commence to cure or remedy, the event of Default claimed or the areas of noncompliance set forth in County's Notice of Default. If a Mortgagee is required to obtain possession in order to cure any Default, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure but in no event may this period exceed one hundred twenty (120) days from the County's Notice of Default.

8.2.4. No Supersedure. Nothing in this Section 8.2 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside

this Agreement, nor shall any provision of this Section 8.2 constitute an obligation of County to such Mortgagee, except as to the notice requirements of Section 8.5.

8.3. Amendments to Agreement. The Parties agree that they will make reasonable amendments to this Agreement, at the expense of the requesting Landowner, to meet the reasonable requirements of any lender or mortgagee for the Project. For the purposes of this Section a reasonable amendment is one that does not relieve the Developers of any of their material obligations under this Agreement nor impair the ability of the County to enforce the terms of this Agreement.

8.4. Covenants Binding on Successors and Assigns and Run with Land. Except as otherwise more specifically provided in this Agreement, including but not limited to the exceptions described in Section 7.8, this Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns, as provided in Government Code section 65868.5.

8.5. Notice. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to the County and Developers as follows:

If to the County:                      Director of Resource Management  
675 Texas St, Ste 5500  
Fairfield CA 94533

With a copies to:                      County Counsel  
675 Texas St, Ste 6600  
Fairfield CA 94533  
  
Holland & Knight LLP  
50 California Street, Suite 2800  
San Francisco, CA 94109  
Attention: Tamsen Plume  
Telephone: (415) 743-6900  
Facsimile: (415) 743-6910

If to Developers:                      See Exhibit A

With copies to:                        See Exhibit A

Notices to be deemed effective if delivered by certified mail, return receipt requested, commercial courier or by facsimile, with delivery to be effective upon verification of receipt, except as to facsimile if confirmation is after 5:00 p.m., then deemed received the following business day. Any Party may change its respective address for notices by providing written notice of such change to the other Parties.

8.6. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.7. Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its or their rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by another Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by another Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

8.8. Construction of Agreement. All Parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; (e) "includes" and "including" are not limiting; and (f) "days" means calendar days unless specifically provided otherwise. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement.

8.9. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found by a court of competent jurisdiction to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case any Party may terminate this Agreement by providing written notice thereof to the other Parties.

8.10. Time. Time is of the essence of this Agreement. All references to time in this Agreement shall refer to the time in effect in the State of California.

8.11. Extension of Time Limits. The time limits set forth in this Agreement may be extended by mutual consent in writing of the Parties in accordance with the provisions of this Agreement.

8.12. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developers and the County.

8.13. Entire Agreement. This Agreement (including all exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions

mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement.

8.14. Estoppel Certificate. Any Landowner may, at any time, and from time to time, deliver written notice to the County requesting the County to certify in writing that: (i) this Agreement is in full force and effect, (ii) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (iii) the Landowner requesting such certificate is not in Default of the performance of its obligations, or if in Default, to describe therein the nature and extent of any such Defaults. The Director shall be authorized to execute any certificate requested by Developers hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to County Counsel. The Director shall execute and return such certificate within thirty (30) days following Landowner's request therefor. Developers and County acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees. The request shall clearly indicate that failure of the County to respond within the thirty (30) day period will lead to a second and final request. Failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate.

8.15. County Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by County, the Director or his or her designee is authorized to act on behalf of County, unless specifically provided otherwise by this Agreement or Applicable Law, or the context requires otherwise.

8.16. Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party to this Agreement is acting as the agent of any other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of the Developers, the affairs of the County, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

8.17. Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

- |           |   |
|-----------|---|
| Exhibit A | List of Developers and Addresses for Notice |
| Exhibit B | Property Legal Descriptions                 |
| Exhibit C | Applicable County Regulations               |
| Exhibit D | Impact Fees                                 |
| Exhibit E | Form Assignment and Assumption Agreement    |
| Exhibit F | Annual Review Form                          |

**Exhibit G      Sales Participation Agreement**

**Exhibit H      Interest Rate and Related Terms Related to Initial County Costs**

IN WITNESS WHEREOF, the County and Developers have executed this Agreement as of the Effective Date.

**"COUNTY"**

County of Solano, a political subdivision of the State of California

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

Linda J. Seifert~~John M. Vasquez~~, Chair  
Solano County Board of Supervisors

**ATTEST:**

Birgitta E. Corsello~~Michael D. Johnson~~, Clerk  
Solano County Board of Supervisors

By: \_\_\_\_\_  
Jeanette Bellinder~~Patricia J. Crittenden~~, Chief  
Deputy Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
County Counsel

**LANDOWNER SIGNATURES  
(Starting on Following Page)**

*[Signatures must be notarized]*

**EXHIBIT A**

**List of Developers and Notice Addresses**

**EXHIBIT B**

[Legal Descriptions of Developers Property]

**EXHIBIT B**

## EXHIBIT C

### APPLICABLE COUNTY REGULATIONS

To the extent the following do not conflict with or are not inconsistent with the Existing Approvals (in the event of a conflict or inconsistency, the Existing Approvals shall control):

The rules, regulations, ordinances, resolutions, Impact Fees, Exactions and official policies of the County existing on the Effective Date and applicable to development and use of the Property. Applicable County Regulations include, without limitation, (i) the General Plan, the County Code, and all other County laws in effect on the Effective Date; and (ii) all those existing and approved permits, entitlements, agreements, and other grants of approval having force and effect on the Effective Date relating to the Project and Property, including without limitation their text, terms and conditions of approval.

The County acknowledges that application of County Code, Chapter II, Article XI (Schools Facilities Mitigation Plans for New Development) is constrained by Government Code Title 7, Division 1, Chapter 4.9, including but not limited to Government Code section 65995.

EXHIBIT D

IMPACT FEES

1. Public Facilities Fee pursuant to Chapter 11, Article X of the County Code;
2. Major Thoroughfare and Bridge Construction Impact Fee established by Resolution 80-88.
3. Transportation Impact Fee (or Public Facilities Fee for Transportation) reflected in Resolution 2013-236~~as may be added once after the Effective Date of the Development Agreement.~~
4. Fire Protection District Impact Fee pursuant to Chapter 11, Article XVI of the County Code.

Note: See also amounts payable as reimbursement for Initial County Costs pursuant to Section 3.12 of this Agreement.

EXHIBIT E  
FORM ASSIGNMENT AGREEMENT AND  
ASSUMPTION AGREEMENT

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
 )  
Solano County )  
675 Texas St, Ste 6600 )  
Fairfield CA 94533 )  
Attention: \_\_\_\_\_ )

*(Space Above This Line for Recorder's Use Only)*  
Exempt from Recording Fee per Government Code §27383

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and among \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), \_\_\_\_\_, a \_\_\_\_\_ ("Assignee"), and SOLANO COUNTY, a \_\_\_\_\_ ("County").

*RECITALS*

[Landowners] (collectively, "Developers") have entered into a Development Agreement with the County effective \_\_\_\_\_, 2009 (Recorder's Document No. 20\_\_ - \_\_\_\_\_) ("Development Agreement"), to facilitate the development of that certain real property owned by Developers within Solano County, State of California, which is legally described in Exhibits \_\_\_\_\_ to the Development Agreement and shown on the maps attached to the Development Agreement as Exhibits \_\_\_\_\_ (collectively, "Property"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

Assignor is the fee owner of the approximately \_\_\_\_\_ acre portion of the Site designated as APN \_\_\_\_\_, more particularly described in Exhibit I attached hereto and incorporated herein ("Property").

Assignor desires to transfer its interest in the Property to Assignee concurrently with execution of this Agreement and Assignor desires to so acquire such interest in the Property from Assignor.

Section 7.2 of the Development Agreement provides that each of the Developers may assign its rights and obligations under the Development Agreement to another party, provided that the assigning Developer shall have provided to County at least ten (10) business days prior written notice and provided that the assignor and the assignee document the assignment in an agreement substantially in the form of this Agreement.

Assignor has provided the required written notice to County of its intent to enter into an assignment and assumption agreement as required by Section.7.2.

Assignor desires to assign to Assignee and Assignee desires to assume all rights and obligations of Assignor under the Development Agreement. Upon execution of this Agreement and transfer to Assignee of legal title to the Property, Assignor desires to be released from any and all obligations under the Development Agreement.

### *A G R E E M E N T*

NOW, THEREFORE, Assignor, Assignee and County hereby agree as follows:

1. Assignment by Assignor. Assignor hereby assigns, transfers and grants to Assignee, and its successors and assigns, all of Assignor's rights, title and interest and obligations, duties, responsibilities, conditions and restrictions under the Development Agreement (collectively, "Rights and Obligations").

2. Acceptance and Assumption by Assignee. Assignee, for itself and its successors and assigns, hereby accepts such assignment and assumes all such Rights and Obligations, whether accruing before or on or after the Effective Date (defined in Section 16 below). Assignee agrees, expressly for the benefit of County, to comply with, perform and execute all of the covenants and obligations of \_\_\_\_\_ [*Insert name of Assignor entity*] arising from or under the Development Agreement.

3. Release of Assignor. Assignee and County hereby fully release Assignor from all Rights and Obligations. Both Assignor and Assignee acknowledge that this Agreement is intended to fully assign all of Assignor's Rights and Obligations to Assignee, and it is expressly understood that Assignor shall not retain any Rights and Obligations whatsoever.

4. Substitution of Assignor. Assignee hereafter shall be substituted for and replace Assignor in the Development Agreement. Whenever the term "\_\_\_\_\_" [*Insert defined name of Assignor*] appears in the Development Agreement, it shall hereafter mean Assignee. Whenever the term "Developers" or "Landowner" appears in the Development Agreement, it shall hereafter include Assignee.

5. Assignor and Assignee Agreements, Indemnifications and Waivers.

(a) Assignee represents and warrants to County as follows:

(i) Assignee is a \_\_\_\_\_ duly formed within and good standing under the laws of the State of \_\_\_\_\_. The copies of the documents evidencing the formation of Assignee, which have been delivered to County, are true and complete copies of the originals, as amended to the date of this Agreement. Assignee has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Assignee has been fully authorized by all requisite actions on the part of Assignee.

EXHIBIT E

(ii) Assignee's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Assignee is a party or by which it is bound.

(iii) Assignee has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Assignee's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Assignee's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Assignee's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

(iv) As of the Effective Date of this Agreement, Assignee owns fee simple title to the Property.

6. Assignor and Assignee hereby acknowledge and agree that County has not made, and will not make, any representation or warranty that the assignment and assumption of the Development Agreement provided for hereunder will have any particular tax implications for Assignor or Assignee.

(a) Assignor and Assignee each hereby waives and releases and each hereby agrees to indemnify and hold County harmless from any and all damages, liabilities, causes of action, claims or potential claims against County (including attorneys fees and costs) arising out of or resulting from the assignment and assumption of the Rights and Obligations.

(b) Assignor acknowledges and agrees that the Rights and Obligations have been fully assigned to Assignee by this Agreement and, accordingly, that Assignee shall have the exclusive right to assert any claims against County with respect to such Rights and Obligations. Accordingly, without limiting any claims of Assignee under the Development Agreement, Assignor hereby waives any claims or potential claims by Assignor against County to the extent arising solely out of the Development Agreement.

7. Development Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and provisions of the Development Agreement are hereby ratified and shall remain in full force and effect.

8. Recording. Assignor shall cause this Agreement to be recorded in the Official Records of Solano County, California, and shall promptly provide conformed copies of the recorded Agreement to Assignee and County.

9. Successors and Assigns. Subject to the restrictions on transfer set forth in the Development Agreement, all of the terms, covenants, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns, pursuant to Section 7.2 of the Development Agreement.

EXHIBIT E

10. Assignee Address for Notices.

The address of Assignee for the purpose of notices, demands and communications under Section 8.5 of the Development Agreement shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

11. California Law/Venue This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court in Solano County, State of California.

12. Interpretation. All parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise: (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; and (e) "includes" and "including" are not limiting.

13. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement.

14. Severability. Except as otherwise provided herein, if any provision(s) of this Agreement is (are) held invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall

EXHIBIT E

constitute one and the same instrument, with the same effect as if all of the parties to this Agreement had executed the same counterpart.

16. County Consent. County is executing this Agreement for the limited purpose of consenting to the assignment and assumption and clarifying that there is privity of contract between County and Assignee with respect to the Development Agreement.

17. Effective Date. The Effective Date of this Agreement shall be the date upon which Assignee obtains fee title to the Property and delivers evidence of the transfer to County ("Effective Date"). For the purposes of this Section, the evidence of transfer shall consist of a duly recorded deed and title report.

IN WITNESS WHEREOF, Assignor, Assignee and County have entered into this Agreement as of the date first above written.

*[Signatures follow on separate pages]*

**ASSIGNOR:**

\_\_\_\_\_

a \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Notary Acknowledgment Required]*

**ASSIGNEE:**

\_\_\_\_\_

a \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Notary Acknowledgment Required]*

*[Signatures continued on next page]*

EXHIBIT E

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COUNTY

COUNTY OF SOLANO, a political subdivision of  
the State of California,

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Notary Acknowledgment Required]*

ATTEST:

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

\_\_\_\_\_, County Clerk

APPROVED AS TO FORM:

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

\_\_\_\_\_, County Counsel

EXHIBIT E

7

EXHIBIT NO. 1

**Property Legal Description**

*[To Be Inserted]*

Exhibit A to  
EXHIBIT \_\_\_\_\_

EXHIBIT F

ANNUAL REVIEW FORM

This Annual Review Evaluation Form is submitted to Solano County ("County") by [Developer] [Note: each Landowner to submit separately] pursuant to the requirements of California Government Code section 65865.1 and Section 5 of the Development Agreement Rules to demonstrate good faith compliance with its obligations under the Development Agreement between the County and Developers for Middle Green Valley having an Effective Date of \_\_\_\_\_ ("Development Agreement"). All terms not otherwise defined herein shall have the meanings assigned to them in the Development Agreement:

Annual Review Period: \_\_\_\_\_ to \_\_\_\_\_.

Specify whether Impact Fees, Processing Fees, Connection Fees and/or other fees due and payable have been paid during this annual review period.

Describe whether obligations related to open space dedications, open space improvements and/or open space in lieu fees were satisfied where required during this annual review period.

Describe whether other applicable Development Agreement obligations were completed during this annual review period.

Specify whether Landowner has assigned the Development Agreement or otherwise conveyed the Property during this annual review period.

The undersigned representative confirms that [Landowner] is:

\_\_\_\_\_ In good faith compliance with its obligations under the Development Agreement for this annual review period.

\_\_\_\_\_ Not in good faith compliance with its obligations under the Development Agreement for this annual review period, in response to which [Landowner] is taking the actions set forth in the attachment hereto.

IN WITNESS WHEREOF, [Landowner] has executed this Annual Review Form as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.