

**ORDINANCE NO. 2010-\_\_\_\_\_**

**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.** 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.

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

**1.9.** 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.

**1.10.** 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 Report for the July 27, 2010 meeting 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.

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

**1.12.** 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.

**1.13.** Approval of the Master Development Agreement could provide a substantial benefit to the community.

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

**1.15.** 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.

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

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

**1.18.** 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 draft dated \_\_\_\_\_ 2010, which is attached as **Exhibit A**, and is incorporated by reference in this Ordinance.

**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.

### **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 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 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:

**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 sixty (60) days of the date of approval of this Ordinance.

**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 sixtieth (60th) 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.

**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.

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

AYES:

NOES:

EXCUSED:

\_\_\_\_\_  
John M. Vasquez, Chair  
Solano County Board of Supervisors

ATTEST:

Michael D. Johnson, Clerk  
Solano County Board of Supervisors

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

**Introduced:**

**Adopted:**

**Effective:**

**DRAFT SUBJECT TO FURTHER COUNTY STAFF AND LANDOWNER REVIEW AND COMMENTS  
BOARD OF SUPERVISORS APPROVAL AFTER PUBLIC HEARING.**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

**HK Draft 6/30/10**

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

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Space Reserved for Recorder's Use Only

**SALES PARTICIPATION AGREEMENT**

**for the**

**Middle Green Valley Specific Plan**

**By and Among**

**COUNTY OF SOLANO**

**and**

**PARTICIPATING LANDOWNERS**

**Dated as of \_\_\_\_\_, 2010**

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- C. List of Units Being Transferred
- D. Appraisal Instructions
- E. Form of Notice of Payment
- F. Form of Escrow Instructions
- G. Form of Partial Release From Sales Participation Agreement

## SALES PARTICIPATION AGREEMENT

**THIS SALES PARTICIPATION AGREEMENT** (this "Agreement"), dated for reference purposes as of \_\_\_\_\_, 2010, is entered into by and among the County of Solano, a political subdivision of the State of California (the "County"), and each of the parties identified on Exhibit A attached hereto (the "Participating Owners"). (The County and the Participating Owners are sometimes referred to collectively as the "Parties.")

### Recitals

A. Concurrently herewith, the County adopted a Master Development Agreement for Middle Green Valley by and among the County and certain landowners, including the Participating Owners by Ordinance \_\_\_ dated \_\_\_\_\_, 2010 ("MDA") and Middle Green Valley Specific Plan by Ordinance \_\_\_ dated \_\_\_\_\_, 2010 (the "Specific Plan") for the Middle Green Valley region of Solano County, California ("Middle Green Valley"), pursuant to which, among other things, the County implemented the voluntary transfer of development rights (the "TDR Program") from certain properties within Middle Green Valley to certain other properties, in order to provide for the development of the most appropriate areas of Middle Green Valley and the preservation of the rural character and agricultural viability of other areas of Middle Green Valley.

B. The Participating Owners own certain parcels of real property in Middle Green Valley, and pursuant to Section 3.23 of the MDA, have voluntarily elected to participate in the TDR Program. The portions of the Participating Owners' real property that are subject to this Agreement (referred to as the "Participating Properties") are described in Exhibit B attached hereto.

C. Under the County's General Plan, up to four hundred (400) new additional residential units ("Units") were authorized for the Middle Green Valley as part of a Specific Plan that met the policies of the General Plan and implemented a TDR Program to allow for clustering and the preservation of agricultural land, natural resources and viewsheds. For the purpose of the formulation of the Specific Plan, consistent with the General Plan policies for Middle Green Valley, for Unit allocation, each acre within the Specific Plan area was deemed of equal importance since all land types were considered necessary to achieve the policies of the General Plan. A pro rata share of the Units was allocated to the property owners within the Specific Plan strictly by its percentage ownership by acre of the total Specific Plan area. During the Specific Plan Citizens Advisory Committee process, the County analyzed the General Plan policies for Middle Green Valley, including but not limited to protection and enhancement of agricultural opportunities, viewshed protection, and natural resource protection. Certain properties within Middle Green Valley were identified as more appropriate for intense development than others. Therefore, for some properties, the number of Units that would have been allocated by ownership could not have been constructed on such property consistent with the policies of the General Plan. This Agreement is intended to provide a mechanism to provide compensation for the Units that cannot be built on certain Participating Owner's property to allow the Units to be built on other Participating Owners' property that is more appropriate for development.

D. As set forth on Table 4.1 (Section 4.2.3) of the Specific Plan, each Participating Property was assigned a number of Units based on the acreage of the Participating Property and then adjusted upward or downward to reflect the reallocation of Units under the TDR Program. The number of Units allocated to the Participating Owners in Table 4.1 of the Specific Plan is set forth on Exhibit A attached hereto.

E. Each Participating Owner (a "Sending Owner") owning a property identified on Exhibit B as a "Sending Property" agreed in Section 3.23 of the MDA to allow the reallocation of the Units identified on Exhibit C attached hereto to those Participating Owners (the "Receiving Owners") owning the properties identified on Exhibit B as the "Receiving Properties," in exchange for the receipt of payment from Receiving Owners on the terms and conditions described in this Agreement, including the requirement to record conservation easements on portions of the Sending Properties required under the Specific Plan. A total of thirty-seven (37) Units [**final number TBD based on participation**] were reallocated in the TDR Program between separate landowners and are subject to the portions of this Agreement requiring payment of a Purchase Price, as defined in this Agreement. The result of the Specific Plan, as implemented through the TDR Program, is to (1) to increase the maximum allowable density for primary residential units on the Receiving Properties under the Specific Plan, and (2) to reduce the maximum allowable density for primary residential units on the Sending Properties. This Agreement is intended to provide a mechanism whereby the Sending Owners receive compensation for the approximate value of the reallocation of the Units to the Receiving Properties under the TDR Program in exchange for recording conservation easements on the portions of the Sending Properties designated as preserved open space in the Specific Plan.

F. The parties now wish to agree as to the mechanism, rights and obligations relating the TDR Program. This Agreement shall become effective as of the date a fully-executed and acknowledged version is recorded in the Official Records of Solano County, California (the "Effective Date").

### **Agreement**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which is acknowledged, the parties agree as follows:

#### **ARTICLE 1: REALLOCATION OF UNITS**

1. Reallocation of Units in Specific Plan. Each Sending Owner acknowledges that the number of Units specified in Exhibit C were reallocated to each Receiving Property in Section 4.2.3 of the Specific Plan as set forth on Exhibit C (each a "TDR Unit" or collectively, the "TDR Units"). It is acknowledged that the allocation of Units among the Receiving Owners as set forth in Exhibit C is solely for purposes of confirming that each Receiving Owner has received the correct number of Units in the Specific Plan. It is further acknowledged that the allocation of a particular Sending Owner's Units to a particular Receiving Owner has no affect on or relevance to the Parties' rights and obligations under this Agreement, including without limitation each Sending Owner's right to receive Purchase Price from each Sale, as those terms are defined below.

1.1 Effect of Reallocation . The parties agree that: (1) Table 4-1 of the Specific Plan reflects the reallocation set forth in Section 1.1 of this Agreement and the maximum number of Units that may be developed on each Participating Owners' property, and (2) Sections 4.2.3 and 3.5.3 of the Specific Plan designates the portions of each Sending Property that shall be subject to conservation easement.

1.2 Property Taxes. The Parties intend that this Agreement shall not cause or result in the reassessment of any Participating Owners' 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 separate ad valorem taxes on the TDR Units ("Ad Valorem Taxes"). In the event that the County Tax Assessor finds that this Agreement causes or results in Reassessment or Ad Valorem Taxes, the affected Participating Owners and the County shall meet and confer in good faith and determine what modifications to this Agreement are necessary to avoid Reassessment or Ad Valorem Taxes while meeting the basic intent of the Specific Plan, the TDR Program and this Agreement. If the County and the affected Participating Owners determine that there are no modifications that achieve this result, the Parties may terminate this Agreement. If the parties determine that there are no modifications that avoid the Ad Valorem Taxes, the amount of such taxes may be reduced from the Purchase Price, as defined below.

1.3 Nightingale Neighborhood Further Reallocation. Section 3.5.5(C) of the Specific Plan specifies the maximum number of new residential units within the Nightingale Neighborhood (as that term is defined in the Specific Plan). The Nightingale Neighborhood has two landowners: B&L Properties and Maher, both of whom are parties to this Agreement as Receiving Owners. The County, B&L Properties and Maher understand and agree that, subject to the maximum number of units for this neighborhood under the Specific Plan, B&L Properties and Maher may (but are not required to), by mutual consent, reallocate units from one ownership to the other within this neighborhood, provided the allocation is consistent with the Specific Plan. Any such reallocation of units within the Nightingale Neighborhood shall be documented in a written memorandum signed by B&L Properties and Maher, identifying the number of units reallocated, and providing for assignment of the obligation to make the payments required by this Agreement to the Sending Owners for those units reallocated within the Nightingale Neighborhood. Upon execution, a copy of any such memorandum shall be provided to (1) the County to allow the County to track such reallocations and (2) all Participating Owners.

## **ARTICLE 2: PURCHASE PRICE**

### **2. Purchase Price.**

2.1 Agreement to Pay Purchase Price. Except as provided in Sections 2.4 below, upon the sale of all, or any portion of, a Receiving Property to a bona fide third party purchaser ("Bona Fide Purchaser") for Market Value (a "Sale"), each Receiving Owner agrees to pay to the Sending Owners the Purchase Price (defined below) for the TDR Units on or before the date described in Section 2.3 below. For the purposes of this Agreement, a Sale shall occur only upon the final close of escrow when title to the property is recorded in the name of the Bona Fide Purchaser. Concurrently with the close of escrow for a Sale in which the applicable Purchase Price is paid into escrow, the Escrow Agent shall record in the Official Records a

Notice of Payment in the form attached hereto as Exhibit E, and shall also deliver a copy of such Notice of Payment to the County to allow the County to track such payments. The Notice of Payment shall be recorded as to the portion of the Receiving Owner's portion of the Receiving Properties for which the payment was made and the Sending Properties (if such notice is allowed to be recorded by the County Recorder).

## 2.2 Calculation of Purchase Price.

2.2.1 Each Sending Property's Purchase Price. Each Sending Owner shall be paid its pro rata percentage of the Purchase Price as calculated herein. The pro rata share of the Purchase Price paid to each Sending Owner shall be based on such Sending Owner's percentage of the total TDR Units being transferred pursuant to Article 1 above. (For example, if a Sending Owner is reallocating six (6) Units, the Sending Owner's pro rata share the Purchase Price shall be [6/37, or 16.22% [final number to be inserted based on final Specific Plan].) The Purchase Price under this Section 2.2 shall only be calculated based on the number of TDR Units allocated to such portion pro rata by acreage, and this Agreement shall continue to run with the remainder of the Receiving Property. (For example, if one-half (1/2) of a Receiving Property is sold, then for the purposes of calculating the Purchase Price under this Agreement, one-half (1/2) of the reallocated Units assigned to the whole Receiving Property pursuant to Article 1 shall be assigned to that portion.) In the event the division results in less than a whole Unit, the Unit is equal to or greater than 0.5 shall be calculated as a whole Unit and the remainder assigned to the remaining portion of the Receiving Property. (In the example above, if the total number of TDR Units assigned to the Receiving Property is 25, and one-half (1/2) of the Receiving Property is being sold, then the number of TDR Units that would be calculated for the purpose of the Purchase Price would be thirteen (13) (12.5 rounded up), and the other twelve (12) TDR Units would remain with unsold portion of the Receiving Property.) It is acknowledged that, due to rounding, a portion of the Purchase Price payable to the Sending Owners may be unaccounted for, and in such a situation, any unaccounted for portion of the Purchase Price payable to the Sending Owners shall be allocated to the Appraiser's fees payable pursuant to Section 2.2.5(c), and if any such portion remains unaccounted for after payment of the Appraiser's fees, such remaining portion shall be allocated to the Escrow Agent's fees payable upon a Sale.

Notwithstanding the foregoing, the number of TDR Units to be allocated in a Sale to an unsubdivided portion of the Receiving Property may be specified in a written agreement between buyer and seller if all of the following conditions are met:

- (i) the written agreement for the purchase and sale of unsubdivided land specifies the number of residential TDR Units to be included in the sale;
- (ii) the allocation of residential lots to the real property to be transferred is consistent with the Specific Plan;
- (iii) at least 30 days prior to close of escrow, a request is submitted to the County Counsel for the assignment of the MDA to the purchaser as to the real property to be sold, and the application states the number of residential lots to be transferred in connection with the Sale, the number of TDR Units to be allocated in the Sale, the acreage of the real property that is the subject of the Sale, identifying the parties to the Sale, confirming that sufficient portions of the

Receiving Property remains to allocate the remaining TDR Units, and providing such additional information concerning the Sale as the County may request; and

(iv) prior to close of escrow the County approves in writing the parties' allocation of TDR Units and shall provide a copy of such approval to the Escrow Agent.

2.2.2 "Purchase Price" for the purposes of this Agreement shall mean:

(a) An amount determined by the Appraiser (as defined below) in an Appraisal (as defined below) to be the Market Value (as defined below) of a single TDR Unit as of the date of the relevant Sale ("Market Value of a TDR Unit"), adjusted by CPI (as defined below) if the Sale occurs after six (6) months from the date of the Appraisal;

(b) multiplied by the number of TDR Units assigned to the Receiving Property, or portion therefore, subject to the Sale;

(c) reduced by [*twelve percent (12%) number to be finalized in execution version based on final Specific Plan*] of the total standard closing costs incurred by the seller in such Sale, which shall be limited to the seller's share of standard escrow and title fees, a broker's commission in an amount that is standard in Solano County, and other closing costs typically paid by sellers of real property in Solano County;

(d) reduced further by fifty percent (50%) of the Appraiser's fee for the Appraisal;

(e) For example only, if (a) the Market Value of a TDR Unit is \$100,000.00 (b) the number of TDR Units assigned to the Receiving Property being sold is five (5), (c) the standard closing costs for the subject Sale are \$250,000, and (d) the Appraiser's fee is \$10,000, then the "Purchase Price" shall be \$465,000, calculated as follows:

- (a) Market Value of a TDR Unit = \$100,000
- (b) x 5 TDR Units = \$500,000.
- (c) - (\$250,000 standard closing costs for the subject Sale x [*12%*] = \$30,000) = \$470,000
- (d) - (\$10,000 Appraiser's fee x 50% = \$5,000) = \$465,000

For the purposes of this Agreement, "CPI" shall mean the total percent change, from the effective date of an applicable appraisal to the first working day prior to a close of escrow of the Sale for which that appraisal is applicable in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose Consolidated Metropolitan Statistical Area, for all items, not seasonally adjusted, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or its successor index. In the event that the U.S. Department of Labor, Bureau of Labor Statistics adopts a major revision or change to CPI measurements or calculations, County reserves the right to replace the use of CPI within this Agreement with another appropriate comparable index. For purposes of determining applicability and use of CPI, escrow for such a Sale will be deemed to have closed on the date that is the number of days in the Extension Period prior to the date that escrow for the Sale actually closes.

### 2.2.3 Market Value of a TDR Unit.

(a) The County and Participating Owners agree that they shall collectively retain Ronald Garland of Garland & Associates (the “Appraiser”) to conduct the Appraisals described in this Agreement pursuant to the appraisal instructions set forth on Exhibit D (“Appraisal Instructions”). Except as stated in Section 2.2.4 below, the Participating Owners agree to accept the Appraiser’s determination of Market Value of a TDR Unit for all purposes of this Agreement. For the purposes of this Agreement the term “Market Value” shall be defined as set forth on the Appraisal Instructions.

(b) The contract with the Appraiser shall provide that the Appraiser shall prepare an appraisal of the Market Value of a TDR Unit within ninety (90) days of a written request and according to the Appraisal Instructions (“Appraisal”). The Parties hereby agree that such Appraisal shall be valid for three hundred and sixty (360) days from the date of the Appraisal. As described in the Appraisal Instructions, such Appraisal shall appraise the value of a TDR Unit pursuant to this Agreement, based on the certified Environmental Impact Report, adopted Specific Plan, and the recordation of that certain Master Development Agreement for the Middle Green Valley Specific Plan Area in effect as of the date of the Appraisal (collectively, the “Existing Entitlements”); but such appraisal shall not reflect the underlying land value or any subsequent entitlements, development plans or improvements for the Receiving Properties, such as actual or proposed subdivision mapping, permitting, development plans, improvement plans, grading, horizontal or vertical improvements, etc. (collectively, “Subsequent Entitlements and Improvements”).

### 2.2.4 Disagreements With Appraiser’s Determination.

(a) Upon the preparation of each Appraisal, the contract with the Appraiser shall require that the Appraiser deliver a copy of its written Appraisal to all the Participating Owners and to the County. Upon receipt of an Appraisal, the County shall randomly select an Alternate Qualified Appraiser to prepare the Second Appraisal, if required under Section 2.2.4(b). Each Participating Owner shall have a period of fifteen (15) days after receipt thereof within which to object to the Appraiser’s determination by delivering a written statement (the “Written Objection”) to the Appraiser and the County describing in detail the reasons for the objection, stating such Participating Owner’s opinion of the accurate determination of value, and providing the basis for such opinion. If a Participating Owner fails to deliver such Written Objection within such 15-day period, such Participating Owner shall be deemed for all purposes to have accepted and agreed to the Appraiser’s determination.

(b) If a Participating Owner timely delivers the required Written Objection (“Objecting Owner”) to the Appraiser and the County, the County and the Objecting Owner shall jointly retain a second qualified appraiser from the list of qualified appraisers described in Section 2.2.5 (“Second Appraiser”) to prepare a full independent appraisal (the “Second Appraisal”) to compare to the Appraisal prepared by the Appraiser. The Second Appraiser shall be provided a copy of the Appraisal with the request for the Second Appraisal. The Second Appraisal (1) shall be prepared according to the Appraisal Instructions, (2) shall determine the Market Value of a TDR Unit as of the date of the original Appraisal, (3)

shall not be based on any information that was not available to the Appraiser at the time the Appraisal was prepared (e.g., comparable sales that took place after the date of the Appraisal), (4) shall include an explanation of any difference from the Appraisal, (5) prepared within sixty (60) days from the date of request and (6) shall be delivered to all the Participating Owners and the County. If the value determined by such Second Appraisal is different from that determined by the First Appraisal by less than eleven percent (11%), the value determined by the first Appraisal shall be used for purposes of this Agreement, including but not limited the payment of the Purchase Price, and the Objecting Owner shall be solely responsible for the cost of the Second Appraisal. If the value determined by such Second Appraisal is different from the that determined by the First Appraisal by eleven percent (11%) or more, but less than twenty-one percent (21%), the Market Value of a TDR Unit for the purposes of this Agreement shall be the average of the value determined by the Appraisal and the Second Appraisal and the cost of the Second Appraisal shall be split between the Receiving Property that requested the original Appraisal and the Sending Owners, and the cost of the Second Appraisal shall be added to the cost of the Appraisal in the calculation of the Purchase Price in Section 2.2.2, above.

(c) If the value determined by the Second Appraisal is different from that determined by the First Appraisal by twenty-one percent (21%) or more, then the County, Receiving Property that requested the original Appraisal and Objecting Owner shall jointly retain one of the other Alternate Qualified Appraisers ("Third Appraiser"). Upon such selection, the County shall deliver to the Third Appraiser copies of the Second and First Appraisals, and the Third Appraiser shall have sixty (60) days to determine which of the first or second appraisal is more accurate and the appraisal determined to be more accurate shall be the Market Value of a TDR Unit for the Sale., using the same criteria and the same information as applicable to the first two appraisals ("Third Appraisal"). The Third Appraiser's determination will be in writing and will explain in detail the basis of his or her decision. The Third Appraiser's final determination of the Market Value of a TDR Unit shall be delivered to all the Participating Owners and the County. The cost of the Third Appraisal shall be split between the Receiving Property that requested the original Appraisal and the Sending Owners, and the cost of the Third Appraisal shall be added to the cost of the Appraisal in the calculation of the Purchase Price in Section 2.2.2, above. The decision of the Third Appraiser under this Section 2.2.4(c) shall be binding and conclusive as to all Parties for the purposes of this Agreement.

(d) A Receiving Owner may elect, in its sole discretion, to close escrow on a Sale pending resolution of a dispute under this Section 2.2.4; provided, however, the Escrow Agent shall retain one hundred and fifty percent (150%) of the Purchase Price based on the Appraisal in escrow until the dispute is resolved. Upon resolution of the dispute under the terms of this Section 2.2.4, the Escrow Agent shall distribute the Purchase Price as appropriate. Any excess shall be paid to the Receiving Owner. If there is any deficit, the Escrow Agent shall notify the Receiving Owner in writing, and such Receiving Owner shall deposit the required amount with the Escrow Agent within thirty (30) days of receipt of notice from the Escrow Agent. In the event a Receiving Owner elects to delay a close of escrow for a Sale pending the final outcome of the Second or Third Appraisal, for the purposes of that Sale, the validity of the Appraisal, as finally determined in the appeal process under this Agreement will be extended for a period ("Extension Period") equal to the number of days elapsed between the date of the applicable Written Objection and the 45<sup>th</sup> day following the final determination of the Market Value of a TDR Unit pursuant to this Section 2.2.4.

## 2.2.5 Agreement Regarding the Appraiser.

(a) Alternate Qualified Appraisers. Within six (6) months of the Effective Date, the County shall prepare a list of at least three (3), but not more than five (5) at any one time, qualified alternative appraisers determined by the County to have the appropriate qualifications, in accordance with the standards set forth in the Appraisal Instructions, to perform the duties of the Appraiser required by this Agreement (each shall be an "Alternate Qualified Appraiser"). An Alternate Qualified Appraiser may act as a successor Appraiser under subsection (b), may act as the Second Appraiser under Section 2.2.4(b), and/or may act as the Third Appraiser under Section 2.2.4(c). The County shall periodically, and as necessary, update the list of Alternate Qualified Appraisers.

(b) Appraiser. If the Appraiser named above, or any successor Appraiser, is unable to conduct any Appraisal required by this Agreement, the Participating Owners shall agree as to the selection of a successor Appraiser as follows: The County shall notify each Participating Owner in writing of the Appraiser's inability to conduct the Appraisal, and shall include in such written notice the County's list of Qualified Alternative Appraisers. Within ten (10) days after receipt of such notice, each Participating Owner shall have the right to submit to the County its written vote of which appraiser on such list shall serve as the successor Appraiser. If a Participating Owner fails to deliver such written vote within such 10-day period, such Participating Owner shall not thereafter have the right to vote for a successor Appraiser. The Alternate Qualifying Appraiser obtaining the highest number of votes within such 10-day period shall thereafter be the Appraiser for purposes of this Agreement. If no Participating Owner submits a vote within such 10-day period or the number of votes are evenly divided, the County shall select one of the Alternate Qualifying Appraisers to be the successor Appraiser and the Participating Owners hereby agree to accept such selection.

(c) Contract with Appraiser. The contract entered into with the Appraiser shall be for a term of one (1) year, and shall automatically renew for successive one-year terms unless the County elects to terminate the contract at the end of the then-current term. If the County determines that the Appraiser is not performing its duties as provided herein or in such contract, the County shall have the right to terminate such contract by providing written notice to the Appraiser in the manner to be stated in such contract. Upon any such termination or non-renewal of such contract, a successor appraiser shall be selected in the manner stated in Section 2.2.5(a) above.

(d) Appraiser's Fee. The contract shall provide that the Appraiser's fee for the Appraisal required for each Sale shall be paid at the earlier of (i) thirty (30) days from the date of the Appraisal or (ii) at the close of escrow for the Sale as provided in Section 2.2.2 above. If the Appraisal fee is paid prior to the close of escrow, the Receiving Property ordering the Appraisal shall pay the Appraiser directly and shall receive reimbursement of fifty percent (50%) of the cost from the Sending Owners at the close of Escrow.

(e) Timing of First Appraisal. The contract shall provide that the first Appraisal shall be prepared at the earliest of the following to occur: (i) the first Sale under this Agreement, (ii) the recordation of the first Final Map on a Receiving Property, or (iii) January 1, 2014; unless by October 31, 2013, the Receiving Owners, jointly, elect to submit a

written request to the County, with a copy to the Appraiser, to defer such date to the following January 1<sup>st</sup>. By October 31<sup>st</sup> of each year thereafter, if an Appraisal has not otherwise been prepared under this Agreement, the Receiving Owners may jointly elect to defer such date to the following January 1<sup>st</sup>.

2.3 Timing of Payment of Purchase Price. Each Receiving Owner agrees to use Placer Title Company at the following address: 1300 Oliver Road, Suite 120, Fairfield, CA, Attn: Michael Fortney (the "Escrow Agent") to handle each Sale (or, if the buyer requires another escrow company to serve as escrow agent, the Receiving Owner shall use the Escrow Agent as a cooperating escrow to handle the disbursement of the Purchase Price pursuant to this Agreement and the recordation of the Conservation Easement pursuant to this Agreement), and shall deliver to the Escrow Agent escrow closing instructions with respect to each such Sale which include provisions substantially in the form attached hereto as Exhibit F. Such escrow closing instructions shall supplement any other instructions to be provided by the parties at the time of such Sale, and the parties agree not to provide the Escrow Agent with any instructions that contradict the attached instructions. The Purchase Price relating to each Sale shall be payable from escrow at such Sale; provided, however, the Escrow Agent shall not release the portion of the Purchase Price payable to each Sending Owner until (i) any dispute regarding the Appraisal, if any, pursuant to Section 2.2.4 has been resolved conclusively and (ii) such Sending Owner has delivered to the Escrow Agent the executed and acknowledged "Conservation Easement" (defined below) as provided in Article 3 below.

2.4 Exceptions to Sales. This Agreement shall not prohibit a Receiving Owner from effecting any type of transfer or other conveyance of the Receiving Property, or any portion thereof. The following transactions shall not be deemed a "Sale" for the purposes of this Agreement and the Receiving Owner shall not pay the Purchase Price in connection with such transfers; provided, however, any transferee pursuant to any such transfer shall be subject to and bound by the terms and conditions of this Agreement, and the covenants and obligations of the Receiving Party shall run with the land in such circumstances:

(a) a transfer or conveyance of all or any portion of a Receiving Property pursuant to a judicial or nonjudicial foreclosure, deed in lieu of foreclosure, or other similar conveyance upon the exercise of a remedy under a loan secured by the Receiving Property shall not be considered a "Sale" for the purposes of this Agreement;

(b) an option agreement, including any option payments or deposits, unless and until a Bona Fide Purchaser exercises its option and effects a Sale;

(c) a sale or other conveyance to a party who is not a Bona Fide Purchaser; and

(d) a sale of a residential or other building that exists as of the date of this Agreement (including any replacement of such existing building).

The Receiving Owner who is transferring its Receiving Property to a party who is not a Bona Fide Purchaser shall be responsible for providing written notice to the County and the Sending Owners prior to the closing of such sale that no Purchase Price is payable in connection with such transfer. If any Sending Owner disagrees that the transferee under such transfer is to a

Bona Fide Purchaser, such Sending Owner shall notify the Receiving Owner of such disagreement. If such Sending Owner and the Receiving Owner cannot resolve such disagreement within ten (10) days thereafter, such Sending Owner shall have the right to submit such matter to the dispute resolution procedure described in Section 5.3 below, and if the Receiving Owner does not agree to submit to such dispute resolution procedure, such Sending Owner may bring an action in any court of competent jurisdiction to resolve such disagreement. No such disagreement shall delay or otherwise affect the Receiving Owner's transfer of the Receiving Property to the transferee; provided, however, if such disagreement has not been resolved prior to the closing date of such transfer, Escrow Agent shall withhold an amount equal to one hundred and fifty (150%) of the total Purchase Price that would have been paid with respect to such transfer if the transferee had been a Bona Fide Purchaser based on the amount calculated using the most recent Appraisal, and Escrow Agent shall hold such amount until such disagreement has been finally resolved. If no Appraisal has been prepared under this Agreement at the closing date of the Sale the Escrow Agent shall withhold an amount equal to fifty thousand dollars (\$50,000.00) per TDR Unit. At final resolution, the Escrow Agent shall either distribute such amount to Receiving Owner (if it is determined that such transferee was not a Bona Fide Purchaser), or to the Sending Owners as provided herein (if it is determined that such transferee was a Bona Fide Purchaser). If there is any deficit, the Escrow Agent shall notify the Receiving Owner in writing, and such Receiving Owner shall deposit the required amount with the Escrow Agent within thirty (30) days of receipt of notice from the Escrow Agent.

## 2.5 Miscellaneous Provisions Regarding Payment of Purchase Price.

2.5.1 Timing of Payment. The Escrow Agent shall notify the Sending Owner of the availability of any Purchase Price payment to be paid to such Sending Owner. Sending Owner shall thereafter notify the Escrow Agent regarding the timing of such payment. Nothing in this Agreement shall prevent such Sending Owner from instructing the Escrow Agent regarding the timing of such payment. The Sending Owner shall be responsible for any and all consequences, including the tax consequences, of the timing of such payments.

2.5.2 Payment of Purchase Price by Promissory Note. The Receiving Owners agree that in the event any Sale involves the payment of a portion of the purchase price by a promissory note by the purchaser to the Receiving Owner, (a) the cash portion of the purchase price must not be less than the Purchase Price payable to the Sending Owners pursuant to Section 2.1 above, and (b) the amount payable to the Sending Owners pursuant to Section 2.1 above shall be payable wholly out of the cash portion of the purchase price, and not out of any portion of the purchase price payable by such promissory note.

2.5.3 Replacement of Escrow Agent. If the Escrow Agent is unable to continue to serve as Escrow Agent under this Agreement for any reason, the County shall select a replacement Escrow Agent, which shall be a national title company with offices in Solano County, and such replacement Escrow Agent shall agree in writing to comply with the provisions of this Agreement. The County shall notify all Participating Owners in writing of such selection of the replacement Escrow Agent, and the Participating Owners hereby agree to accept the County's selection of the replacement Escrow Agent for all purposes hereunder.

2.5.4 Mason/Lawton Trust TDR Units. The Mason/Lawton Trust Units are assigned only to the Receiving Property owned by the Masons. If the Masons and Mason/Lawton Trust reach a private agreement with respect to the Mason/Lawton Trust TDR Units prior to a Sale of all or a portion of the Receiving Property owned by the Masons, then Article 2 of this Agreement shall not apply to the Mason/Lawton Trust TDR Units; if not, then Article 2 of this Agreement shall only apply to the TDR Units related to the Mason/Lawton Trust as provided in this Section 2.5.4. At a Sale, the Escrow Agent shall be directed to disburse the Market Unit Value of one half (1/2) of the Mason/Lawton Trust TDR Units assigned to any Sale to [Lawton] and the other one half shall be dispersed to the Masons. (For example, if the one quarter (1/4) of the Receiving Property owned by the Masons is subject to a Sale, such that 1/4 (or 28 (27.5 rounded up)) of the 110 Mason/Lawton Trust Units are assigned to the portion subject to the Sale, and the Market Unit Value was determined by the Appraisal to be \$50,000, then 1/2 of \$1,400,000 (28 x \$50,000)(or \$700,000) would be dispersed to [Lawton]). The remainder of this Agreement shall apply to such Units, including without limitation the obligation to record a Conservation Easement pursuant to Article 3.

### **ARTICLE 3: CONSERVATION EASEMENTS**

#### **3. Conservation Easement on Sending Properties.**

3.1 Agreement to Grant Easement. Upon the first to occur of each of the events described below in this Section 3.1, each Sending Owner agrees to grant to the “Conservation Easement Holder” as defined in Appendix A of the Specific Plan an easement on such Sending Owner’s property (a “Conservation Easement”) meeting the requirements of Section 4.2.3 of the Specific Plan and in form and content acceptable to the County Counsel, pursuant to which the Sending Owner shall agree to restrict the development of its Sending Property as described more fully therein:

3.1.1 The Escrow Agent being ready and authorized to release the Purchase Price pursuant to Section 2.3 above upon a Sale and receipt of evidence of the recording of such Conservation Easement;

3.1.2 The recordation of a parcel map or final map, or certificate of compliance for a lot line adjustment, as to the relevant Sending Property (unless the sole purpose of such subdivision is to separate a building existing as of the Effective Date of this Agreement from the remainder of the Sending Property and such subdivision does not authorize the construction any new Units on such Sending Property); or

3.1.3 The issuance of a building permit for any new structure to be constructed on all or part of the relevant Sending Property, except that a Sending Owner shall not be required to grant a Conservation Easement over its Sending Property upon the issuance of a building permit, if such building permit does not require any further subdivision rights, such as the recordation of a parcel map or final map, or certificate of compliance for a lot line adjustment.

3.2 No Right to Delay Sales. The Sending Owners shall not have the right or ability to delay or otherwise affect a Receiving Owner’s sale of its Receiving Property, whether

by failing to grant the Conservation Easement to the Conservation Easement Holder as required hereby or otherwise. If a Sending Owner has not complied with its obligations under this Agreement that must be satisfied before such Sending Owner is entitled to receipt of its share of the Purchase Price, the Escrow Agent will hold such Sending Owner's share of the Purchase Price until such obligations have been satisfied.

#### **ARTICLE 4: TERMINATION**

##### 4. Termination.

4.1 As to Each Receiving Owner. Except with respect to any provisions of this Agreement which expressly survive termination, this Agreement shall terminate as to any Receiving Property as to which a Notice of Payment has been recorded pursuant to Section 2.1. Following the recording of Notices of Payment as to all of such Receiving Owner's Receiving Property, the Receiving Owner seeking the termination of this Agreement as to its property shall send a written request to the County together with evidence that all payments required hereunder with respect to such Receiving Owner's property have been made, and if the County confirms that such final payment has been made, the County shall record a Partial Termination of Sales Participation Agreement in the Official Records, in the form attached hereto as Exhibit G, releasing such Receiving Property from the terms and conditions of this Agreement.

4.2 As to Each Sending Owner. Except with respect to any provisions of this Agreement which expressly survive termination, this Agreement shall terminate as to any Sending Property upon (a) the relevant Sending Owner's receipt of all portions of the Purchase Price payable with respect to such Sending Property pursuant to Article 2 above, and (b) the recordation of the Conservation Easement as to such Sending Property. A Sending Owner may, at its election, seek the termination of this Agreement as to its property by sending a written request to the County together with evidence that the Conservation Easement has been recorded, and if the County confirms that such conditions have been satisfied, the County shall record a Partial Termination of Sales Participation Agreement in the Official Records, in the form attached hereto as Exhibit G, releasing such Sending Property from the terms and conditions of this Agreement.

#### **ARTICLE 5: DEFAULTS AND REMEDIES**

##### 5. Defaults and Remedies.

5.1 Events of Default. The following shall be deemed "Events of Default" under this Agreement:

5.1.1 The failure of a Receiving Owner to use the Escrow Agent for a Sale as required by Section 2.3 above;

5.1.2 The failure of a Receiving Owner to pay to the Sending Owners all or a portion of the Purchase Price on the date required by Article 2 above;

5.1.3 The failure of a Sending Owner to record a Conservation Easement on the date required by Article 3 above;

5.1.4 The failure of any Participating Owner to pay its share of the costs and expenses of the Escrow Agent or the Appraiser, when due; and/or

5.1.5 Any attempt to avoid the obligations set forth in this Agreement through the use of sham transfers or deeds of trust (i.e., transfers to, or deeds of trust granted to, parties solely for the purpose of avoiding the obligations set forth in this Agreement).

5.2 Remedies. In addition to any rights and remedies which may be available at law, the parties shall have the following remedies, all of which shall expressly survive the termination of this Agreement:

5.2.1 By executing this Agreement, each Receiving Owner agrees to pay to the Escrow Agent for the benefit of the Sending Owners their respective shares of the Purchase Price as stated in Article 2 above, and accordingly, each Receiving Owner agrees that this Agreement shall constitute a lien upon its Receiving Property for such purposes. Upon the failure of a Receiving Owner to pay to any Sending Owner the portion of a Purchase Price required to be paid to such Sending Owner on the date required by Article 2 above, such Sending Owner shall have the right to record a claim of lien on the transferred Receiving Property. Such lien shall have priority from the Effective Date of this Agreement. The claim of lien shall include the following:

- (a) The name of the lien claimant.
- (b) A statement concerning the basis for the claim of lien and stating that the lien claimant is not in default of its obligations under this Agreement.
- (c) An identification of the owner or reputed owner of the Receiving Property or interest therein against which the lien is claimed.
- (d) A description of the Receiving Property or portion thereof against which the lien is claimed.
- (e) A description of the payment obligation under this Agreement which has given rise to the claim of lien and a statement itemizing the amount thereof.
- (f) A statement that the lien is claimed pursuant to the provisions of this Agreement, reciting the date and document number of recordation hereof.
- (g) The claim of lien shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Receiving Owner against whom the lien is claimed, by personal service or by mailing pursuant to Section 9.1 below. The lien so claimed shall attach, with priority from the Effective Date of this Agreement, solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, a suit in the nature of a suit to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of the State of California.

5.2.2 Any time a Participating Owner shall not pay any sum payable hereunder to another Participating Owner within five (5) days of the due date, such delinquent Participating Owner shall pay default interest on such amount from the due date to and including the date such payment is received by the Participating Owner entitled thereto, at a rate of ten percent (10%) per annum, but in any event not to exceed the highest rate permitted by law.

5.2.3 If a Sending Owner fails to record a Conservation Easement as required by Article 3 above, such Sending Owner shall not be entitled to receive any portion of any Purchase Price, or to be issued any further building permits or development rights with respect to such Sending Owner's property (and the County may withdraw or condition any previously-granted building permits pursuant to which construction has not been completed), unless and until such Sending Owner records the Conservation Easement. In the event a Sending Owner has not complied with its obligation to record a Conservation Easement as required by Article 3, within three (3) years of the date it receives notice from the Escrow Agent that is entitled to disbursement of its share of the Purchase Price under this Agreement, the Sending Owner shall be deemed to have conclusively forfeited its right to such Purchase Price, unless the County, in its discretion, has granted a reasonable extension in writing for good cause. In the event a Sending Owner has been deemed to have forfeited its right to disbursement of a Purchase Price under this Section, such payment shall be promptly dispersed by the Escrow Agent to the Receiving Owner.

5.3 Disputes. As an alternative procedure, in an action by a Participating Owner against any other Participating Owner under this Agreement, the Participating Owners 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 Participating Owners 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. If the Participating Owners are unable to agree upon a referee within ten (10) days of a written request to do so by a Participating Owner, the Participating Owners, 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 Participating Owners) shall be borne equally by the Participating Owners. Any referee selected pursuant to this Section 5.3 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. Notwithstanding the foregoing, the alternative dispute resolution described in this Section 5.3 is an optional remedy under this Agreement and where a Participating Owner asserting an action wishes to do so, that Participating Owner may bring a legal action without first engaging in alternative dispute resolution. Likewise, a Participating Owner 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.

## **ARTICLE 6: INDEMNIFICATION**

6. Indemnification. Each Participating Owner shall indemnify, defend (with counsel reasonably acceptable to the County) and hold harmless the County and its officers, employees, agents, successors and assigns (collectively, the "County Parties") from and against any and all

claims, actions, suits, causes of action, costs, penalties, expenses, damages and any other liability whatsoever (including but not limited to attorneys fees and costs)(collectively, “Claims”), arising or resulting directly or indirectly from the TDR Program, including without limitation approval or implementation of this Agreement or any provision hereunder, the valuation or determination of the Market Value of a TDR Unit, the selection of the Appraiser or the Escrow Agent, the recordation or implementation of any Conservation Easement, and/or from any acts, omissions, negligence or willful misconduct of any Participating Owner, the Appraiser or the Escrow Agent, whether such acts, omissions, negligence or willful misconduct are by a Participating Owner, the Appraiser or the Escrow Agent or any of such person’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 the County or the County Parties.

## **ARTICLE 7: ASSIGNMENT**

7. Covenants Run With the Land. The terms of this Agreement and all easements granted hereunder shall constitute covenants running with the land and shall bind all of the Sending Properties and Receiving Properties, and inure to the benefit of and be binding upon each Sending Owner and Receiving Owner and their respective successors and assigns. As used herein, the terms “Sending Owners” and “Receiving Owners” shall be deemed to mean the owners of the Sending Properties and Receiving Properties as of the relevant points in time. A Sending Owner may assign such Sending Owner's right to its share of the Purchase Price under Section 2.2.2 of this Agreement to any person or entity so long as: (i) such Sending Owner has recorded the Conservation Easement required under Section 3.1 of this Agreement prior to such assignment, (ii) the County Counsel has approved the form of the assignment agreement and (iii) the notice of assignment is submitted to the Escrow Agent.

## **ARTICLE 8: LENDERS**

### 8. Lender’s Consent; No Subordination.

8.1 Representations and Warranties. Each Participating Owner represents and warrants that it has obtained all necessary consents to this Agreement from any lender whose loan is secured by a lien on such Participating Owner’s parcel, or whose loan otherwise requires such lender’s consent to this Agreement.

8.2 Future Loans. This Agreement shall be superior to, and shall not be subordinated to, any loans obtained by any of the Participating Owners after the Effective Date hereof, whether or not such loans are secured by liens on all or portions of any Participating Property and whether or not such loans are for the purpose of refinancing any existing loans or for providing funding for construction of all or portions of the Participating Properties.

8.3 Lender’s Right to Foreclose. Notwithstanding any other provisions in this Agreement to the contrary, no breach of any of the covenants, conditions and obligations of this Agreement, nor the enforcement of any remedy set forth in this Agreement, shall defeat or render invalid the lien of any deed of trust or mortgage on any Participating Property made in good faith and for value, but all covenants, conditions and obligations of this Agreement shall be binding upon and effective against any person or entity which acquires title to all or any portion of any

Participating Property through foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise as a result of an exercise of remedies under any such deed of trust or mortgage.

**ARTICLE 9: MISCELLANEOUS**

9. Miscellaneous.

9.1 Notices.

9.1.1 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 the Participating Owners as follows:

If to the County: County of Solano  
Director of Resource Management  
675 Texas Street, Suite 5500  
Fairfield, CA 94533

With a copies to: County Counsel  
675 Texas Street, Suite 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 Participating Owners: See Exhibit A

With copies to: See Exhibit A

9.1.2 Notices shall 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 where if confirmation is after 5:00 p.m., then notices shall be 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.

9.2 Construction and Interpretation.

9.2.1 This Agreement and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements are superseded in total by this Agreement and the Exhibits attached hereto. This Agreement has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such Parties, and such Parties are fully informed with respect thereto;

no such Party shall be deemed the scrivener of this Agreement; and, based on the foregoing, the provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

9.2.2 Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words “including”, “such as”, or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as “without limitation”, or “but not limited to”, are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

9.2.3 The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

9.2.4 Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Party by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Party and the same shall remain in full force and effect.

9.2.5 This Agreement may be amended by, and only by, a written agreement signed by all of the Parties and shall be effective only when recorded in the Official Records.

9.2.6 This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

9.3 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Units or of any Participating Property or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein.

9.4 Mitigation of Damages. In all situations arising out of this Agreement, each Party shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party shall take all reasonable measures to effectuate the provisions of this Agreement.

9.5 Agreement Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Agreement shall (i) entitle any Party to cancel, rescind, or otherwise terminate this Agreement, or (ii) defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to any part of the Project. However, such limitation shall not

affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

9.6 Time. Time is of the essence of this Agreement.

9.7 No Waiver. The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Party of any default under this Agreement shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement.

9.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

[Signatures Appear on Following Pages]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement, or caused this Agreement to be executed by their duly authorized representatives, effective as of the Effective Date stated above.

THE COUNTY

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

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

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

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

THE SENDING OWNERS

[SIGNATURE BLOCKS FOR ALL  
SENDING OWNERS]

THE RECEIVING OWNERS

[SIGNATURE BLOCKS FOR ALL  
RECEIVING OWNERS]

[ADD NOTARY ACKNOWLEDGMENT FORMS FOR EACH SIGNATURE]

## EXHIBIT A

### THE PARTICIPATING OWNERS

**NOTE: NEED FULL NAMES AND ADDRESSES OF THE PARTIES; Adjust as necessary for final participation]**

1. Sending Owners

Name	Address	Total Units Allocated under the Specific Plan	No. of TDR Units Being Transferred to Receiving Properties
[Full name of Engell] (“Engell”)		12	8
[Full name of Hager] (“Hager”)		9	4
[Full name of James Seibe] (“James Seibe”)		4	4
[Full name of Jean Siebe] (“Jean Seibe”)		7	6
[Full name of Volkhart] (“Volkhart”)		9	5
[Full name of Wirth] (“Wirth”)		9	7
<b>TOTAL</b>		<b>53</b>	<b>37</b>
[Full name of Mason/Lawton Trust] (“Mason/Lawton Trust”)		110	110

2. Receiving Owners

Name	Address	Total Units Allocated under the Specific Plan	No. of TDR Units Being Transferred From Sending Properties	<b>TOTAL</b>
[Full name of B&L Properties] (“B&L Properties”)		58	8	<b>66</b>
[Full name of Mason] (“Mason”)		178*	24	<b>202</b>
[Full name of		34	5	<b>39</b>

<i>Mahe</i> (“ <u>Mahe</u> ”)				
<b>TOTAL</b>		<b>270</b>	<b>37</b>	<b>307</b>

\* includes 110 Mason/Lawton Trust TDR Units

**EXHIBIT B**

**LEGAL DESCRIPTIONS OF PARTICIPATING PROPERTIES**

Sending Properties

*[legal descriptions to be inserted consistent with conceptual attachment]*

Receiving Properties

*[legal descriptions to be inserted consistent with conceptual attachment]*

Mason/Lawton Trust

*[legal descriptions to be inserted consistent with conceptual attachment]*

**EXHIBIT C**

**UNITS TRANSFERRED**

*[numbers to be finalized prior to execution based on final approved TDR Table]*

Sending Owner	Receiving Owner for Purposes of Reallocation of Units Only	No. of Units
Engell	Mason	8
Hager	B&L Properties	4
James Seibe	B&L Properties	4
Jean Siebe	Mason	6
Volkhardt	Maher	5
Wirth	Mason	7
<b>TOTAL</b>		<b>37</b>
Mason/Lawton Trust	Mason	<b>110</b>

## EXHIBIT D

### APPRAISAL INSTRUCTIONS

These appraisal instructions apply to all appraisals relating to the Sales Participation Agreement by and among; the County of Solano and the Participating Owners ("SPA"), including Appraisals, and Second Appraisals if they occur as referenced in sections 2.2.3 and 2.24(b) of the SPA.

Each appraisal is to be performed in accordance with the then applicable Uniform Standards of Professional Appraisal Practice (USPAP), developed by the Appraisal Foundation as adopted by the California Office of Real Estate Appraisers.

The Uniform Standards of Appraisal Practice require stating certain assignment parameters in each appraisal assignment. All appraisals performed in accordance with these appraisal instructions will have the following parameters:

- Identified Client: All signatory parties to the SPA.
- Intended Users: All signatory parties to SPA.
- Intended Use: Implementation of the SPA. Individual appraisals are to reference the use further as relating to sections 2.2.3 and 2.2.4 of the SPA.
- Value Type: Market Value<sup>1</sup>
- Date of Value: *[TBD; appraisal to be ordered no earlier than 120 days from the intended date of a closing of a Sale (as that term is defined in the SPA) and shall be valid for a period of 360 days from the date of the Appraisal]*
- Property Rights Appraised: A TDR Unit as that term is defined in the SPA.

The TDR Units to be appraised are further clarified as being:

1. The property right created through the Existing Entitlements (as that term is defined in the SPA) and the SPA.
2. The TDR Units do not include any increment of value created through Subsequent Entitlements and Improvements (as that term is defined in the SPA). Example of such Subsequent Entitlements and Improvements include; actual or proposed subdivision mapping, design review, federal and state permitting, improvement plans, grading,

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1 *Dictionary of Real Estate Appraisal*, 5th Edition, The Appraisal Institute

horizontal or vertical improvements, etc.

3. The intent of the parties is that the Existing Entitlements and SPA creates the defined TDR Unit which remains a constant fixed asset through the term of the SPA. Appraisals subsequent to the first appraisal are to reflect changing market conditions and not any perceived change in the character over time of the property right being appraised.
4. The signatory parties to the SPA acknowledge that there are many potential manners of viewing the Market Value of the TDR Unit. The signatories to the SPA stipulate that the TDR Unit is to be appraised as it contributes to the value of the three Receiving Properties (as that term is defined in the SPA).
5. The signatory parties stipulate that the value of the TDR Unit is not its contributory value to any Sending Property (as that term is defined in the SPA).
6. The parties stipulate that the value of the TDR Unit is not its contributory value to the any other property other than the defined Receiving Properties.
7. The signatory parties to the SPA stipulate that the value of the TDR Unit is no different than the value of any other unit of development right residing within the Receiving Properties. The fact that the Unit is part of the TDR Program makes it neither more nor less valuable than any other Unit entitled by the Existing Entitlements within the Receiving Properties.
8. The signatory parties to the SPA stipulate to the appraisal of the TDR Unit as it contributes to the value of the Receiving Properties. Further, analyses of any of the three Receiving Properties are to be generic without ascribing value differentials to the individual development plan, the subtleties of specific location within Middle Green Valley, differences in density of development, or any potential differences in the costs of utility development or offsite improvement costs.
9. The TDR Unit, the property right created by the SPA, does not include the contributory value of the underlying residual land of the Receiving Property.

#### Minimum appraiser qualifications

The minimum qualifications of an appraiser under the SPA shall be: holding the MAI designation, having a minimum of ten years of residential development land appraisal experience in Solano County, and specific training in the appraisal of the contributory value of parts of full fee interests. Examples include training in appraisal of transferable development rights, conservation easements, restricted development rights, or similar training in the valuation of the division of property rights.

#### Definition of terms:

Market Value: “The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting

prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."<sup>1</sup>

Contribution: The concept that the value of a particular component is measured in terms of its contribution to the value of the whole property, or as the amount that its absence would detract from the value of the whole.<sup>2</sup>

Intended use: The use or uses of an appraiser's reported appraisal, appraisal review, or appraisal consulting opinions and conclusions, as identified by the appraiser based on communications with the client at the time of the assignment.<sup>3</sup>

Intended user: The client and any other party as identified, by name or type, as users of the appraisal, appraisal review, or appraisal consulting opinions and conclusions, as identified by the appraiser based on communications with the client at the time of the assignment.<sup>4</sup>

Client: The party or parties who engage an appraiser (by employment or contract) in a specific assignment.<sup>5</sup>

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1 *Dictionary of Real Estate Appraisal*, 5th Edition, The Appraisal Institute

2 *Dictionary of Real Estate Appraisal*, 5th Edition, The Appraisal Institute

3 *Uniform Standards of Professional Appraisal Practice*, 2010-2011 Edition, The Appraisal Foundation

4 *Uniform Standards of Professional Appraisal Practice*, 2010-2011 Edition, The Appraisal Foundation

5 *Uniform Standards of Professional Appraisal Practice*, 2010-2011 Edition, The Appraisal Foundation

**EXHIBIT E**

RECORDING REQUESTED BY:

AND WHEN RECORDED, MAIL TO:

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Space Above for Recorder's Use

**NOTICE OF PAYMENT**

**NOTICE IS HEREBY GIVEN THAT:**

In connection with that certain Sales Participation Agreement dated \_\_\_\_\_, 20\_\_, (the "SPA") between and among the undersigned, the County of Solano, California, and certain other "Participating Owners," which was recorded on \_\_\_\_\_, 20\_\_, in the Official Records of Solano County, California, as Instrument No. \_\_\_\_\_, the undersigned, being one of the "Receiving Owners" as defined in the SPA, hereby affirms that (1) all required payments have been made under Section 2.1 of the SPA to the "Sending Owners (as defined in the SPA) in connection with the sale by the undersigned of that certain real property described in Attachment 1 attached hereto ("Property") and (2) the lien right in Section 5.2.1 is hereby extinguished as to the Property.

The undersigned certifies that the foregoing is true and accurate to the best of the undersigned's knowledge.

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_,  
a \_\_\_\_\_

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

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

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



Attachment 1 to  
Notice of Payment

Legal Description of the Property

**EXHIBIT F**

**FORM OF ESCROW INSTRUCTIONS**

\_\_\_\_\_ Title Company

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_, Escrow Officer

Re: Seller's Closing Instructions  
Escrow No. \_\_\_\_\_

Dear \_\_\_\_\_:

The undersigned, \_\_\_\_\_, a \_\_\_\_\_ (the "Seller"), is selling certain real property located at \_\_\_\_\_ (the "Property"), to \_\_\_\_\_ (the "Buyer"), pursuant to that certain Purchase and Sale Agreement dated as of \_\_\_\_\_, 20\_\_, by and between the Seller and the Buyer (the "Purchase Agreement"). These instructions are not intended to supersede the terms and provisions of the Purchase Agreement. This letter constitutes your closing instructions from the Seller, as follows:

1. Delivery of Documents and Funds.

1.1 From the Seller. You have received or will receive the following documents from the Seller, executed on behalf of the Seller:

1.1.1 Notice of Payment, relating to the payments to the "Sending Owners" required to be made pursuant to that certain Sales Participation Agreement dated \_\_\_\_\_, 20\_\_, and recorded in the County Recorder's Office on \_\_\_\_\_, 20\_\_, as Instrument No. \_\_\_\_\_ (the "SPA");

1.1.2 A fully-completed worksheet (the "Worksheet") in the form attached to these instruction, showing the amounts to be paid to each "Sending Owner" pursuant to the SPA;

1.1.3 [LIST ALL OTHER SELLER CLOSING DOCUMENTS BEING DELIVERED INTO ESCROW].

1.2 From the Buyer. You have received or will receive the following documents from the Buyer, executed on behalf of the Buyer:

1.2.1 Preliminary Change of Ownership Report (the "PCOR");

1.2.2 [LIST ALL OTHER BUYER CLOSING DOCUMENTS BEING DELIVERED INTO ESCROW].

1.3 Funds. You have earlier received \$ \_\_\_\_\_ from the Buyer as a deposit, which is to be applied toward the purchase price. You shall receive by wire transfer of federal funds the additional amount of \$ \_\_\_\_\_ from \_\_\_\_\_ (the “Lender”) on behalf of the Buyer. You shall receive the balance of the purchase price from the Buyer, plus an amount necessary to pay all of the Buyer’s share of closing costs and prorations. (The foregoing amounts are referred to as the “Funds.”)

2. Recording and Disbursement of Funds.

2.1 Precondition to Recording and Disbursement of Funds. You are not authorized to record any documents or disburse any funds unless and until all of the following conditions have been satisfied:

2.1.1 You have received all of the documents (fully executed and acknowledged, as appropriate) and the Funds referred to above;

2.1.2 The Seller has approved and signed your estimated closing statement showing all closing costs and prorations to be paid by or on behalf of the Seller, and showing the funds to be paid to the Seller at Closing (the “Seller’s Estimated Closing Statement”); and

2.1.3 The Seller has verbally stated to you that you may proceed as instructed herein.

2.2 Recording and Delivery of Documents. Upon satisfaction of all of the conditions in Section 2.1, you are authorized to take the following actions in the following order:

2.2.1 date any undated closing documents as of the closing date;

2.2.2 cause the Notice of Payment to be recorded in the County Recorder’s Office, and thereafter mailed to the County;

2.2.3 deliver the PCOR to the County Recorder’s Office;

2.2.4 deliver to the undersigned: (a) the Notice of Payment showing that they have been recorded, (b) a photocopy of the PCOR, showing that it has been delivered to the County Recorder’s Office, and (c) original counterparts of all other closing documents; and

2.2.5 deliver to the Buyer: (a) the Notice of Payment showing that they have been recorded, (b) a photocopy of the PCOR, showing that it has been delivered to the County Recorder’s Office, and (c) original counterparts of all other closing documents.

2.3 Disbursement of Funds. Upon confirmation of closing, you are to make disbursements from the Funds as follows:

- 2.3.1 Pay your fees and all disbursements that have been approved by the Seller as shown on the Seller's Estimated Closing Statement;
- 2.3.2 In accordance with the SPA, pay a portion of the Funds to each of the "Sending Owners" identified in the SPA in the amounts shown on the Worksheet attached hereto; provided, however, you shall not release any Funds to a Sending Owner unless and until such Sending Owner has either (a) previously recorded a Conservation Easement on its property as provided in the SPA; or (b) delivers to you a duly executed and acknowledged Conservation Easement for recording in the County Recorder's Office, in which case you are instructed to record such Conservation Easement in the County Recorder's Office prior to releasing any Funds to such Sending Owner pursuant to this paragraph; and
- 2.3.3 Disburse the balance of the Funds to or as directed by the Seller, pursuant to instructions to be provided by the undersigned or the Seller.

We anticipate that the closing will occur by \_\_\_\_\_, 20\_\_\_. If you are unable to comply with these instructions and close this escrow on or before 5:00 p.m. on \_\_\_\_\_, 20\_\_\_, or there are to be any changes therein, you are not to proceed without further written authorization from the undersigned. Please immediately call me if there are any questions concerning the above.

**PLEASE ACKNOWLEDGE RECEIPT AND ACCEPTANCE OF THESE INSTRUCTIONS BY IMMEDIATELY RETURNING AN EXECUTED COPY OF THESE INSTRUCTIONS TO THE UNDERSIGNED. IN ANY EVENT, YOUR DISBURSEMENT OF ANY FUNDS DEPOSITED WITH YOU BY THE BUYER, OR YOUR RECORDATION OF THE DEED, SHALL BE DEEMED TO BE EVIDENCE OF YOUR AGREEMENT TO PERFORM ALL OF THE INSTRUCTIONS AND REQUIREMENTS CONTAINED HEREIN.**

Very truly yours,

\_\_\_\_\_  
[NAME OF SELLER]

---

**THE UNDERSIGNED ACKNOWLEDGE RECEIPT OF THESE INSTRUCTIONS AND  
AGREE TO PROCEED IN STRICT ACCORDANCE THEREWITH.**

Acknowledged and agreed to as of  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_ TITLE INSURANCE COMPANY

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

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

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

Attachment to Escrow Instructions:  
Worksheet for Calculating Payments to Sending Owners

1. As provided in the Sales Participation Agreement dated \_\_\_\_\_, 20\_\_ (the “SPA”), the “Market Value of a TDR Unit” of the property being sold pursuant to the foregoing Escrow Instructions, as determined by the Appraiser named in the SPA, was \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per TDR Unit. A copy of the Appraisal is attached to this Worksheet as Attachment 1.

2. The seller’s portion of the “standard closing costs” (as defined in the SPA) incurred in connection with the sale of the property were as follows:

(a)	Escrow Fees	\$ _____
(b)	Title Fees	\$ _____
(c)	Broker Commission (____%)	\$ _____
(d)	Transfer Tax	\$ _____
(e)	Recording Fees	\$ _____
(f)	Other	\$ _____ (attach description)
	TOTAL	\$ _____

A copy of the escrow company’s estimated Settlement Statement showing the above closing costs is attached to this Worksheet as Attachment 2.

3. For purposes of calculating the “Purchase Price” for the TDR Units as provided in the SPA, the following calculations are effective as of the Closing Date:

(a) Market Value of a TDR Unit (per Unit): \$ \_\_\_\_\_;

(b) \_\_\_\_\_ are the number of TDR Units assigned to the property subject to the Sale pursuant to the SPA;

(b) **[12%]** of the closing costs = \$ \_\_\_\_\_;

(c) 50% of the cost of the Appraisal = \$ \_\_\_\_\_ fee (as shown on the Appraiser’s invoice attached to this Worksheet as Attachment 3):  
\$ \_\_\_\_\_;

4. Using the calculations in Step 3 above, the "Purchase Price" equaled:

(a) Market Value of a TDR Unit (\$ \_\_\_\_\_);

(b) multiplied \_\_\_\_\_ (the number of TDR Units)

(c) reduced by 12% of the seller’s closing costs (\$ \_\_\_\_\_);

(d) reduced by 50% of the cost of the Appraisal (\$ \_\_\_\_\_);

(e) equals a Purchase Price of \$ \_\_\_\_\_

5. At the Closing, as provided in the SPA, the Escrow Agent shall disburse a portion of the Purchase Price to each “Sending Owner,” as follows: **[to be revised as necessary based on participation]**

Engell	23.6842105%	=	\$ _____
Hager	10.5263158%	=	\$ _____
<del>Parenti</del>	<del>07.8947368%</del>	=	<del>\$ _____</del>
James Seibe	10.5263158%	=	\$ _____
Jean Siebe	15.7894737%	=	\$ _____
Volkhart	13.1578947%	=	\$ _____
Wirth	18.4210526%	=	\$ _____
TOTAL:	100%	=	\$ _____

*[Insert row/calculation for Mason/Lawton Trust if applicable under Section 2.4.5 of the SPA]*

The Escrow Agent shall disburse the foregoing Purchase Price to each Sending Owner at an address and by a method stated in written instructions to be provided by each Sending Owner to Escrow Agent.

[The following should be attached to each Worksheet:]

Attachment 1: Appraisal establishing Market Value of a TDR Unit

Attachment 2: Escrow company’s estimated Settlement Statement showing all of seller’s closing costs

Attachment 3: Appraiser’s invoice for the Appraisal

**EXHIBIT G**

RECORDING REQUESTED BY:

AND WHEN RECORDED, MAIL TO:

---

Space Above for Recorder's Use

**PARTIAL TERMINATION OF SALES PARTICIPATION AGREEMENT**

**WHEREAS**, on or about \_\_\_\_\_, 20\_\_, the County of Solano, a political subdivision of the State of California (the "County"), and certain "Participating Landowners" entered into that certain Sales Participation Agreement (the "SPA") which was recorded in the Official Records of Solano County, California, on \_\_\_\_\_, 20\_\_, as Instrument No. \_\_\_\_\_; and

**WHEREAS**, pursuant to the SPA, upon the satisfaction of certain conditions stated therein, the parties agreed that the SPA would terminate as to certain of the parcels of real property bound thereby; and

**WHEREAS**, the County has determined that the conditions necessary to release the property described in Attachment 1 attached hereto (the "Released Property") from the SPA have been satisfied;

**NOW, THEREFORE**, in accordance with the provisions of the SPA authorizing the County to release parcels of real property from the SPA upon the satisfaction of such conditions,

- (1) The Released Property is hereby released from the restrictions and obligations stated in the SPA (except for any obligations which, by their express terms, survive the termination of the SPA), and
- (2) The SPA is hereby terminated with respect to the Released Property (except for any obligations which, by their express terms, survive the termination of the SPA), and
- (3) The Released Property and its owners shall have no further rights under the SPA.

**NOTWITHSTANDING THE FOREGOING**, nothing herein shall release any other real property that is subject to the SPA from the restrictions and obligations thereof, and the SPA shall not terminate but remain in full force and effect with respect to all such other parcels of real property that are subject to the SPA.



***DRAFT SUBJECT TO FURTHER COUNTY STAFF AND LANDOWNER REVIEW AND COMMENTS  
BOARD OF SUPERVISORS APPROVAL AFTER PUBLIC HEARING.***

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

**LANDOWNER REVIEW DRAFT 6/30/10**

**No Exhibit H; Separate Ordinance**

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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**DRAFT SUBJECT TO FURTHER COUNTY STAFF AND LANDOWNER REVIEW AND COMMENTS  
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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 \_\_\_\_\_, 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. **[Reference attached list, acreage and legal descriptions once collected from landowners - Daley Ranch partial description to be prepared by County]** 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 four (394) 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 \_\_\_\_\_, 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

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Impact Report for the Middle Green Valley Specific Plan ("**EIR**") by Resolution No. \_\_\_\_\_ adopted \_\_\_\_\_, 2010.

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. \_\_\_\_\_ adopted \_\_\_\_\_, 2010 ("**MMRP**").

(2) Adoption of the Middle Green Valley Specific Plan by Ordinance No. \_\_\_\_ introduced on \_\_\_\_\_ and adopted by the Board of Supervisors on \_\_\_\_\_ (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

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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 July 27, 2010, the Board of Supervisors approved this Development Agreement and authorized its execution, and adopted that Ordinance No. \_\_\_\_\_. That Ordinance ("**Enacting Ordinance**") became effective on \_\_\_\_\_, 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

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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.

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"**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.

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**"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

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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.

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"**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.

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"**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

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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.

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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

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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 a 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 28-60 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 28-60 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 28-60 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.

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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

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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,

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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). **Exhibit H** to Ordinance No. \_\_\_\_-2010 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 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

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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

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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

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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

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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

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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

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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

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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**").

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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 re-vest 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

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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

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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

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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

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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

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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

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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

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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

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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 28-53 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

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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 28-53 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

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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

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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

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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

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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.

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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.



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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.

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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

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- Exhibit D      Impact Fees
- Exhibit E      Form Assignment and Assumption Agreement
- Exhibit F      Annual Review Form
- Exhibit G      Sales Participation Agreement

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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: \_\_\_\_\_  
John M. Vasquez, Chair  
Solano County Board of Supervisors

**ATTEST:**

Michael D. Johnson, Clerk  
Solano County Board of Supervisors

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

**APPROVED AS TO FORM:**

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

**[LANDOWNER SIGNATURES]**

*[Signatures must be notarized]*

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**EXHIBIT A**

List of Developers and Notice Addresses

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**EXHIBIT B**

[Legal Descriptions of Developers Property]

**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) 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 1 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.

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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.

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(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.

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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

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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]*

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**ASSIGNOR:**

\_\_\_\_\_

a \_\_\_\_\_

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

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

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

*[Notary Acknowledgment Required]*

**ASSIGNEE:**

\_\_\_\_\_

a \_\_\_\_\_

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

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

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

*[Notary Acknowledgment Required]*

*[Signatures continued on next page]*

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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

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**EXHIBIT NO. 1**

**Property Legal Description**

*[To Be Inserted]*

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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\_\_.

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**EXHIBIT G**

**Form of Sales Participation Agreement**

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