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440 Fifth St., Room 206
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10:47AM 05-Nov-2013	Page 1 of 57	

RECORDING FEE EXEMPT
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SECTION 27383 ✓

**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE COUNTY OF SAN BENITO AND
FAIRVIEW CORNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**

**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE COUNTY OF SAN BENITO AND
FAIRVIEW CORNERS, LLC**

This DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into on November 6, 2012, by and between the County of San Benito, a political subdivision of the State of California ("**County**") and Fairview Corners, LLC, a California limited liability company ("**Owner**"). County and Owner are sometimes herein referred to individually as a "**party**" and collectively as "**parties.**"

RECITALS

This Agreement is predicated on the following facts, which are incorporated into and made a part of this Agreement.

A. Capitalized Terms.

This Agreement uses certain terms with initial capital letters that are defined in Section 1 below or elsewhere in this Agreement. County and Owner intend to refer to those definitions when the capitalized terms are used in this Agreement.

B. Nature and Purpose of Development Agreements.

The Legislature enacted Government Code section 65864 *et seq.* ("**Development Agreement Statute**") in response to the lack of certainty in the approval of development projects, which can result in a waste of resources, escalate the cost of housing, and discourage investment in and commitment to planning that would maximize the efficient utilization of resources. The Development Agreement Statute is designed to strengthen the public planning process, to encourage private participation in comprehensive, long-range planning, and to reduce the economic costs of development. It authorizes a county to enter into a binding agreement with any person having a legal or equitable interest in real property located in the county regarding the development of that property.

C. County's Development Agreement Procedures

Pursuant to the Development Agreement Statute, County adopted San Benito County Code Chapter 19.11 (as amended), which sets forth procedures and requirements for the consideration and adoption of development agreements ("**County Development Agreement Procedures**"). This chapter enables County and a developer seeking County approval of a project to enter into a development agreement that vests certain rights and that requires a developer to provide certain public benefits beyond those that could otherwise be imposed as conditions of development.

D. Owner's Interest in the Property.

The land governed by this Agreement consists of approximately sixty (60) acres in unincorporated San Benito County, as more particularly described in attached Exhibit 1 and depicted on attached Exhibit 2 ("**Property**"). Owner holds fee title to and is the legal owner of the Property. The Property has been designated by the San Benito County Board of Supervisors ("**Board**") and in the County's General Plan as an "Area of Special Study," which is an area where significant growth is expected to occur upon completion and adoption of a comprehensive specific plan pursuant to Government Code section 65450.

E. Development of the Property.

Owner has prepared the Fairview Corners Specific Plan, which has been adopted by the County Board of Supervisors as provided in Recital F below ("**Specific Plan**"). The Specific Plan permits the development of the Property for residential and related purposes as described more fully therein ("**Project**"). Under the Specific Plan, Owner may develop up to a maximum of two hundred twenty (220) primary dwelling units (excluding Secondary Dwelling Units). The ultimate number of units and housing mix to be developed will be within Owner's discretion subject to County's approval authority as set forth more fully in the Specific Plan. The Project may be developed with a variety of housing types, including for sale or rental detached single-family dwellings, attached single-family dwellings, multi-family attached homes, townhouses, condominiums, row houses, and apartments to ensure the necessary flexibility to allow Owner to respond to changing market demand and community needs during a time of widespread economic instability. In addition, as set forth more fully herein, the Project may include on-site parks and recreational areas connected by a pedestrian and bicycle network, as well as related on- and off-site Project Infrastructure.

F. Initial Project Approvals.

County has taken or intends to take various planning, land use entitlement and environmental review actions relating to the Project (collectively, "**Initial Approvals**") including, without limitation, the following:

1. Environmental Impact Report (Resolution No. 2012-70). On November 6, 2012, pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*), the CEQA Guidelines (14 Cal. Regs. § 15000 *et seq.*), and County's local Implementing Procedures for CEQA (collectively, "**CEQA**"), following review and recommendation of the San Benito County Planning Commission ("**Planning Commission**") and after a duly noticed public hearing, the Board took the following actions: (a) certified the Final Environmental Impact Report (State Clearinghouse No. 2010081009) for the Project ("**Project EIR**") pursuant to Resolution Number 2012-70 adopted

November 6, 2012; (b) adopted written findings relating to significant environmental impacts; (c) adopted a Statement of Overriding Considerations; and (d) adopted a mitigation monitoring and reporting plan that incorporated all identified mitigation measures set forth in the Project EIR ("**MMRP**").

2. General Plan Amendment (Resolution No. 2012-71). On November 6, 2012, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board took the following actions: (a) approved General Plan Amendment No. 08-36 as an amendment to County's General Plan ("**General Plan Amendment**") in connection with the Project; and (b) made determinations regarding the Project's (including, without limitation, this Agreement) consistency with County's General Plan (as amended). The General Plan Amendment is distinct from the comprehensive update to the General Plan, which County is currently pursuing at the time of the Initial Approvals.

3. Specific Plan Adoption (Resolution No. 2012-72). On November 6, 2012, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board adopted Specific Plan No. 005-10, which governs development of the Project ("**Specific Plan Adoption**").

4. County Code, Zoning Text and Zoning Map Amendments (Ordinance No. 909). On November 6, 2012, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board took the following actions: (a) amended the text in the County's Zoning Code to reflect the new zoning designation of "Fairview Corners-Specific Plan (FVC-SP)" to be applied to the Property; and (b) amended the County's Zoning Map to show the Property as rezoned to "Fairview Corners-Specific Plan (FVC-SP)", (collectively, "**Zoning Amendments**" in Zone Change No. 08-164).

5. Development Agreement (Ordinance No. 910). On November 6, 2012, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board made the following findings with respect to this Agreement:

(a) It was processed in accordance with the Development Agreement Statute.

(b) It is consistent with the San Benito County General Plan (as amended, including the General Plan Amendment referenced above), the Specific Plan, any area plans and other applicable Rules, Regulations and Official Policies.

(c) It is compatible with the uses authorized in, and the regulations prescribed for, the applicable zoning of the Property.

5

(d) It will not adversely affect the orderly development of the surrounding community.

(e) It is fair, just and reasonable.

(f) It is consistent with and best serves the public health, safety and general welfare of County's citizens and good land use practice because, among other things, it provides for public benefits beyond those benefits that would be forthcoming through conditions of development project approvals as set forth herein.

(g) It should be encouraged in order to meet important economic, social, environmental and planning goals of the County.

(h) It is consistent with County's Development Agreement Procedures reflected in the San Benito County Code, title 19, chapter 19.11, as amended.

(i) A Notice of Determination has been issued in connection with this Agreement and the other Initial Approvals and was posted by County staff on or about November 8, 2012 as required under the applicable law and regulations.

For the foregoing reasons, the Board approved this Agreement. On November 6, 2012, the Board adopted Ordinance No. 910, enacting this Agreement. This Agreement will become effective on December 30, 2012 ("**Effective Date**").

H. Intent of the Parties.

County and Owner have, in good faith, negotiated the terms and conditions of this Agreement, and have determined that use of a development agreement is appropriate for development of the Project in accordance with the Project Approvals. The Specific Plan is designed to comprehensively plan the Property, in order to, among other things, implement the intention of the San Benito County General Plan Area of Special Study designation, while also incorporating the necessary flexibility to enable Owner to effectively respond to changing market demands and absorption rates during a time of widespread economic instability. County desires to enter into this Agreement because it will reduce uncertainty in planning and provide for the orderly development of the Property; it will facilitate the maximum efficient utilization of the resources within the County and the surrounding community; it will provide for public benefits beyond those that otherwise could be imposed as conditions of approval, including, without limitation, Revenue Neutrality, as well as the potential for the provision of significant improved park and recreational facilities, and a wide range

of housing options to serve a variety of economic segments within the County; and it will otherwise achieve the goals and purposes of the Development Agreement Statute and County's Development Agreement Procedures. In exchange for these benefits to County, together with the other public benefits derived from development of the Project, Owner desires to enter into this Agreement to receive the assurance that it may proceed with development of the Project in accordance with the Project Approvals, as set forth more fully herein.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants contained herein, Owner and County agree as follows:

AGREEMENT

Section 1. Definition of Terms.

The following defined terms are used in this Agreement.

- 1.1 **"Agreement"** means this Development Agreement between County and Owner.
- 1.2 **"Area Median Income"** means the annual median income adjusted for household size, applicable to San Benito County as published annually by San Benito County pursuant to Title 25 of the California Code of Regulations, Section 6932, and applicable regulations of the United States Department of Housing and Urban Development.
- 1.3 **"Board"** means the San Benito County Board of Supervisors.
- 1.4 **"Building Permit"** means a document authorizing the holder to construct a building, as provided for in the San Benito County Code.
- 1.5 **"CEQA"** has the meaning set forth in Recital F(1).
- 1.6 **"Certificate of Occupancy"** means a final certificate of occupancy issued by County's Building Official or, if County's Building Code does not provide for the issuance of a certificate of occupancy for a particular structure, the functional equivalent thereto.
- 1.7 **"Code Amendments"** has the meaning set forth in Recital F(4).
- 1.8 **"Community Financing District"** or **"CFD"** means a financing district formed under the Mello-Roos Community Facilities Act of 1982, pursuant to Government Code section 53311 *et seq.*
- 1.9 **"County"** means the County of San Benito, a political subdivision of the State of California.

1.10 **“County Development Agreement Procedures”** has the meaning set forth in Recital C.

1.11 **“Days”** means calendar days. If the last day to perform an act under this Agreement is a Saturday, Sunday or legal holiday in the State of California, said act may be performed on the next succeeding calendar day that is not a Saturday, Sunday or legal holiday in the State of California and in which the County offices are open to the public for business.

1.12 **“Defense Counsel”** has the meaning set forth in Section 10.15.

1.13 **“Development Agreement Statute”** has the meaning set forth in Recital B.

1.14 **“Development Impact Fee”** means any requirement of County in connection with a Project Approval for the dedication of land, the construction of public improvements, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment; facilities, services and infrastructure; and other public interests.

1.15 **“Dispute”** has the meaning set forth in Section 8.1.

1.16 **“Effective Date”** has the meaning set forth in Recital F(5).

1.17 **“Enforced Delay”** has the meaning set forth in Section 6.2(d).

1.18 **“Engineer’s Report”** has the meaning set forth in Section 4.3.

1.19 **“Existing Rules”** means the Rules, Regulations and Official Policies in effect on the Effective Date.

1.20 **“General Plan Amendment”** has the meaning set forth in Recital F(2).

1.21 **“Initial Approvals”** has the meaning set forth in Recital F.

1.22 **“JAMS”** has the meaning set forth in Section 8.1.

1.23 **“Legal Challenge”** has the meaning set forth in Section 10.15.

1.24 **“Local Builder”** means an individual or company specializing in residential construction holding a valid general contractor’s license with a primary residence or primary place of business located in San Benito County and who or which have constructed twenty (20) or fewer residential units in any year within the previous five (5) years.

1.25 **“Local Sub-Contractors”** means an individual or company specializing in residential construction holding a valid California Contractor’s

License and insurance acceptable to Owner and the Project's general contractor, and with a primary business or home address located in the County of San Benito.

1.26 "Low Income Households" means those households that earn up to eighty percent (80%) of the Area Median Income.

1.27 "Median Income Households" means those households that earn up to one hundred percent (100%) of the Area Median Income.

1.28 "MMRP" has the meaning set forth in Recital F(1).

1.29 "Mortgage" means any mortgage, deed of trust, security agreement, assignment or other security instrument encumbering all or any portion of the Property or Owner's rights under this Agreement.

1.30 "Mortgagee" means the holder of any Mortgage encumbering all or any portion of the Property or Owner's rights under this Agreement, and any successor, assignee, or transferee of any such Mortgagee.

1.31 "New Rules" has the meaning set forth in Section 3.3.

1.32 "Notice of Default" has the meaning set forth in Section 6.2(a).

1.33 "Notice of Intent to Terminate" has the meaning set forth in Section 7.2.

1.34 "Offsite Land" means lands other than the Property that prove necessary to support Project Infrastructure, as is further detailed in Section 3.8.

1.35 "Owner" means Fairview Corners, LLC and all of its successors and assigns.

1.36 "Periodic Review" has the meaning set forth in Section 6.1.

1.37 "Planning Commission" means the San Benito County Planning Commission.

1.38 "Planning Director" means the head of the Planning and Building Department and the Chief Planning Officer of San Benito County.

1.39 "Project" has the meaning set forth in Recital E.

1.40 "Project Approvals" means the Initial Approvals and Subsequent Approvals, collectively.

1.41 "Project EIR" has the meaning set forth in Recital F(1).

1.42 "Project Infrastructure" has the meaning set forth in Section 2.2.

1.43 “Project Infrastructure Phasing Master Plan” means the Project Infrastructure Phasing Master Plan that must be submitted to the County Public Works Director for approval in connection with the application of the Project’s first tentative map in accordance with Section 7.1 of the Specific Plan. This Master Plan may be amended from time to time with County approval.

1.44 “Project Master Plans” means the Project’s various Master Plans, including, without limitation, those relating to the Project’s phasing, park and recreational facilities, infrastructure, and utilities which must be submitted to the County Public Works Director for approval in connection with the application of the Project’s first tentative map in accordance with Section 7.1 of the Specific Plan. All such Project Master Plans may be amended from time to time with County approval.

1.45 “Project Revenues” mean any and all revenues obtained or otherwise generated in connection with the Project, whether by property taxes, homeowners’ association assessments, sales taxes, special taxes, special assessments or otherwise.

1.46 “Property” has the meaning set forth in Recital D.

1.47 “Recorder” means the San Benito County Recorder, which is responsible, in part, for recording legal documents that determine ownership of real property and other agreements related to real property.

1.48 “Regulatory Processing Fees” means fees and charges adopted by County for the purpose of defraying County’s actual costs incurred or to be incurred in the processing and administration of any form of regulatory permit, license, land use entitlement, financing district or mechanism, entitlement or approval, or imposed by County to defray the costs of periodically updating its plans, policies, and procedures, including, without limitation, the fees and charges referred to in Government Code section 66014.

1.49 “Rules, Regulations and Official Policies” means the County rules, regulations, ordinances, laws, general or specific plans, zoning, subdivision and official policies governing development, including, without limitation, density and intensity of use; permitted uses; the maximum height and size of proposed buildings; the provisions for the reservation or dedication of land for public purposes or payment of fees in lieu thereof; the construction, installation and extension of public improvements; growth management; environmental review; and other criteria relating to development or use of real property and applicable to the Property.

1.50 “Secondary Dwelling Unit” means either an attached or detached structure (e.g., a separate cottage or room above or adjacent to the primary dwelling, garage or outbuilding, or a room within the primary dwelling, garage or outbuilding), which unit shall have all of the following features at a minimum: a

separate door to the exterior, a full bathroom with either a tub or shower, a clothes closet, a kitchen area which includes at least a sink, a microwave oven, an under-counter refrigerator and a single burner cook top, with space for a queen size bed and an eating counter or eating table.

1.51 “Specific Plan” means the Fairview Corners Specific Plan adopted by the Board on November 6, 2012 by Resolution No. 2012-72, as set forth in Recital F(3).

1.52 “Specific Plan Adoption” has the meaning set forth in Recital F(3).

1.53 “Subsequent Approvals” means any and all land use, environmental, building and development approvals, entitlements and permits required subsequent to the Effective Date in connection with development of the Project on the Property, including, without limitation, tentative and final subdivision maps, parcel maps and lot line adjustments; subdivision improvement agreements; conditional use permits; design review approvals; building permits; grading permits; certificates of occupancy; approvals of financing districts or other financing mechanisms; and any amendments thereto. Except as otherwise set forth in Section 3.1 (c) below, the parties intend that any and all Subsequent Approvals will fit within the framework established by the Initial Approvals so as to provide consistent, detailed guidance for the development of the Property in compliance with the specific requirements, goals and policies contained in the Initial Approvals. Thus, the Subsequent Approvals shall be substantially consistent with the Initial Approvals. Notwithstanding the foregoing, as set forth in Section 3.1 below, the parties agree that nothing in this Agreement shall prevent Owner from applying to County for approval of a Subsequent Approval that reflects a modification to the Project and/or any Initial Approvals, which such approval shall be within County’s discretion. Upon approval of a Subsequent Approval, such approval shall be deemed part of this Development Agreement and fully vested.

1.54 “Subsequent Landowner” is a party who has acquired all or a portion of the Property from Owner other than: (1) a Mortgagee; or (2) the ultimate user of any residential lot who has been released from liability under this Agreement pursuant to Sections 7.3 and 9.1 below.

1.55 “Term” has the meaning set forth in Section 5.1.

1.56 “Traffic Impact Mitigation Fee Program” or “TIMF Program” refer to the City of Hollister/San Benito County Regional Traffic Impact Fee Program.

1.57 “Traffic Impact Mitigation Fees” or “TIMF” refers to fees required to be imposed on development under the City of Hollister/San Benito County Regional Traffic Impact Fee Program.

Section 2. Owner's Obligations

2.1 Development of the Project and Project Phasing.

(a) Development of the Project shall be consistent with: (i) this Agreement; (ii) the San Benito County General Plan as it existed on the Effective Date, as modified by the General Plan Amendment; (iii) the San Benito County Code as it existed on the Effective Date, as modified by the Zoning Amendments; (iv) the Initial Approvals, including, without limitation, the Specific Plan; (v) the Subsequent Approvals, as and when they are issued, approved, or adopted, including all conditions of approval; and (f) all other applicable Existing Rules. In the event of a conflict between any provision of this Agreement and the Specific Plan, this Agreement shall control.

(b) Development of the Project is intended to be phased, as generally provided in Section 7.2 of the Specific Plan and in accordance with the approved Project Infrastructure Phasing Master Plan. Owner may submit an application for a separate tentative and final subdivision map for each phase (each, a "**Phase**"), which shall show the proposed housing mix and number of lots and units and related Project Infrastructure necessary to serve that Phase as well as any other information required under the Subdivision Map Act (Gov't Code § 66410 *et seq.*) and County's Subdivision Ordinance (County Code tit. 23), for approval in accordance with Section 66410 *et seq.* of the California Government Code and this Agreement.

(c) Development of each Phase shall include construction of all Project Infrastructure needed to serve the uses and structures within that Phase. The approved Project Master Plans, the required contents of which are set forth more fully in Section 7.1 of the Specific Plan, shall detail the scope and timing of the improvements and other Project Infrastructure to be constructed within each Phase. The parties agree that Owner shall not be required to construct and/or fund any Project Infrastructure in advance of when any such Project Infrastructure is necessary to serve the uses and structures within a specific Phase, except as otherwise set forth in attached Exhibit 3 and Article 7.0 (Implementation Plan) of the Specific Plan.

The housing mix for each Phase, which is within Owner's discretion subject to County's approval authority as set forth in the Specific Plan and this Development Agreement, may be dependent upon market conditions and other factors; provided, however, that County retains its discretion to approve the proposed development for each Phase as set forth in Section 4.2 below and Article 7.0 of the Specific Plan. Owner acknowledges that if it proposes to develop single-family units on lots of one (1) acre or more, approval of a conditional use permit will be required in accordance with Section 2.4 of the Specific Plan. Each Phase subsequent to the first Phase shall be contiguous with or otherwise adjacent to Project Infrastructure serving the prior Phase, shall provide for logical, sequential development of the Property, connecting access

and emergency roads and utilities from Phase to Phase, as may be typically required by County's fire and utility agencies and in accordance with the approved Project Infrastructure Phasing Master Plan and other Project Master Plans.

2.2 County's Reliance on Owner's Provision of, or Contribution Towards, Project Infrastructure.

As set forth more fully in Section 4.3 below, the parties acknowledge and agree that County's approval of the Project is, in part, in reliance upon and in consideration of Owner's provision of, or pro rata fair share contribution towards the costs of the infrastructure, facilities, improvements, services and amenities (including construction, operation (including personnel) and maintenance thereof) necessary to serve the Project, as described more fully in the Specific Plan and other Project Approvals (collectively, "**Project Infrastructure**") and in accordance with Owner's obligations set forth herein and in Exhibit 3, the Project's Infrastructure Phasing Master Plan, and other Project Master Plans. As set forth in Section 2.1 above, Section 2.5 below, and Articles 2.0 and 7.0 of the Specific Plan, the parties anticipate the Project Infrastructure will be constructed in Phases. The approved Project Infrastructure Phasing Master Plan, as well as the improvement drawings or subdivision improvement agreement(s) for each applicable Phase shall provide sufficient details for the appropriate Phasing. Although County is not hereby making any representations regarding the potential applicability of the laws and regulations governing prevailing wages and public bidding requirements, the parties acknowledge that the Project Infrastructure constructed by Owner is not intended to be a public works improvement, and therefore not intended to trigger prevailing wage or public bidding requirements.

2.3. Satisfaction of Park Obligations.

(a) Owner shall comply with County's requirements for the provision of park and recreational lands as set forth in County Code section 23.15.008 and the San Benito County Master Parks and Recreation Plan ("**County Master Parks Plan**") (collectively, "**Park Obligations**") in effect on the Effective Date of this Agreement. Such compliance may include construction of on-site parks and recreational areas, payment of the applicable park in-lieu fee ("**Park In-Lieu Fee**"), or a combination thereof; provided, however, that the parties agree the method of compliance to satisfy the Park Obligations shall be within County's discretion pursuant to County Code section 23.15.008(F). After the method of compliance is determined by County, Owner shall reflect the method by which it will comply with the Park Obligations in the Project's Master Parks Plan. The parties acknowledge and agree that the Park Obligations, based on the formula described in Section 2.3(b) below, is 3.4 acres of park space, assuming full build-out of the Project.

(b) In the event and to the extent County determines the Park Obligations may be satisfied in whole or in part through payment of the Park In-Lieu Fee, then such fee shall be calculated based upon (i) the Project's ultimate primary dwelling unit count, (ii) California Department of Finance population estimates of 3.081 persons per unit for San Benito County, (iii) County's parkland ratio of five (5) acres per 1,000 people, and (iv) the comparable sales method as set forth in County Code section 23.15.008(c)(2)(b)(2). Any such fee shall be payable to County at the time a certificate of occupancy is issued for each primary dwelling unit.

(c) In the event and to the extent County determines the Park Obligations may be satisfied in whole or in part through the construction of on-site active parks, then the parties agree the provision of the following types of facilities shall be deemed to satisfy the Park Obligations:

(i) On-site active park(s), each of which shall be made available to the public and consist of at least ten thousand (10,000) square feet, which shall: be interconnected internally by streets, bicycle lanes and/or pedestrian walkways in a continuous loop around the Property, contain water-saving landscaping, and be improved with at least one (1) of the following active recreational amenities for pedestrian, cycling or fitness or other playground features:

- a. Preschool and/or elementary-aged play area;
- b. Hard courts (basketball, handball and/or tennis); specialty courts (shuffleboard, bocce ball, horse shoes);
- c. Picnic area;
- d. Shaded seating area;
- e. Open grass area for informal play;
- f. Recreational/fitness circuit or stations, and
- g. Dog off-leash area.

Notwithstanding the foregoing, the amenities described in subsections (e) and (g) above must be accompanied by at least one (1) additional amenity described in subsections (a) through (d) or (f) above. The parties acknowledge and agree that the Park Obligations, as set forth in the County Code and the County Master Parks Plan, do not permit the provision of passive open space to be credited towards the satisfaction thereof.

(ii) Off-street pedestrian and bicycle paths, which shall be made available to the public.

The parties agree that on-site parks shall be designed to create a "sense of place" that will enhance neighborhood and community identity, and shall also consider, as appropriate, security and safety issues; such on-site park design shall be considered as part of County's consideration of the Project's Master Parks Plan. Satisfaction of the Park Obligations shall occur on a Phase by Phase basis to be designated on each tentative map except as otherwise may be approved by County, and the approved method of compliance shall be incorporated as conditions of approval for each final map. In the event Owner has not satisfied its Park Obligations for each Phase in accordance with this Section 2.3, County may withhold issuance of additional building permits for subsequent Phase(s) or, if all building permits have been issued, then County may withhold additional certificates of occupancy for subsequent Phase(s), until such Obligations are so satisfied. Notwithstanding the foregoing, due to the Revenue Neutrality provisions set forth herein, the parties anticipate the Fairview Corners Community Facilities District ("**CFD**") will need to be structured such that there are an adequate number of units in the Project to financially support the permanent operation and maintenance of any on-site park and recreational facilities being proposed in each Phase.

(d) If Owner constructs any on-site parks and recreational facilities to satisfy its Park Obligations, then Owner shall offer to dedicate said facilities (land and improvements) to County. Upon acceptance of any such offer of dedication, County shall own, operate and maintain such on-site park and recreational facilities, which operation and maintenance shall be funded by the Project Revenues in accordance with Section 4.3 below, including, without limitation, by the Project's CFD or similar financing mechanism. The foregoing provision shall also apply to other Project Infrastructure including, without limitation, any other open space, streetscape, pathways and landscaped areas, so that all Project Infrastructure not owned, operated and maintained by the Project's homeowners association shall be offered for dedication to County, with funding for ongoing operation and maintenance to be covered by the Project Revenues, including, without limitation, by the Project's CFD or similar financing mechanism.

2.4 Public Trail Network, Other Recreational Facilities.

(a) As set forth more fully in the Final EIR, the Specific Plan, the Project's approved Master Parks Plan, and Subsequent Approvals, Owner shall construct a public trail network to provide pedestrian and bicycle access connecting the Project and Gavilan College San Benito Campus, which shall be offered for dedication to County, with funding for ongoing operation and maintenance to be covered by the Project Revenues in accordance with Section 2.3 above, including, without limitation, by the Project's CFD or similar financing mechanism. In addition, Owners anticipate that on-site naturally designed

retention basins (with or without recreational improvements) may be constructed as well. If such retention basins will not be privately owned, operated and maintained by the Project's homeowners association, then Owner shall offer to dedicate such basins to County, with funding for ongoing operation and maintenance to be covered by the Project Revenues in accordance with Section 2.3 above, including, without limitation, by the Project's CFD or similar financing mechanism. The parties agree that Owner shall receive credit towards satisfaction of the Park Obligations for the construction of said pedestrian and bicycle network so long as it complies with the requirements set forth in Section 2.3 above.

(b) The provision of an on-site public trail network that provides a connection between the Project and Gavilan College San Benito Campus with the regional public bicycle and pedestrian improvements planned for the Fairview Road corridor by the Council of San Benito County Governments (COG) San Benito County Bikeway and Pedestrian Master Plan provides a public benefit by increasing access and connection opportunities between parklands and school facilities through bikeways and multiple modes of transportation, and provides greater opportunities for active recreation. Owner shall demonstrate interconnectivity of trails, bikeways and recreational opportunities with adjacent recreational opportunities on the Gavilan College San Benito Campus and multi-modal transportation opportunities planned for by the COG along Fairview Road as part of the Parks Master Plan.

2.5 Coordination of Road Improvements and Other Project Infrastructure.

(a) Owner shall provide, or contribute its pro rata fair share towards, certain road improvements to be located within or around the Property as well as the other Project Infrastructure, as set forth in the Specific Plan and the attached Exhibit 3, as well as any additional improvements that may be required pursuant to the Subdivision Map Act, County's Subdivision Ordinance, and the approved Project Master Plans in connection with a specific tentative map application submitted for County approval. Owner acknowledges the importance of coordinating construction of the Project Infrastructure to facilitate orderly development, as appropriate, with the adjacent Gavilan College San Benito Campus construction, and to minimize disruption to Project residents in connection with such construction to the extent feasible. The parties acknowledge that the Project's entry road and related improvements shall be designed to facilitate connections between the Project and the anticipated development of the Gavilan College San Benito Campus, as set forth more fully in Exhibit 3.

(b) Owner shall provide adequate emergency vehicle access to the Property as set forth in Section 3.2 of the Specific Plan, and in compliance with the MMRP.

2.6 Design of Project Infrastructure.

Development of the Property, including, without limitation, the Project Infrastructure, shall be subject to final design review by County in accordance with the Specific Plan and the County Code, as applicable. The Project Approvals, and all required Project Master Plans, including, without limitation, the Project Infrastructure Phasing Master Plan, as well as any improvement plans prepared in connection with the Project Approvals and in accordance with the Specific Plan, shall govern the design and scope of all Project Infrastructure to be constructed on or benefitting the Property. The parties intend that Owner shall construct and/or fund its pro rata share of all Project Infrastructure as required by the Project Approvals, in accordance with the vested rights set forth herein.

2.7 Project's Affordable Housing Obligations.

(a) The parties acknowledge this Agreement is being entered into during a period of uncertain and challenging economic times. In part due to these circumstances, the Board recently eliminated County's Inclusionary Housing requirements (Ord. No. 866), which mandated the provision of inclusionary housing under certain circumstances. In addition, the Board recently adopted County's Affordable Housing Ordinance (Ord. No. 866), which seeks to incentivize the voluntary provision of affordable housing in appropriate circumstances. As a Project benefit, Owner agrees to assist County in satisfying its regional housing obligations and, to the extent feasible, encouraging the development of a diversity of housing types within the Project which may address a broad spectrum of housing needs for County residents, as set forth more fully in this Section 2.7. Accordingly, Owner agrees to provide Affordable Housing within the Project in the manner set forth herein and Owner's compliance with these provisions shall be deemed to satisfy any such Affordable Housing requirements.

(b) Owner shall fulfill its obligation to provide Affordable Housing in connection with the Project by complying with the Affordable Housing Program set forth below ("**Affordable Housing Program**" or "**AHP**"). In recognition of the economic challenges facing builders, the AHP is designed to provide a flexible approach to the provision of Affordable Units, which is intended to help achieve the overall objectives of County's Affordable Housing Ordinance. Accordingly, Owner may fulfill the obligations under the AHP by the provision of Affordable Units on-site, by the provision of Affordable Units off-site, or by the payment of an in-lieu fee under certain specified circumstances, as set forth in Section 2.7(d)(iii) below.

(c) Owner shall be required under this Agreement to satisfy the Project's Affordable Housing requirements (collectively, "**Affordable Housing**")

Obligations) as set forth in this Section 2.7. Owner may elect to satisfy the Affordable Housing Obligations with any one of the methods set forth below, or any combination thereof, so long as Owner satisfies all of the Affordable Housing Obligations as required herein. As a condition of approval of each tentative map, Owner shall elect how it intends to satisfy the Affordable Housing Obligations as these obligations relate to the development proposed on each such subdivision map as well as other development under the Specific Plan. Owner shall demonstrate its compliance with the Affordable Housing Obligations in accordance with this Section 2.7 in connection with each tentative map application. In the event that Owner fails to comply with the Affordable Housing Obligations in accordance with the time frames specified herein, County may withhold any additional building permits for the Project until such time as Owner remedies such lack of compliance and documents its compliance with the Affordable Housing Obligations to the County Planning Director's reasonable satisfaction.

(d) Owner may elect to satisfy its Affordable Housing Obligations as to all or any part of the Project (including on a Phase by Phase basis) by the provision of on-site Affordable Units, in accordance with the provisions of this Section 2.7. If Owner so elects, then Owner shall provide on-site Affordable Units in the following amount:

(i) If the Project's total unit count is between sixty-one (61) and two hundred twenty (220) primary dwelling units, then Owner shall be required to reserve a total of ten percent (10%) of the Project's total units (less any Affordable Units that have been constructed off-site in accordance with this Section 2.7), with fifty percent (50%) being reserved for Low Income Households and the remaining fifty percent (50%) being reserved for Median Income Households (collectively, "**Affordable Units**"). Owner may satisfy up to fifty percent (50%) of the Affordable Housing Obligations by the provision of on-site Secondary Dwelling Units; provided, however, that if at the time each said Affordable Unit is initially offered, the Actual Cost of an Affordable Unit (as defined below) exceeds the then-market rate rent level or sales price under County's guidelines (as defined in Section 2.7(i) below), then Owner may instead satisfy up to one hundred percent (100%) of the Affordable Housing Obligations by the provision of on-site Secondary Dwelling Units. The parties recognize that Secondary Dwelling Units may provide affordable housing for elders, students and other users, and may provide valuable flexibility for the housing of multi-generational families.

The term "**Actual Cost of An Affordable Unit**" means the total costs of acquiring, financing, constructing and selling the Affordable Unit, including improved lot costs, hard and soft building costs, building and other fees, developer overhead (not to exceed five percent (5%) of hard costs), but excluding developer profit.

(ii) If the Project's total unit count is between thirty-one (31) and sixty (60) primary dwelling units, then Owner shall be required to reserve a total of fifteen percent (15%) of those total units (less any Affordable Units that have been constructed off-site in accordance with Section 2.7) as Affordable Units, with fifty percent (50%) of those units being reserved for Low Income Households and the remaining fifty percent (50%) being reserved for Median Income Households. Owner may satisfy up to fifty percent (50%) of the Affordable Housing Obligation by the provision of on-site Secondary Dwelling Units; provided, however, that if at the time each said unit is initially offered, the Actual Cost of An Affordable Unit exceeds the then-market rate rent level or sales price under County's Guidelines, then Owner may instead satisfy up to one hundred percent (100%) of the Affordable Housing Obligations by the provision of on-site Secondary Dwelling Units.

(iii) If the Project's total unit count is between thirteen (13) and thirty (30) primary dwelling units, then Owner shall be required to reserve a total of twenty percent (20%) of those total units (less any Affordable Units that have been constructed off-site in accordance with Section 2.7) as Affordable Units, with fifty percent (50%) of those units being reserved for Low Income Households and the remaining fifty percent (50%) being reserved for Median Income Households. Owner may satisfy up to fifty percent (50%) of the Affordable Housing Obligations by the provision of on-site Secondary Dwelling Units; provided, however, that if at the time each said unit is initially offered the Actual Cost of An Affordable Unit exceeds the then-market rate rent level or sales price under County's Guidelines, then Owner may instead satisfy up to one hundred percent (100%) of the Affordable Housing Obligations by the provision of on-site Secondary Dwelling Units.

(iv) If the Project's total unit count is twelve (12) or fewer primary dwelling units, then Owner shall be required to satisfy the Affordable Housing Obligation by one or a combination of the following alternative methods: (A) pay the applicable in-lieu fee in accordance with Section 2.7(g) below, or (B) construct a Secondary Dwelling Unit with each primary dwelling unit.

(e) In the event and to the extent that Owner seeks to satisfy its Affordable Housing Obligations by constructing Affordable Units, Owner shall satisfy these obligations in accordance with the following time frames:

(i) At least fifty percent (50%) of the required Affordable Units for the Project are constructed and certificates of occupancy have been issued for said Affordable Units prior to the completion of and issuance of certificates of occupancy for fifty percent (50%) of the Project's total primary dwelling unit count;

(ii) At least seventy five percent (75%) of the required Affordable Units for the Project are constructed and certificates of occupancy

have been issued for said Affordable Units prior to the completion of and issuance of certificates of occupancy for seventy five percent (75%) of the Project's total primary dwelling unit count; and

(iii) The balance of the required Affordable Units for the Project are constructed and certificates of occupancy have been issued for said Affordable Units prior to the completion of and issuance of certificates of occupancy for the remaining twenty five percent (25%) of the Project's total primary dwelling unit count.

(f) The parties acknowledge County's preference that Owner satisfy its Affordable Housing Obligations by constructing on-site Affordable Units. Notwithstanding the foregoing, the parties further acknowledge and agree that Owner may elect to satisfy up to fifty percent (50%) of its Affordable Housing Obligations by the provision of Affordable Housing off-site, either directly by constructing such off-site units or indirectly, by causing the construction of such units by a third party, non-profit entity, who may own and operate the off-site Affordable Housing Units. The provision of off-site Affordable Housing may occur on the adjacent planned Gavilan San Benito College Campus, in accordance with the Campus' approvals. The parties acknowledge that any off-site Affordable Units shall be constructed in accordance with the time frames set forth in Section 2.7(e) above.

(g) In the event the Project's total unit count is twelve (12) or fewer primary dwelling units, then Owner may satisfy its Affordable Housing Obligations by the payment of an in-lieu fee in an amount equal to Fifty Thousand Dollars (\$50,000.00) per market rate detached primary residential unit constructed on the Property (the "**In-Lieu Fee**"). If payment of the In-Lieu Fee is relied upon to satisfy the Affordable Housing Obligations under this Section 2.7(g), then the In-Lieu Fee shall be paid for each primary dwelling unit prior to the issuance of a Certificate of Occupancy for such unit, and as a condition of occupancy.

(h) The Affordable Units may be either for-sale or rental units, and shall not be required to be deed-restricted unless otherwise mandated under any applicable terms of financing. The Affordable Units shall contain complete, separate and distinct facilities for living, sleeping, eating, cooking, and sanitation, and cooking facilities shall be equipped with, at minimum, a stove, oven, refrigerator, and sink. The exterior of the Affordable Units shall be of similar quality and design to comparable market rate units within the Project, although interior finishes and amenities of the Affordable Units may be more modest than comparable market rate units.

(i) To qualify as an Affordable Unit for purposes of satisfying the Affordable Housing Obligations, at least fifty percent (50%) of the Affordable Units shall be offered at an initial rent level or sales price (as the case may be) that is affordable to Low Income Households and the balance shall be offered at

an initial rent level or sales price (as the case may be) that is affordable to Median Income Households, in accordance with Sections 2.7(d) above, and the then-applicable San Benito County Low Income Affordable Housing and Median Income Rental/For-Sale Housing Cost and Limits provisions ("**County Guidelines**"). For purposes of confirming compliance, the required initial rent level or sales price (as the case may be) shall be documented to the County Planning Director's reasonable satisfaction at the time the Certificate of Occupancy is issued for each such unit.

(j) The Affordable Units may be age-restricted for senior citizens ages 55 and older.

(k) Owner shall demonstrate its compliance with the Affordable Housing Obligations as part of its Periodic Review that happens annually, as set forth more fully in Section 6.1 of this Agreement. In addition, Owner shall provide the County's Planning Director with written updates as to the status of its compliance with the Affordable Housing Obligations on or before April 15th and October 15th of every year during the Term of this Development Agreement, or for one calendar year after the issuance of the last Certificate of Occupancy for the Project, whichever first occurs.

(l) The required number of Affordable Units under this Section 2.7 shall be calculated based on the total number of the Project's primary dwelling units in the Phase actually constructed (including both single-family and multi-family units, but excluding Secondary Dwelling Units); provided, however, that in the event and to the extent Local Builder Lots are sold to Local Builders (in accordance with Section 2.8 below), any such Lots shall be subtracted from the total Project unit count for purposes of calculating the required number of Affordable Units and the Local Builders shall not be required to comply with any Affordable Housing requirements in the development of such Lots. If the calculation set forth in this Section 2.7(l) results in a fractional unit, then the required unit count shall be rounded up if the fractional amount is forty percent (40%) or more, otherwise the required unit count shall be rounded down and Owner shall pay the applicable In Lieu Fee for such fractional unit, prorated accordingly.

(m) Owner agrees to advertise each Affordable Unit developed by Owner for sale or rent in the local newspaper for at least a ninety (90) day period prior to the completion and/or sale or rental of each Affordable Unit in order to encourage those people who live or work in the County, as well as Gavilan students and non-faculty Gavilan employees, to purchase or rent such unit. However, Affordable Units may be sold or rented on a first come basis. Owner also agrees to advertise any Affordable Unit that is developed by Owner off-site or on the Gavilan Campus for sale or rent, with such advertisement to be made in local newspapers and on the Gavilan Campus in any campus newspaper or if none, then on bulletin board(s) and signage on site approved by campus

administrators. Such advertisement shall run at least ninety (90) days prior to completion and/or sale or rental of each unit and shall target expressly non-faculty employees, students and faculty members. However, each such unit shall be offered on a first come basis.

2.8 Out-Reach to Local Sub-Contractors. Prior to the commencement of construction of each Phase of vertical construction of homes in the Project, Owner agrees to advertise a request for proposal from Local Sub-Contractors for the development of the Project in a local and regional newspaper for at least a ninety (90) day period in order to encourage Local Sub-Contractors to submit bids to the general contractor in response to the request for proposals.

2.9 Reimbursement; Credits.

(a) Owner and County acknowledge that Owner may enter into private cost-sharing arrangements with the Gavilan College District in connection with any planned, shared infrastructure between the Project and the adjacent campus.

(b) Owner shall not be entitled to any reimbursement or fee credits in connection with any Project Infrastructure required under this Agreement or by any other Project Approvals, except under the following limited circumstances:

(i) Owner shall be entitled to reimbursement from available TIMF Program funds (or credited against the Project's TIMF fees otherwise owed) for its actual costs to install any traffic, intersection, road or frontage improvements that Owner is required to build under the Specific Plan, any Subsequent Approvals, or the MMRP (including signalization of the intersections at Fairview Road/Hillcrest Road, Memorial Drive/Hillcrest Road and Enterprise Road/Airline Highway (State Route 25), certain improvements to Airline Highway/Union Road intersection, and certain improvements to Union Road/Mitchell Road/SR156 intersection) beyond those costs established as Owner's pro rata fair share, so long as any such intersection(s) or other facilities are expressly designated in the TIMF Program (as may be amended from time to time to include additional locations for improvements) at such time as Owner commences or completes construction of said improvements. Owner acknowledges that only the Fairview Road/Hillcrest Road and Memorial Drive/Hillcrest Road, Enterprise Road/Airline Highway (State Route 25), Airline Highway/Union Road, and Union Road/Mitchell Road/SR 156 intersections are specifically identified in the TIMF Program as of the Effective Date, but that additional intersections may become covered under the TIMF Program by amendment of the existing TIMF Program to identify and cover these intersections, as set forth below.

The parties acknowledge that the current TIMF Program allows flexibility to expand TIMF coverage for an additional five intersections, which are not currently identified by name (floater intersections) but which may be designated for TIMF Program coverage in the future, when traffic conditions warrant such designation, and at the discretion of the Council of San Benito County Governments (COG), the County of San Benito, and/or the City of Hollister. As stated in the FEIR, County staff, COG staff, or a third party may proceed with a proposal to designate certain intersections (including, but not limited to, Valley View Road/Sunnyslope Road intersection) as a TIMF intersection by using one of the floater intersections. Such a proposal would be presented to the Board of Supervisors for its consideration or as part of a multi-jurisdictional process facilitated through the COG. The County anticipates that the Valley View Road/Sunnyslope Road intersection may be affected by the growth of a number of projects, if and as they are developed. Provided County in its discretion makes the necessary findings consistent with all applicable federal, state, and local laws and regulations and with the provisions of the adopted TIMF Program and fee study, that the Valley View Road/Sunnyslope Road intersection is impacted by a number of projects and appropriate for designation at that time, County staff will present the matter to the Board of Supervisors and/or the COG for those bodies' consideration whether to include the intersection in the TIMF. In the event Owner seeks to have the TIMF Program modified to specifically designate the Valley View Road/Sunnyslope Road intersection or any additional intersections described in the Final EIR as covered thereunder, County staff shall work cooperatively with Owner, consistent with all applicable federal, state, and local laws and regulations to process a proposed amendment of the TIMF Program to designate such intersection(s), including bringing the item to the Board of Supervisors for its consideration or as part of a multi-jurisdictional process facilitated through the COG. In the event Owner seeks to amend the TIMF Program accordingly, outside of an otherwise scheduled update of the TIMF Program initiated by the County or by the COG, or initiated by a third party, Owner will pay all of the County's costs associated therewith. Provided, however, nothing herein abrogates the Board of Supervisors' or the COG's discretion in considering whether to expand the TIMF accordingly, which Owner acknowledges is a legislative act that cannot be predetermined before such matter is before the respective Boards.

Notwithstanding the foregoing, Owner agrees that if and when the traffic signal at the Project entrance is required to be constructed in accordance with the MMRP, then Owner shall be obligated to so construct said improvement (subject to any private cost-sharing arrangement with Gavilan College District) and that Owner shall not be entitled to reimbursement from the TIMF Program (or credit against any TIMF fees otherwise owed) in connection with said signal.

(ii) Owner agrees that it shall construct Fairview Road frontage improvements (i.e., curbs, gutters, sidewalks, etc.) with each Project Phase which fronts on Fairview Road, as well as the required work to allow for

turn lanes into the Property, as set forth in Section 2.2 above and as required in the Specific Plan and the MMRP, as well as any other street improvements that may be required pursuant to the Subdivision Map Act, County's Subdivision Ordinance, and the Project Master Plans, in connection with any specific tentative map application. With respect to such Fairview Road improvements, no reimbursement or credits shall occur except for the following: Owner shall be reimbursed from available TIMF Program funds or receive a credit against the Project's TIMF fees otherwise due for the actual cost to construct approximately twelve (12) feet of travel lane improvements (i.e., grading, asphalt, rock) needed to widen Fairview Road to add a second (2nd) lane, as currently contemplated in the TIMF Program.

(iii) In accordance with Section 2.9(c) below, Owner may be entitled to reimbursement for improvements made to the existing wastewater conveyance systems in the event and to the extent other property owners outside of the Property are directly benefitted, which are necessary to enable connection of Project wastewater infrastructure to the existing wastewater conveyance system. It is anticipated that Owner will provide a wastewater conveyance system tie-in to the existing system on Enterprise Road through either improvement to and extension of the Cielo Vista Subdivision wastewater conveyance system (Option 1 in the Final EIR) or by construction of a new main extending from the Property on Fairview Road to Airline Highway and Enterprise Road (Option 2 in the Final EIR).

(c) In the event and to the extent other private property owners outside of the Property directly benefit from Owner's construction of any Project Infrastructure or other improvements on-site or off-site, Owner shall be entitled to reimbursement from any such other property owner(s) based on a pro rata, fair share apportionment of costs. To the extent Owner seeks reimbursement under this Section 2.9(c), County staff shall work cooperatively with Owner, consistent with all applicable federal, state, and local laws and regulations (including, without limitation, Proposition 218), to form a local benefit district or Area of Benefit for the purpose of facilitating the reimbursement of Owner for said improvements to the extent said improvements are not covered in the TIMF Program, including bringing the item to the Board of Supervisors for its consideration consistent with applicable law; provided, however, Owner shall pay all of County's costs associated therewith (subject to reimbursement from available funds in the Benefit Area upon formation) and shall, as a condition of formation, indemnify and hold County harmless from and against all claims in connection therewith, and further provided that nothing herein abrogates the Board's discretion in considering whether to form such district or benefit area, which Owner acknowledges is a legislative act that cannot be predetermined before such matter is before the Board. Notwithstanding the foregoing, Owner agrees that County's obligations hereunder are limited to facilitating reimbursement from other private property owners as set forth above, and County shall have no obligation whatsoever to reimburse Owner.

2.10 Habitat Conservation.

Owner shall provide mitigation for identified impacts to biological resources as set forth in the Project EIR and in accordance with the MMRP, subject to any requirements of the U.S. Fish and Wildlife Service or the California Department of Fish and Game. County agrees that provision of such mitigation satisfies the purpose of County's Habitat Conservation Mitigation Fee (Ordinance No. 541; Chapter 19.19 of the San Benito County Code) and shall be in lieu of payment otherwise due by Owner under County's Habitat Conservation Mitigation Fee. Subject to approval from the applicable federal and state resource agencies, Owner intends to satisfy the Project's biological resources mitigation requirements by the establishment of a permanent habitat conservation easement across other lands outside of the Property but within San Benito County.

Section 3. Owner's Vested Rights.

3.1 Vested Right to Develop the Project.

(a) As of the Effective Date, Owner shall have the vested right to develop the Property with the Project in accordance with the Specific Plan, this Agreement and other Project Approvals. The parties acknowledge and agree that Subsequent Approvals will be required to fully implement the Project, and that all Subsequent Approvals shall be in substantial compliance with the Specific Plan and the other Project Approvals, subject to Section 3.1(c) below.

(b) County shall in good faith process and consider any application for a Subsequent Approval in accordance with the Existing Rules, subject to Section 3.1(c) below. The permitted uses of the Property; the density and intensity of such uses; the maximum height and size of proposed buildings; the provisions for the reservation or dedication of land for public purposes or payment of fees in lieu thereof; the construction, installation and extension of public improvements; and the development standards and design guidelines (including, without limitation, density, height, setbacks, floor area coverage and building envelopes) shall comply with the Specific Plan and the other Project Approvals. Except as provided in Section 3.1(c) and Section 3.3 below, development of the Property shall be governed by the Existing Rules. In accordance with this Section 3.1(b) and Section 3.3(iii) below, to the extent any future changes in the General Plan, County zoning code or any other New Rules, including those as may be adopted by initiative, purport to be applicable to the Property but are in conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail. Provided, however, that codes, ordinances and regulations relating to uniform building and construction standards shall apply as in force and effect at the time of issuance of each applicable Building Permit as set forth in Section 3.3 below.

(c) Notwithstanding the foregoing, if Owner seeks to modify the Project in the future in a manner that would not be in substantial compliance with the Specific Plan and the other Project Approvals (e.g., increasing the Project's total unit count or density beyond the specified maximum or developing neighborhood commercial uses), Owner may file an application to do so; provided, however, County's consideration of any such application shall be governed by the then-applicable Rules, Regulations and Official Policies rather than the Existing Rules. If such application is approved by County, then such approval shall be automatically incorporated into this Agreement without the need to amend this Agreement.

3.2 Development Impact Fees and Regulatory Processing Fees.

(a) Owner shall pay all Development Impact Fees, as identified in attached Exhibit 5 (Applicable Development Impact Fees) and in the amount in effect on the Effective Date and shall also pay any indexed increases of the Development Impact Fees in effect as of the date payable; provided, however, the Park In-Lieu Fee in effect as of the Effective Date shall be calculated in the manner specified in Section 2.3(b) above. County shall not impose any Development Impact Fees on Owner's development of the Property except those in effect as of the Effective Date as set forth in Exhibit 5, and Owner shall not be required to pay any Development Impact Fees newly established after the Effective Date.

(b) County agrees that Owner's payment of all Development Impact Fees due in accordance with this Section 3.2 shall be due and payable at issuance of each Certificate of Occupancy consistent with Government Code section 66007, rather than at issuance of each Building Permit, except for the Traffic Impact Fees which shall be due and payable at time of issuance of each Building Permit. The parties further agree that the amount of said permissible fees owed shall be calculated as of the date of issuance of each Certificate of Occupancy, except for Traffic Impact Fees which shall be calculated as of the date of issuance of each Building Permit.

(c) Owner shall pay all Regulatory Processing Fees in accordance with Section 3.3 below.

3.3 Application of Subsequently Enacted Rules, Regulations and Official Policies.

Subject to Section 3.1(c) above, County may adopt new or modified Rules, Regulations and Official Policies after the Effective Date ("**New Rules**"); provided, however, such New Rules (1) shall not impose new Development Impact Fees other than those identified in Exhibit 5, and (2) shall be applicable to the Project and the Property only to the extent applicable to other similar residential developments in the County and only to the extent that such application will not modify, prevent, substantially impede or otherwise

substantially and adversely affect development of the Project on the Property or conflict with any of the vested rights granted to Owner under this Agreement. Any New Rules shall be deemed to conflict with Owner's vested rights if they seek to limit or reduce the density or intensity of development of the Project; or to limit the timing of the development of the Project (including the timing of approval of subdivision maps, issuance of Building Permits and issuance of Certificates of Occupancy), either with specific reference to the Property or as part of a general enactment that applies to the Property. Notwithstanding the foregoing, County shall not be precluded from applying any New Rules to the Project or Property under the following circumstances, where the New Rules are: (i) specifically mandated by changes in state or federal laws or regulations adopted after the Effective Date as provided in Government Code section 65869.5; (ii) specifically mandated by a court of competent jurisdiction upon issuance of a final judgment; (iii) changes to the Uniform Building Code or similar uniform construction codes, or to County's local construction standards for public improvements so long as such code or standard has been adopted by County and is in effect on a County-wide basis; (iv) new or increased Regulatory Processing Fees so long as such fees are applied to all similar development projects on a County-wide basis; or (v) required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate and substantially adverse risk on the health or safety of the surrounding community in a manner that would otherwise not be foreseeable as a result of typical residential development, such as impacts relating to increased traffic or due to the provision of utilities or public services.

3.4 Modification or Suspension by State or Federal Law.

In the event that state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provision(s) of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Notwithstanding the foregoing, the remainder of this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event Owner is prevented from proceeding with development and sale of the Project because of state or federal laws enacted after the Effective Date, the parties agree, in good faith, to explore options to amend the Development Agreement to be consistent with such state and federal laws and still facilitate the purposes of the Development Agreement.

3.5 CEQA; Growth Management Measures.

Owner acknowledges that implementation of the Project will require County's consideration and approval of applications for Subsequent Approvals and that County shall in good faith complete environmental review in connection with those Subsequent Approvals as required by CEQA and other applicable federal,

state and local laws and regulations. County's environmental review of the Subsequent Approvals pursuant to CEQA shall utilize the Final EIR to the fullest extent permitted by law; provided, however, nothing in this Agreement shall be deemed to limit the legal authority of County to conduct any environmental review required under CEQA or other applicable laws and regulations. County shall promptly cause a Notice of Determination (or Notice of Exemption, if applicable) to be posted and published in connection with any final decision on a Subsequent Approval in accordance with applicable laws and regulations.

On or about November 1, 2011, the Board rescinded County's Growth Management Ordinance (formerly contained in Chapter 21.07 of the San Benito County Code). The parties acknowledge there are no Rules, Regulations or Official Policies in effect on the Effective Date that would require Owner to obtain growth management allocations to develop the Project, nor shall any growth management allocation program or measures subsequently enacted by County be applicable to the Project.

On or about November 1, 2011, the Board rescinded County's Residential Growth Increase Ordinance (formerly contained in Chapter 19.29 of the San Benito County Code), requiring consideration of General Plan Amendments and Specific Plans at a referendum of all County voters at an election. The parties acknowledge there are no Rules, Regulations or Official Policies in effect on the Effective Date that would require Owner to obtain voter approval to develop the Project, nor shall any residential growth increase program or measures subsequently enacted by County be applicable to the Project.

3.6 Timing of Development.

This Agreement contains no requirement that Owner commence or complete development of any proposed Phase of the Project or any portion thereof within any specific period of time. The parties acknowledge that Owner cannot at this time predict when, or at what rate the Project will be developed. Such decisions depend upon numerous factors that may not be within Owner's control, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Owner and County agree that Owner shall have the right to develop the Project in such order, at such rate, and at such times as Owner deems appropriate within its exercise of subjective business judgment, subject only to any phasing requirements set forth in the Specific Plan, this Agreement, and Subsequent Approvals. Subject to Section 3.3 above, any future modifications of the Existing Rules that would have the effect of regulating or limiting the rate of development of residential projects shall not apply to the Project. Notwithstanding the foregoing, nothing herein shall be construed to relieve Owner from any timing conditions to commence or complete any Project Infrastructure that may be set forth herein or otherwise imposed as part of any Project Approval.

3.7 Regulation by Other Public Agencies.

It is acknowledged by the parties that other public agencies not within County's control may possess authority to regulate aspects of the development of the Project, and this Agreement does not limit such authority of other public agencies.

3.8 Eminent Domain.

The parties acknowledge and agree that development of the Project Infrastructure is a critical component of the Project and also will result in key benefits to the community generally. The parties further acknowledge that fulfilling said obligations may require acquisition of additional land outside the Property. If such acquisition is necessary to develop any aspect of the Project Infrastructure, Owner shall use its commercially reasonable efforts to acquire any and all such land ("**Offsite Land**"), which shall include: a) paying for and obtaining an appraisal prepared by a qualified Member of the Appraisal Institute (MAI), in connection with the acquisition of the Offsite Land; and b) offering to acquire the Offsite Land based on such appraisal. County staff shall work cooperatively with Owner to facilitate making available for construction of required Project Infrastructure any necessary land owned by County or within its right of way by issuance of an encroachment permit, which shall not be unreasonably withheld, and if necessary under applicable law, by bringing Owner's request for same to the Board for consideration.

In the event Owner is not successful in acquiring the Offsite Land, County and Owner shall meet and confer to determine: (i) whether the need for the Offsite Land is such that County should consider informally intervening to facilitate said acquisition; (ii) whether there may be other feasible means of accomplishing the public objectives at issue such that acquisition of the Offsite Land is no longer needed; and (iii) whether it would be appropriate for County to consider using its statutory powers of eminent domain to acquire the Offsite Land. In the event that County determines, in its discretion, to use its statutory powers of eminent domain to pursue acquisition of the Offsite Land, Owner shall be responsible for all costs associated therewith. Notwithstanding the foregoing, neither this Section 3.8 nor any other provision of this Agreement is intended to abrogate County's responsibilities, in the exercise of eminent domain, to satisfy the substantive and procedural requirements of the Eminent Domain Law (Cal. Code of Civ. Proc. Part 3, tit. 7, §§ 1230.010-1273.050), as amended from time to time. In the event the Offsite Land is not ultimately acquired, either through private acquisition or eminent domain, or in the event that County determines not to pursue eminent domain of the Offsite Land, Owner's obligations in connection with that aspect of the Project Infrastructure that necessitated acquisition of the Offsite Land shall terminate and be of no further force or effect in accordance with Government Code section 66462.5 of the Subdivision Map Act.

Section 4. Cooperation.

4.1 Owner's Application for Subsequent Approvals.

Owner shall be obligated to obtain any and all required Subsequent Approvals to develop the Project. Owner's obligations under this Section 4.1 apply to those approvals that are under County's jurisdiction and also to those approvals that may be required by other governmental or quasi-governmental agencies having jurisdiction over the implementation of any aspect of the Project (including, without limitation, the Department of Transportation; agencies having jurisdiction over boundary changes or district formation, flood control, sewer service, water service or fire protection; and agencies having jurisdiction over air quality, biological resources, solid wastes, and hazardous wastes and materials).

4.2 County's Processing of Subsequent Approvals.

County shall cooperate and diligently work to promptly process and consider all applications for Subsequent Approvals in a timely manner, provided they are in a proper form and include the timely provision of all required information and payment of any applicable fees and provided that Owner is in compliance with this Agreement. In the event that County and Owner mutually determine that additional personnel or outside consultants need to be retained to assist County to expeditiously process any Subsequent Approval, the cost of any such personnel or consultants shall be paid by Owner but shall be under the direction of County. County shall retain its discretion in its consideration of any and all Subsequent Approvals but shall exercise that discretion in a manner consistent with the Specific Plan and this Agreement.

4.3 Revenue Neutrality of Project; Cooperation in Forming Financing Districts.

The parties acknowledge and agree that County is approving the Project, in part, based on Owner's obligation to ensure the Project shall be Revenue Neutral, such that the Project Revenues fully cover the costs to construct, operate and maintain the Project Infrastructure over the life of the Project ("**Revenue Neutrality**") and this Section 4.3 has been designed to address this concern. The Project will generate increased Project Revenues to the County; however, these revenues may be insufficient to construct, operate and maintain all of the Project Infrastructure. The parties further acknowledge and agree the Project is being approved during challenging and uncertain economic times, and therefore the parties desire to provide additional assurances, to the extent feasible, that the Project will achieve and maintain said Revenue Neutrality. Accordingly, any gap between the actual cost of the construction, operation and maintenance of the Project Infrastructure over the life of the Project and the actual Project Revenues ("**Revenue Gap**") shall be financed through a CFD or other appropriate and mutually acceptable financing mechanism(s) or district(s) such as a CSD or LLD, assuming the same is formed by County.

As a condition of the Project's first tentative map, Owner shall work cooperatively with County to form a CFD or other appropriate and mutually acceptable financing mechanism(s) or district(s), to the extent permitted under

applicable law, to assist in paying for the construction, operation and maintenance of the Project Infrastructure; provided, however, that nothing contained in this Agreement shall be construed as requiring County to form such district(s) or mechanism(s) or to issue or sell bonds therefor. If any such district(s) or financing mechanism(s) are approved by County for formation, Owner shall vote affirmatively in any required election to confirm such formation as a condition of the Project's first tentative map. In preparing the analysis required under the law to form the CFD or other district(s) or mechanism(s) ("**Engineer's Report**"), the Engineer's Report shall use assumptions that substantially conform with those set forth in attached Exhibit 4 (CFD Assumptions) or as otherwise mutually agreed to by the parties at the time of formation; provided, however, that the Engineer's Report shall determine the benefit spread (or fair share allocation) based on industry standard methodology and any additional assumptions mutually agreed upon by County and Owner as part of the formation process. The parties acknowledge and agree that the funding obtained through the CFD or other district(s) or mechanism(s) is designed to cover the identified Revenue Gap (if any) only, and that the amount of the special tax or assessment shall take into account only such Revenue Gap, in the amount that is anticipated to occur at the time of formation or in the future. The parties agree that (i) once the CFD or other district(s) or mechanism(s) have been duly formed as required in this Section 4.3, (ii) any and all statutes of limitations periods relating to said formation have passed without legal challenge, or (iii) in the event of legal challenge, such litigation has been fully and finally resolved in a manner that allows the CFD (or other district(s) or mechanism(s)) to lawfully exist, then Owner's obligations under this Section 4.3 shall be deemed satisfied.

Section 5. Term of this Agreement.

5.1 Duration of Agreement.

The term of this Agreement shall commence on the Effective Date and shall continue for a period of fifteen (15) years unless extended or sooner terminated as provided herein and in accordance with County's Development Agreement Procedures ("**Term**"). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for Owner's indemnification obligations described in Sections 10.12 and 10.15 below, which shall survive termination. Termination shall not affect any right or obligation arising from the Project Approvals.

5.2 Extension by Agreement.

The Term may be extended at any time before its termination date by the mutual agreement of the parties in writing and in accordance with County's Development Agreement Procedures.

Section 6. Periodic Compliance Review; Default.

6.1 Periodic Compliance Review.

County shall review Owner's good faith compliance with the terms of this Agreement on an annual basis. This periodic compliance review shall be conducted in accordance with the Development Agreement Statute and County's Development Agreement Procedures, and shall address all items set forth therein as well as specifically demonstrate Owner's compliance, among other things, with its Affordable Housing Obligations under Section 2.7 above and its Development Impact Fee payment obligations under Section 3.2 above ("**Periodic Review**"). Owner may prepare an annual report for County's review, or request that County prepare said report and, in either case, Owner shall reimburse County for the actual costs of preparing for and conducting the Periodic Review within thirty (30) days of written demand from County. If Owner requests that County prepare said report, then Owner shall promptly provide all requested information necessary for County to do so.

In the event County elects to terminate this Agreement pursuant to the provisions of Section 6.2(b) below, Owner, in accordance with Section 8 below, may challenge such termination by instituting arbitration proceedings in which the arbitrator shall exercise its review, based on substantial evidence, as to the existence of cause for termination.

6.2 Default.

(a) **Notice of Default.** Failure or unreasonable delay by County or Owner to perform any material provision herein shall constitute a default under this Agreement. In the event of a default, the party alleging such default shall give the defaulting party not less than thirty (30) days' written notice of default ("**Notice of Default**"), unless the parties extend such time by mutual written consent or except in cases where Owner's default presents a threat of imminent harm to the public; provided, however, failure or delay in giving a Notice of Default shall not waive a party's right to give future notice of the same or any other default. The Notice of Default shall specify the nature of the alleged default, the manner and period of time in which said default may be satisfactorily cured, and shall otherwise adhere to the noticing requirements set forth in County's Development Agreement Procedures. The time of the Notice of Default shall be measured from the date actually delivered in accordance with Section 10.12 below.

(b) **Cure Period; Right to Terminate or Initiate Arbitration Proceedings.** The defaulting party shall provide evidence establishing it was never, in fact, in default or shall cure the default within thirty (30) days; provided, however, that if the nature of the alleged default is such that it cannot be reasonably cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. During any period of curing, the party charged shall not be considered in default for purposes of terminating this

Agreement or instituting arbitration proceedings. If the default is cured, then no default shall exist or be deemed to have existed and the noticing party shall take no further action. After proper notice and the expiration of such 30-day cure period without cure and subject to the Dispute Resolution process set forth in Section 8.1 below, the noticing party, at its option, may terminate this Agreement under Section 7.2 below without legal action or may institute arbitration proceedings as provided herein and in County's Development Agreement Procedures.

(c) **Remedies Generally.** The parties agree that remedies to enforce the terms of this Agreement shall be limited to actions for mandamus, specific performance, injunctive relief or other equitable relief, and that neither party shall be liable for monetary damages. Notwithstanding the foregoing, County reserves the right to seek payment from Owner through arbitration proceedings for any fees, charges, costs or other monies owed under this Agreement, and to obtain recovery thereof.

(d) **Enforced Delay; Extension of Time of Performance.** No party shall be deemed in default of its obligations under this Agreement where a delay or default is due to an act of God, natural disaster, accident, breakage or failure of equipment, enactment of conflicting federal or state laws or regulations, third-party litigation, strikes, lockouts or other labor disturbances or disputes of any character, interruption of services by suppliers thereof, unavailability of materials or labor, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disobedience, riot, or by any other severe and unforeseeable occurrence that is beyond the control of that party (collectively, "**Enforced Delay**"); provided, however, the parties agree a delay that results solely from unforeseen economic circumstances shall not constitute an Enforced Delay for purposes of this Section 6.2(d). Performance by a party of its obligations under this Section 6.2(d) shall be excused during, and extended for a period of time equal to, the period (on a day-for-day basis) for which the cause of such Enforced Delay is in effect.

Section 7. Termination.

7.1 Termination Upon Completion of Project or Expiration of Term.

This Agreement shall terminate upon the expiration of the Term (plus any extensions mutually agreed upon in accordance with Section 5.2 above) or when the Project has been fully developed and all of Owner's obligations in connection therewith and with this Agreement have been satisfied as reasonably determined by County. Upon termination of this Agreement, the County Recorder may cause a notice of such termination in a form satisfactory to County Counsel to be duly recorded in the official records of San Benito County.

7.2 Termination Due to Default.

After notice and expiration of the thirty (30) day cure period as specified in Section 6.2 above and completion of the Dispute Resolution process set forth in Section 8.1 below, if the default has not been cured or it is not being diligently cured in the manner set forth above, the noticing party may, at its option, give notice of its intent to terminate this Agreement pursuant to the Development Agreement Statute and County's Development Agreement Procedures ("**Notice of Intent to Terminate**"). Within thirty (30) days of receipt of a Notice of Intent to Terminate, the matter shall be scheduled for consideration and review in the manner set forth in the Development Agreement Statute and County's Development Agreement Procedures. Following consideration of the evidence presented in said review, either party alleging the default may give written notice of termination of this Agreement. If a party elects to terminate as provided herein, upon sixty (60) days' written notice of termination, this Agreement shall thereby be terminated. Notwithstanding the foregoing, a written notice of termination given under this Section 7.2 is effective to terminate the obligations of the noticing party only if a default has occurred and such default, as a matter of law, authorizes the noticing party to terminate its obligations under this Agreement. In the event the noticing party is not so authorized to terminate, the non-noticing party shall have all rights and remedies provided herein or under applicable law, including, without limitation, the right to specific performance of this Agreement. Once a party alleging default has given a written notice of termination, arbitration proceedings may be instituted to obtain a declaratory judgment determining the respective termination rights and obligations under this Agreement.

7.3 Termination of Agreement with Respect to Individual Units Upon Sale to Ultimate User and Completion of Construction.

The assignment provisions of Sections 9.1 and 9.2 below shall not apply, and the obligations hereunder shall terminate with respect to any unit and the owner of such unit shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

- (a) The lot upon which the unit is located has been finally subdivided and individually (i.e., not in "bulk") sold to a member of the public or other ultimate user; and
- (b) A Certificate of Occupancy has been issued for a residential building on said lot.

7.4 Termination by Mutual Consent.

This Agreement may be terminated by mutual consent of the parties in the manner provided in the Development Agreement Statute and in County's Development Agreement Procedures.

Section 8. Dispute Resolutions.

8.1 Informal Resolution of Disputes; Mediation.

If a dispute arises related to the interpretation or enforcement of, or compliance with, the provisions of this Agreement ("**Dispute**"), County and Owner shall first attempt to resolve it through informal discussions. In the event a Dispute cannot be resolved in this manner within twenty one (21) days, County and Owner shall endeavor to settle the Dispute by mediation. The Dispute shall be submitted to the San Jose, California office of Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS for final binding arbitration pursuant to Section 8.2 below. Either County or Owner may commence mediation by providing to JAMS and the other party a written request for mediation setting forth the subject of the Dispute and the relief requested. County and Owner shall cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals and in scheduling the mediation proceedings. If the parties cannot agree on the appointment of the mediator or the date of the mediation within thirty (30) days after the written request for mediation has been received, then JAMS shall appoint the mediator at its discretion and/or set a mediation date. County and Owner agree to participate in any such mediation in good faith, and shall share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by either of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees shall be treated as confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process.

8.2 Arbitration.

(a) Either County or Owner may initiate arbitration with respect to a Dispute by filing a written demand for arbitration at any time following completion of the informal dispute resolution and mediation processes described above; provided, however, that mediation may continue after the commencement of arbitration, if County and Owner so mutually desire. Unless otherwise agreed to by County and Owner, the mediator shall be disqualified from serving as the arbitrator in the case. The provisions of this Section 8.2 may be enforced by any court of competent jurisdiction, and the prevailing party shall be entitled to an award of all costs, fees, and expenses, including, without limitation, attorneys' fees, to be paid by the non-prevailing party. Any Dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, not resolved by the mediation process set forth above, shall be determined by arbitration to be held in San Benito County before one (1) arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, which rules shall govern the commencement of arbitration and the selection of the arbitrator among other things. Judgment on the arbitration award may be entered in the San Benito County Superior Court or any court having jurisdiction. This Section 8.2 shall not preclude County or Owner from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction. Subject to Section 8.3 below, the costs and fees of arbitration (including those fees and expenses set forth in JAMS' fee schedule in effect at the time of commencement of the arbitration) shall be borne equally by County and Owner, and each side shall be responsible for its own attorney(s) and expert(s) witness fees.

(b) The dispute resolution process described under Sections 8.1 and 8.2(a) above shall be undertaken in good faith. A mediator or arbitrator other than JAMS may be mutually agreed upon by County and Owner in writing. By agreeing to this dispute resolution process, neither County nor Owner hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. Any arbitration award shall be final and binding upon County and Owner and each shall accept such decision and award as binding and conclusive and enforceable in Superior Court in San Benito County and each party shall abide thereby and neither party may commence civil litigation as a means of resolving a Dispute except for an action to obtain equitable relief.

8.3 Attorneys' Fees and Dispute Resolution Costs.

Subject to Sections 8.1 and 8.2 above, in any action or proceeding brought by any party to enforce or interpret a provision of this Agreement, or to seek injunctive relief or declaratory relief against any other party to this Agreement, the prevailing party is entitled to recover reasonable attorneys' fees

and any other costs incurred in the action or proceeding in addition to any other relief to which it is entitled.

Section 9. Assignment and Assumption; Rights and Duties of Mortgagees.

9.1 Assignment of Rights, Interests and Obligations.

(a) Subject to compliance with Section 9.2 below, Owner may sell, assign or transfer in whole or in part the Property to any Subsequent Landowner at any time during the Term of this Agreement. Owner shall seek County's prior written consent to any sale, assignment, or transfer, which consent shall not be unreasonably withheld or delayed; provided, however, that such consent shall not be required if the proposed sale, assignment, or transfer would involve an entity directly related to any of the entities that make up the general manager of Owner such that it holds a majority interest (fifty-one percent (51%) or more) therein, nor shall such approval be necessary or any obligation hereunder be binding on individual lot or home buyers of units, except as may relate to payment of Regulatory Processing Fees payable in connection with the development of such individual lot or unit. Upon request by Owner, County shall promptly execute and acknowledge a release of an individual lot or residential unit from the obligations hereunder, provided such release shall be acceptable in form to County, and Owner shall pay all costs in connection therewith.

(b) Failure by County to respond within forty-five (45) days to any request made by Owner for the required consent shall be deemed to be County's approval of the sale, assignment or transfer in question. County may refuse to give its consent only if, in light of the proposed Subsequent Landowner's reputation and financial resources, such assignee would not, in County's reasonable opinion, be able to perform the obligations proposed to be assumed by such assignee. The parties agree that no new conditions, requirements or improvements on the development of the Project by a Subsequent Landowner beyond those set forth in the Project Approvals shall be imposed as a condition of County's consent of same. Such determination shall be made by the Planning Director, and is appealable by Owner to the Board. Notwithstanding the foregoing and in accordance with Section 7.3 above, this Section 9.1 shall not apply to the owner of any residential unit located on a lot that has been finally subdivided and individually sold to the ultimate user and a Certificate of Occupancy has been issued for a residential building on the lot.

9.2 Assumption of Rights, Interests and Obligations.

Express written assumption by a Subsequent Landowner of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred, shall relieve Owner of such obligations so expressly assumed. Any such assumption agreement shall be in a recordable form and shall be approved as to form by

County Counsel, which approval shall not be unreasonably withheld or delayed. Said agreement shall provide for the Subsequent Landowner to contractually assume and be bound by all of Owner's obligations under this Agreement with respect to the Property, or portions thereof, which are sold, assigned or transferred to the Subsequent Landowner. The County Recorder shall duly record any such assumption agreement in the official records of San Benito County within ten (10) days of receipt. Subject to County's consent of such assignment pursuant to Section 9.1 above, upon recordation of said assumption agreement, Owner shall automatically be released from those obligations assumed by the assignee.

9.3 Rights and Duties of Mortgagee in Possession of Property.

(a) **Mortgagee Protection.** This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the Effective Date, including, without limitation, the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair any Mortgage made in good faith and for value; provided, however, this Agreement shall be binding upon and effective against all persons and entities, including all Mortgagees who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

(b) **Mortgagee Obligations.** County, upon receipt of a written request from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Owner under this Agreement, provided that the Mortgagee cures, as soon as reasonably practicable, any defaults by Owner hereunder that are reasonably susceptible of being cured. The foreclosing Mortgagee shall comply with this Agreement, including, without limitation, complying with the assumption of requirements set forth in Section 9.2 above. The County Recorder shall cause any assumption agreement to be duly recorded in the official records of San Benito County within ten (10) days of receipt.

(c) **Notice of Default to Mortgagee; Right of Mortgagee to Cure.** If County receives notice from a Mortgagee requesting a copy of any Notice of Default regarding the Property hereunder, then County shall deliver said notice to such Mortgagee, concurrently with service thereof to Owner. Each Mortgagee shall have the right (but not the obligation) for a period of thirty (30) days after receipt of such notice to cure the alleged default set forth in said notice in accordance with Section 6.2(b) above.

Section 10. General Provisions.

10.1 Independent Contractors.

Each party is an independent contractor and shall be solely responsible for the employment, acts, omissions, control and directing of its employees. All persons employed or utilized by Owner in connection with this Agreement and the Project shall not be considered employees of County in any respect. Except as expressly set forth herein, nothing contained in this Agreement shall authorize or empower any party to assume or create any obligation whatsoever, express or implied, on behalf of any other party or to bind any other party or to make any representation, warranty or commitment on behalf of any other party.

10.2 Invalidity of Agreement and Severability of Provisions.

If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment, including any appeals. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, the remaining provisions shall continue in full force and effect.

10.3 Further Documents.

Each party shall execute and deliver to the other party all other instruments and documents as may be reasonably necessary to carry out the purpose of this Agreement in order to provide or secure to the other party the rights and privileges granted by this Agreement.

10.4 Time of Essence.

Time is of the essence in the performance of each and every covenant and obligation to be performed by the parties hereunder.

10.5 Modifications.

This Agreement may be modified from time to time by mutual consent of the parties, in accordance with the Development Agreement Statute and the County Development Procedures. In the event the parties modify this Agreement, the County Recorder shall cause notice of such action to be duly recorded in the official records of San Benito County within ten (10) days of such action.

10.6 Subsequent Approvals Do Not Require Amendment.

County's approval of any Subsequent Approval shall not require an amendment to this Agreement except in the event and to the extent Owner expressly seeks and County approves such amendment in connection with Subsequent Approval(s). Upon County's approval of any Subsequent Approval (including, without limitation, any such approval that would modify the Project), the Subsequent Approval shall be deemed incorporated into this Agreement as if originally included and shall become part of the Project Approvals governing development of the Project covered by this Agreement and vested in accordance with this Agreement.

10.7 Project Is A Private Undertaking.

The parties agree that: (a) any development by Owner of the Property shall be a private development; (b) County has no interest in or responsibilities for or duty to third parties concerning any improvements constructed in connection with the Property until such time that County accepts the offer of dedication of same pursuant to the provisions of this Agreement or in connection with any subdivision map approvals; (c) the contractual relationship between County and Owner is such that Owner is an independent contractor and not an agent of County; and (d) nothing in this Agreement is intended or shall be construed to create or reflect any form of partnership or joint venture between the parties.

10.8 No Discrimination Permitted.

Owner shall not discriminate in any way against any person on the basis of race, color, national origin, sex, marital status, sexual orientation, age, creed, religion, or condition of physical disability in connection with or related to the performance of this Agreement.

10.9 Covenants Running With The Land.

Subject to Section 7.3 above, all of the provisions contained in this Agreement are binding upon and benefit the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or any portion of the Property, whether by operation of law or in any manner whatsoever, during their ownership of the Property, or any portion thereof. All of the provisions of this Agreement constitute covenants running with the land pursuant to California law, including, without limitation, Civil Code section 1468.

10.10 Recordation Of Agreement.

Within ten (10) days of the Effective Date, Owner shall cause this Agreement to be duly recorded in the official records of San Benito County.

10.11 Notices.

Any notice required under this Agreement shall be in writing and personally delivered, or sent by certified mail (return receipt requested and postage pre-paid), overnight delivery, or facsimile to the following:

County: San Benito County Planning and Building Department
Attn: Planning Director
3224 Southside Road
Hollister, CA 95023
Tel: 831.637.5313
Fax: 831.637.5334

Copy to: County Counsel's Office
Attn: County Counsel
481 4th Street, 2nd Floor
Hollister, CA 95023
Tel: 831.636.4040
Fax: 831.637.4044

Copy to: Miller Starr Regalia
Attn: Nadia Costa
1331 North California Blvd., 5th Floor
Walnut Creek, CA 94596
Tel: 925.935.9400
Far: 925.933.4126

Owner: Fairview Corners, LLC
c/o FC Investors LLC
Attn: Richard B. Oliver and Mary Beth Long
385 Woodview Ave., #100
Morgan Hill, CA 95037
Tel: 408.779.5900
Fax: 408.779.3840

Copy to: Jeffrey A. Trant
Law Office of Jeffrey A. Trant
60815 Falcon Pointe Lane
Bend, Oregon 97702
Tel: 541.639.8200
Fax: 541.639.8201

Notices to Mortgagees by County shall be given as provided above using the address provided by such Mortgagee(s). Notices to Subsequent Landowners shall be given by County as required above only for those Subsequent Landowners who have given County written notice of their addresses for the purpose of receiving such notices. Any party may change its mailing address/facsimile at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt, air bill or facsimile.

10.12 Prevailing Wage.

Owner shall be solely responsible for determining whether construction of any or all of the Project Infrastructure required in connection with the Project trigger the obligation to pay prevailing wages under California or federal law. In the event and to the extent that payment of prevailing wages is required, Owner shall comply with those requirements. Owner shall defend, indemnify and hold harmless County, its agents, employees, officers and officials from any claims, injury, liability, loss, costs or damages sought by a third party for a failure to pay prevailing wages in connection with the Project. The indemnification obligation set forth in this Section 10.12 shall survive the termination of this Agreement.

10.13 Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

10.14 Venue.

Any action brought relating to this Agreement shall be held exclusively in a state court in the County of San Benito.

10.15 Cooperation In The Event Of Legal Challenge; Indemnification.

In the event of any legal action or proceeding brought by a third party challenging the validity of this Agreement or any provision hereof or any Project Approval ("**Legal Challenge**"), the parties shall cooperate in defending said action or proceeding. It being understood that the Project is a private undertaking, it shall be Owner's primary responsibility to defend any Legal Challenge, as defined herein. Owner shall engage the services of competent counsel at Owner's expense ("**Defense Counsel**"), subject to County's reasonable approval, to defend the interests of Owner (and County, to the extent such interests are covered by the joint defense doctrine) in any Legal Challenge challenging any aspect of the Project Approval(s); provided, however, that

nothing in this Section 10.15 shall preclude County Counsel's involvement in the Legal Challenge to defend County's interest therein. Furthermore, in accordance with that certain *Reimbursement Agreement* between County and Owner (executed on July 27, 2010), in the event County determines, in its reasonable discretion based on a good faith and diligent review of the Legal Challenge and the surrounding circumstances, that separate counsel is necessary to serve the interests of County and the public welfare, County may retain separate counsel, for which Owner shall pay all actual legal fees and costs related thereto. If County retains special counsel in accordance with this Section 10.15, County shall direct special counsel to cooperate with Defense Counsel to the extent feasible and to use diligent and good faith efforts to avoid duplication with the efforts with the Defense Counsel; such efforts may include, for example, the filing of joint briefs and other papers. Defense Counsel, County Counsel, and County's special counsel, if any, shall consult with each other and act in good faith in considering any settlement or compromise of any Legal Challenge.

Owner further agrees to and shall indemnify, defend and hold harmless County, its agents, employees, officers, and officials from any claims, injury, liability, loss, costs or damages, arising from Owner's operations or those of its employees, officers, agents, contractors or subcontractors, which relate to the Project. It is understood that Owner's duty to indemnify, defend and hold harmless includes the duty to defend as set forth in California Civil Code Section 2778. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve Owner from liability hereunder. The provisions of this Section 10.15 shall survive the termination of this Agreement.

10.16 No Waiver.

No waiver by any party of any provision of this Agreement shall be considered a waiver of any other provision of any subsequent breach of the same or any other provisions, including the time for performance of any such provisions. The exercise by a party of any right or remedy as provided in this Agreement or provided by law shall not prevent the exercise by the party of any other remedy provided in this Agreement or under the law.

10.17 Construction.

This Agreement has been reviewed and revised by legal counsel for both County and Owner, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. The provisions of this Agreement and the attached exhibits shall be construed as a whole according to their common meaning and not strictly for or against any party, and in a manner that shall achieve the purposes of this Agreement. Wherever required by the context, the masculine gender shall include the feminine or neuter genders, or vice versa.

10.18 Entire Agreement.

This Agreement and all exhibits constitute the entire agreement between the parties and supersede all prior discussions, negotiations, and agreements whether oral or written. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written notification signed by both parties.

10.19 Estoppel Certificate.

Any party from time to time may deliver written notice to the other party requesting written confirmation that, to the knowledge of the certifying party: (a) this Agreement is in full force and effect and constitutes a binding obligation of the parties; (b) this Agreement has not been amended either orally or in writing, or if it has been amended, specifying the nature of the amendment(s); and (c) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature of the default. A party receiving a request shall execute and return the certificate within thirty (30) days after receipt thereof. The Planning Director shall have the right to execute any such certificate requested by Owner. At the request of Owner, the certificate provided by County establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and Owner shall have the right to record the certificate for the affected portion of the Property at its cost.

10.20 Counterparts.

This Agreement and any and all amendments thereto may be executed in counterparts, and all counterparts together shall be construed as one document.

10.21 Authority To Execute.

Each party hereto expressly warrants and represents that it has the authority to execute this Agreement on behalf of its entity and warrants and represents that it has the authority to bind its entity to the performance of its obligations hereunder.

10.22 Captions.

The caption headings provided herein are for convenience only and shall not affect the construction of this Agreement.

10.23 Compliance, Monitoring, and Management Duties; Default.


If Owner fails to perform any duties related to compliance review processes, monitoring, or the management of any programs as required herein, County has the right, but not the obligation, to undertake such duties and perform them at Owner's sole expense.

10.24 Listing And Incorporation Of Exhibits.

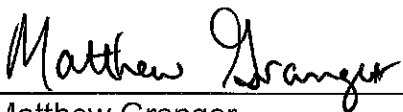
The exhibits to this Agreement, each of which is hereby incorporated herein by reference, are as follows:

- Exhibit 1: Legal Description of Property
- Exhibit 2: Map of Property
- Exhibit 3: Project Infrastructure and Road Improvements
- Exhibit 4: CFD Assumptions
- Exhibit 5: Applicable Development Impact Fees

COUNTY OF SAN BENITO


 Byron Turner, Interim Planning Director
 San Benito County Planning & Building Department
 Date:

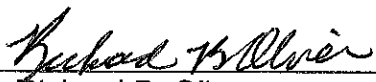
APPROVED AS TO FORM:
San Benito County Counsel's Office


 Matthew Granger
 County Counsel

[SIGNATURES CONTINUED ON NEXT PAGE]

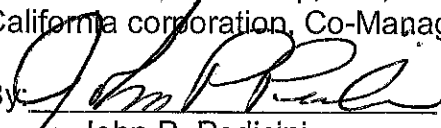
FAIRVIEW CORNERS LLC, a
California limited liability company

By: FC Investors LLC, a
California limited liability company, Co-Manager

By: 
Richard B. Oliver

Its: President

By: Dividend Capital Group, Inc., a
California corporation, Co-Manager

By: 
John P. Pedicini

Its: President

ACKNOWLEDGEMENT

State of California
County of Santa Clara

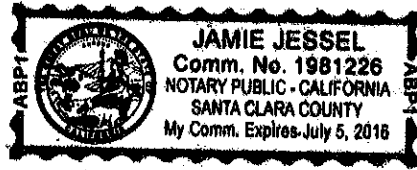
On Oct 1, 2013 before me, Jamie Jessel, Notary Public

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

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

WITNESS my hand and official seal.

Signature Jamie Jessel



My Commission Expires: July 5, 2016

Notary Name: Jamie Jessel Notary Phone: 408 779-5900

Notary Registration Number: 1981226 County of Principal Place of Business: Santa Clara

ACKNOWLEDGEMENT

State of California
County of Santa Clara

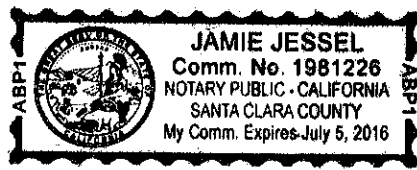
On Oct 1, 2013 before me, Jamie Jessel, Notary Public

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

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Exhibit 1
Legal Description

Real Property in the unincorporated area of the County of San Benito, State of California, described as follows:

PARCEL I:

Being all of Parcel 1 as shown on that certain Parcel Map filed for record on December 10, 2008 in Book 11 of Maps, Page 12, San Benito County Records.

Portion of Section 7 of Township 13 South Range 6 East of Mt. Diablo Base and Meridian and lying within the unincorporated area of San Benito County

Exhibit 2
Map of Property

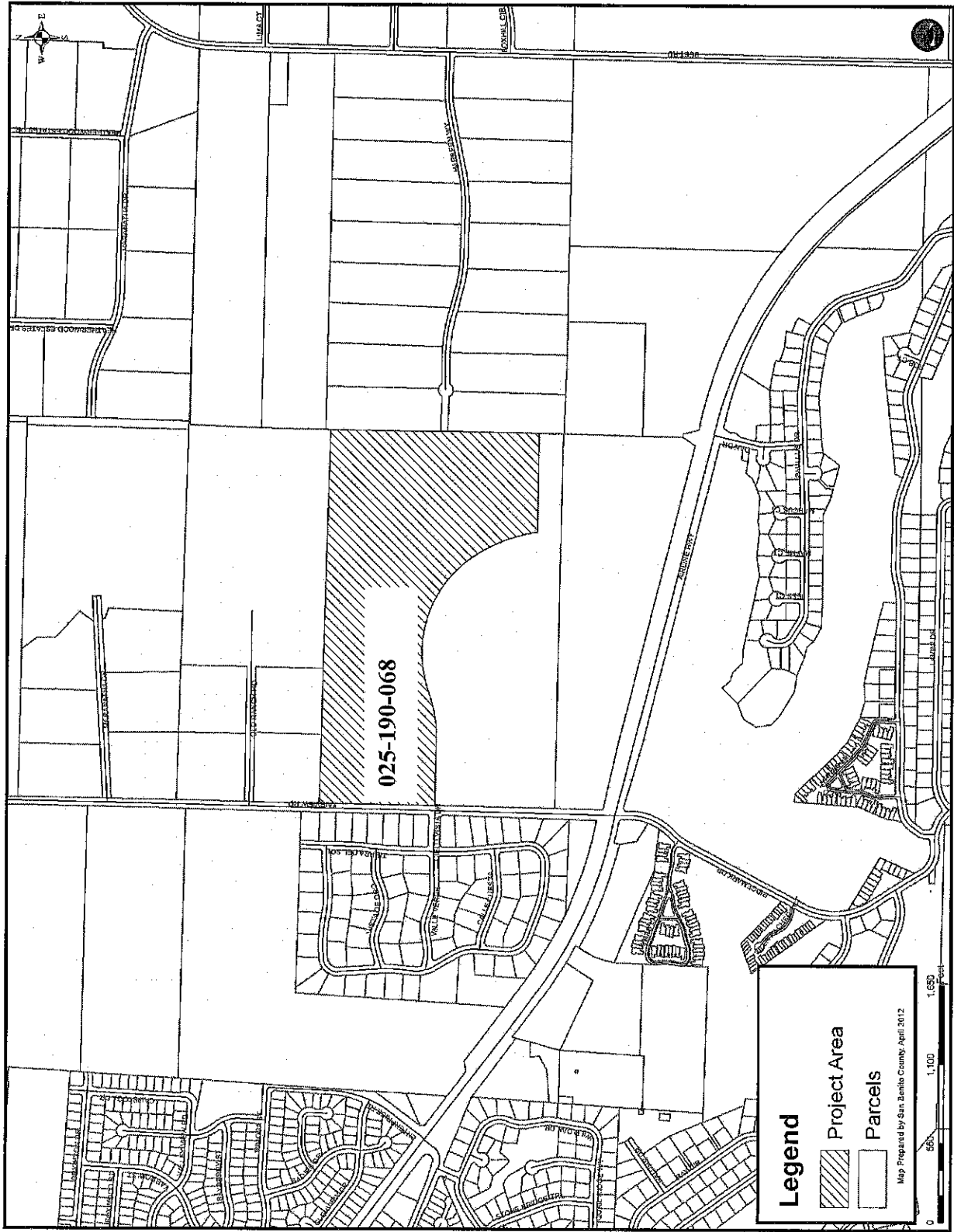


Exhibit 3

Project Infrastructure and Road Improvements

In accordance with Sections 2.1, 2.2 and 2.5 of the Development Agreement, Owner shall be responsible for the following improvements, along with any other Project Infrastructure set forth in the Specific Plan, the MMRP, and the Project Master Plans, and as otherwise may be required pursuant to the Subdivision Map Act and the County's Subdivision Ordinance, in connection with a specific tentative map application:

(a) Off-Site Backbone Infrastructure to Project Site. Owner shall construct the following backbone infrastructure improvements outside the Property boundaries, which are needed to connect to the Project's backbone infrastructure systems, as set forth in the Specific Plan, the Final EIR and the applicable approved Project Master Plan(s):

(i) Domestic water line tie-in at the intersection of Fairview Road and the Cielo Vista Drive entry road. At the eastern boundary of the Property, the line shall be extended outside the Property and be connected to the end of the existing (six) 6-inch potable water main at the head of the Harbern Way cul-de-sac. This potable water connection shall provide the Property with a redundant connection point as required by applicable County standards.

(ii) Wastewater conveyance system tie-in to the existing system on Enterprise Road through either (a) improvement and extension of the Cielo Vista Subdivision wastewater conveyance system (Option 1 in the Final EIR) or (b) the construction of a new main extending from the Property on Fairview Road to Airline Highway and Enterprise Road (Option 2 in the Final EIR).

(iii) Extension of public utilities (electrical, gas and communications lines) into the Property.

The foregoing improvements shall be constructed when required under the Development Agreement, the applicable Project Master Plans or as otherwise set forth in the subdivision improvement agreement for the applicable Phase. Once constructed, the improvements installed by Owner shall be offered for dedication to the appropriate public entity, with ongoing operation and maintenance funded

by the Project Revenues. It is anticipated the infrastructure improvements described in Section (a)(ii) above will provide a public benefit to the wastewater system and its users, including existing and future landowners, and may be subject to reimbursement as set forth in Section 2.9(a) of the Development Agreement.

(b) On-Site Backbone Infrastructure and Shared Main Entry Road Improvements.

In accordance with Sections 2.1, 2.2 and 2.5 of the Development Agreement, Owner shall construct the backbone infrastructure improvements within the Property boundaries on a Phase by Phase basis, as needed to serve the uses and structures developed within each said Phase. Notwithstanding the foregoing, and in accordance with Section (h) below, Owner shall be required as a condition of the first tentative map to construct the main Project entrance road improvements within the public right-of-way, including all utility connections (water, sewer, storm drainage, dry utilities), sized to accommodate build out conditions of both the Project and the adjacent Gavilan College San Benito Campus. County agrees that the remainder of the Project's road improvements may be constructed by Owner on the Property and sized appropriately to accommodate roadway capacity as the Project proceeds Phase by Phase, and Owner shall not be responsible for completion of any other roadway or utility improvements on or benefitting the Gavilan College San Benito Campus.

- (i) The foregoing improvements shall be constructed when required under the Development Agreement, the Specific Plan, the applicable Project Master Plans, or as otherwise set forth in the subdivision improvement agreement for the applicable Phase. Once constructed, the improvements installed by Owner shall be offered for dedication to the appropriate public entity, with ongoing operation and maintenance funded by the Project Revenues.

(c) Permissive Early Development of Certain Infrastructure. In accordance with Section 2.1 of the Development Agreement, Owner may construct certain backbone infrastructure improvements on the Property (such as required storm water retention basins) in advance of contiguous development by Phase, provided that adequate access for maintenance and operation is included in the design and construction of the improvements. Advance infrastructure

components shall be indicated on the Project's Infrastructure Master Plan, as approved by the County.

(d) Funding of On-Site Improvements and Reimbursement. All improvements within the Property are intended to be designed, constructed and financed using private equity and/or debt funding, an appropriate financing mechanism, or any combination of the foregoing. These infrastructure improvements may be subject to proportional fair share, fee credit and/or reimbursement as set forth in the Development Agreement. Once constructed, the improvements shall be offered for dedication to the appropriate public entity, with ongoing operation and maintenance through the Project Revenues, except for the funding to operate and maintain the utilities, which would occur through the applicable rate structure.

(e) Off-Site Improvements Required for Project Development. In accordance with Sections 2.1, 2.2 and 2.5 of the Development Agreement, Owner shall construct certain off-site improvements as described in the Specific Plan, the Final EIR and any Subsequent Approvals, as follows:

- (i) The Cielo Vista Drive extension into the Property.
- (ii) Street improvements and frontage improvements to Fairview Road along the Property frontage.

The foregoing improvements shall be constructed when required under the MMRP, the Development Agreement and applicable Project Master Plan. Once constructed, the improvements shall be offered for dedication to the appropriate public entity, with ongoing operation and maintenance funded by the Project Revenues. The above infrastructure improvements under Section (c)(ii) may be subject to reimbursement as set forth in the Development Agreement.

(f) Off-Site Traffic Improvements Required Under the MMRP Based Upon Future Conditions. In accordance with Sections 2.1, 2.2 and 2.5 of the Development Agreement, Owner may be required to construct the following off-site improvements, when and to the extent set forth in the Final EIR, MMRP, the applicable Project Master Plans and any Subsequent Approvals:

- (i) Traffic signalization at Fairview Road and Hillcrest Road.
- (ii) Traffic signalization at Memorial Drive and Hillcrest Road.

- (iii) Traffic signalization at the intersection of Enterprise Road and Airline Highway (State Route 25).
- (iv) Certain improvements identified for Airline Highway and Union Road.
- (v) Certain improvements identified for Union Road/Mitchell Road/State Route 156.
- (vi) Traffic signalization at the intersection of Valley View Road/Sunnyslope Road.
- (vii) Traffic signalization of Fairview Road and Cielo Vista Drive.

These infrastructure improvements may be subject to fee credits and/or reimbursement as set forth in the Final EIR and Development Agreement. The parties acknowledge the following: the above improvements specified in subsection g(i)-(v) are specifically identified in the TIMF Program as of the Effective Date; the improvements specified in subsection g(vi) (Valley View/Sunnyslope intersection) are not currently in the TIMF Program, but may be covered by the TIMF Program in the future (as set forth more fully in Section 2.9(c)(i) in the Development Agreement); and the improvement in subsection g(vi) (signal at Fairview/Cielo Vista Drive) is not in the TIMF Program as of the Effective Date and is not anticipated to be covered by the TIMF Program given the nature of the improvement.

The parties further acknowledge and agree that the improvements that are in the TIMF Program, either as of the Effective Date (i.e., those set forth in subsection g(i)-(v)) or that ultimately are covered in the future (i.e., those set forth in subsection g(vi), to the extent the TIMF Program is so modified) will be reimbursed through the TIMF program; provided, however, that the last above-referenced improvement (subsection g(vi)) shall not be so reimbursed.

(g) Impact of Development of Gavilan College San Benito Campus. County understands that Owner and the Gavilan College District intend to share circulation improvements to be Phased accordingly as the respective projects are constructed. In this regard, the parties acknowledge that the Project's entry road and related improvements have been designed to facilitate connections and access between the Project and the Gavilan College San Benito Campus: at full buildout, the median of the Cielo Vista street extension follows the property line between the two projects. Each project has the responsibility to ensure adequate

access, roadway and infrastructure development in connection with its respective project. If the Property is developed before full buildout of the Gavilan College San Benito Campus, the Project's circulation improvements may be constructed on a Phase by Phase basis, as needed to serve the uses and structures developed within each said Phase, provided that the main Project entrance and along the Cielo Vista Drive extension, including all utilities (water, sewer, storm drainage, dry utilities), shall be constructed to accommodate the ultimate buildout of the Project and to facilitate an extension to the adjacent Gavilan College campus site as follows:

(i) If Owner proceeds with development of the Project prior to the development of the Gavilan College San Benito Campus, Owner shall be required as a condition of the first tentative map to construct the main Project entrance roadway improvements within the public right-of-way and to a point of up to one hundred (100) feet toward the interior of both sites (as determined by the Director of Public Works) sized to accommodate build out conditions of both the Project and the adjacent Gavilan College San Benito Campus. County agrees that the remainder of the road improvements on the Property can be sized appropriately to accommodate roadway capacity as the Project proceeds by Phase, and that the remainder of the road improvements for the Gavilan College San Benito Campus project would not need to be constructed until development of that campus project and would be the responsibility of the Gavilan College District.

(ii) If Owner proceeds with development of the Project prior to the development of the Gavilan College San Benito Campus, and Owner has not been able to secure the rights necessary from Gavilan College District to construct the full intersection improvements at Fairview and the Cielo Vista extension despite diligent and good faith efforts to do so, the County Planning/Public Works Departments shall work cooperatively with Owner to make any necessary modifications to the Project's entry to allow for ingress to and egress from the Property. The parties acknowledge there may be several options to modify the ingress and egress accordingly, with approval of any such modifications being within County's discretion. The parties further acknowledge that such modifications may consist of a slight offset of the Project's access to the north. Any such modifications to the Project's entry shall otherwise be consistent with the traffic requirements for the ultimate build-out of the Project, as set forth in the MMRP and the applicant Project Master Plans, which may, but not necessarily, result ultimately in an additional right turn pocket for the Project and the Gavilan College San Benito Campus project.

Exhibit 4

CFD Assumptions

As set forth in Section 4.3 of the Development Agreement, Owner and County shall work cooperatively to form a CFD or other appropriate financing district(s) or mechanism(s) to ensure that any identified Revenue Gap is fully covered. As part of the formation process and in accordance with applicable law, an Engineer's Report shall be prepared to determine the annual costs of constructing, operating and maintaining the Project Infrastructure as compared to the annual Project Revenues. In preparing this Engineer's Report, the parties agree the analysis shall assume that an urban level of service (as compared to current County standards) will be provided to the Project for the following public services: fire protection, street lighting, street maintenance, park maintenance and landscape maintenance. The parties further agree the analysis shall consider the following five (5) cities in determining the cost to provide an urban level of service for the above-referenced public services: Hollister, Woodland, Rocklin, Gilroy and Watsonville. Said assumptions may be modified in accordance with then-current industry standards and the mutual consent of both parties.

The Fiscal Impact Analysis for Fairview Corners shall also assume the following:

- The water delivery system will be dedicated to Sunnyslope County Water District ("Sunnyslope"), which will operate and maintain the system. The Project will become part of Sunnyslope's utility rate base, and monthly water charges will be collected by Sunnyslope to pay for operation and maintenance of the system.
- County will provide a range of urban-level services, as follows:
 - All streets within the Project will be public streets maintained by the County, unless otherwise determined as part of the Project's subdivision map process.
 - Any park or recreational facilities will be offered for dedication to County; upon County's acceptance, County will operate and maintain said facilities.
 - The Project's storm drainage system will be offered for dedication to County; upon County's acceptance, County will operate and maintain said facilities.
 - Fire protection services will be provided by the California Department of Forestry ("CDF") under a contract with County.

- The Project's sewer system will be dedicated to the agency providing sewer services (assuming no septic systems), which will operate and maintain the system. The Project will become part of the agency's utility rate base, and monthly rate charges will be collected by the appropriate agency in accordance with standard procedures to pay for operation and maintenance of the system.
- The Project's reclaimed water system will be dedicated to the appropriate agency. The system will become part of the agency's utility rate base, and monthly rate charges will be collected by the agency to pay for operation and maintenance of the system.

Exhibit 5

Applicable Development Impact Fees

Exhibit 5**County Development Impact Fees**

Fee Category	Cost
Drainage	\$1,340 per building permit
Traffic	<u>Land Use Zone One:</u> \$1,717 per single-family dwelling \$1,058 per multi-family dwelling <u>Land Use Zone Two:</u> \$5,233 per single-family dwelling \$3,223 per multi-family dwelling <u>Land Use Zone Three:</u> \$1,799 per single-family dwelling \$1,109 per multi-family dwelling
Road equipment	\$0.70/ SF of residential living space
Fire Protection	\$0.25/SF of covered space
Law Enforcement	\$0.38/SF of covered space
Jail/Juvenile Hall	\$0.47/SF of covered space
Parks and Recreation	To be calculated pursuant to Section 3.1 of the Development Agreement.

Subject to Section 3.1 and Section 3.3 of the Development Agreement, Development Impact Fees may increase or decrease in accordance with the Construction Cost Index or Consumer Price Index as set forth in San Benito County Code Section 5.01.