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Tracy, CA 95376

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SECTION 27383

DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF TRACY
AND
THE TRACY HILLS PROJECT OWNER, LLC
and
TRACY PHASE I, LLC

DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF TRACY, THE TRACY HILLS PROJECT OWNER, LLC, AND TRACY PHASE I, LLC

This DEVELOPMENT AGREEMENT ("***Agreement***") is made by and among the City of Tracy ("***City***"), a municipal corporation, on the one hand, and The Tracy Hills Project Owner, LLC, a Delaware limited liability company, and Tracy Phase I, LLC, a Delaware limited liability company (collectively, the "***Developer***"), on the other hand. City and Developer each may sometimes be referred to herein as a "***Party***" and collectively as the "***Parties***."

RECITALS

A. 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, encourage private participation in comprehensive, long-range planning, and reduce the economic costs of development. It authorizes a City to enter into a binding agreement with any person having a legal or equitable interest in real property located in unincorporated territory within that City's sphere of influence regarding the development of that property.

B. Pursuant to the Development Agreement Statute, City has adopted procedures and requirements for the consideration of development agreements. This Agreement has been prepared, processed, considered and adopted in accordance with such procedures.

C. On January 5, 1998, the Tracy City Council certified the Tracy Hills Environmental Impact Report (SCH No. 95122045), approved certain General Plan amendments, and adopted and approved the Tracy Hills Specific Plan ("1998 Specific Plan") (Ordinance 964 C.S.; Resolution Nos. 98-001, 98-002, and 98-003). The 1998 Specific Plan applied to six thousand one hundred seventy-five (6,175) acres, of which approximately 3,552 acres were designated to remain in conservation open space and were not annexed into the City and 2,732 acres were annexed for development and related infrastructure and open space. The 1998 Specific Plan provided for development of up to five thousand four hundred ninety-nine (5,499) residential units in a mix of low, medium and high density neighborhoods, and over five million square feet of non-residential land uses including office, commercial, and light industrial uses, as well as parks, schools, and additional open space within the 2,732-acre annexation area.

D. Developer is the legal owner of approximately one thousand eight hundred forty-three (1,843) acres within the 1998 Specific Plan Area annexed into the City for the purposes of development (the "***Property***"), as more particularly described and depicted on attached Exhibit 1.

E. On April 5, 2016, following review and recommendation by the City of Tracy Planning Commission and after a duly noticed public hearing, the City Council of City took the following actions (collectively, the "***Project Approvals***"):

1. In support of the following actions, by Resolution No. 2016-062, and pursuant to and in compliance with the applicable provisions of the California Environmental Quality Act ("***CEQA***") certified an Environmental Impact Report for the Project, as defined below (State Clearinghouse No. 2013102053) ("***EIR***"), adopted written findings relating to significant environmental impacts, adopted a Statement of Overriding Considerations, and adopted a mitigation monitoring and reporting plan that incorporated all identified mitigation measures set forth in the EIR ("***MMRP***").

2. By Resolution No. 2016-063, amended the General Plan to make certain conforming amendments to ensure consistency between the City's General Plan and the Project, as defined below ("***General Plan Amendment***").

3. By Resolution No. 2016-063, amended the 1998 Specific Plan (as amended, the "***Specific Plan***") to provide for future development of approximately 5,499 residential units, 1,589,069 square feet of mixed use business park space, 758,944 square feet of commercial space, 3,360,654 square feet of light industrial space, and 119.8 acres of conservation easements; to provide zoning and development standards and design guidelines for the area; and to provide for public services and infrastructure improvements to serve the development, including fire and police protection, solid waste disposal, schools, streets, water, sewer, storm drains, electricity, natural gas, telephone, and cable television. Development of the Property consistent with and as provided by the Specific Plan is referred to herein as the "***Project***."

4. Conducted the first reading of Ordinance No. 1212, an ordinance amending the text of the City's Zoning Code to add Article 22.6 and establish a new zoning designation of "Tracy Hills Specific Plan Zone" (Tracy Municipal Code Section 10.08.3024) for the 2,732-acre annexation area (hereafter, the "***Specific Plan Area***") the location of which is depicted in the Specific Plan at Figure 1-3; and amending the City's Zoning Map to show the Specific Plan Area as zoned to "Tracy Hills Specific Plan Zone (collectively, "***Zoning Amendments***").

5. Conducted the first reading of Ordinance No.1213, an ordinance approving this Agreement and directing this Agreement's execution by City ("***Approving Ordinance***").

F. On April 19, 2016, the City Council conducted the second reading of and adopted the Zoning Amendments and the Approving Ordinance, both of which took effect on May19, 2016 ("***Effective Date***").

AGREEMENT

Based on the foregoing recitals, the truth and accuracy of which are hereby acknowledged and incorporated into and made a part of this Agreement, and in consideration of the mutual covenants and promises contained herein and other consideration, the value and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. DEFINITION OF TERMS.

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

1.1 "**1998 Specific Plan**" has the meaning set forth in Recital C.

1.2 "**Agreement**" has the meaning set forth in the Preamble.

1.3 "**Approving Ordinance**" has the meaning set forth in Recital E(5).

1.4 "**Assignee**" has the meaning set forth in Section 8.1.

1.5 "**Building Permit**" means the document issued by City's Building Official authorizing the holder to construct a building or other structure, as provided for in the City of Tracy Municipal Code.

1.6 "**CEQA**" has the meaning set forth in Recital E.1.

1.7 "**CFD Act**" means the Mello-Roos Community Facilities Act of 1982, pursuant to Government Code Section 53311 *et seq.*

1.8 "**City**" has the meaning set forth in the Preamble.

1.9 "**City Council**" means the Tracy City Council.

1.10 "**City Development Agreement Procedures**" has the meaning set forth in Recital B.

1.11 "**Claims**" has the meaning set forth in Section 9.13.

1.12 "**Community Benefit Fee**" has the meaning set forth in Section 4.1.

1.13 "**Community Facilities District**" or "**CFD**" means a community facilities district and all improvement areas designated therein, formed under the CFD Act pursuant to the parameters set forth in Exhibit 2 attached hereto. As set forth in Exhibit 2, there may be multiple CFDs formed for all or portions of the Property, which CFDs may include a Facilities CFD (as defined in Exhibit 2) and a Services CFD (as defined in Exhibit 2).

1.14 "**County Recorder**" means the San Joaquin County Recorder, which is responsible, in part, for recording legal documents that determine ownership of real property and other agreements related to real property.

1.15 "**CUP**" means a conditional use permit approved by City pursuant to this Agreement and the Tracy Municipal Code.

1.16 "**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 City offices are open to the public for business.

1.17 "**Developer**" has the meaning set forth in the Preamble.

1.18 "**Development Agreement Statute**" has the meaning set forth in Recital A.

1.19 "**Development Impact Fee**" means any fee identified in Title 13 of the City of Tracy Municipal Code.

1.20 "**Development Services**" means the City's Development Services Department.

1.21 "**Development Services Director**" means the head of Tracy's Development Services Department and the Chief Planning Officer.

1.22 "**Dispute**" has the meaning set forth in Section 7.1.

1.23 "**EB-5 Program**" means the Employment Based Fifth Preference Immigration Visa Program.

1.24 "**Effective Date**" has the meaning set forth in Recital F.

1.25 "**EIR**" has the meaning set forth in Recital E.1.

1.26 "**Enforced Delay**" has the meaning set forth in Section 5.4.

1.27 "**ENR**" means the Engineering News Record ("***ENR***") Construction Cost Index (overall-California).

1.28 "**Equivalent Dwelling Unit**" or "**EDU**" means the flow and load from one very-low- or low-density residential unit. The flows and loadings from other land use categories are based on the number of equivalent dwelling units per gross acre of development.

1.29 "**Existing Rules**" means the City's General Plan, the Specific Plan, the City's Municipal Code, all Citywide Infrastructure Master Plans, and all other adopted City ordinances, resolutions, rules, regulations, guidelines and policies in effect on the Effective Date.

1.30 "**Finished Lot**" means a legally subdivided lot with utilities stubbed out to the property line of said lot.

1.31 "**FIP**" means the Finance and Implementation Plan adopted by City for the Property as provided for and required by this Agreement and the Tracy Municipal Code Section 10.20.060(b)(3), as may be amended from time to time.

1.32 "**First Tranche CFD Bonds**" means the first set of bonds issued in the Facilities CFD formed for the Property, which may be in one or more series, that are issued to finance the facilities and fees required to be constructed by the Developer, as set forth herein.

1.33 "**General Plan Amendment**" has the meaning set forth in Recital E.2.

1.34 **"Interim Improvements"** means improvements which City, in its sole discretion, constructs or allows to be constructed in lieu of specific and more extensive Master Plan Infrastructure, are designed to be temporary, and will be replaced at a pre-determined time or upon the occurrence of a pre-determined event by the designated and approved Master Plan Infrastructure.

1.35 "**Master Plan Infrastructure**" means any public infrastructure improvement that is described in the Master Plans.

1.36 "**Master Plan Fee**" means each and every fee based on an adopted Master Plan and adopted by the Tracy City Council by Resolution No. 2014-10, and as amended by resolution 2014-158.

1.37 "**Master Plans**" means, collectively, the following City of Tracy Infrastructure Master Plans: the Parks Master Plan, the Public Facilities Master Plan, the Public Safety Master Plan, the Transportation Master Plan, the Wastewater Master Plan, the Tracy Hills Storm Drainage Master Plan, and the Water System Master Plan.

1.38 "**MGD**" means million gallons per day.

1.39 "**MMRP**" has the meaning set forth in Recital E.1.

1.40 "**Mortgage**" means any mortgage, deed of trust, security agreement, sale and leaseback arrangement, assignment or other security instrument encumbering all or any portion of the Property or Developer' rights under this Agreement, where the Property or a portion thereof or an interest therein, is pledged as security, contracted in good faith and for fair value.

1.41 "**Mortgagee**" means the holder of the beneficial interest under any Mortgage encumbering all or any portion of the Property or Developer' rights under this Agreement, and any successor, Assignee, or transferee of any such Mortgagee.

1.42 "**Notice of Compliance**" has the meaning set forth in Section 5.2.

1.43 "**Notice of Intent to Terminate**" has the meaning set forth in Section 6.3

1.44 "**Parks Master Plan**" means that certain City of Tracy Parks Master Plan adopted by City on April 16, 2013 and in effect on the Effective Date.

1.45 "**Party**" or "**Parties**" has the meaning set forth in the Preamble.

1.46 "**Periodic Review**" has the meaning set forth in Section 5.1.

1.47 "**Permitted Assignees**" has the meaning set forth in Section 8.1(a).

1.48 "**Permitted Assignment**" has the meaning set forth in Section 8.1(a).

1.49 "**Planning Commission**" means the Tracy Planning Commission.

1.50 "**Project**" has the meaning set forth in Recital E.3.

1.51 "**Project Approvals**" has the meaning set forth in Recital F and, as used herein, shall include all "Subsequent Approvals" as defined in Section 1.60.

1.52 "**Property**" has the meaning set forth in Recital D.

1.53 "**Public Facilities Master Plan**" means that certain Citywide Public Facilities Master Plan adopted by City, dated January 2013 and in effect on the Effective Date, and as vested by this Agreement.

1.54 "**Public Safety Master Plan**" means that certain Citywide Public Safety Master Plan adopted by City, dated March 21, 2013, and in effect on the Effective Date, and as vested by this Agreement.

1.55 "**Regulatory Processing Fees**" means any and all fees, costs and charges adopted or otherwise imposed by City as a condition of regulatory approval of the Project for the purpose of defraying City's actual costs incurred or to be incurred in the processing and administration of any form of permit, approval, license, entitlement, or formation of a financing district or mechanism, or any and all costs adopted or otherwise imposed by City for the purpose of defraying City's actual costs of periodically updating its plans, policies, and procedures, including, without limitation, the fees and charges referred to in Government Code Section 66014.

1.56 "**Second Tranche CFD Bonds**" means bonds issued by the Facilities CFD formed for the Property, in one or more series, after the First Tranche CFD Bonds have been redeemed in full.

1.57 "**Specific Plan**" has the meaning set forth in Recital E.3.

1.58 "**Specific Plan Area**" has the meaning set forth in Recital E.4.

1.59 "**Subsequent Approval**" means any and all land use, environmental, building and development approvals, entitlements and/or permits granted by the City after the Effective Date to develop and operate the Project on the Property, including, without limitation, amendments or other modifications to any Project Approvals; boundary changes; tentative and final subdivision maps, parcel maps and lot line adjustments; subdivision improvement agreements; development review; site plan review; conditional use permits; design review; Building Permits; grading permits; encroachment permits; Certificates of Occupancy; formation of financing districts or other financing mechanisms; and any amendments thereto (administrative or otherwise).

1.60 "**Subsequently Adopted Rules**" has the meaning set forth in Section 3.1(c).

1.61 "**Term**" has the meaning set forth in Section 2.1.

1.62 **"Timely Payment"** means payment by Developer not later than thirty (30) days following Developer's receipt of an invoice from City describing in reasonable detail costs incurred by City that are subject to payment by Developer under the terms of this Agreement.

1.63 **"Tracy Hills Storm Drainage Master Plan"** means that certain storm drainage master plan for the Tracy Hills Specific Plan area dated December 2000 and updated by the City on _____ ___, 2016.

1.64 "**Transportation Master Plan**" or "**TMP**" means that certain Citywide Roadway & Transportation Master Plan adopted by City in November 2012 and in effect on the Effective Date.

1.65 "**Water System Master Plan**" means that certain Citywide Water System Master Plan adopted by City, dated December 2012 and in effect on the Effective Date, and as vested by this Agreement.

1.66 "**Wastewater Master Plan**" means that certain Tracy Wastewater Master Plan adopted by City, dated December 2012 and in effect on the Effective Date, and as vested by this Agreement.

1.67 "**Zoning Amendments**" has the meaning set forth in Recital E.4.

SECTION 2. TERM OF THIS AGREEMENT

2.1 Term of Agreement.

This Agreement shall commence on the Effective Date and shall continue for a period of twenty-five (25) years unless sooner terminated as provided herein ("***Term***"). The Term may be extended at any time before termination by the mutual agreement of the Parties in writing and in accordance with City's Development Agreement Procedures. Notwithstanding the foregoing, the provisions of Section 3.7 of this Agreement relating to the use of Community Facilities District financing shall survive the end of the Term.

2.2 Effect of Termination.

Subject to the provisions of Section 6, following expiration of the Term (which shall include any mutually agreed upon extensions), this Agreement shall be deemed terminated and of no further force and effect except for any and all obligations expressly provided for herein that shall survive termination.

SECTION 3. CITY OBLIGATIONS

3.1 Vested Right to Develop the Project.

(a) Vested Entitlements and Project Approvals. Except as specifically set forth herein, as of the Effective Date, Developer shall have the vested right to develop the property in accordance with the Existing Rules, Project Approvals and any Subsequent Approvals.

(b) Processing Subsequent Approvals. The Parties acknowledge that in order to develop the Project on the Property, Developer will need to obtain City approval of various Subsequent Approvals that may include, without limitation, tentative and final subdivision maps, parcels maps, lot line adjustments, CUPs, development review, site plan review, Building Permits, grading permits, encroachment permits, specific plan amendments and Certificates of Occupancy. For any Subsequent Approval proposed by Developer, Developer shall file an application with City for the Subsequent Approval at issue in accordance with the Existing Rules, and shall pay such application and processing fees as are in effect at the time of the application except as expressly provided herein. Provided that such application(s) are in a proper form and include all required information and payment of any applicable Regulatory Processing Fees in the amount in effect at time of payment, City shall diligently and expeditiously process each such application in accordance with the Existing Rules, and shall exercise any discretion City has in relation thereto in accordance with the terms and conditions of this Agreement. In the event that City and Developer mutually determine that it would be necessary to retain additional personnel or outside consultants to assist City to expeditiously process any application for a Subsequent Approval, City may retain such additional personnel or consultants, and shall direct any such additional personnel or consultants to work cooperatively and in a cost-efficient and timely manner with Developer to accomplish the objectives under this section 3.1(b); provided, however, that Developer shall pay all costs associated therewith, although said personnel or consultants shall be under City's direction. City shall retain the full range of its discretion in its consideration of any and all Subsequent Approvals as provided for under applicable law.

(c) Subsequently Adopted Rules. City may apply to the Property and the Project any new or modified rules, regulations and policies adopted after the Effective Date ("***Subsequently Adopted Rules***"), only to the extent that such Subsequently Adopted Rules are generally applicable to other similar residential and non-residential (as applicable) developments in the City of Tracy and only to the extent that such application would not conflict with any of the vested rights granted to Developer under this Agreement. The Parties intend that Subsequently Adopted Rules that are adopted by the voters that impair or interfere with the vested rights set forth in this Agreement shall not apply to the Project. For purposes of this Agreement, any Subsequently Adopted Rule shall be deemed to conflict with Developer's vested rights hereunder if it:

(i) Seeks to limit or reduce the density or intensity of development of the Property or the Project or any part thereof;

(ii) Would change any land use designation or permitted use of the Property;

(iii) Would limit or control the location of buildings, structures, grading, or other improvements of the Project, in a manner that is inconsistent with the Existing Rules or Project Approvals;

(iv) Would limit the timing or rate of the development of the Project, except as otherwise provided herein; or

(v) Seeks to impose on the Property or the Project any Development Impact Fee not in effect on the Effective Date of this Agreement, provided however, that, except as expressly provided herein, Developer shall pay, or cause to be paid, applicable Development Impact Fees in the amounts in effect at the time of payment.

(d) Applicable Subsequently Adopted Rules. Notwithstanding the foregoing, and by way of example but not as a limitation, City shall not be precluded from applying any Subsequently Adopted Rules to development of the Project on the Property where the Subsequently Adopted 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;

(iii) Changes to the Uniform Building Code or similar uniform construction codes, or to City's local construction standards for public improvements so long as such code or standard has been adopted by City and is in effect on a Citywide basis; or

(iv) 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 as reasonably determined by City.

3.2 Wastewater Conveyance and Treatment Services.

City will provide wastewater conveyance and treatment services to development of the Project on the Property as set forth below.

(a) Developer's Pre-Payment Of Wastewater Fees. Upon the later of (i) sixty (60) days from the Effective Date of this Agreement, or (ii) the date upon which the City awards the contract for design services for Phase 2b of the Wastewater Treatment Plant Expansion Project, Developer shall deposit with the City Two Million Eight Hundred Eighty Dollars ($2,000,880) (the "First Wastewater Fee Payment"), which deposit shall represent Developer's pre-payment of wastewater fees for two hundred forty (240) dwelling units (or equivalent non-residential development) at the rate of Eight Thousand Three Hundred Thirty-Seven Dollars ($8,337.00) per dwelling unit (the "Initial Wastewater Fee Rate"). If Developer makes the First Wastewater Fee Payment in a timely manner as set forth above, no further City wastewater fees for treatment or conveyance shall be required for the first 240 dwelling units or equivalent non-residential development for the Project.

(b) Authority For Timing Of Payment Obligation; Developer's Consent. Developer hereby acknowledges and agrees that the timing of its fee payment under Section 3.2(a) is authorized by and consistent with the provisions and requirements of California Government Code Section 66007(b)(1). Developer hereby voluntarily consents to making such payment on the schedule set forth herein, and forever waives and relinquishes any rights it may have to object to or challenge the

timing of such payment obligation under Government Code Section 66007 or any other statute, law, rule, regulation, ordinance or any other authority.

(c) Limitations On City's Obligation To Provide Wastewater Conveyance And Treatment Services.

As of the Effective Date of this Agreement, there is insufficient treatment capacity available at the City's Wastewater Treatment Plant, and insufficient conveyance capacity in the City's wastewater conveyance system, to provide wastewater conveyance and treatment services to the full build-out of the Project. In recognition of these existing limitations of the City's wastewater treatment and conveyance infrastructure, City and Developer hereby acknowledge and agree that, commencing on January 1, 2015:

(i) The City will provide wastewater treatment and conveyance services (for purposes of this Section 3.2(c), treatment and conveyance services are referred to collectively as "***Services***") for up to four thousand two hundred (4,200) new dwelling units (or equivalent non-residential development) throughout the City (including the Property and all other properties in the City) which Services include the Services that may be provided to Developer pursuant to Section 3.2(a).

(ii) In addition to the Services that may be provided to Developer pursuant to Section 3.2(c)(i) above, Developer shall be eligible for otherwise available services on the same basis as other property owners and Developers in the City.

(iii) Any and all terms and provisions of this Agreement to the contrary notwithstanding, the City shall not be obligated to provide Services to more than 4,200 new dwelling units (or equivalent non-residential demand) throughout the City (including the Property and all other properties in the City), unless and until the City has secured adequate funding, as determined by the City in its sole discretion, to complete Phases 2 and 3 of the Corral Hollow Sewer Line Chokepoints Relief Project, and the planned Phase 2b Expansion of the City's wastewater treatment plant as described in the Wastewater Master Plan.

3.3 Fees, Credits and Reimbursements

(a) Developer shall pay all applicable City fees, including without limitation those set forth in the City's Municipal Code (including but not limited to the Development Impact Fees) and the Master Plans as set forth in this Section 3.3. The time for Developer's payment of applicable Development Impact Fees shall be established by and set forth in a contract executed by the City and Developer pursuant to Government Code section 66007(c).

(b) At the time of Developer's payment of all City Traffic Impact Fees (i.e., TIMP—Traffic), Developer shall make such payments, and City shall allocate such payments, as follows:

(i) Developer will pay to City in cash fifteen percent (15%) of Developer's gross Traffic Impact Fee (TIF) obligation. Such 15% of Developer's TIF payments shall be allocated to master plan transportation improvement projects and

master plan program management costs as the City deems appropriate, in its sole and exclusive discretion;

(ii) To the extent that Developer has accrued credits against its TIF payment obligations, Developer may (in Developer's sole and exclusive discretion) apply all or any portion of such credits against the remaining eighty-five percent (85%) balance of Developer's then-outstanding gross TIF obligation; and

(iii) To the extent that Developer's credits are not sufficient to fully satisfy such 85% balance, or to the extent that Developer does not elect to apply its accrued credits to such 85% balance, Developer shall pay the remainder of such 85% balance in cash to the City, and the City shall appropriate such cash payments into Capital Improvement Program (CIP) fund(s) created for the following improvements:

- All I-580 interchange improvements at Corral Hollow Road;
- All required improvements to Corral Hollow Road from Linne Road to the southern Property boundary, including railroad and canal crossings;
- All I-580 interchange improvements at Lammers Road;
- All required improvements to Lammers Road from Old Schulte Road to I-580, including railroad and canal crossings; and
- Linne Road improvements from Corral Hollow Road to McArthur Boulevard.

(c) Subject to Developer's compliance with the requirements of Section 4.8 below, Developer shall be eligible for a credit against Developer's obligation to pay Public Safety Facilities Impact fees consistent with the provisions and requirements of this Section 3.3, Section 3.4 and Section 4.8 below.

(d) All credits and reimbursements available to Developer, including without limitation credits and reimbursements available as a result of Developer's election to fund, design and/or construct Master Plan Infrastructure under Section 3.4 below, shall be determined and granted according to the Existing Rules. City hereby agrees that, where Developer is eligible under the Existing Rules, based upon any specific expenditure, for both credit against future fees and reimbursement, Developer may elect to receive credit (consistent with applicable Existing Rules) against future fees paid for Project development rather than reimbursement. Developer and City shall enter into improvement agreements as required by T.M.C. § 13.08.010 to allocate credits, identify the amount of credits, and to allocate credit to specific developments. Developer is not required to allocate such credit pro rata or via any specific formula, but may allocate, pursuant to the procedures in § 13.08.010, in such manner and pursuant to such formula as it deems appropriate in its sole and absolute discretion, subject to all other requirements such as availability of credits and use of credits only for "like-kind" impact fees. Given the scale of the Project and the large initial investment in many improvements that will qualify for credit, it is anticipated that Developer shall have balances of available credits confirmed by improvement agreements in advance of actual building permit issuance. In such event, Developer may allocate such credits to

specific lots by a subsequent written direction to the City Engineer indicating the available credits being applied to specific lots.

3.4 Developer Option to Design, Fund and/or Construct Public Infrastructure.

Developer may construct public infrastructure, including Master Plan Infrastructure and non-Master Plan public infrastructure, according to the provisions of this Section 3.4.

(a) Developer may fund, design and/or construct any Master Plan Infrastructure subject to the following requirements:

(i) Developer shall be in substantial compliance, as determined by the City, with the terms and conditions of this Agreement at the time that it notifies the City of its desire to construct Master Plan Infrastructure.

(ii) Developer shall notify City in writing that Developer wishes to fund, design and/or construct a specific Master Plan Infrastructure project, and at the time of such notice from Developer, there is not a construction contract or improvement agreement in already effect that provides for the construction of that specific Master Plan Infrastructure project.

(iii) Developer shall comply with all applicable requirements of Chapter 13.08 of the City of Tracy Municipal Code.

(iv) Developer shall execute improvement agreements and post security for all work required to complete such Master Plan Infrastructure to the satisfaction of the City and any other agency with permitting authority or jurisdiction over such work, prior to Developer becoming eligible for any credit or reimbursement.

(v) Developer shall make Timely Payment of all costs incurred by City in facilitating completion of such Master Plan Infrastructure in accordance with the applicable Master Plan(s) and improvement agreements.

(vi) Developer's election to fund, design and/or construct Master Plan Infrastructure pursuant to and in compliance with this Section 3.4 shall not preclude, limit or impair Developer's eligibility for any credits or reimbursements which Developer would otherwise be eligible for under Chapter 13.08 of the Tracy Municipal Code.

(b) Costs incurred by Developer for Interim Improvements may be eligible for credits or reimbursement only if:

(i) Developer requests the City's determination that the specific Interim Improvement(s) may be used to support a grant of fee credits prior to commencing construction of the Interim Improvement(s);

(ii) City determines, based on designs approved by the City, that the specific Interim Improvement(s) will be salvageable at the time of construction of the ultimate improvement(s);

(iii) City, in its reasonable discretion, determines that the completed Interim Improvement(s), may be used to support the requested fee credit; and

(iv) The amount of fee credits are limited to the value of the salvageable improvements based on Master Plan costs.

(c) City hereby acknowledges that Developer has previously provided funding to City for designs of the following Master Plan Infrastructure, and Developer shall be entitled to credit, consistent with the applicable Existing Rules, against Developer's obligation to pay the applicable Master Plan Fees (as indicated):

(i) Water Treatment Plant Clear Well (Citywide Water System Master Plan Fee);

(ii) Zone 3 City-Side Water Line (Citywide Water System Master Plan Fee);

(iii) Corral Hollow Road Precise Plan Line (Citywide Transportation Master Plan Fee); and

(iv) Corral Hollow Program Sewer Line (Tracy Wastewater Master Plan Fee).

(d) Construction of Corral Hollow Road Improvements. Any and all other language in this Agreement, the EIR or the MMRP to the contrary notwithstanding, Developer and City hereby agree that Developer shall complete the Corral Hollow Road widening and associated improvements, including sidewalks, from the southern edge of the California Aqueduct to the intersection with Linne Road, as described in Mitigation Measure 4.13-5b of the EIR (the "CH Widening Work"), prior to the City's completion of its final inspection of the structure that will contain the one thousand eight hundredth (1,800th) residential dwelling unit in the Project, or earlier if reasonably determined by the City Engineer to be necessary based on subsequent traffic studies. Upon execution of an Offsite Improvement Agreement with appropriate security (as determined by the City) for the CH Widening Work consistent with the Transportation Master Plan (as determined by the City Engineer), Developer shall be entitled to a credit against subsequently-due Transportation Impact Fees in an amount equal to one-third (1/3) of the costs of the sidewalks completed as part of the CH Widening Work, as well as such credits as may be available to Developer for the non-sidewalk components of the CH Widening Work under Section 3.3(d) of this Agreement. At the appropriate time, as determined by the City, Developer shall cooperate with the City to form a Benefit Assessment District to secure reimbursement to the City of one-third (1/3) of the costs of the sidewalks from the benefitting property owners. At the appropriate time, as determined by Developer, City shall cooperate with Developer to secure reimbursement to Developer of two-thirds (2/3) of the costs of the sidewalks and the costs of all right-of-way acquisitions, which reimbursements may be through a Benefit Assessment District or may be through some other mechanism for reimbursement consistent with then-existing City policies and requirements for reimbursements.

(e) Developer shall have the option to fund, design and/or construct any non-Master Plan public infrastructure necessary or desirable to develop the Project, subject to the following requirements:

(i) Developer shall be in substantial compliance, as determined by the City, with the terms and conditions of this Agreement at the time that it notifies the City of its desire to construct non-Master Plan public infrastructure.

(ii) Developer shall notify City in writing that Developer wishes to fund, design and/or construct a specific non-Master Plan public infrastructure project, and at the time of such notice from Developer, there is not a construction contract or improvement agreement in already effect that provides for the construction of that specific non-Master Plan public infrastructure project.

(iii) Developer shall execute improvement agreements and post security for all work required to complete such non-Master Plan public infrastructure to the satisfaction of the City and any other agency with permitting authority or jurisdiction over such work, prior to Developer commencing work on the non-Master Plan public improvements. Such improvement agreements shall require Developer to, at a minimum: (a) submit plans and specifications for such non-Master Plan public infrastructure to the City Engineer for City review and approval; (b) post adequate security, as determined by the City, for completion of the work described in the improvement agreement, including performance, labor and materials, and guaranty and warranty security; (c) complete the non-Master Plan public infrastructure in a timely manner and in conformance with the plans and specifications approved by the City; and (d) indemnify the City, to the satisfaction of the City Attorney, for any costs, claims, liabilities and damages incurred by the City arising or resulting from Developer's election to fund, design and/or construct the non-Master Plan public infrastructure pursuant to this Section 3.4.

(iv) Developer shall make Timely Payment of all costs incurred by City in facilitating Developer's election to fund, design and/or construct non-Master Plan public infrastructure pursuant to this Section 3.4(e).

(v) Developer hereby acknowledges and agrees that Developer is not, and shall not be, eligible for any credit(s) against any City fees, or any reimbursement(s) of any costs incurred by Developer in funding, designing or constructing non-Master Plan public infrastructure, based on Developer's election to fund, design and/or construct non-Master Plan public infrastructure pursuant to this Section 3.4(e).

3.5 Developer's Application for Non-City Permits and Approvals.

City shall cooperatively and diligently work with Developer in its efforts to obtain any and all such non-City permits, entitlements, approvals or services as are necessary to develop and operate the Project in order to assure the timely availability of such permits, entitlements, approvals and services, at each stage of Project development.

3.6 Community Facilities District.

(a) It is the mutual intent of the Parties that development of the Project not, now or at any time in the future, have any impact on or require any contribution from the General Fund of the City. To facilitate such intent, the City shall cooperate with Developer and use reasonable efforts to (i) form one or more Community Facilities District(s) ("***CFD***"), (ii) designate one or more improvement areas, (iii) designate property as "***Future Annexation Area***" for annexation to the CFD in the future, (iv) authorize the issuance of bonded indebtedness, and (v) authorize the special taxes and the bond proceeds from the CFD and all improvement areas thereof (collectively, the "***CFD Proceeds***") to be used to finance such facilities, services, and fees required to be constructed, provided, or paid under this Agreement as the City determines are lawfully and appropriately financed by the CFD, all in accordance with the provisions set forth in Exhibit 2 attached hereto.

(b) Property identified as Future Annexation Area may annex into (i) a then-existing improvement area or (ii) a new improvement area, using the Unanimous Approval process outlined in Section 1.1 of Exhibit 2 attached hereto, without the need for any public hearing, election, or City Council approval, as provided in the CFD Act.

(c) Any fees paid by the Developer pursuant to this Agreement or otherwise prior to the availability of CFD Proceeds which are determined by the City to be subject to reimbursement with CFD Proceeds shall be deemed "deposits" which may be returned to the Developer upon payment of an equivalent amount to the City from the CFD Proceeds.

(d) The Developer shall pay all costs associated with the formation and approval of such CFD(s) pursuant to a customary Deposit and Reimbursement Agreement, and Developer shall be eligible for reimbursement of such payments as provided in the Deposit and Reimbursement Agreement, but only from CFD Proceeds.

(e) The City and Developer intend and agree that the CFD should be formed prior to City's approval of the first final subdivision map for the Project, and each Party shall use reasonable efforts to complete formation of the CFD by that time.

3.7 Life of Tentative Subdivision Maps.

The life of all Project Approvals and any and all subsequently-approved tentative subdivision maps approved for the Project shall be equal to the Term of this Agreement in accordance with applicable laws, unless this Agreement is earlier terminated pursuant to the provisions hereof, in which event the life of said tentative subdivision maps shall be governed by the applicable provisions of the Subdivision Map Act.

3.8 Timing of Development.

Developer shall have the right to develop the Project on the Property (or any portion thereof) in such order, at such rate, and at such times as Developer deems appropriate within its exercise of subjective business judgment. The Parties acknowledge and agree that, except as expressly provided to the contrary herein, this Agreement does not

require Developer to commence or complete development of the Project or any portion thereof within any specific period of time.

SECTION 4. ADDITIONAL DEVELOPER OBLIGATIONS

4.1 Community Benefit Fee.

Developer shall pay to City a "***Community Benefit Fee***" in the amount of five million dollars ($5,000,000.00), to be used by City for any such purposes as may be determined by City in its sole and exclusive discretion, in the following installments:

(a) Prior to the issuance of the first grading permit for any portion of the Property, Developer shall pay to City, by electronic funds transfer, One million two hundred fifty thousand dollars ($1,250,000.00) ("***First Community Benefit Payment***"); and

(b) Not later than two (2) years from the date of the First Community Benefit Payment, Developer shall pay to City, by electronic funds transfer, three million seven hundred fifty thousand dollars ($3,750,000.00) ("***Final Community Benefit Payment***").

4.2 Parkland Dedication/In-Lieu Fees.

(a) Parks. Developer shall irrevocably dedicate, at no cost to the City, no less than thirty (30) acres of land within that portion of the Property that is south of the I-580 Freeway, to be used for the Tracy Hills Community Park ("***THCP***"). The 30 acres, plus any area needed for grade separating slopes and the connecting trail, shall be within the one hundred eighty (180) acres of open space required in the General Plan. Developer hereby acknowledges that fifteen (15) acres of the dedication is over and above the requirements of California Government Code Section 660057(a). Developer hereby voluntarily consents to dedicating the additional 15 acres on the schedule set forth herein, and forever waives and relinquishes any rights it may have to object to or challenge the timing and amount of such dedication under Government Code Section 66000 et. seq. or any other statue, law, rule, regulation, ordinance or any other authority. Developer shall design, construct one half of, and dedicate the THCP to conform to the following requirements:

(i) The THCP shall be comprised of not more than two (2) net usable areas (exclusive of slopes required to accommodate existing grade) of at least fifteen (15) acres each such that THCP contains at least 30 acres of net usable space. If the two areas are not contiguous, they shall be connected by improved trails at least twenty (20) feet wide and not longer than one thousand five hundred (1,500) feet, and otherwise in accordance with Parks Master Plan requirements and standards as determined and approved by the City. Each area shall be suitable, as determined by City, to accommodate (1) improvements consistent with the Parks Master Plan as adopted April 16, 2013, and as may be subsequently amended and agreed to by Developer; and (2) connections to the remainder of the one hundred fifty (150) acres of Open Space Area described in the Specific Plan.

(ii) The THCP site(s) shall be at least six hundred (600) feet from the I-580 freeway. The precise location of the THCP site(s) and the connections to

the remainder of the 150-acre Open Space Area shall be in accordance with Parks Master Plan requirements as determined and approved by the City.

(iii) Prior to the City's approval of a final subdivision map for all or any portion of the Property south of Interstate 580, Developer shall submit to the City, for the City Council's review and approval, conceptual designs for the entire THCP (both 15-acre areas and all connections) consistent with the Parks Master Plan.

(iv) Developer shall design and construct improvements for one of the two 15-acre areas (the "Developer-Improved 15-acre area") described in the City Council-approved conceptual designs in two (2) phases, pursuant to a City Council-approved Improvement Agreement. The first phase of the Developer-Improved 15-acre area shall be started no later than the issuance of the building permit for the 2,900th residential dwelling unit on the Property and shall be completed within twelve (12) months. The cost of this first phase, including all applicable Master Plan costs, shall not exceed the Community Park portion of the Park Development Impact Fees paid by Developer on the first 2900 residential dwelling units, without Developer's consent. The second phase of the Developer-Improved 15-acre area will be started at the issuance of the building permit for the 3600th residential dwelling unit on the Property and shall be completed within twelve (12) months. The cost of this second phase, including all applicable Master Plan costs, shall not exceed the Community Park portion of the Park Development Impact Fees paid on the total number of residential dwelling units planned on the Property less 2900 units, without Developer's consent.

(v) Not later than the City's approval of a final subdivision map for any lands adjacent to the Developer-Improved 15-acre area, Developer shall make an irrevocable offer, in a form to be approved by the City, to dedicate that 15-acre area and the proposed (or completed) improvements to the City.

(vi) Not later than the City's approval of a final subdivision map for any lands adjacent to the other 15-acre area described in the City Council-approved conceptual design for the THCP required by subsection (iv) above (the "City-Improved 15-acre area"), Developer shall make an irrevocable offer, in a form to be approved by the City, to dedicate the City-Improved 15-acre area to the City. City shall design and construct improvements on this City-Improved 15-acre area, consistent with the Parks Master Plan, with Community Park Fees collected from development on lands other than the Property.

(vii) Nothing in this Agreement is intended to, or shall, relieve Developer of its obligation to pay the City's existing Park Development Impact Fees at issuance of certificate of occupancy for each residential dwelling unit, subject to the provisions of Sections 3.5 and 3.6 above. The Community Park portion of the Park Development Impact Fees for the Property shall be placed in a Capital Improvement Program account to be used for THCP improvements. If Developer has not made an irrevocable offer to City for dedication for the Developer-Improved 15-acre area by December 31, 2025, then the land dedication and improvement obligations set forth in this Section 4.2 shall expire and have no further force or effect, and City shall be free to use Developer's Park Development Impact Fees, including but not limited to the Community Park portion of such fees, for community parks and improvements at any location within the City.

(b) Park Maintenance. City shall maintain the THCP and the connecting trails, if any, upon acceptance of improved THCP acreage from Developer.

4.3 Open Space Obligations.

(a) Developer shall provide no less than one and a half million dollars ($1,500,000) in improvements to the 150-acre Open Space Area (the "***Open Space Improvements***") as provided in this Section 4.3.

(b) Prior to the City's approval of the first tentative subdivision map adjacent to the Open Space Area, Developer shall submit to the City for the City's reasonable approval a proposed budget and design concept for the Open Space Improvements (the "***Open Space Improvements Proposal***"). Not later than ninety (90) days from the City's receipt of the Open Space Improvements Proposal, the City shall either approve or disapprove the Open Space Improvements Proposal. If the City disapproves the Open Space Improvements Proposal, the City shall state the reasons for its disapproval in sufficient detail to allow Developer to amend and re-submit its Open Space Improvements Proposal to obtain the City's approval.

(c) The Open Space Improvements shall be constructed in phases when development occurs adjacent to a particular portion of the Open Space Area.

(d) Developer shall provide for the long-term maintenance of the Open Space Area, as provided in Section 4.9, excluding the THCP.

4.4 Recycled Water Infrastructure Terms.

All on-site infrastructure necessary to provide recycled water service will be built with on-site improvements pursuant to conditions of approval to each tentative map. Developer will pay Recycled Water Fees according to the Water System Master Plan as follows:

(a) For each building permit for a residential dwelling unit or units in Phase 1A and Phase 1B, as depicted in Exhibit 3 hereto, of the Project, Developer shall pay forty-seven percent (47%) of the Recycled Water Fees that would otherwise be due at the time of issuance of such building permit; and

(b) The remainder of the total of Developer's Recycled Water Fees will be paid from Special Tax Revenues and/or CFD Bond proceeds as described in Exhibit 2 hereto.

4.5 Phasing of Project Development.

Development of the Project is intended to be phased as generally described and depicted in the Specific Plan; provided, however, that Developer shall have the right to develop the Project in such order, at such rate, and at such times as Developer deems appropriate within its exercise of subjective business judgment, in accordance with Section 3.9 above.

4.6 Project Monument.

Developer shall construct a Project Monument which is anticipated to take the form of a landscape feature that identifies and serves as a landmark for the Project. The final form of the Project Monument shall be subject to a Development Review Permit pursuant to Article 30 of Chapter 10.08 of Title 10 of the City of Tracy Municipal Code and be approved by the City Council. The Project Monument shall be located on or adjacent to Corral Hollow Road south of I-580 in the area designated Mixed Use Business Park in the Specific Plan, and shall be completed prior to the issuance of the Certificate of Occupancy for the five hundredth (500^{th}) residential dwelling unit in the Project.

4.7 Tracy Hills Business Park.

In a separate agreement with a third-Party, Developer previously agreed that 150 acres of the mixed-use business park component of the Project (hereafter, the "***Tracy Hills Business Park***") be developed in three phases of at least 50 gross acres per phase, and be intended primarily to provide for the following job generating land uses: administrative and corporate offices, call centers, light manufacturing and assembly and fabrication, such that no less than seventy-five percent (75%) of the total land area of each 50 acre phase be developed with such uses, allowing for the remaining twenty-five percent (25%) of each 50 acre phase to include other uses, including but not limited to commercial and high density residential uses, and will do so pursuant to this Agreement. Developer has further committed to the third-Party that: (a) construction of all public infrastructure required to serve the first minimum fifty (50) acres of the Tracy Hills Business Park be completed within one year after the effective date of this Agreement; (b) construction of all public infrastructure required to serve the second approximately fifty (50) gross acres of the Tracy Hills Business Park would be complete within one year after the City approves development applications for projects constituting 80% of the first 50 gross acres; and (c) construction of public infrastructure required to serve the remaining approximately fifty (50) gross acres of the Tracy Hills Business Park would be complete within one year after the City approves development applications for projects constituting 80% of the second 50 gross acres. Developer's covenants to comply with its prior commitment to develop job-generating land uses in the Tracy Hills Business Park portion of the Property by ensuring that an inventory of job generating mixed-use business park land is ready and available at all times until the build-out of the Tracy Hills Business Park is consistent with the City's intent to ensure that the Tracy Hills Specific Plan provide job-generating land uses. Notwithstanding the foregoing, the City is not a Party to Developer's third Party agreement and such third Party agreement has no effect on the City's discretion or decision-making authority regarding the Tracy Hills Specific Plan and the Project.

4.8 Public Safety.

In addition to complying with all mitigation measures relating to police and fire services in the EIR, City and Developer shall implement and comply with the following provisions and requirements.

(a) Fire Station

The following provisions shall be implemented by the City and Developer for construction of the first fire station on the Property, unless otherwise agreed to in writing by City and Developer. In the absence of such other written agreement, Developer shall design and construct the first fire station within twenty-four (24) months of the Effective Date of this Agreement according to the following terms and conditions:

(i) Not later than thirty (30) days from the Effective Date of this Agreement, City and Developer shall execute an improvement agreement providing for City's and Developer's site acquisition, design and construction of the first fire station (the "Fire Station Agreement") consistent with the following:

(1) Developer shall commence work on the design and construction documents for the fire station within ten (10) days following City's selection of a fire station site, and construction documents shall be completed no later than nine (9) months (270 days) from the execution of the Fire Station Agreement.

(2) City shall select the fire station site no later than sixty (60) days from the execution of the Fire Station Agreement.

(3) City shall approve the construction documents no later than three (3) months (ninety (90) days) from Developer's submittal of the construction documents.

(4) Not later than sixty (60) days from the date that the City has approved the construction documents for the fire station, Developer shall commence construction of the fire station.

(ii) The fire station shall be complete one year after the commencement of construction.

(iii) The fire station shall be built in accordance with all requirements of the Public Safety Master Plan (as may be amended by the City).

The Developer shall pay the first five million five hundred thousand dollars ($5.5 million) of costs associated with the site acquisition, design and construction of the fire station. The City shall pay all remaining costs associated with completion of the fire station.

(b) Police Vehicles and Officer Equipment Payments

(i) First Installment

Prior to issuance of a grading permit, the Developer shall pay to the City of Tracy funds necessary for two fully equipped patrol vehicles with MDC and Radio in a dollar amount of $150,000 ($75,000 each vehicle), and the safety equipment including portable radio, bullet proof vest, firearm, Taser, ammunition, and safety gear for two officers in the amount of $30,000 ($15,000 each officer).

(ii) Second Installment

Before final inspection of the first residential unit, the Developer shall pay the City $180,000 for the purposes of an additional two fully equipped vehicles and safety equipment for two additional officers.

(iii) Third Installment

Before final inspection of the 500th residential unit, the Developer shall pay the City $30,000 for the purposes of additional safety equipment for two additional officers (bringing the total vehicles and equipment to 4 vehicles and safety equipment for 6 officers).

(c) Public Safety Master Plan Fee Credits

The Developer shall receive credits against its obligation to pay Public Safety Master Plan fees in the amounts of $5.5 million (for fire station costs) and $390,000 (for police vehicle and equipment costs). The credit amounts shall be credited on a per residential unit basis against the full amount of the City's adopted Public Safety Master Plan fee less that portion of such fee attributable to the public safety communication tower / equipment, and shall otherwise be implemented according to the Existing Rules.

4.9 Long-Term Maintenance of Project Public Landscaping

The Parties hereby acknowledge and agree that a Condition of Approval of the first approved Vesting Tentative Subdivision Map for Phase 1A (Application Number TSM13-0005) for the Project shall provide substantially as follows (capitalized terms in the following condition of approval will have the meanings set forth for them in the conditions of approval for the Vesting Tentative Subdivision Map for Phase 1A (Applicant Number TSM13-0005), which meanings may or may not be the same as the meanings of such terms in this Agreement):

> Maintenance for Project Public Landscaping. Before approval of the first Final Map, the Subdivider shall assure that there will be sufficient funding to pay the public landscaping maintenance costs (as defined below). Subdivider shall prepare public landscaping improvement plans and a public landscaping budget analysis (to be reviewed and approved by the City Public Works Director) to establish the scope of and cost estimates for public landscaping.
>
> As used in these Conditions of Approval:
>
> "Public landscaping maintenance costs" include but are not limited to all costs associated with the maintenance, operation, repair and replacement of public landscaping included in the Project. Labor costs shall be based upon and be paid at "prevailing wages," as that term is used in Section 1771 of the California Labor Code.
>
> "Public landscaping" includes but is not limited to the following public areas and public improvements within or adjacent to the Project: public walls, special public amenities, ground cover, turf, shrubs, trees, irrigation systems, drainage and electrical systems, masonry walls or other fencing, entryway monuments

or other ornamental structures, furniture, recreation equipment, hardscape and any associated appurtenances within medians, parkways, dedicated easements, channel-ways, public parks and public open space areas. It does not include public streets and street sweeping, but may include street lights.

Before approval of the first Final Map, Subdivider shall enter into an agreement with the City, which shall be recorded against the entire Phase 1A property, which adopts and implements one or more of the following three options (a., b. or c.), subject to the approval of the Administrative Services Director:

a. CFD or other funding mechanism. Before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), the Subdivider shall, at its expense, form a Community Facilities District (CFD) or establish another lawful funding mechanism that is reasonably acceptable to the City for the entire Project area for funding or performing the on-going maintenance of public landscaping. Formation of the CFD shall include, but not be limited to, affirmative votes and the recordation of a Notice of Special Tax Lien. Upon successful formation, the Property will be subject to the maximum special tax rates as outlined in the Rate and Method of Apportionment. If funds are needed to pay for such public landscaping maintenance costs before collection of the first special taxes in the CFD (the "deficit"), then before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), the Subdivider shall deposit to the CFD (by submittal to the City's Administrative Services Director) the amount of the deficit;

Or

b. HOA and dormant CFD. Subdivider shall complete all of the following:

    (1) Form a Homeowner's Association (HOA) or other maintenance association, with CC&Rs reasonably acceptable to the City, to assume the obligation for the on-going maintenance of all public landscaping areas within the entire tentative subdivision map area;

    (2) Cause the HOA to enter into an agreement with the City, in a form to be approved by the City and to be recorded concurrently with the first Final Map, setting forth, among other things, the required maintenance obligations, the standards of maintenance, and all other associated obligation(s) to ensure the long-term maintenance by the HOA of all public landscape areas within the entire tentative subdivision map area;

    (3) For each Final Map, make and submit to the City, in a form reasonably acceptable to the City, an irrevocable offer of dedication of all public landscape areas within the Final Map area;

(4) Before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), annex into a CFD in a "dormant" capacity, to be triggered if the HOA fails (as determined by the City in its sole and exclusive discretion) to perform the required level of public landscape maintenance. The dormant tax or assessment shall be disclosed to all homebuyers and non-residential property owners, even during the dormant period.

Or

c. Direct funding. Before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), the Subdivider shall deposit with the City an amount necessary, as reasonably determined by the City, to fund in perpetuity the full costs of public landscaping maintenance as identified by the approved landscaping budget analysis.

In order to ensure consistency with respect to the maintenance of public parks, public landscapes and public open space areas throughout buildout of the entire Project, all subsequent vesting tentative maps approved for the Project shall impose a substantially similar Condition of Approval to implement the public landscaping maintenance requirements contemplated by and described herein.

4.10 Long-Term Maintenance of Public Landscaping for Major Program Roadways

The Parties hereby acknowledge and agree that a Condition of Approval of the first approved Vesting Tentative Subdivision Map for Phase 1A (Application Number TSM13-0005) for the Project shall provide substantially as follows (capitalized terms in the following condition of approval will have the meanings set forth for them in the conditions of approval for the Vesting Tentative Subdivision Map for Phase 1A (Applicant Number TSM13-0005), which meanings may or may not be the same as the meanings of such terms in this Agreement):

> Maintenance for Public Landscaping for Major Program Roadways. Before approval of the first Final Map, the Subdivider shall assure that there will be sufficient funding to pay the Subdivider's proportionate share of the ongoing public landscaping maintenance costs associated with major program roadways, by entering into an agreement with the City, which shall be recorded against the entire Phase 1A property, which adopts and implements one of the following two options (a. or b.), subject to the approval of the Administrative Services Director:
>
> a. CFD. Before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), Subdivider shall, at its sole expense, form a Community Facilities District (CFD) for the entire Project area, for funding the Subdivider's proportionate share of the ongoing public landscaping maintenance costs associated with major program roadways identified in the Citywide Roadway and Transportation Master Plan. Formation of the CFD shall include, but not be limited to, affirmative votes and the recordation of a Notice of Special Tax Lien. Upon successful formation, the Property will be subject to the maximum

special tax rates as outlined in the Rate and Method of Apportionment. If funds are needed to pay for such public landscaping maintenance costs before collection of the first special taxes in the CFD (the "deficit"), then before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), the Subdivider shall deposit to the CFD (by submittal to the City's Administrative Services Director) the amount of the deficit;

Or

b. Direct Funding. Before final inspection or occupancy of the first dwelling (except for up to fifteen model homes), the Subdivider shall deposit with the City an amount necessary, as reasonably determined by the City, to fund in perpetuity the full costs of funding the Subdivider's proportionate share of the ongoing public landscaping maintenance costs associated with major program roadways identified in the Citywide Roadway and Transportation Master Plan.

In order to ensure consistency with respect to funding the public landscaping maintenance costs associated with major program roadways throughout buildout of the entire Project, all subsequent vesting tentative maps approved for the Project shall impose a substantially similar Condition of Approval to implement the major program roadway maintenance requirements contemplated by and described herein.

4.11 Extension of Depressed Sewer Infrastructure Beneath Delta Mendota Canal

Prior to the City's final inspection of the first structure on the Property to which the City will provide wastewater service, Developer shall complete, test, and offer for dedication to the City all wastewater infrastructure necessary to convey, at a minimum, all wastewater flows anticipated to be generated within the Specific Plan area upon final buildout of the Specific Plan, across and beneath the Delta Mendota Canal, which infrastructure shall include without limitation two parallel inverted siphons as ultimately designed by the City's consultant (i.e., CH2MHill or such other consultant subsequently retained by the City) (for purposes of this Section 4.11, all such infrastructure is referred to as the "Depressed Sewer Infrastructure"). Developer shall be solely responsible for all costs associated with the design, permitting, construction, inspections, special inspections, operation and dedication of the Depressed Sewer Infrastructure, except that City shall assume responsibility for costs of operation and maintenance of the Depressed Sewer Infrastructure from and after the date that City accepts the dedication of the Depressed Sewer Infrastructure. Developer shall be eligible for reimbursement for costs incurred by Developer pursuant to this Section 4.11 in accordance with Section 3.3(d) of this Agreement and the Existing Rules.

SECTION 5. PERIODIC COMPLIANCE REVIEW; DEFAULT.

5.1 Periodic Compliance Review.

On an annual basis and upon thirty (30) days' notice from City to Developer, Developer shall document its good faith compliance with the terms of this Agreement and submit this compliance report to City. This periodic compliance review shall be conducted in

accordance with the Development Agreement Statute and City's Development Agreement Procedures ("***Periodic Review***").

5.2 Notice of Compliance.

Provided that City has determined, based on the most recent Periodic Review, that Developer is in compliance with all provisions of this Agreement, then within thirty (30) days following a written request from Developer that may be made from time to time, City shall execute and deliver to Developer (or to any Party requested by Developer) a written "***Notice of Compliance***" in recordable form, duly executed and acknowledged by City, that certifies:

(a) This Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications;

(b) There are no current uncured defaults as to the requesting Developer under this Agreement or specifying the dates and nature of any such default;

(c) Any other information reasonably requested by Developer. Developer shall have the right, at its sole discretion, to record the notice of compliance.

5.3 Default.

(a) Any failure by City or Developer to perform any material term or condition of this Agreement, which failure continues uncured for a period of sixty (60) days following written notice of such failure from the other Party (unless such period is extended by written mutual consent), shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default.

(c) During any cure period specified under this Section and during any period prior to any delivery of notice of default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or formal termination of the Agreement as provided herein.

(d) City will continue to process in good faith development applications relating to the Property during any cure period, but need not approve any such application if it relates to a proposal on the Property with respect to which there is an alleged default hereunder.

(e) In the event either Party is in default under the terms of this Agreement, the non-defaulting Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies, and/or (iii) pursue judicial remedies.

(f) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies that it may have available in law or equity, institute legal action to cure, correct, or remedy any default by the other Party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder or to seek specific performance. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement as it relates to an alleged default hereunder shall be deemed a final agency action.

(g) The Parties hereby acknowledge that money damages are excluded as an available remedy. The Parties further acknowledge that the City would not have entered into this agreement if doing so would subject it to the risk of incurring liability in money damages, either for breach of this agreement, anticipatory breach, repudiation of the agreement, or for any actions with respect to its negotiation, preparation, implementation or application. The Parties further acknowledge that money damages and remedies at law generally are inadequate, and specific performance is the most appropriate remedy for the enforcement of this agreement and should be available to all Parties for the following reasons:

(i) Due to the size, nature, and scope of the project, it may not be practical or possible to restore the property to its original condition once implementation of this agreement has begun. After such implementation, Developer may be foreclosed from other choices it may have had to utilize the property or portions thereof.

(ii) Developer has invested significant time and resources and performed extensive planning and processing of the project in agreeing to the terms of this agreement and will be investing even more significant time and resources in implementing the project in reliance upon the terms of this agreement, and it is not possible to determine the sum of money which would adequately compensate Developer for such efforts.

(h) Therefore, the Parties hereby acknowledge and agree that it is a material part of Developer' consideration to City that City shall not be at any risk whatsoever to liability for money damages relating to or arising from this agreement, and except for non-damages remedies, including the remedy of specific performance, Developer, on the one hand, and the City, on the other hand, for themselves, their successors and assignees, hereby release one another's officers, trustees, directors, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to article i, section 19 of the california constitution, the fifth and fourteenth amendments of the united states constitution, or any other law or ordinance which seeks to impose any money damages, whatsoever, upon the Parties because the Parties entered into this agreement, because of the terms of this agreement, or because of the manner of implementation or performance of this agreement.

5.4 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, unforeseeable and severe economic conditions, 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***"). Performance by a Party of its obligations under this Section 8.4 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.

5.5 Third Party Legal Actions.

(a) If there are any third party administrative, legal or equitable actions challenging any of the Project Approvals, including, without limitation, this Agreement and all CEQA processes and actions by City relating to the Project, Developer shall defend and indemnify City against any and all fees and costs arising out of the defense of such actions, including the fees and costs of City's own in-house or special counsel retained to protect City's interests. Each Party is entitled to legal counsel of its choice, at Developer's expense. The Parties and their respective counsel shall cooperate with each other in the defense of any such actions, including in any settlement negotiations. If a court in any such action awards any form of money damages to such third party, or any attorneys' fees and costs to such third party, Developer shall bear full and complete responsibility to comply with the requirements of such award, and hereby agrees to timely pay all fees and costs on behalf of City.

(b) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the Parties shall cooperate and use their best efforts, to the extent permitted by law, to cure any inadequacies or deficiencies identified by the court in a manner consistent with the purposes of this Agreement.

SECTION 6. TERMINATION.

6.1 Termination Upon Completion of Project or Expiration of Term.

This Agreement shall terminate upon the expiration of the Term or when the Project on the Property has been fully developed and Developer' obligations in connection therewith and with this Agreement have been satisfied. Upon termination of this Agreement, either Party may cause a notice of such termination in a form satisfactory to the City Attorney to be duly recorded in the official records of San Joaquin County.

6.2 Termination Based on Residential Occupancy.

Provided that Developer has fully satisfied all of its obligations under Section 4 above, and notwithstanding any other provision of this Agreement, as it relates to a residential unit, this Agreement shall terminate and be of no further force and effect for each individual residential unit on the Property on that date a "***Certificate of Occupancy***" is

issued by City for such residential unit if such residential unit is transferred and conveyed to a third party intending to use the unit for residential purposes.

6.3 Termination Due to Default.

After notice and expiration of the sixty (60) day cure period as specified in Section 5.3 above, 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 City'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 City's Development Agreement Procedures. Following consideration of the evidence presented in said review, the 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 be terminated as it relates to the defaulting Party's rights and obligations hereunder. Notwithstanding the foregoing, a written notice of termination given under this Section 6.3 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, legal proceedings may be instituted to obtain a declaratory judgment determining the respective termination rights and obligations under this Agreement. Notwithstanding the foregoing, any such default and related termination shall only extend to the defaulting Party's rights and obligations hereunder and shall not affect the rights and obligations of any other Assignee who has acquired other portions of the Property in accordance with Section 8.1 below.

6.4 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 City's Development Agreement Procedures.

SECTION 7. DISPUTE RESOLUTION.

7.1 Voluntary Mediation and Arbitration.

If a dispute arises related to the interpretation or enforcement of, or compliance with, the provisions of this Agreement ("***Dispute***"), City and Developer may mutually consent to attempt to resolve the matter by mediation or arbitration; provided, however, that no such mediation or arbitration shall be required in order for a Party to pursue litigation to resolve a Dispute.

7.2 Legal Proceedings.

Either Party may, in addition to any other rights or remedies, institute legal action to resolve any Dispute or to otherwise cure, correct or remedy any default, enforce any

covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.

7.3 Attorneys' Fees and Dispute Resolution Costs.

In any action or proceeding brought by any Party to resolve a Dispute, 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 8. ASSIGNMENT AND ASSUMPTION; RIGHTS AND DUTIES OF MORTGAGEES.

8.1 Assignment of Rights, Interests and Obligations.

Subject to compliance with this Section 8, Developer may sell, assign or transfer its interest in the Property and related Project Approvals to any individual or entity ("***Assignee***") at any time during the Term of this Agreement.

(a) Any assignment by Developer as provided for in this Section 8.1 may occur without obtaining City's consent ("Permitted Assignment") so long as (i) the proposed assignee is an affiliate of Developer, which shall include any entity that is directly or indirectly owned or controlled by Developer such that it owns a substantial interest, but less than a majority of voting stock of the entity; or (ii) any subsequent owner of a finished lot within the Project. Any assignees satisfying either criteria set forth in this Section 8.1(a) shall be referred to herein as "Permitted Assignees." Permitted Assignee(s) shall provide City with written notice of a Permitted Assignment within thirty (30) days following the effective date thereof.

(b) If the proposed assignee does not qualify as a Permitted Assignee, then Developer or subsequent owner may assign its interest in the Property and related Project Approvals so long as said Developer or subsequent owner receives the Development Services Director's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. It shall be deemed unreasonable to refuse consent for such assignment unless, in light of the proposed assignee's reputation and financial resources, such assignee would not be able to perform the obligations proposed to be assumed by such assignee. Any such determination shall be made in writing by the Development Services Director, supported by substantial evidence, and would be appealable by the affected owner to the City Council. Failure by City to respond to any such assignment request within forty-five (45) days would be deemed to constitute consent. Further, no consent to assign shall be required under this Section 8.1(b) for land covered by a specific tentative map or parcel map so long as Developer or subsequent owner(s) has satisfied all of its obligations hereunder in connection with said tentative map or parcel map. Finally, the Parties agree that once the Project is fully built out, then no consent to assign shall be required.

8.2 Assumption of Rights, Interests and Obligations.

Subject to compliance with the preceding Section 8.1, express written assumption by an Assignee 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

Developer of such obligations and other terms and conditions so expressly assumed. Any such assumption agreement shall be in substantially the same form as attached Exhibit 4, as determined by the City Attorney. The County Recorder shall duly record any such assumption agreement in the official records of San Joaquin County within ten (10) days of receipt. Upon recordation of said assumption agreement, Developer shall automatically be released from those obligations assumed by the Assignee.

8.3 Rights and Duties of Mortgagee in Possession of Property.

(a) 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, and including any subsequent transferee of the Property acquired by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise (in either case, a "Mortgagee Successor"), subject, however, to the terms of Section 8.3(b), below.

(b) The provisions of Section 8.3(a) above notwithstanding, no Mortgagee Successor shall have any obligation or duty under this Agreement to commence or complete the construction of any Project infrastructure, or to guarantee such construction or completion, or have any liability for failure to do so; provided, however, that a Mortgagee Successor shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements permitted under the Project Approvals. In the event that any Mortgagee Successor shall acquire title to the Property or any portion thereof, the Mortgagee Successor further shall not be (i) liable for any breach or default under this Agreement on the part of any Developer or its successor, or (ii) obligated to cure any breach or default under this Agreement on the part of any Developer or its successor. In the event such Mortgagee Successor desires to succeed to Developer' rights, benefits, and privileges under this Agreement, however, City may condition such succession upon the assumption of this Agreement by the Mortgagee Successor by written agreement reasonably acceptable to City and the Mortgagee Successor, including, without limitation, the obligation to cure any breach or default on Developer's part that is curable by the payment of money or performance at commercially reasonable cost and within a commercially reasonable period of time after such assumption takes effect.

(c) If City receives notice from a Mortgagee requesting a copy of any notice of default regarding all or a portion of the Property, then City shall deliver to such Mortgagee, concurrently with service thereof to Developer, any such notice given to Developer with respect to any claim by City that Developer has defaulted, and if City makes a determination of noncompliance under Section 5 above, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after receipt of such notice to cure, or to commence to cure, the alleged default set forth in said notice in accordance with Section 5 above. If the default or such noncompliance is of a nature that can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall have the right (but not the obligation) to seek to obtain possession with diligence and continuity through a receiver

or otherwise, and thereafter to remedy or cure the default or noncompliance within ninety (90) days after obtaining possession, except if any such default or noncompliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such Mortgagee commences cure during such ninety (90) day period, and thereafter diligently pursues completion of such cure to the extent possible. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee or Mortgagee Successor to undertake or continue construction or completion of any improvements comprising the Project (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the defaulting Developer's continuing obligations hereunder in the manner specified in Section 8.3(b), above.

SECTION 9. GENERAL PROVISIONS.

9.1 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 Developer in connection with this Agreement and the Project shall not be considered employees of City 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.

9.2 Invalidity of Agreement and Severability of Provisions.

If this Agreement in its entirety is determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment, including the entry of judgment in connection with any appeals. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid and unenforceable, the remaining provisions shall continue in full force and effect. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may terminate this Agreement as to Developer (in the case of Developer taking such action, the termination shall relate only to Developer's interest in the Property and the related Project Approvals) by providing written notice of such termination to the other Party.

9.3 Further Documents; Other Necessary Acts.

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 and the Project Approvals and Subsequent Approvals, in order to provide or secure to the other Party the full and complete enjoyment of the rights and privileges granted by this Agreement.

9.4 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.

9.5 Amendment to this Agreement.

This Agreement may be modified from time to time by mutual consent of the Parties, in accordance with the Development Agreement Statute, the City Development Agreement Procedures and this Section 9.5. In the event the Parties modify this Agreement, City shall cause notice of such action to be duly recorded in the official records of San Joaquin County within ten (10) days of such action.

9.6 Project Is A Private Undertaking.

The Parties agree that: (a) any development by Developer of the Property shall be a private development; (b) City 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 City accepts the same pursuant to the provisions of this Agreement and in connection with the various Project Approvals; (c) Developer shall have full power over and exclusive control of the Project herein described to the extent of Developer' interest therein, subject only to the limitations and obligations of Developer under this Agreement, its Project Approvals, and the other Existing Rules; (d) the contractual relationship between City and Developer is such that Developer is an independent contractor and not an agent of City; and (e) nothing in this Agreement is intended or shall be construed to create or reflect any form of partnership or joint venture between the Parties.

This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

9.7 Covenants Running With The Land.

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, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including, without limitation, Civil Code section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Property and is binding upon each owner, including Developer and all successive owners, of all or a portion of the Property during its ownership of such property.

9.8 Recordation Of Agreement.

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

9.9 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:

City: City of Tracy
Attn: Development Services Director
333 Civic Center Plaza
Tracy, CA 95376
Tel: 209-831-6400
Fax: 209-831-6439
Email: des@ci.tracy.ca.us

Copy to: City Attorney's Office
Attn: City Attorney
333 Civic Center Plaza
Tracy, CA 95376
Tel: 209-831-6130
Fax: 209-831-6137
Email: attorney@ci.tracy.ca.us

Developer: Tracy Hills Project Owner, LLC
Attention: John Stanek
888 San Clemente Drive, Suite 100
Newport Beach, CA 92660
Tel: 949-720-3612
Fax: 949-720-3613
Email: jstanek@integralcommunities.com

Developer Tracy Phase I , LLC
Attention: John Stanek
888 San Clemente Drive, Suite 100
Newport Beach, CA 92660
Tel: 949-720-3612
Fax: 949-720-3613
Email: jstanek@integralcommunities.com

Copy to: Rutan & Tucker, LLP
Attention: Hans Van Ligten
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626
Tel: 714-662-4640
Fax:
Email: hvanligten@rutan.com

Notices to Mortgagees by City shall be given as provided above using the address provided by such Mortgagee(s). Notices to Assignees shall be given by City as required above only for those Assignees who have given City written notice of their addresses for the purpose of receiving such notices. Either 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.

9.10 Prevailing Wage.

In accordance with applicable laws and regulations, City or Developer, as appropriate, shall be responsible for determining whether any construction of project infrastructure required in connection with development shown on a specific tentative map or final map or other Subsequent Approval application proposed by Developer will 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, City shall ensure compliance with those requirements, as appropriate and feasible.

9.11 Applicable Law.

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

9.12 Venue.

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

9.13 Indemnification.

Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) (collectively, "***Claims***") resulting from or arising out of the development of the Project contemplated by this Agreement, other than a liability or claim based upon City's negligence or willful misconduct. The indemnity obligations of this Agreement shall not extend to Claims arising from activities associated with the maintenance or repair by the City or any other public agency of improvements that have been accepted for dedication by the City or such other public agency.

9.14 No Waiver.

No waiver by either 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, and shall have no effect with respect to any other Party's rights and obligations hereunder. 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, and shall have no effect with respect to any other Party's rights and remedies as provided herein.

9.15 Construction.

This Agreement has been reviewed and revised by legal counsel for both City and Developer 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 either 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.

9.16 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.

9.17 Estoppel Certificate.

Either 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 Developer. At Developer' request, the certificate provided by City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and Developer shall have the right to record the certificate for the affected portion of the Property at its cost.

9.18 Counterparts.

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

9.19 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.

9.20 Captions.

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

9.21 Compliance, Monitoring, and Management Duties; Default.

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

9.22 Treatment of Developer Payments.

The Parties agree that it is their mutual intent that the payments to be made by Developer hereunder be deemed payments for infrastructure-related costs pertaining to the Project which shall be eligible for the purposes of satisfying the job creation requirements of the EB-5 Program to the fullest extent permitted by applicable law. The payments shall be deemed payments for infrastructure-related costs regardless of whether they are characterized as deposits and regardless of whether the payments are ultimately financed by the CFD. The Parties further agree that, upon the request of the Developer, which shall bear all applicable costs, the Parties will structure or restructure the payments required by Developer hereunder to effectuate the intent of the preceding sentence to the fullest extent permitted by applicable law. Upon the request of the Developer, the City will cooperate with the Developer in providing such information as may be reasonably requested by the United States Citizenship and Immigration Services or the Developer to confirm the eligibility of the payments made by the Developer hereunder with the requirements of the EB-5 Program.

9.23 Listing And Incorporation Of Exhibits.

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

Exhibit 1: Property and Specific Plan Area

Exhibit 2: Community Facilities District Financing Provisions

Exhibit 3: Phase 1 Area

Exhibit 4: Sample Assignment and Assumption Agreement Form

[SIGNATURE PAGE FOLLOWS]

CITY OF TRACY, a municipal corporation

Michael Maciel
Mayor, City of Tracy
Date:

APPROVED AS TO FORM:
City of Tracy City Attorney's Office

Bill Sartor
City Attorney
Date: 6/7/16

TRACY PHASE 1, LLC
a Delaware limited liability company

By: _____
Name: John Stanek
Title: Authorized Representative

THE TRACY HILLS PROJECT OWNER, LLC,
a Delaware limited liability company

By: Tracy Hills Operator, LLC,
a Delaware limited liability company,
its Managing Member

By: Tracy Hill Communities Manager, LLC,
a California limited liability company,
its Manager

By: KPMW Integral, LLC,
a California limited liability company,
its Managing Member

By: _____
Name: John Stanek
Title: Authorized Representative

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

State of California)
County of Orange)

On May 31, 2016, before me, Anne Nguyen, Notary Public, personally appeared John Stanek, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

ANNE NGUYEN
Commission # 2119883
Notary Public - California
Orange County
My Comm. Expires Aug 14, 2019

Signature _____ (Seal)

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

State of California)
County of Orange)

On May 31, 2016, before me, Anne Nguyen, Notary Public, personally appeared John Stanek, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

ANNE NGUYEN
Commission # 2119883
Notary Public - California
Orange County
My Comm. Expires Aug 14, 2019

Signature _____ (Seal)

ACKNOWLEDGMENT

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

State of California
County of San Joaquin)

On June 8, 2016 before me, Nora A. Pimentel, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Nora A. Pimentel (Seal)

NORA A. PIMENTEL
Notary Public - California
San Joaquin County
Commission # 2143109
My Comm. Expires Mar 15, 2020

EXHIBIT 1

DEVELOPMENT AGREEMENT - PARCEL DESCRIPTIONS

Phase 1A

All that real property situate in the City of Tracy, County of San Joaquin, State of California, and being all of Parcels 1 through 7, inclusive, as shown on the Parcel Map filed August 8, 2013 in Book 25, Page 168 of Parcel Maps of said County.

APN: 253-360-01, 253-360-02, 253-360-03, 253-360-04, 253-360-05, 253-360-06, 253-360-08, 253-360-09, and 253-360-10.

Phase 1B

All that real property situate in the City of Tracy, County of San Joaquin, State of California, and being all of Resultant Parcel No. 1 described in the Owner(s) Grant Deed recorded on February 1, 2013 as Document No. 2013-015451 Official Records of San Joaquin County that lies south of the Union Pacific Railroad right of way, east of highway 580, and west of the California Aqueduct.

Excepting therefrom Parcels 1 through 7, inclusive, as shown on the Parcel Map filed August 8, 2013 in Book 25, Page 168 of Parcel Maps of said County, and the portion of Corral Hollow (street right of way fee dedication) offered and accepted on the Parcel Map recorded August 8, 2013 in Book 25, Page 168 of Parcel Maps of said County records.

APN: 251-040-08, 251-050-07, 251-060-07; and 253-360-07

Phase 2 thru 4

All that real property situate in the City of Tracy, County of San Joaquin, State of California, and being all of Resultant Parcel No. 2 described in the Owner(s) Grant Deed recorded on February 1, 2013 as Document No. 2013-015450 Official Records of San Joaquin County.

All that real property situate in the City of Tracy, County of San Joaquin, State of California, and being all of 27.31 Acres described in the Certificate of Compliance recorded October 05, 2005 as Document No. 2005-249673 Official Records of San Joaquin County.

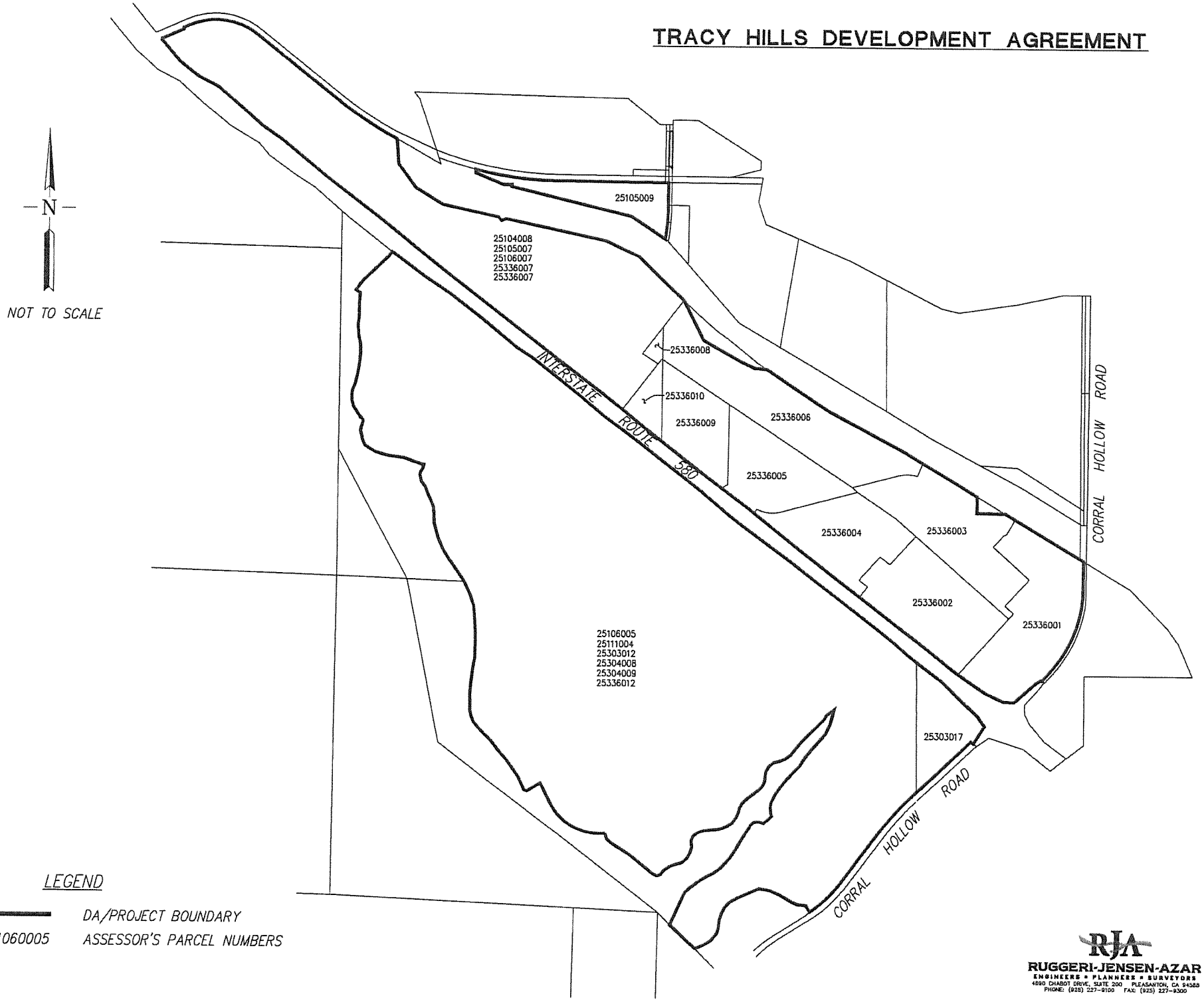
APN: 251-060-05, 251-110-04, 253-030-12, 253-030-17, 253-040-08, 253-040-09, and 253-360-12

Phase 5A

All that real property situate in the City of Tracy, County of San Joaquin, State of California, and being all of Resultant Parcel No. 1 described in the Owner(s) Grant Deed recorded on February 1, 2013 as Document No. 2013-015451 Official Records of San Joaquin County that lies south of the Union Pacific Railroad right of way and east of the California Aqueduct.

APN: 251-050-09

TRACY HILLS DEVELOPMENT AGREEMENT



LEGEND

DA/PROJECT BOUNDARY

251060005 ASSESSOR'S PARCEL NUMBERS

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS * PLANNERS * SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

EXHIBIT 2

COMMUNITY FACILITIES DISTRICT FINANCING PROVISIONS

[Capitalized Terms that are not defined in this Exhibit shall have the meanings given such terms in the main body of the Development Agreement.]

1.1 Formation of Facilities CFD, Designation of Improvement Area No. 1, and Identity of Future Annexation Area.

(a) Background. Developer is the legal owner of approximately one thousand eight hundred and forty-three (1,843) acres within the 1998 Specific Plan Area in the City (the "***Property***"). Developer intends to develop the Property over time, and to finance various infrastructure improvements and public services through the CFD (as defined below). The Developer intends to commence development of the Property with the initial phase consisting of Phase 1A (herein, the "**Initial Phase**"). The remainder of the Property will be developed in one or more phases over time (the "**Subsequent Phase Property**").

(b) Formation. City shall, upon the petition of the Developer described below, establish a community facilities district ("**Facilities CFD**") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "**CFD Act**") in the manner described in this Section 1.1. The Facilities CFD shall consist initially only of the Initial Phase, with all of the Subsequent Phase Property being identified as "Future Annexation Area" pursuant to the CFD Act ("**Future Annexation Area**"). As the Developer determines to develop the Subsequent Phase Property in one or more phases (each a "**Subsequent Phase**"), the Developer intends to annex each Subsequent Phase into the Facilities CFD in the manner described in this Section 1.1. Each of the Initial Phase and each Subsequent Phase may be designated as its own improvement area of the Facilities CFD (each an "**Improvement Area**") under the CFD Act or, alternatively, may be annexed into an Improvement Area that has already been established within the Facilities CFD. The Initial Phase will be designated Improvement Area No. 1 ("**Improvement Area No. 1**"). The composition and configuration of a Subsequent Phase shall be determined by the Developer, and a Subsequent Phase that is annexed to the Facilities CFD does not have to be related or identical to any phase identified in other documents or maps.

(c) Petition. At any time, Developer may petition City under the CFD Act to (i) establish the Facilities CFD over the Initial Phase, (ii) designate the Initial Phase as Improvement Area No. 1, and (iii) identify the Subsequent Phase Property as Future Annexation Area to be annexed into the Facilities CFD in the future. In its petition, Developer may include proposed specifications for Improvement Area No. 1 of the Facilities CFD, including special tax rates, Facilities CFD boundaries and any proposed tax zones, the total tax burden that will result from the imposition of the special taxes (subject to the 2.00% Limitation (as defined below) for residential units), and other provisions. Developer's proposed specifications will be based on Developer's development plans, market analysis, and required preferences, but in all cases will be subject to this Development Agreement and the CFD Goals (as defined herein). The City's obligation to form a Facilities CFD shall be subject to the provisions of this Development Agreement, the CFD Goals and the reasonable exercise of the City Council's legislative discretion.

(d) Commencement of Formation of Facilities CFD.

(i) Within ninety (90) days following City's receipt of a petition and any

deposit required by Section 53318 of the CFD Act, the Existing Rules, and any applicable Subsequently Adopted Rules, the City Council shall adopt a resolution of intention to form the Facilities CFD and to designate Improvement Area No. 1 consistent with the petition. The Facilities CFD and Improvement Area No. 1 shall be formed initially over the Initial Phase, and the Subsequent Phase Property will be identified in the Facilities CFD formation proceedings as Future Annexation Area. Improvement Area No. 1 shall have a separate rate and method of apportionment of special tax (an "**RMA**"), authorization to issue one or more series of special tax bonds ("**CFD Bonds**"), and an appropriations limit. As a Subsequent Phase is annexed to the Facilities CFD, it may be designated as a separate Improvement Area, complete with a separate RMA, separate authorization to issue CFD Bonds, and separate appropriations limit. A separate notice of special tax lien required by Section 3114.5 of the California Streets and Highways Code (the "**Notice of Special Tax Lien**") shall be recorded against each taxable parcel within the Facilities CFD upon completion of formation of the Facilities CFD (for Improvement Area No. 1) or on each parcel that annexes upon annexation to the Facilities CFD (for a Subsequent Phase).

(e) Annexation of Subsequent Phases.

(i) At any time, as the Developer determines to commence development of a Subsequent Phase, Developer may submit to the City Manager or his or her designee (the "**City Representative**") a written consent and unanimous approval of all owners of the Subsequent Phase (collectively, the "**Unanimous Approval**"). The Developer shall submit a draft of each Unanimous Approval to the City Representative at least 30 days prior to the date on which it wishes the Unanimous Approval to be effective. The Unanimous Approval may provide for annexation of the Subsequent Phase to a then-existing Improvement Area or may designate the Subsequent Phase as a new, separate Improvement Area. If annexing to a new separate Improvement Area, the Unanimous Approval shall also set forth terms of a separate RMA that meets the requirements of Section 1.3, set forth the bond authorization for the new Improvement Area, and set forth the appropriations limit for the new Improvement Area. The Unanimous Approval will also direct the City to record a Notice of Special Tax Lien against parcels in the Subsequent Phase.

(ii) The annexation and related matters described in the Unanimous Approval shall be implemented and completed without the need for Council approval as long as the following conditions are met:

(A) The rate and method of apportionment of special tax for the new improvement area is prepared by a special tax consultant retained by the City and paid for by the Developer or the applicable property owners submitting the Unanimous Approval.

(B) The rate and method of apportionment of special tax for the new improvement area complies with the City's then-effective goals and policies established under Section 53312.7(a) of the CFD Act.

(C) The rate and method of apportionment of special tax for the new improvement area does not establish a maximum special tax amount for the initial fiscal year in which the special tax may be levied for any category of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the rate and method of apportionment of special tax for Improvement Area No. 1.

(D) The rate and method of apportionment of special tax for the new improvement area does not introduce a special tax that was not included in the rate and method of apportionment of special tax for Improvement Area No. 1 (e.g., a special tax that is levied and must be paid in a single fiscal year or over a shorter time period than 30 years).

(E) The rate and method of apportionment of special tax for the new improvement area gives the City the discretion to convert Facilities Special Taxes to Facilities Maintenance Services Special Taxes subject to a similar "Services Tax Trigger Event" as the rate and method of apportionment of special tax for Improvement Area No. 1 (modified, as applicable, to represent the timing of the new rate and method of apportionment of special tax for the new improvement area).

(F) The rate and method of apportionment of special tax for the new improvement area is not inconsistent with the terms of the Development Agreement, as amended, whether or not it is still operative.

(G) The rate and method of apportionment of special tax for the new improvement area includes a backup special tax that protects against revenue loss as a result of land use changes.

(iii) In the event that City Council review is not required pursuant to the previous clause (ii) because the RMA satisfies all of the conditions listed in paragraphs (A)-(G) of clause (ii), the Unanimous Approval will be subject to review and approval by the City Representative, and the City Representative's approval shall be based on the consistency of the Unanimous Approval with the provisions of this Development Agreement and the CFD Goals.

(iv) Upon approval of the Unanimous Approval as set forth in the clause (ii) above, the City Representative shall take all steps necessary to record or to cause recordation of a Notice of Special Tax Lien against all taxable parcels in the Subsequent Phase. From and after the recordation of the Notice of Special Tax Lien on taxable parcels in the Subsequent Phase, the Subsequent Phase shall be considered annexed to the Facilities CFD within its designated Improvement Area (if applicable) without any further action on the part of the City or the City Council. City and Developer acknowledge that upon recordation of the Notice of Special Tax Lien on taxable parcels in the Subsequent Phase, (A) the newly-created Improvement Area shall be authorized to finance any of the Facilities (as defined herein) and (B) the Acquisition Agreements (as defined herein) shall be applicable to the newly-created Improvement Area such that the Facilities may be financed pursuant to the Acquisition Agreements from any Funding Sources (as defined herein) of such newly-created Improvement Area.

(f) Authorized Facilities. The Facilities CFD and each Improvement Area (created initially or by subsequent annexation) shall be authorized to finance all of the Facilities (as defined in Section 1.2), irrespective of the geographic location of the improvements financed. The City has determined that the Facilities benefit the Facilities CFD and each Improvement Area as a whole, and therefore any of the Facilities may be financed in any Improvement Area without regard to specific benefit to such Improvement Area.

(g) Joint Community Facilities Agreements. Under the CFD Act, City may be required to enter into one or more joint community facilities agreements with other governmental

entities that will own or operate any of the Facilities to be financed by the Facilities CFD. The City and Developer agree that they will take all reasonable steps to procure the authorization and execution of any required joint community facilities agreements with other governmental entities before the issuance of any CFD Bonds that will finance the construction or acquisition of Facilities that will be owned or operated by such other governmental entities. Developer acknowledges and agrees that the ability of the City to enter into joint community facilities agreements is subject to the discretion of the other governmental entities.

(h) Facilities Maintenance Services. The Facilities CFD and each Improvement Area (created initially or by subsequent annexation) shall be authorized to finance all of the Facilities Maintenance Services (as defined in Section 1.2), irrespective of the geographic location of the services financed. The City has determined that the Facilities Maintenance Services benefit the Facilities CFD and each Improvement Area as a whole, and therefore any of the Facilities Maintenance Services may be financed in any Improvement Area without regard to specific benefit to such Improvement Area.

1.2 Scope of CFD-Financed Costs.

(a) Facilities. The Facilities CFD and each Improvement Area shall be authorized to finance all or any portion of the facilities described in Section 53313.5 of the CFD Act and any capital fees, in each case to the extent agreed upon by the City and Developer at the time of formation of the Facilities CFD (collectively, the "**Facilities**"). The term Facilities shall include, but is not limited to, recycled water improvements ("**Recycled Water Improvements**") and capital improvements to previously-constructed Facilities ("**Capital Reimprovements**"). The special tax levied to pay for the Facilities is referred to as the "**Facilities Special Tax**."

(b) Facilities Maintenance Services. For each Improvement Area, the RMA shall provide that the maximum Facilities Special Tax levied in such Improvement Area shall be reduced by 80% on the date of the Trigger Event without any further action by the City Council, and the special taxes thereafter levied in the Improvement Area shall be deemed services special taxes that shall be used to finance the maintenance costs of the Facilities that were authorized to be financed by the Facilities CFD (the "**Facilities Maintenance Services Special Tax**"). The term "**Trigger Event**" means, calculated separately for each Improvement Area, the date on which the later of the following two things occurs: (i) the full funding of all Facilities in the Facilities CFD as a whole; or (ii) the repayment of all outstanding CFD Bonds payable from the Facilities Special Taxes levied in the applicable Improvement Area. The occurrence of the Trigger Event shall be determined by the City Representative in the exercise of its reasonable discretion. The Facilities Maintenance Services Special Tax may be used to finance the maintenance costs of any of the Facilities regardless of the location of such Facilities (the "**Facilities Maintenance Services**"). On the Trigger Date, the Facilities Special Taxes shall be considered terminated and the Facilities Maintenance Services Special Tax shall thereafter be levied. The Facilities Maintenance Services Special Tax shall be levied in perpetuity.

1.3 Parameters of CFD Formation.

(a) Cooperation. Developer and City agree to cooperate reasonably in developing each RMA to be used in each Improvement Area of the Facilities CFD. Each RMA shall be consistent with the Developer's petition (with respect to Improvement Area No. 1) or the Unanimous Approval (with respect to a subsequent Improvement Area), so long as such petition or Unanimous Approval is consistent with this Development Agreement, and the CFD Goals. Developer and City will each use good-faith reasonable efforts at all times to furnish timely to

the other, or to obtain and then furnish to the other, any information necessary to develop each RMA, such as Developer's plans for the types, sizes, numbers, and timing for construction of buildings within each Improvement Area. Each Improvement Area of the Facilities CFD will be subject to its own RMA.

(b) Maximum Special Tax Rates for Developed Property. Each RMA in the Facilities CFD will specify special tax rates for Developed Property (property for which a building permit has been issued) within the Improvement Area that will be applicable to the Facilities Special Tax (each a "**Maximum Facilities Special Tax Rate**"). The Maximum Facilities Special Tax Rates for Developed Property may vary based on sizes, densities, types of buildings to be constructed, and other relevant factors. Each RMA will establish Maximum Facilities Special Tax Rates assuming that any CFD Bonds issued will have a minimum debt service coverage-ratio of one hundred ten percent (110%).

(c) Total Tax Obligation. The Maximum Facilities Special Tax Rates will be set so that the Total Tax Obligation (as defined below) on any residential unit within an Improvement Area will not exceed two percent (2.00%) of the reasonably projected anticipated sales price of that residential unit at the time of creation of the Improvement Area (the "**2.00% Limitation**").

(i) For purposes of this Section 1.3, the term "**Total Tax Obligation**" means, with respect to a residential unit at the time of calculation, the sum of: (a) the ad valorem taxes actually levied or projected to be levied if the residential unit were developed at the time of calculation; (b) the Maximum Facilities Special Tax Rates levied or projected to be levied if the residential unit were developed at the time of calculation; (c) the maximum Services Special Taxes but not the Contingent Special Tax in the Services CFD (as such terms are defined herein); (d) all installments of special assessments if the residential unit were developed at the time of calculation; and (d) all other special taxes (based on assigned special tax rates) or assessments secured by a lien on the residential unit levied or projected to be levied if the residential unit was developed at the time of calculation. Homeowner's association fees and the lien of the Contingent Special Tax shall not be included in the calculation of the Total Tax Obligation.

(d) Escalation of Special Tax Rates. Developer may ask for annual increases in the Maximum Facilities Special Tax Rates in an amount not to exceed two percent (2%) per year. If Developer does not so elect with respect to an RMA, City may elect to include such increases in the RMA if City provides reasonable evidence to Developer that the increases will be needed to pay for the Facilities Maintenance Services to be provided by City after the Trigger Event.

(e) Use of Remainder Taxes.

(i) Developer and City contemplate that, except as set forth in this Exhibit 2, within each Improvement Area of the Facilities CFD, Facilities will be paid from Remainder Taxes (as defined below) both before and after the issuance of CFD Bonds for such Improvement Area. Accordingly, each RMA will provide that Remainder Taxes may be used to finance Facilities. For each Facilities CFD, annually, on the day following each Principal Payment Date (as defined below) for such Improvement Area, all Remainder Taxes for such Improvement Area will be deposited in the applicable Remainder Taxes Project Account (as defined below).

(1) The term "**Remainder Taxes**" means, in each year, as of the day following the Principal Payment Date for an Improvement Area, all Facilities Special Taxes collected prior to such date in such Improvement Area in excess of the total of: (a) debt service on the outstanding CFD Bonds for the applicable Improvement Area due in the current calendar year, if any; (b) priority and any other reasonable administrative costs for the applicable Improvement Area that are payable by the City or expected to be payable by the City prior to the receipt of additional Facilities Special Tax proceeds; and (c) amounts levied to replenish the applicable reserve fund as of the Principal Payment Date, including amounts reserved for reasonable anticipated delinquencies, if any.

(2) The term "**Principal Payment Date**" means, either before or after CFD Bonds are issued, September 1 of each year, regardless of whether principal payments are actually due in any particular year.

(3) The term "**Remainder Taxes Project Account**" means a separate account created by City for the Facilities CFD and maintained by City to hold all Remainder Taxes for all of the Improvement Areas of the Facilities CFD to be used for financing Facilities.

(ii) Calculated separately for each Improvement Area, Remainder Taxes shall be utilized in the following years and for the following purposes:

(1) Remainder Taxes collected in the first 15 Fiscal Years, or such greater number of years as mutually agreed by City and the Developer in writing, in which Facilities Special Taxes are first levied to pay debt service and/or Facilities costs shall be used to finance the Facilities determined solely by the Developer.

(2) Remainder Taxes collected in the 16th Fiscal Year, or such later year as mutually agreed by the City and the Developer in writing, in which Facilities Special Taxes are first levied to pay debt service and/or Facilities costs, through and including the termination date for the Facilities Special Taxes, under the applicable RMA shall be used to finance the Recycled Water Improvements and/or other Facilities authorized to be funded, as determined solely by the City.

(iii) No Pledge for Debt Service. Remainder Taxes deposited in the Remainder Taxes Project Account will not be deemed or construed to be pledged for payment of debt service on any CFD Bonds, and neither Developer nor any other person will have the right to demand or require that the City or Fiscal Agent, as applicable, use funds in the Remainder Taxes Project Account to pay debt service.

(f) Prepayment. The RMA will include provisions allowing a property owner within an Improvement Area that is not in default of its obligation to prepay up to 80% of the property owner's Facilities Special Tax obligation. Prepaid Facilities Special Taxes will be placed in a segregated account in accordance with the applicable Indenture (defined below). The RMA and the Indenture will specify the use of prepaid Facilities Special Taxes. Before CFD Bonds

are issued for an Improvement Area, all prepayment amounts other than those required for administrative expenses shall be used to finance Facilities ("**Prepaid Special Taxes**").

(g) Two-Tranches of CFD Bonds.

(i) Each RMA shall establish the termination date for the levy of Facilities Special Taxes as a date that will allow the issuance of both (i) one or more series of CFD Bonds to finance Facilities (which may be refunding bonds that produce additional proceeds to finance Facilities) determined by the Developer (the "**First-Tranche CFD Bonds**") and (ii) one or more series of CFD Bonds to finance Facilities, including Recycled Water Improvements and Capital Reimprovements at the direction of the City (the "**Second-Tranche CFD Bonds**"). For each RMA, the termination date for the levy of the Facilities Special Tax shall be no earlier than the final day of the fiscal year that is 80 years from the fiscal year in which the Facilities Special Tax was first levied under such RMA.

(ii) Determined separately for each Improvement Area, City shall be obligated to issue First Tranche Bonds as described in Section 1.4 only until the date that is 15 years after the Facilities Special Taxes are first levied in such Improvement Area (the "**15 Year Date**"). Second Tranche Bonds may be issued by City for an Improvement Area at any time following the 15 Year Date for such Improvement Area.

1.4 Issuance of CFD Bonds

(a) Issuance. City, on behalf of the Facilities CFD, intends to issue one or more series of CFD Bonds (which may be refunding bonds that produce additional proceeds to finance Facilities) with respect to each Improvement Area for purposes of this Development Agreement. During the period specified in Section 1.3 for each Improvement Area, Developer may submit written requests that City issue First-Tranche CFD Bonds, specifying requested issuance dates, amounts, and main financing terms. Following Developer's request, Developer and City will meet with City's public financing consultants to determine reasonable and appropriate issuance dates, amounts, and main financing terms that are consistent with this Development Agreement and the CFD Goals. Second-Tranche CFD Bonds for an Improvement Area may be issued at the discretion of the City. Both First-Tranche CFD Bonds and Second-Tranche CFD Bonds shall be issued pursuant to an indenture, trust agreement, or fiscal agent agreement (however denominated, an "**Indenture**") between the Facilities CFD and a fiscal agent or trustee (however denominated, the "**Fiscal Agent**").

(b) Payment Dates. So that Remainder Taxes may be calculated on the same date for all Improvement Areas, each issue of CFD Bonds shall have interest payment dates of March 1 and September 1, with principal due on September 1.

(c) Term. Subject to Section 1.3(g), each issue of First-Tranche CFD Bonds will have a term of not less than thirty (30) years and not more than thirty-five (35) years unless Developer and City agree otherwise. Each issue of Second-Tranche CFD Bonds will have the term determined by the City in its discretion.

1.5 CFD Goals

(a) CFD Goals. Under Section 53312.7 of the CFD Act, prior to formation of the Facilities CFD, the City must consider and adopt local goals and policies concerning the Facilities CFD (the "**CFD Goals**"). The City adopted CFD Goals on February 4, 2014 pursuant

to Resolution No. 2014-019. The Developer has reviewed the CFD Goals. The CFD Goals shall apply to the Tracy Hills project as a whole and to the property in the Facilities CFD on the date of formation and as expanded with future annexations (the "**Facilities CFD Property**"). The City shall not adopt CFD Goals applicable to the Facilities CFD Property that are inconsistent with this Development Agreement unless required under the CFD Act or other controlling State or federal law. In particular, the CFD Goals shall include the following provisions, each of which the Developer is relying on:

(i) Value-to-Lien Ratio. The appraised or assessed value-to-lien ratio required for each CFD Bond issue (including all relevant overlapping liens) will be three to one (3:1) or such higher ratio that is (A) mutually agreed to by the City and the Developer, (B) required by the CFD Act, or (C) based on market conditions at the time of such CFD Bond issue, as determined by a reputable municipal advisor or underwriter with experience in California land-secured financings selected by the City after consultation with the Developer.

(ii) Coverage Ratio. An issue of CFD Bonds will not have a debt service coverage-ratio (including all overlapping and outstanding CFD Bonds) of less than one hundred ten percent (110%), unless otherwise agreed to by the Developer and the City.

(iii) Letter of Credit. So long as the value of the overall property in an Improvement Area is at least equal to the required value-to-lien ratio, the City shall not require that the Developer or any property owner in the Improvement Area provide a letter of credit or other credit enhancement as security for the payment of Facilities Special Taxes in the Facilities CFD.

1.6 Miscellaneous CFD Provisions

(a) Reserve Fund Earnings. The Indenture for each issue of CFD Bonds will provide that earnings on any reserve fund that are not then needed to replenish the reserve fund to the reserve requirement will be transferred to: (i) the project fund for the CFD Bonds for allowed uses until it is closed in accordance with the Indenture; then (ii) the debt service fund held by the Fiscal Agent under the Indenture.

(b) Authorization of Reimbursements. City will take all actions necessary to satisfy section 53314.9 of the Government Code or any similar statute subsequently enacted to use CFD Bond proceeds and Remainder Taxes to reimburse Developer for: (i) Facilities CFD formation and CFD Bond issuance deposits; and (ii) advance funding of Facilities or costs.

(c) Acquisition Agreement. Contemporaneously with the formation of the Facilities CFD, Developer and City will execute one or more acquisition and funding agreements (the "**Acquisition Agreements**") that will apply to the acquisition and construction of the Facilities for each and every Improvement Area of the Facilities CFD. The Acquisition Agreements shall be structured so that they are automatically applicable to any financing by Facilities Special Taxes levied in, or CFD Bonds issued for, a Subsequent Phase annexed into an Improvement Area of the Facilities CFD, without requiring any modifications to the Acquisition Agreements or any further approvals by the City. The Acquisition Agreements shall contain an acknowledgment by the City and Developer as to the following:

(i) Developer may be constructing Facilities before First-Tranche CFD Bond proceeds, Remainder Taxes, and Prepaid Special Taxes (herein, "**Funding Sources**") that will be used to acquire them are available;

(ii) The City's Development Services Engineering or Building Divisions will inspect Facilities and process payment requests even if Funding Sources for the amount of pending payment requests are not then sufficient to satisfy them in full;

(iii) Facilities may be conveyed to and accepted by the City or other governmental entity before the applicable payment requests are paid in full;

(iv) If the City or other governmental entity accepts Facilities before the applicable payment requests are paid in full, the unpaid balance will be paid when sufficient Funding Sources become available, and the Acquisition Agreements will provide that the applicable payment requests for Facilities accepted by the City or other governmental entity may be paid: (A) in any number of installments as Funding Sources become available; and (B) irrespective of the length of time payment is deferred;

(v) Developer's conveyance or dedication of Facilities to the City or other governmental entity before the availability of Funding Sources to acquire the Facilities is not a dedication or gift, or a waiver of Developer's right to payment of Facilities under this Development Agreement or the Acquisition Agreements; and

(vi) City will have no obligation to acquire the Facilities or reimburse Developer with any moneys other than the Funding Sources.

(d) Initial and Continuing Disclosure. In connection with each issue of CFD Bonds, the Developer shall provide customary disclosure about the Developer and its development and financing plans. In addition, Developer shall comply with all of its obligations under any continuing disclosure agreement it executes in connection with the offering and sale of any CFD Bonds. Developer acknowledges that a condition to the issuance of any CFD Bonds may be Developer's execution of a continuing disclosure agreement.

(e) No Other Land-Secured Financings. Other than the Facilities CFD (and any Improvement Areas therein), the Services CFD (defined below), and any land-secured financing district initiated by the City as the result of a qualified petition of registered voters in the Facilities CFD, City shall not form any additional land-secured financing district over any portion of the property in the Project without first consulting with the Developer.

(f) Prevailing Wages. If a CFD is formed, the Developer shall require, and the specifications and bid and contract documents shall require, all contractors engaged to perform work on a public work of improvement to pay prevailing wages and to otherwise comply with applicable provisions of the California Labor Code.

(g) Services CFD.

(i) The City and the Developer intend to form a community facilities district under the CFD Act separate from the Facilities CFD to finance certain services (herein, the "**Services CFD**"). The Services CFD will be formed over the Initial Phase, and the Subsequent Phase Property will be identified as Future Annexation Area. As Subsequent Phase Property is developed in one or more phases, the Developer shall annex the phase to the Services CFD in the same manner and subject to the same limitations as set forth in Section 1.1 herein.

(ii) Special taxes levied in the Services CFD (the "**Services Special Taxes**") shall be used to finance each of the following services (the "**Authorized Services**"): maintenance of parks located within the Project; maintenance of retention basins within the Project; major program road landscaping maintenance costs (as described in Section 4.10 of the Development Agreement); and, if determined by the City Council to be included in the Services CFD, police protection, fire protection, and/or other public services that are authorized to be funded pursuant to the CFD Act (limited to the amount determined by the City Council of the City, but not to exceed $325 per residential unit for fiscal year 2015-16, as it may be escalated as set forth in the rate and method of apportionment for the Services CFD).

(iii) In addition, each RMA for the Services CFD will provide for a Contingent Special Tax (as defined below) to pay the HOA Services (defined below) if any of the following events (each, a "**Contingent Tax Trigger Event**") occurs, as reasonably determined by the City: (i) the homeowners association that provides the HOA Services within the applicable Improvement Area (a "**Homeowners Association**") is no longer a functioning association; (ii) the levy and collection of dues, charges, fees, or other exactions levied by the Homeowners Association to pay maintenance costs are overturned by a vote of the members of the Homeowners Association, or such dues, charges, fees, or other exactions are no longer levied and collected by the Homeowners Association; or (iii) the HOA Services being managed by the Homeowners Association are no longer being provided at a satisfactory level. Upon the occurrence of the Contingent Tax Trigger Event, the Services CFD and each Improvement Area shall be authorized to levy a contingent special tax (a "**Contingent Special Tax**") in perpetuity to pay for the HOA Services that were previously funded by dues, charges or fees that had been levied and collected by the Homeowners Association. For the purpose of this paragraph, the term "**HOA Services**" means the services funded by the public landscaping maintenance costs described in Section 4.9 of the Development Agreement.

(h) Disclosure to Property Owners. The Developer agrees provide, or cause to be provided, the disclosure to purchasers of property in the Facilities CFD and the Services CFD in the manner and at the time required by the CFD Act.

TRACY HILLS PHASING EXHIBIT

EXHIBIT 3

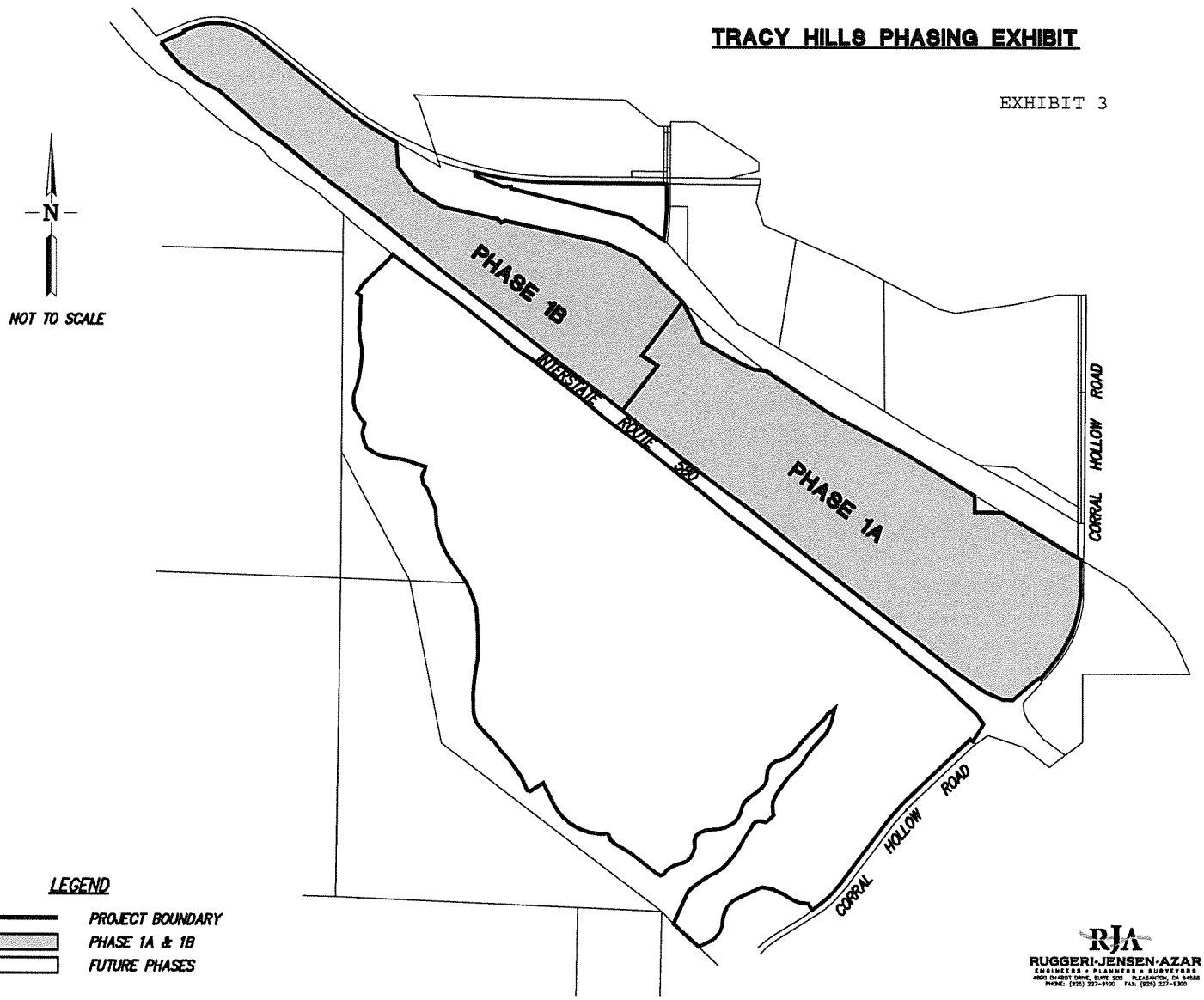


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Exhibit 4

ASSIGNMENT AND ASSUMPTION AGREEMENT
(TRACY HILLS SPECIFIC PLAN)

This Assignment and Assumption Agreement ("Agreement"), dated as of _____, 20__, is entered into by and among the _____, LLC, a California limited liability company ("Assignor"), _____, a _____ ("Developer"), with reference to the following facts:

A. The City of Tracy, on one hand, and The Tracy Hills Project Owner, LLC, and Tracy Hills Phase 1 Project Owner, LLC (together, the "Tracy Hills Project Owners") on the other hand, entered into that certain Development Agreement dated as of _____, 2016, (the "DA"). Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the DA.

B. The Assignor and Developer have entered into that certain agreement (hereafter, the "Subject Agreement") pursuant to which the Developer has the right to acquire from Assignor certain property (hereafter, the "Subject Property") that is or was owned by Tracy Hills Project Owners and is subject to the DA. A site map and legal description of the Subject Property are attached to hereto as Exhibits A and B, respectively, and incorporated herein by reference.

C. Upon the close of escrow under the Subject Agreement and conveyance of the Subject Property to the Developer, Assignor desires to assign the portions of the DA pertaining to the Subject Property and all related agreements to which Assignor is a party to Developer, and Developer intends to assume all rights and obligations of Assignor, as "Developer" thereunder.

NOW, THEREFORE, the Assignor and Developer hereby agree as follows:

1. Assignment and Assumption.

   a. Upon the close of escrow under the Subject Agreement and conveyance of the Subject Property to the Developer, Assignor assigns to Developer all of Assignor's right, title and interest in and to the DA relating to the Subject Property and Developer accepts such assignment, and assumes all of the obligations of Assignor thereunder and agrees to be bound thereby in accordance with the terms thereof.

   b. Upon the close of escrow under the Subject Agreement and conveyance of the Subject Property to the Developer, Developer agrees to assume all of the rights and obligations of the Assignor pursuant to the DA as to the Subject Property and to keep and perform all covenants, conditions and provisions of the DA as to the

Subject Property arising on and after the close of escrow under the Subject Agreement and conveyance of the Subject Property to the Developer. Developer shall indemnify and hold harmless Assignor from any and all liabilities arising from the DA from and after the effective date of this Agreement.

3. No Third Party Beneficiaries. This Agreement is made for the sole benefit and protection of the parties hereto, and no other person or persons shall have any right of action or right to rely hereon. As this Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof shall be deemed to exist or bind any party unless in writing and signed by the party to be charged.

4. Counterpart Originals. This Agreement may be executed in several duplicate originals, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original agreement. When fully executed, the date of this Agreement shall be the date of execution by the last party to sign.

5. Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of the parties hereto.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

[INSERT SIGNATURE BLOCK]

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

[INSERT SIGNATURE BLOCK]

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT A

SITE MAP

[behind this page]

EXHIBIT B

LEGAL DESCRIPTION

[behind this page]