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RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF AMERICAN CANYON
4381 BROADWAY STREET, SUITE 201
AMERICAN CANYON, CA 94503

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF AMERICAN CANYON,

AND

AMERICAN CANYON I, LLC,

REGARDING

THE AC-1 PROPERTY AND PROJECT

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF AMERICAN CANYON,
AND
AMERICAN CANYON I, LLC,
REGARDING
THE AC-1 PROPERTY AND PROJECT©

This Development Agreement ("**Development Agreement**"), dated this 18th day of July, 2019 ("**Effective Date,**" described further below), is entered into by and between the City of American Canyon, a California municipal corporation ("**City**"), and American Canyon I, LLC, a Delaware Limited Liability Company ("**AC-1**") (AC-1 is also referred to in this Development Agreement as "**Developer**"), pursuant to section 65864 *et seq.* of the Government Code of the State of California, and pursuant to City's police powers under Article XI, section 7 of the California Constitution. City and Developer are, from time to time, hereinafter referred to in this Development Agreement individually as a "**Party**" and collectively as the "**Parties.**"

NOW, THEREFORE, on the basis of the following facts, understandings and intentions of the Parties, and in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. The preceding Preamble is true and correct, is a part of this Development Agreement, and the terms defined in the Preamble are used throughout this Development Agreement.

B. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 *et seq.* ("**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property providing for the development of that property and establishing certain development rights in the property. This Development Agreement has been drafted and processed pursuant to the Development Agreement Statute.

C. In 2010, AC-1 and City entered into a Memorandum of Understanding (**"2010 MOU"**) which sought to summarize certain assumptions of the Parties regarding the future preparation of a development proposal for that property described in Attachment A to the 2010 MOU (comprised of certain lands in the corporate boundaries of the City owned by the Newell family ("**Newell Property**") (any reference in this Development Agreement to the "Newell Property" shall mean and include all or any portion of the in-City Newell Property), and certain lands owned by AC-1 ("**AC-1 Property**" or "**Property**"). Both the Newell Property and the AC-1 Property are contained within the "**Watson Ranch Specific Plan,**" as both properties are illustrated in *Exhibit A* to this Development Agreement. The Newell Property secured City approval, and subsequent recordation, of a subdivision map (**"Newell Parcel Map"**) (creating the

in-City portion referred to in this Development Agreement as the Newell Property), and dedicating certain roadway rights-of-way to the City. However, only the AC-1 Property is the subject of this Development Agreement. The Watson Ranch Specific Plan also includes "**Zoning**" regulations and criteria. The Specific Plan and its included Zoning are collectively referred to in this Development Agreement as the **"Watson Ranch Specific Plan"** and/or the "**Specific Plan.**" As part of the preparation and adoption of the Specific Plan, a related **"General Plan Amendment"** was prepared. Thereafter, a Specific Plan/Zoning amendment and corresponding General Plan amendment were adopted by the City in June 2019 to slightly move certain Land Use Designations and to confirm available Project access points. Therefore, any reference in this Development Agreement to the **"Watson Ranch Specific Plan"** and/or the "**Specific Plan**" shall mean and include that subsequent Specific Plan/Zoning amendment, and any reference in this Development Agreement to the **"General Plan Amendment"** shall mean and include that subsequent General Plan amendment. As set forth in Recital paragraph F (below) of this Development Agreement, the Watson Ranch Specific Plan, Zoning regulations and criteria, and related General Plan Amendment are included in this Development Agreement's reference to the **"Existing Approvals."**

D. The 2010 MOU anticipated the preparation of the Specific Plan, the review of the Specific Plan and all other approvals needed for the development of the Property and the below-described Project pursuant to the California Environmental Quality Act (Pub. Res. Code §§ 21000 *et seq.*) and its Guidelines (California Code of Regulations, Title 14 §§ 15000, *et seq.*), as each is amended from time to time ("**CEQA**") and through an Environmental Impact Report prepared on the Project ("**Project EIR**"), the funding of those efforts by Developer, the entering into negotiations for a statutory Development Agreement by and between the Parties regarding the Project, and the preparation of a mutually acceptable Term Sheet and Major Milestone Schedule for preparing and completing those Project approvals. The Term Sheet and Project Schedule Agreement was approved by the City on January 16, 2018. This Development Agreement is a product of the Term Sheet and Project Schedule Agreement and the further negotiations by and between the Parties.

E. The planning, development, construction, operation and maintenance of the proposed uses of the Property (implemented through the Project Approvals) are collectively referred to in this Development Agreement as the "**Project,**" which Project is more particularly described in, and reviewed and analyzed by, the Project EIR, prepared in conjunction with the General Plan Amendment, Specific Plan, Zoning and other Project Approvals. In accordance with CEQA, City certified as adequate and complete the Project EIR. The City has determined that no additional environmental review is necessary in connection with its consideration, approval and execution of this Development Agreement. Any reference in this Development Agreement to the "Project" shall mean and include the "Property," and any reference in this Development Agreement to the "Property" shall mean and include the "Project."

F. As of the execution of this Development Agreement by the Parties, various land use regulations, entitlements, grants, conditions, permits, and other "Project Approvals have been adopted, issued, and/or granted by City relating to the Project (collectively, "**Existing Approvals**"), including without limitation, all of the following:

1. Project EIR.

2. General Plan Amendment.

3. Specific Plan.

4. Zoning.

5. Twenty-four-lot vesting tentative map (**"Large Lot Vesting Tentative Map").**

G. Throughout the public planning process, including the Specific Plan process, the Developer has exhibited a willingness to provide roadways, open space, public and civic places, schools, trails, parks and other public benefits in excess of that which the City could otherwise require under controlling law, including without limitation, the provision of school-related accommodations substantially in excess of statutory requirements, the dedication and improvement of in excess of 50 acres of open space and parks, including a two-acre community plaza and community center site, the adaptive reuse of the Portland Cement Company ruins to a mixed-use "town center," and the investment of infrastructure substantially in excess of what could be required of the Project under controlling law. These Project benefits provide the consideration for this Development Agreement, including without limitation, the Fees Credits, City Contribution, reimbursements, and other provisions set forth in this Development Agreement. Therefore, to ensure that such benefits are properly secured by City, and to ensure, in return, that Developer has the ability to develop the Project as planned and approved, this Development Agreement provides Developer with a vested right to complete the Project subject and pursuant only to the "**Applicable Law**" that this Development Agreement describes, and to which this Development Agreement binds the Parties. Through this Development Agreement, "**Existing City Laws**" (defined herein) and the Existing Approvals are vested into by City and by Developer, and "**Subsequent Approvals**" (defined herein) regarding the Project are later vested into and included in this Development Agreement, and its Applicable Law, provided such Subsequent Approvals are processed pursuant to this Development Agreement's requirements (e.g., processed pursuant to controlling California law (including CEQA, planning law, and Development Agreement Statute compliance), have secured approval of the Parties, are adopted by City, etc.). The Existing Approvals and such Subsequent Approvals are collectively referred to in this Development Agreement as the "**Project Approvals**."

H. On October 4, 2018, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**"), the hearing body for purposes of the Development Agreement Statute, adopted Resolutions that affirmed CEQA compliance for this Development Agreement, adopted findings that this Development Agreement is consistent with the City's General Plan (as amended by the "General Plan Amendment"), Specific Plan and other Existing Approvals, and recommended that this Development Agreement be approved by the City Council.

I. On June 4, 2019, following a duly noticed and conducted public hearing, the "**City Council**" of City introduced and conducted the first reading of Ordinance No. 2019-06, an ordinance that affirms CEQA compliance, that adopts findings that this Development Agreement

is consistent with the City's General Plan, Specific Plan and other Existing Approvals, that approves this Development Agreement, and that directs this Development Agreement's execution by City ("**Approving Ordinance**"). The City conducted the second reading of the Approving Ordinance and adopted the Approving Ordinance on June 18, 2019 (**"Adoption Date"**), and the Approving Ordinance became effective thirty (30) days later on July 18, 2019 (the **Effective Date** of this Development Agreement).

ARTICLE 1
DEFINITIONS AND TERM

1.01 Definitions.

(a) The following terms, phrases, and words are used in this Development Agreement and shall have the meanings set forth in this Section, unless otherwise indicated by this Development Agreement.

(1) **"2010 MOU"** shall have that meaning set forth in Recital paragraph C of this Development Agreement.

(2) **"AC-1"** shall have that meaning set forth in the preamble of this Development Agreement, and likewise means "Developer" as used in this Development Agreement.

(3) **"Acquisition Agreement"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(4) **"AD"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(5) **"Administrative Amendment"** shall have that meaning set forth in Section 3.02 of this Development Agreement.

(6) **"Adobe Lumber Agreement"** shall have that meaning set forth in Section 2.09 of this Development Agreement.

(7) **"Adoption Date"** shall have that meaning set forth in Recital paragraph I of this Development Agreement.

(8) **"Affordable by Design"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(9) **"Affordable Housing Agreement"** shall have that meaning set forth in Sections 2.07 of this Development Agreement.

(10) **"Aggregate Tax Burden"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(11) **"Alternative Project Finance Mechanism Agency"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(12) **"Annual City Payment"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(13) **"Annual Review"** shall have that meaning set forth in Section 4.02 of this Development Agreement.

(14) **"Applicable Law"** shall have that meaning set forth in Recital paragraph G and Section 2.01 of this Development Agreement.

(15) **"Approving Ordinance"** shall have that meaning set forth in Recital paragraph I of this Development Agreement.

(16) **"Assessment District"** or **"AD"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(17) **"Assignee"** shall have that meaning set forth in Article 4 of this Development Agreement.

(18) **"Assignment"** shall have that meaning set forth in Article 4 of this Development Agreement.

(19) **"Assignment Agreement"** shall have that meaning set forth in Article 4 and Section 2.09 of this Development Agreement.

(20) **"At-Grade Rio Del Mar"** shall mean the collective total of **"At-Grade Rio Del Mar Segment 1," "At-Grade Rio Del Mar Segment 2," "At-Grade Rio Del Mar Segment 3," "At-Grade Rio Del Mar Segment 4," "At-Grade Rio Del Mar Segment 5,"** and **"At-Grade Rio Del Mar Railroad Crossing Segment,"** as set forth in Section 2.07 of this Development Agreement.

(21) **"At-Grade Rio Del Mar Segment 1"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(22) **"At-Grade Rio Del Mar Segment 2"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(23) **"At-Grade Rio Del Mar Segment 3"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(24) **"At-Grade Rio Del Mar Segment 4"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(25) **"At-Grade Rio Del Mar Segment 5"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(26) **"At-Grade Rio Del Mar Railroad Crossing Segment"** shall have that meaning set forth in Section 2.07 of this Development Agreement

(27) **"Bonds"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(28) **"Caltrans"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(29) "**Certificate of Occupancy**" shall mean a certificate issued or final inspection approved by City authorizing use and occupancy of a project structure.

(30) "**CEQA**" shall have that meaning set forth in Recital paragraph D of this Development Agreement.

(31) **"CFD"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(32) **"Chosen Law"** shall have that meaning set forth in Section 2.01 and in Section 2.03 of this Development Agreement.

(33) "**City**" shall mean the City of American Canyon, as set forth in the Preamble of this Development Agreement.

(34) **"City Contribution"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(35) "**City Council**" shall mean the City Council of City, as set forth in the Preamble and Recital paragraph I of this Development Agreement.

(36) "**City Determination**" shall have that meaning set forth in Section 2.03 of this Development Agreement.

(37) **"City Impact Fees"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(38) **"City Manager"** shall have that meaning set forth in Section 3.02 of this Development Agreement.

(39) **"City Precursors"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(40) "**City Response**" shall have that meaning set forth in Section 2.03 of this Development Agreement.

(41) **"Community Plaza and Community Center Site"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(42) **"Conditions of Approval"** shall have that meaning set forth in Section 2.09 of this Development Agreement.

(43) **"Construction Codes"** shall have that meaning set forth in Section 2.01 of this Development Agreement.

(44) **"Consultant"** or **"Consultants"** shall have that meaning set forth in Section 2.04 of this Development Agreement.

(45) **"Density Bonus"** shall mean and include any and all residential density bonuses allowed under controlling California, federal, regional, and local law, as amended.

(46) **"Developer"** shall have that meaning set forth in the Preamble of this Development Agreement, and, subject to Article 4 of this Development Agreement, shall include its successors and assigns.

(47) **"Developer's Newell Drive Obligations"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(48) **"Development Agreement"** shall mean this Development Agreement, as set forth in the Preamble of this Development Agreement.

(49) **"Development Agreement Statute"** shall have that meaning set forth in Recital paragraph B of this Development Agreement.

(50) **"Developer's At-Grade Rio Del Mar Segment 1 Costs"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(51) **"Developer's At-Grade Rio Del Mar Segment 2 Costs"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(52) **"Effective Date"** shall have that meaning set forth in the Preamble and Recital paragraph I of this Development Agreement.

(53) **"Engineer's Report"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(54) **"Equivalent Total Funds"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(55) **"Estoppel Certificate"** shall have that meaning set forth in Section 4.05 of this Development Agreement.

(56) **"Existing Approvals"** shall have that meaning set forth in Recital paragraph F of this Development Agreement.

(57) **"Existing City Laws"** shall have that meaning set forth in Recital paragraph G of this Development Agreement and Section 2.01(a)(4) of this Development Agreement.

(58) **"Finance Mechanism(s)"** shall mean and include **"Project Finance Mechanism(s)"**, and both shall have that meaning set forth throughout this Development Agreement, including without limitation, Sections 2.04, and 2.08 of this Development Agreement.

(59) **"Force Majeure Event"** shall have that meaning set forth in Section 4.03(a) of this Development Agreement.

(60) **"Funding Sources"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(61) **"General Plan"** means the General Plan of the City of American Canyon, as amended by the General Plan Amendment, including text and maps.

(62) **"General Plan Amendment"** shall have that meaning set forth in Recital paragraph C of this Development Agreement.

(63) **"Good Faith and Fair and Expeditious Dealing"** shall have that meaning set forth in Section 2.04 of this Development Agreement.

(64) **"Grade-Separated Rio Del Mar"** shall mean the collective total of **"Grade-Separated Rio Del Mar Segment A," "Grade-Separated Rio Del Mar Segment B," "Grade-Separated Rio Del Mar Segment C," "Grade-Separated Rio Del Mar Segment D, "Grade-Separated Rio Del Mar Segment E,"** and the **"Grade-Separated Rio Del Mar Railroad Crossing Segment,** as set forth in Section 2.07 of this Development Agreement

(65) **"Grade-Separated Rio Del Mar Segment A"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(66) **"Grade-Separated Rio Del Mar Segment B"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(67) **"Grade-Separated Rio Del Mar Segment C"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(68) **"Grade-Separated Rio Del Mar Segment D"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(69) **"Grade-Separated Rio Del Mar Segment E"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(70) **"Grade-Separated Railroad Crossing Segment"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(71) **"Hotel"** shall mean that Hotel that is included in the area known as the **"Napa Valley Ruins & Gardens,"** as set forth in Section 2.07 of this Development Agreement, and as further defined and set forth in the Watson Ranch Specific Plan.

(72) **"Improvement Area"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(73) **"Inspection Fees"** shall have that meaning set forth in Sections 2.01 and 2.07 of this Development Agreement.

(74) **"Large Lot Vesting Tentative Map"** shall have that meaning set forth in Recital paragraph F of this Development Agreement.

(75) "**Legal Effect**" shall mean that the ordinance, resolution, permit, license or other grant of approval in question (collectively, "**permit**") has been adopted by City and become effective under law, and that the permit has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction.

(76) **"Loop Road Improvements"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(77) **"Loop Road Segment 1"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(78) **"Loop Road Segment 2"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(79) **"Loop Road Segment 3"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(80) **"Lot 14"** shall have that meaning set forth in Section 2.06 of this Development Agreement.

(81) **"Lot 15"** shall have that meaning set forth in Section 2.06 of this Development Agreement.

(82) **"Master Backbone Infrastructure"** or **"MBI"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(83) **"Master Conditions List"** shall have that meaning set forth in Section 2.09 of this Development Agreement.

(84) **"Master Subdivision Improvement Agreement"** and/or **"Master SIA"** shall have that meaning set forth in Section 2.09 of this Development Agreement.

(85) **"Measure T Funding Equivalent Set-Aside"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(86) "**Meet and Confer Period**" shall have that meaning set forth in Section 2.03 of this Development Agreement.

(87) "**Mello-Roos Community Facilities District**" or "**CFD**" shall have that meaning set forth in Section 2.08 of this Development Agreement.

(88) "**Municipal Code**" shall mean the City of American Canyon Municipal Code.

(89) "**Napa Valley Ruins & Gardens**" (also "**NRVG**") shall have that meaning set forth in Section 2.07 of this Development Agreement, and as further defined and set forth in the Watson Ranch Specific Plan (see, for example, Figure 3.3 of the Specific Plan).

(90) "**Napa Valley Vine Trail**" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(91) "**Newell Drive Segment 1**" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(92) "**Newell Drive Segment 2**" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(93) "**Newell Drive Segment 3**" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(94) "**Newell Drive Segment 4**" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(95) "**Newell Drive Segment 5**" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(96) "**Newell Parcel Map**" shall have that meaning set forth in Recital paragraph C of this Development Agreement

(97) "**Newell Property**" shall have that meaning set forth in Recital paragraph C of this Development Agreement.

(98) "**New City Law(s)**" shall have that meaning set forth in Section 2.03 of this Development Agreement.

(99) "**Notice of Intended Imposition of New Law(s)**" shall have that meaning set forth in Section 2.03 of this Development Agreement.

(100) "**Objection to New City Law(s)**" shall have that meaning set forth in Section 2.03 of this Development Agreement.

(101) "**Operating Memoranda**" shall have that meaning set forth in Section 3.03 of this Development Agreement.

(102) **"Park A"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(103) **"Park B"** shall have that meaning set forth in Section 2.07 of this Development Agreement.

(104) **"Party"** and **"Parties"** shall have that meaning set forth in the Preamble of this Development Agreement, and, subject to Article 4 of this Development Agreement, shall include its successors and assigns.

(105) **"Phase"** shall have that meaning set forth in Section 2.09 of this Development Agreement.

(106) **"Phase SIA"** shall have that meaning set forth in Section 2.09 of this Development Agreement.

(107) **"Planning Commission"** shall mean the Planning Commission for the City, as set forth in Recital paragraph H of this Development Agreement.

(108) **"Portion"** shall have that meaning set forth in Article 4 of this Development Agreement.

(109) **"Principal Payment Date"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(110) **"Processing Agreement"** shall have that meaning set forth in Sections 2.04 of this Development Agreement.

(111) **"Processing Fee(s)"** shall have that meaning generally set forth in Sections 2.01, 2.04, and 2.07 of this Development Agreement, and whether or not mentioned, shall be subject to the specifics set forth in Section 2.07 of this Development Agreement.

(112) **"Project"** shall have that meaning set forth in Recital paragraph E of this Development Agreement.

(113) **"Project Approvals"** shall have that meaning set forth in Recital paragraph G and Section 2.01 of this Development Agreement. The term Project Approvals appears throughout this Development Agreement.

(114) **"Project CEQA Compliance"** shall have that meaning set forth in Section 2.04 of this Development Agreement.

(115) **"Project Debt"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(116) **"Project EIR"** shall have that meaning set forth in Recital paragraph D of this Development Agreement.

(117) "Project Finance Mechanism(s)" shall mean and include **"Finance Mechanism(s),"** and both shall have that meaning set forth throughout this Development Agreement, including without limitation, Sections 2.04, and 2.08 of this Development Agreement.

(118) "Project Finance Mechanism(s) Funding Sources" or **"Funding Sources"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(119) "Property" shall have that meaning set forth in Recital paragraph C of this Development Agreement.

(120) "Public Improvements" shall have that meaning set forth in Section 2.08 of this Development Agreement.

(121) "PUC" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(122) "Quarry Lake Park" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(123) "Rate and Method of Apportionment of Special Taxes" or **"RMA"** shall have that meaning set forth in Section 2.08 of this Development Agreement.

(124) "Relevant Parties" shall have that meaning set forth in Section 2.04 of this Development Agreement.

(125) "Remainder Taxes" shall have that meaning set forth in Section 2.08 of this Development Agreement.

(126) "Remainder Taxes Project Account" shall have that meaning set forth in Section 2.08 of this Development Agreement.

(127) "Repayment Period" shall have that meaning set forth in Section 2.08 of this Development Agreement.

(128) "Required New City Law(s)" shall have that meaning set forth in Section 2.03(e) of this Development Agreement.

(129) "Residential Owner Unit" shall have that meaning set forth in Section 1.02 of this Development Agreement.

(130) "Resolution Process" shall have that meaning set forth in Section 2.03 of this Development Agreement.

(131) "RMA" shall have that meaning set forth in Section 2.08 of this Development Agreement.

(132) "Rolling Hills Drive Improvements" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(133) "Second Notice" shall have that meaning set forth in Section 4.05 of this Development Agreement.

(134) "Services CFD Amount" shall have that meaning set forth in Section 2.08 of this Development Agreement.

(135) "Special Tax Requirement for Services" shall have that meaning set forth in Section 2.08 of this Development Agreement.

(136) "South Napa Junction" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(137) "South Napa Junction Railroad Crossing Segment" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(138) "South Napa Junction Segment 1" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(139) "South Napa Junction Segment 2" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(140) "South Napa Junction Segment 3" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(141) "South Napa Junction Segment 4" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(142) "South Napa Junction Segment 5" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(143) "Special Tax Rate" shall have that meaning set forth in Section 2.08 of this Development Agreement.

(144) "Specific Plan" shall mean the Watson Ranch Specific Plan, as further set forth in Recital paragraph C of this Development Agreement.

(145) "SR 29/Rio Del Mar Tie-In" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(146) "SR 29/South Napa Junction Tie-In" shall have that meaning set forth in Section 2.07 of this Development Agreement.

(147) "Subdivision Document" shall have that meaning set forth in Section 1.02 of this Development Agreement.

(148) "**Subdivision Map Act**" means that legislation set forth in California Government Code Sections 66410 et seq., as amended.

(149) "**Subsequent Approvals**" (each referred to individually as a "**Subsequent Approval**") shall have that meaning set forth in Recital paragraph G and Section 2.01 of this Development Agreement, and shall likewise mean those permits, entitlements, approvals, or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, that are granted by City on or after the Effective Date of this Development Agreement, and that comply with Section 2.01(a)(3) of this Development Agreement. Subsequent Approvals include without limitation new permits, entitlements, approvals, or other grants of authority (and all text, terms and conditions of approval related thereto), as well as amendments to Existing Approvals.

(150) "**Tender**" shall have that meaning set forth in Section 4.04 of this Development Agreement.

(151) "**Term**" shall have that meaning set forth in Section 1.02 of this Development Agreement.

(152) "**Third Party Challenge**" shall have that meaning set forth in Sections 1.02 and 4.04 of this Development Agreement.

(153) "**User Fees**" shall have that meaning set forth in Section 2.01 of this Development Agreement.

(154) "**Vesting Map**" shall have that meaning set forth in Section 1.03 of this Development Agreement.

(155) "**Watson Ranch Specific Plan**" shall have that meaning set forth in Recital paragraph C of this Development Agreement.

(156) "**Zero Water Footprint Agreement**" shall have that meaning set forth in Sections 2.07 and 2.09 of this Development Agreement.

(157) "**Zoning**" shall have that meaning set forth in Recital paragraph C of this Development Agreement.

(b) To the extent that any defined terms contained in this Development Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them in this Development Agreement and/or Existing City Laws. In the event of a conflict between the meaning given to such terms by this Development Agreement and the meaning given to such terms by Existing City Laws, the meaning given to such terms by this Development Agreement shall control over such other meaning otherwise ascribed to them by Existing City Laws.

1.02 Term.

(a) This Development Agreement shall become effective on the Effective Date (the effective date of the Approving Ordinance), which for the purposes of this Development Agreement is July 18, 2019, as set forth in this Development Agreement.

(b) Term of this Development Agreement and Related Issues.

(1) The "**Term**" of this Development Agreement shall generally be thirty (30) years and one (1) day, and more specifically, the Term shall commence upon August 18, 2019 (the Effective Date) and shall continue until, and then terminate upon, 12:01 a.m., Friday, August 20, 2049, unless this Development Agreement is otherwise terminated, modified, or extended as to all or any portion of the Project (and Property) as provided in this Development Agreement.

(2) Following the expiration of the Term of this Development Agreement or any extension thereof, or if sooner terminated, this Development Agreement shall have no force and effect; provided, however, that in no event shall the expiration or termination of this Development Agreement affect or limit, without further action of City, any right then held by Developer under any Project Approvals.

(3) While this Development Agreement shall remain in place and controlling for the Term for the remainder of the Project (and Property), unless otherwise terminated under the controlling terms and conditions of this Development, this Development Agreement shall terminate and be null and void as relates to each individual residential unit (and each such new owner of such residential unit) for which, and at such time as, all of the following qualifying events occur. Such residential unit(s) for which such qualifying events occur is referred to as a **"Residential Owner Unit"** in this Development Agreement.

(A) The qualifying events that create a **"Residential Owner Unit"** are:

(i) City has issued the last permit necessary for such residential unit to be sold to the new owner and for the new residential owner to take ownership possession of the residential unit;

(ii) The new residential unit owner is someone other than the Developer (and other than Developer's Assignees under this Development Agreement); and

(iii) The new residential unit owner becomes the actual residential unit owner and has in fact taken possession of the individual residential unit as an owner.

(B) Therefore, upon a Residential Owner Unit occurring, such Residential Owner Unit shall not have the protections of this Development Agreement and the vested right to the Applicable Law it provides, with the following exception:

(i) A new residential parcel tax, or other New City law, shall apply to such Residential Owner Unit if and only if such new residential parcel tax and/or New City Law applies on a City-wide basis to all then-existing residential parcels; and/or

(ii) Such new residential parcel tax and/or New City Law does not impair or impede or prohibit any existing or future Project Finance Mechanisms(s) under this Development Agreement regarding such Residential Owner Unit(s).

(c) If any "**Third Party Challenge**" (as defined and described in Section 4.04 of this Development Agreement) proceeding affecting this Development Agreement, the Property, the Project, or any Project Approvals, is filed, then the Term of this Development Agreement shall be extended automatically (without any further action of the Parties required) for that period of time commencing from the date of the filing of such Third Party Challenge until the date of the later of the dismissal, resolution, settlement, and/or entry of a final judgment (including all appeals) regarding such Third Party Challenge. However, the filing of any Third Party Challenge(s) against City and/or Developer shall not allow or justify City delaying or stopping the processing of, and/or issuance of, any Project Approvals, unless City is expressly enjoined or otherwise expressly ordered by a court of competent jurisdiction to delay or stop the processing of, and/or issuance of, any Project Approvals. Additionally, no Party shall stipulate to the issuance of any such court order unless all Relevant Parties (City and Developer and/or that successor to Developer whose portion of the Project is at issue) mutually agree to such stipulation.

(d) Any subdivision improvement agreement entered into by and between Developer and City pursuant to the Subdivision Map Act or other State or local regulation shall have a term of no shorter than two (2) years from execution of such subdivision improvement agreement and shall allow for extensions.

(e) Except as provided in Section 2.07 of this Development Agreement requiring the recordation of the final map relating to the Large Lot Vesting Tentative Map within 90 days of the Effective Date of this Development Agreement, pursuant to the controlling provisions of the "**Subdivision Map Act**" and this Development Agreement, in addition to any and all other extensions available under the Subdivision Map Act, the term of any tentative map, vesting tentative map, tentative parcel map, vesting tentative parcel map, final map or vesting final maps, or any new such map or any amendment to any such map, or any re-subdivision (collectively referred to in this Development Agreement as a "**Subdivision Document**") relating to the Project shall automatically be extended to and until the later of the following:

(1) The Term of this Development Agreement; and/or

(2) The end of the term or life that any such Subdivision Document is otherwise given pursuant to the Subdivision Map Act or local regulation not in conflict with the Subdivision Map Act.

(f) Generally, the term of any non-Subdivision Map Act approval is nonetheless tied to the life of the Subdivision Map Act approvals by controlling law. Therefore,

under this Development Agreement, the term or life of any and all Project Approvals, including without limitation, all development plans, development permits, architectural design, or other permits, grants, agreements, approvals or entitlements for the general development of all or any part of the Project and Property (collectively, "**Permit**" or "**Permits**") shall automatically be extended to and until the later of the following:

(1) The Term of this Development Agreement; and/or,

(2) The end of the term or life that any Subdivision Document is given pursuant to the Subdivision Map Act or local regulation not in conflict with the Subdivision Map Act (as set forth in subdivision (e) of this Section); and/or

(3) The term or life given the Permit itself.

1.03 Controlling Nature of this Development Agreement.

(a) During the Term of this Development Agreement, or while this Development Agreement is otherwise in legal effect as relates to any portion of the Project (Property), all of the following shall apply:

(1) This Development Agreement shall provide and shall control over any and all other claims of vested rights of the Project (and Property) by either Party. For example, if a conflict is presented between the vested rights provided under this Development Agreement and the vested rights provided under some other Project Approval (such as a vesting tentative map), the vested rights provided by this Development Agreement shall prevail and control over any and all other vested rights the Project (Property) and/or Party or Parties might otherwise hold or claim.

(2) The vested rights provided by this Development Agreement shall terminate as provided by this Development Agreement. However, if this Development Agreement terminates for any reason prior to an assertion regarding the expiration of vested rights otherwise given under the Subdivision Map Act to any vesting tentative map, vesting parcel map, vesting final map or any other type of vesting map on the Property (or any portion of the Property) (collectively, "**Vesting Map**"), such termination of this Development Agreement shall invoke Section 1.03(b) below.

(b) Consistent with the forgoing, when this Development Agreement terminates or otherwise loses its legal effect as relates to any portion of the Project (Property) subject to a Vesting Map, such Vesting Map shall give Developer the right to proceed with development under such City laws in effect on such date that this Development Agreement terminates or is otherwise of no legal effect on that portion of the Project (Property) that is subject to such Vesting Map, and such vested rights shall last for the life (term) given to such Vesting Map pursuant to the then-applicable Subdivision Map Act.

ARTICLE 2
APPLICABLE LAW

2.01 Applicable Law.

(a) As used in this Development Agreement, "**Applicable Law**" shall exclusively mean all of the following:

(1) The terms and conditions of this Development Agreement.

(2) The Existing Approvals, including without limitation, the Project EIR, the General Plan Amendment, the Watson Ranch Specific Plan (and included Zoning), and the Large Lot Vesting Tentative Map.

(3) The Subsequent Approvals, when granted, provided such Subsequent Approvals are:

(A) Processed pursuant to controlling law;

(B) Mutually agreed to by City and Developer for whose Property (or portion thereof) the Subsequent Approval is sought;

(C) Adopted by the City; and

(D) Take Legal Effect.

(4) **"Existing City Laws,"** which, for the purposes of this Development Agreement, shall mean and include the City rules, regulations, ordinances, policies, standards, specifications, minute orders, motions, agreements, practices and standard operating procedures, taxes, and Impact Fees of City (whether adopted by the City Council, the Planning Commission, the City staff, consultants or the voters of the City), including without limitation, those set forth in the City's General Plan, existing certified EIRs, the American Canyon Municipal Code (including Standard Plans, Standard Specifications, Design Standards, and relevant Public Facility Master Plans), all of which are existing and in effect on December 31, 2017, and all other City laws that relate to or specify the permitted uses of land or improvements, the cost of taxes and Impact Fees, and the density or intensity of use that are existing and in effect on December 31, 2017 (collectively, "**Existing City Laws**"). Any City law after December 31, 2017 shall be considered a **"New City Law."** However, notwithstanding the foregoing, the Applicable Law shall include a New City Law that adopts a new transient occupancy tax, provided that such new transient occupancy tax applies on a City-wide basis to both all then-existing hotels and all future hotels within the City. Such new transient occupancy tax generated from the Project shall be subject to the Section 2.08(b) (**"City Contribution"**) requirements of this Development Agreement. Further, notwithstanding the foregoing, the Applicable Law shall also include any new City Law that adopts a new sales tax increase adopted by City, provided that such new sales tax increase applies on a City-wide basis to all then-existing and all future retail sales within the City. Such new sales tax generated from the Project shall be subject to the Section 2.08(b) (**"City Contribution"**) requirements of this Development Agreement. Otherwise, except as provided in

this Development Agreement, no New City Law shall apply to the Project during the Term of this Development Agreement.

(5) The City processing fee(s) and the City's **"User Fees"** (an example of User Fees is set forth in City's 2018-2019 Table B1 for User Fees) relating to the processing, review, and approval of applications for Project Approvals shall collectively be considered **"Processing Fees"** for the purposes of this Development Agreement), and are addressed in Section 2.07 of this Development Agreement. In addition to Processing Fees, Developer shall pay to City **"Inspection Fees,"** as more specifically addressed in Section 2.07 of this Development Agreement. "City Impact Fees" shall not be considered "Processing Fees" or "Inspection Fees" for the purposes of this Development Agreement.

(6) The California Building Code (as may be modified by City), and all other State-adopted construction, fire and other codes, including "Green Codes" (as all may be modified by City) applicable to improvements, structures and development, and the applicable version or revision of said codes by local City action (collectively referred to as **"Construction Codes"**) in place at that time (date) that building plans subject to such Construction Codes are submitted by Developer to City for a Subsequent Approval, provided that such Construction Codes have been adopted by City and are in effect on a Citywide basis.

(7) The **"Required New City Law(s),"** as set forth in and controlled by Section 2.03(e) of this Development Agreement.

(8) The **"New City Law(s)"** that Developer elects to be subject to pursuant to Section 2.03(a) of this Development Agreement. As also provided below, once Developer elects to be subject to such a New City Law (**"Chosen Law"**), such Chosen Law shall become part of the Applicable Law, and Developer shall not be able to later decide otherwise, although Developer shall be able to elect to be subject to a New City Law that changes the earlier Chosen Law that Developer elected to be subject to.

(b) In the event of any conflict between any of subparts (1), (2), (3), (4), (5), (6), (7), and (8) of subdivision (a) of this Section 2.01 (above), the hierarchical order of authority shall be subpart (1) first, then subpart (2), then subpart (3), then subpart (4), then subpart (5), then subpart (6), then subpart (7), and then subpart (8).

2.02 Vested Right to Applicable Law.

(a) During the Term of this Development Agreement, Developer shall have the vested right to develop the Project and Property subject only to, and in accordance only with, the Applicable Law.

(b) During the Term of this Development Agreement, City's regulation of the Project (Property) and its development, including without limitation, any discretion exercised by City on any and all Project Approval(s), shall occur pursuant to, and in accordance with, only the Applicable Law.

(c) Under this Development Agreement, the Applicable Law shall be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City (in

the future), and/or when Developer determines, in Developer's sole and exclusive discretion, to become subject to a New City Law pursuant to this Development Agreement.

2.03 New City Law(s).

(a) Any City ordinance, resolution, minute order, rule, motion, policy, standard, specification, condition of approval, agreements, practices and standard operating procedures, taxes, and/or Impact Fees of City (whether adopted by the City Council, the Planning Commission, the City staff, consultants, or the voters/electorate of the City), including without limitation, those set forth in the City's General Plan, existing certified EIRs, the American Canyon Municipal Code (including Standard Plans, Standard Specifications, Design Standards, and relevant Public Facility Master Plans), all of which are existing and in effect after December 31, 2017, and all other City laws that relate to or specify the permitted uses of land or improvements, and the density or intensity of use that is not part of the Applicable Law and that takes Legal Effect after December 31, 2017, is hereby referred to in this Development Agreement as a **"New City Law(s)."** A New City Law shall generally be deemed to be in conflict with this Development Agreement if it is not expressly made part of the Applicable Law by this Development Agreement. Additionally, a New City Law shall be deemed to be in conflict with this Development Agreement (and the Applicable Law it describes) if the application of the New City Law to the Project would accomplish any of the below-listed results, either by specific reference to the Project (or Property) or as part of a general enactment which affects or applies to the Project (or Property). The following list is intended as an example list, is inclusive (not exclusive), and is not limited to allow non-listed New City Laws that are deemed to be in conflict with this Development Agreement and the Applicable Law it describes or to allow non-listed New City Laws that impair and/or reduce the development rights provided by this Development Agreement:

(1) New City Laws that change any land use designation or permitted use of the Project (Property) allowed by the Applicable Law or limit or reduce the density or intensity of the Project (or Property) or any part thereof, or otherwise require any reduction in the total number of residential dwelling units or non-residential building units, uses, square footage, floor area ratio, size, height or number of buildings, or other improvements otherwise allowed by the Applicable Law.

(2) New City Laws that limit, control, or otherwise regulate the availability of public or private utilities, services, or facilities otherwise allowed by the Applicable Law, including without limitation, water, wastewater, storm water, gas, electricity, telecommunications, roadways, access points, schools, parks, trails, and/or other public and private improvements of the Project.

(3) New City Laws that limit, control, or otherwise regulate the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project (or Property) in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project on the Property or require the acquisition of additional permits or approvals by the City or other public agency other than those required by the Applicable Law.

(4) New City Laws that limit or control the location of buildings, structures, grading, access, roadways, schools, parks, trails, and/or other public and private improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Applicable Law (including Project Approvals).

(5) New City Laws that limit the processing and/or timing of Project Approvals.

(6) New City Laws that impose any hourly wage, salary, work pay or other worker-compensation-related regulation or policy on the Project not agreed to by Developer.

(7) New City Laws that impose any rent control.

(8) Except as allowed by this Development Agreement, New City Laws that impose any City law, ordinance, fee, tax, regulation not in force and effect on December 31, 2017, except those required by state and/or federal law and/or by state and/or federal courts.

(b) The following **"Resolution Process"** shall apply regarding New City Laws the City is considering applying to the Project (Property) and shall also apply to all other sections of this Development Agreement. When this Section (with its Resolution Process) is applied to other section(s) of this Development Agreement, then this section and its requirements shall be interpreted and implemented to reflect the topic addressed by such other section(s) of this Development Agreement (when invoking the Resolution Process set forth in this Section 2.03(b) of this Development Agreement). For example, if Developer objects pursuant to Section 2.04(h), including without limitation, to a Consultant invoice, the manner in which City and/or a Consultant are performing, and/or any other reason pursuant to Section 2.04(h) of this Development Agreement, then the Resolution Process may be started by either Party: by City sending written notice to Developer of City's position through the below-described **"Notice of Intended Imposition of New Law(s)"** and the process that follows, and/or by Developer through the below-described **Objection to New City Law(s)"** and the process that follows, etc. In this way, the Parties shall first seek resolution under the Resolution Process set forth in this Development Agreement before commencing litigation. Except as set forth in subdivision (b)(4) below, each Party shall bear its own fees and costs incurred in, and as a result of, the Resolution Process.

(1) As stated, City shall not apply any New City Law(s) to the Property that is in conflict with this Development Agreement (collectively, "in conflict with" or "inconsistent with").

(2) If City believes that it has the right under this Development Agreement to impose/apply any New City Law on the Project, it shall send written notice to Developer of that City position (**"Notice of Intended Imposition of New Law(s)"**). Such Notice of Intended Imposition of New City Law(s) shall contain the following sentence at the beginning of its text: "This is a Notice of Intended Imposition of New City Law(s) provided pursuant to Section 2.03 of the AC-1 Development Agreement. The New City Law that City intends to impose on the Watson Ranch Project is described below." City shall then describe such New City Law that City intends to impose on the Project in such Notice of Intended Imposition of New Law(s). Within thirty (30) days of Developer receipt of such Notice of Intended Imposition of New City

Law(s), if Developer believes that such referenced New City Law in such Notice of Intended Imposition of New City Law(s) is in conflict with this Development Agreement and/or the rights Developer otherwise holds, then Developer shall send to City a written notice of Developer's objection to such City-intended imposition on the Project of such New City Law ("**Objection to New City Law(s)**"). Such Developer Objection to New City Law(s) shall set forth the factual and legal reasons why Developer believes City cannot apply such New City Law(s) to the Project. Within thirty (30) days of receipt of said Developer Objection to New City Law(s), City shall respond to Developer's Objection to New City Law(s) ("**City Response**"). Such City Response to Developer's Objection to New City Law(s) shall set forth the factual and legal reasons why City believes City can apply the New City Law(s) to the Project. As soon after Developer's receipt of the City Response as possible, the Parties shall meet and confer and continue to meet and confer over the thirty (30) day period following the date of Developer's receipt of the City Response ("**Meet and Confer Period**"), with the objective of arriving at a mutually acceptable resolution to the disagreement. Within twenty (20) days of the conclusion of the 30-day Meet and Confer Period, City shall make and send to Developer its written determination regarding the imposition of such New City Law on the Project (or its City Determination regarding any other topic of disagreement under this Development Agreement) (collectively, "**City Determination**"). The Parties can extend any of the time frames set forth above by mutual agreement.

(3) By this Development Agreement, such New City Law(s) shall not be imposed on/applied to the Project, or considered imposed on/applied to the Project, during any of the time periods described above. If the City Determination is to impose on/apply to the Project the New City Law(s) in question, then Developer shall have a period of ninety (90) days from the date of receipt of such City Determination within which to file and serve on City its legal action challenging such City action. In other words, a New City Law shall not be considered ripened into being imposed on and/or applied to the Project for the purposes of Developer's obligation to timely-file a lawsuit against City until such time as Developer's receipt of the City Determination. Upon such Developer receipt of such City Determination, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law(s) and the City Determination shall commence. Developer shall file such lawsuit and serve it on City within such 90-day statute of limitations. City's failure to send such Notice of Intended Imposition of New Law, and/or its failure to follow any and all of the other procedural steps required by this Section shall result in City's inability to impose the New City Law described in the City's Notice of Intended Imposition of New Law on the Project. Developer's failure to respond to such Notice of Intended Imposition of New Law, and/or failure to follow any and all of the other procedural steps required by this Section, including without limitation filing litigation within the time period prescribed by this Section 2.03 of this Development Agreement, shall result in the Project being subject to the New City Law described in the City's Notice of Intended Imposition of New Law. Failures by both City and Developer to follow any and all of the other procedural steps required by this Section shall result in City's inability to impose the New City Law described in the City's Notice of Intended Imposition of New Law on the Project.

(4) If upon conclusion of judicial review of such Developer-challenged City Determination (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law(s) that is the topic of the City Determination, such New City Law(s) shall not become part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City

Law(s) (*e.g.*, City shall return in full fees paid, return dedications made, etc.). Additionally, City shall pay (to Developer) Developer's actual attorneys' fees, other legal fees, and any and all other fees and costs incurred by Developer regarding such judicial review. If, instead, upon conclusion of judicial review of such Developer-challenged City Determination of such New City Law(s) in question (at the highest judicial level sought and granted), the reviewing court determines that Developer is subject to the New City Law(s), then Developer shall be subject to such New City Law(s), such New City Law(s) shall become part of the Applicable Law, and City shall not have to return Developer to the position Developer was in prior to City's application of such New City Law(s). Additionally, Developer shall pay (to City) City's actual legal fees and costs incurred regarding such judicial review.

(c) The above-described procedure shall not be construed to interfere with City's right to adopt or apply any New City Law(s) with regard to all other areas of City that exclude the Property, Project, Project Approvals, etc.

(d) Developer, in its sole and absolute discretion, may elect to be subject to a New City Law(s) that is/are not otherwise a part of the Applicable Law. In the event Developer so elects, Developer shall provide notice to City of that election and thereafter such New City Law(s) that Developer has elected to be subject shall be part of the Applicable Law. As set forth in Section 2.01(a)(8) above, once Developer elects to be subject to such a New City Law (**"Chosen Law"**), such Chosen Law shall become part of the Applicable Law, and Developer shall not be able to later decide otherwise, although Developer shall be able, in Developer's sole and exclusive discretion, to elect to be subject to a New City Law that changes the earlier Chosen Law that Developer elected to be subject to.

(e) City, exercising Good Faith and Fair and Expeditious Dealing (*see,* Section 2.04 of this Development Agreement), shall not be precluded from applying to the Project any New City Law(s) that City is specifically required to apply to developments such as the Project (and Property), despite the existence of the Project's (Property's) vested rights, by changes in State or Federal laws or regulations or caselaw and implemented through the Federal, State, regional and/or local level) (**"Required New City Law(s)."** If City determines that a Required New City Law(s) must be applied to the Project (Property), then the Resolution Process set forth in subdivision (b) above shall apply, with one exception: Developer shall pay (to City) City's actual legal fees and costs incurred regarding Resolution Process regardless of the outcome of the Resolution Process. In addition, in the event such Required New City Law(s) is determined to apply and to prevent or preclude compliance with one or more provisions of this Development Agreement or require changes in Project Approvals, this Development Agreement shall be modified, extended, or suspended as may be necessary to comply with such Required New City Law(s). To the extent that any such Required New City Law(s) (or actions of regional and local agencies, including City, required by such Required New City Law(s) or actions of City taken in good faith in order to prevent adverse impacts upon City because of such Required New City Law(s)) have the effect of preventing, delaying or modifying Developer's ability to use or develop the Project or any portion thereof, in a material fashion, then Developer shall have the option to terminate (unilaterally) this Development Agreement.

2.04 Good Faith and Fair and Expeditious Dealing; Processing.

(a) Except where this Development Agreement provides a Party with "sole and exclusive discretion," each, every and all actions of the Parties (and each Party) necessary, required, permitted, desired and/or addressed by the Project Approvals and/or this Development Agreement (including without limitation, all mandatory, permissive, and other action(s) addressed by this Section 2.04 - e.g., submitting, accepting, processing, reviewing and acting upon all applications for Subsequent Approvals, and Section 2.08), shall involve the requirement of "**Good Faith and Fair and Expeditious Dealing.**" For the purposes of this Development Agreement, "Good Faith and Fair and Expeditious Dealing" shall mean that the Parties shall act toward each other, and shall execute the tasks necessary, permissive, and/or desirous to the issue contemplated by this Development Agreement pursuant to the Applicable Law, and in a fair, diligent, best efforts, expeditious and reasonable manner, and that no Party or Parties shall take any action – or fail to take any action – that directly or indirectly results in the prohibition, impairment or impediment of any other Party's or Parties' exercise or enjoyment of its rights and obligations secured through this Development Agreement. Again, whether or not expressly stated in any particular portion of this Development Agreement, except where this Development Agreement provides a Party with "sole and exclusive discretion," each, every and all actions of the Parties and each Party required, permitted, desired and/or addressed by this Development Agreement shall involve the requirement of Good Faith and Fair and Expeditious Dealing. The Parties acknowledge that when City's support of new proposed legislation that ultimately becomes a "New City Law," and that such New City Law is already allowed as part of the Applicable Law by this Development Agreement (i.e., certain new TOT and sales tax laws), such City support shall not be considered to be acts contrary to this Development Agreement's requirement of Good Faith and Fair and Expeditious Dealing. Likewise, the Parties acknowledge that City's support of new proposed legislation that ultimately becomes a "New City Law" and such New City Law will not become part of the Applicable Law by this Development Agreement (i.e., it is a disallowed New City Law by this Development Agreement), that such City support shall not be considered to be acts contrary to this Development Agreement's requirement of Good Faith and Fair and Expeditious Dealing. However, the Parties reserve their right to object to and act upon subsequent actions as contrary to this Development Agreement's requirement of Good Faith and Fair and Expeditious Dealing when those subsequent actions seek to support the enactment of proposed new legislation, and such proposed new legislation leads to a new law or laws at a City, County, regional, state and/or federal level, and such supported new law would apply to the Project.

(b) City shall inform Developer, upon request, of all submission requirements for a complete application for each Subsequent Approval.

(c) City and Developer shall act on requests by Developer for the approval and issuance of the Subsequent Approvals, and shall cooperate to obtain the issuance of Subsequent Approvals, including to:

(1) Interpret any New City Laws in a manner which provides for the approval and issuance of Subsequent Approvals.

(2) Require modifications to Subsequent Approvals consistent with this Development Agreement and the Applicable Law whenever reasonably possible, rather than City denying applications for Subsequent Approvals.

(3) Not obstruct or oppose Developer's application for a Subsequent Approval provided such application is consistent with the requirements of this Development Agreement.

(d) The City shall provide all necessary public notice(s) and shall hold all necessary public hearings with regard to the Subsequent Approvals required by law.

(e) If requested by Developer, City shall meet with Developer prior to Developer's submission of applications for Subsequent Approvals for the purpose of ensuring all requested information by City is understood by Developer so that Developer's applications, when submitted, will be accurate and complete and accepted as such by City.

(f) Developer shall provide City with all documents, applications, plans and other information requested by City that is necessary for City to carry out its obligations hereunder and Developer shall cause the Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor.

(g) Upon submission by Developer of a complete application for a Subsequent Approval, together with appropriate Processing Fees (*see,* Section 2.07 of this Development Agreement) , City shall process the application for the Subsequent Approval.

(h) If City is unable to timely process any such application for a Subsequent Approval, or simply upon request by Developer, the "**Relevant Parties**" shall meet and confer regarding appropriate outside consultants, the Relevant Parties shall agree on such outside consultants, and then City or Developer shall engage such outside consultant(s), other persons, and/or business entities working on the Project (collectively, "**Consultant(s)** ") to perform such processing, provided that Section 2.07 of this Development Agreement shall apply. City shall not charge Developer any administrative, directing, supervising and/or overseeing such Consultant(s), and City shall charge Developer no more than the cost to City of the actual time City expends on administering, directing, supervising, and/or overseeing such Consultants, and the invoices from such Consultants; and if Developer directly contracts with the Consultant(s) to perform such work, Developer shall expressly agree to pay all costs related to such Consultant(s) contract(s), and City shall not charge Developer any administrative, directing, supervising and/or overseeing such Consultant(s), and City shall charge Developer no more than the cost to City of the actual time City expends on administering, directing, supervising, and/or overseeing such Consultants, and the invoices from such Consultants.. In the event that a dispute arises regarding any such Consultant(s), including without limitation, Consultant invoices, costs, performance or any other issue, the Resolution Process provisions of Section 2.03 of this Development Agreement shall apply. Additionally, for the purposes of this Development Agreement, the phrase "**Relevant Parties**," as used in the preceding sentence and throughout this Development Agreement, shall mean the City and the relevant owner of that physical portion of the Project (Property) to which the issue at hand applies. In other words, the consent of only those Parties immediately affected by the issue at hand (monetarily or by precedence setting) is required. By way of example only, AC-1, as a Relevant

Party, could decide to engage Consultants for matters related exclusively to AC-1, NVRG and/or the Hotel. In such a situation, AC-1 would pay all such Consultants costs (as described above), and any other Relevant Parties (such as successors to AC-1 on nonrelevant portions of the Project/Property) would not be obligated to pay any such costs related to such Consultants working exclusively on such AC-1 matters. Consistent with the foregoing, if Consultants are engaged for matters not related exclusively to AC-1, then AC-1 and such other Relevant Parties would (shall) pay their proportional share of such costs of such Consultants. Consistent with the foregoing, the Parties may enter, but are not required to enter, a **"Processing Agreement."** Any such executed and entered Processing Agreement(s) shall be considered a Subsequent Approval and shall become part of this Development Agreement's "Applicable Law" once each such Processing Agreement takes Legal Effect.

(i) As further set forth in Section 2.08 of this Development Agreement, City shall cooperate with Developer to facilitate the construction of the infrastructure required for development of the Project. At the request of Developer, City shall assist with (and where requested by Developer), approve the formation of one or more community facilities districts, enhanced infrastructure financing districts, assessment districts, landscape and lighting districts, tax-exempt and taxable finance mechanisms, or any and all other available "**Project Finance Mechanisms(s).**"

(j) Again, only the Applicable Law shall apply. If City denies an application for a Subsequent Approval, City shall explain in writing to Developer why such City denial was given, and City shall specify in detail (in such writing) the modifications, changes, or improvements to the materials and information submitted that are required by City in order for Developer to obtain City approval. City and Developer shall cooperate to obtain and issue Subsequent Approvals. City shall seek to approve any subsequently submitted Subsequent Approval which complies with such City-specified modifications.

(k) The Parties recognize that the City certified as adequate and complete the Project EIR. The Project EIR was prepared to assess and document the environmental impacts of the General Plan Amendment, Specific Plan, this Development Agreement, the Large Lot Vesting Tentative Map, and other Project Approvals.

(1) Subsequent Approvals and other activities undertaken pursuant to the Project Approvals will be examined in the light of the Project EIR to determine whether any additional environmental document must be prepared ("**Project CEQA Compliance**").

(2) In addition, in connection with any future process resulting in the attainment of Project CEQA Compliance, City shall commence and process any and all initial studies and assessments required by CEQA, and to the extent permitted or required by CEQA, City shall use and adopt EIR(s), supplements and/or addenda thereto and other existing environmental assessments, declarations, reports and studies as adequately addressing the environmental impacts of the Project and its Subsequent Approvals without requiring new or supplemental environmental documentation.

(3) Where legally feasible, City shall not – through the Project CEQA Compliance process or through the Subsequent Approval process – impose any mitigation measures or avoidance measures (as either legislative rules, adjudicatory decisions and/or

conditions of approvals) beyond those required by the existing Project EIR. Where applicable, City shall reject such additional mitigation and/or avoidance measures as infeasible on the basis, among other things, that Government Code section 65866 and this Development Agreement legally bar the implementation of such additional mitigation measures. City shall streamline the environmental review of Subsequent Approvals under CEQA including, without limitation, relying on the Project CEQA Compliance. City shall adopt a Statement of Overriding Consideration to address any significant impacts that cannot be mitigated because the mitigation measures that would reduce the impacts are inconsistent with the legally-binding Applicable Law. Once Project CEQA Compliance has been secured, City shall not impose any environmental mitigation measures, or avoidance measures, or both, beyond those referenced in the Project CEQA Compliance.

(l) Multiple applications by Developer for Subsequent Approvals may be made by Developer at the same time, and if so, shall be processed concurrently by City, unless otherwise requested by Developer.

(m) Notwithstanding any provision to the contrary, for purposes of interpretation of this Development Agreement and for purposes of determining whether Subsequent Approvals are consistent with this Development Agreement and the Applicable Law it describes (including, without limitation, the determination of whether any final subdivision maps substantially comply and conform to any tentative maps), changes to setbacks, size(s), dimensions, configuration, number or placement of lots, or public infrastructure regarding the Project shall be allowed by City without requiring an amendment of or to the Subsequent Approvals and/or without requiring any additional Subsequent Approvals, provided such changes meet all of the following criteria:

(1) Are expressly requested by Developer.

(2) Do not increase the then-existing total square footage of the Project in a substantial amount.

(3) Do not vary substantially from the then-existing layout and placement of uses, Master Backbone Infrastructure, and design standards for the Project.

(4) Are consistent with the provisions of the then-existing Applicable Law.

(5) Do not change the permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The foregoing is not intended to, and shall not, limit, impair, impede, or prohibit Developer from seeking and securing any and all density bonus(es) available under controlling state law and/or federal law, as such controlling law may be amended over time.

2.05 **Requirements of Development Agreement Statute.**

(a) The permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project and Property shall be those set forth in the Applicable

Law (which includes, without limitation, the General Plan, Specific Plan, Zoning, Existing City Laws, Existing Approvals, and Subsequent Approvals).

(b) As Subsequent Approvals are adopted and therefore become part of the Applicable Law of the Project, the Subsequent Approvals will refine the permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project and Property.

2.06 **Timing of Development; Phasing; Initial Access to AC-1 Property.**

(a) The Parties acknowledge that the most efficient and economic development of the Property depends upon numerous factors, and that it will be most economically beneficial to have the rate of development determined by Developer. In particular, the Parties desire to avoid the result of the California Supreme Court's holding in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465 (where the failure of the parties therein to consider and expressly provide for the timing of the development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement), and therefore acknowledge that Developer shall have the right to develop the Project at such time as Developer deems appropriate within the exercise of its subjective business judgment.

(b) Accordingly, while the sequencing, and phasing of the development of the Project is addressed by the Specific Plan, this Development Agreement, and other Project Approvals, when and whether to go forward or not with development shall be in the sole and exclusive discretion of the Developer. For example, Developer shall have the authority to first develop lots 14 and 15 of the Large Lot Vesting Tentative Map, if Developer, in its sole and exclusive discretion, determines to do so. Consistent with the foregoing, this Section 2.06 of this Development Agreement addresses the **"Phases"** that apply to the development of the Project, which Phases are generally addressed in the Specific Plan, and which Specific Plan defers to this Development Agreement to refine the terms and conditions of such Phasing, including without limitation, the related MBI roadway segments. Phase 1 of the Specific Plan allows for the development of up to three hundred ninety seven (397) residential units, Phase 2 of the Specific Plan allows for the development of up to three hundred forty (345) residential units, Phase 3 of the Specific Plan allows for the development of up to two hundred sixty seven (267) residential units, and Phase 4 of the Specific Plan allows for the development of up to two hundred forty four (244) residential units. Additionally, any residential units allowed under any particular Phase (i.e., Phase 1, Phase2, Phase 3, and Phase 4) that are not developed in that particular Phase shall be carried over to the next applicable Phase(s), and such next applicable Phase(s) shall have its allowed residential unit count increased by the number of such carried over residential units. By way of example only, if only 300 of the allowed 397 residential units in Phase 1 are developed in Phase 1, then 97 units shall be carried over into Phase 2, and therefore the allowed residential unit count in Phase 2 shall increase from 345 residential units to 442 allowed residential units. By continuing example, if only 400 of the 442 residential units now allowed in Phase 2 are developed in Phase 2, then 42 residential units would be carried over into Phase 3, and therefore the allowed residential unit count in Phase 3 would increase from 267 residential units to 309 allowed residential units. The ultimate cap on residential development in the Specific Plan is set at 1253 residential units (1010 residential units on the AC-1 Property, and 243 residential units on the Newell Property),

not including (counting) additional allowed residential units on both the AC-1 Property and the Newell Property secured through the California Density Bonus law and other Statutory programs allowing increases in density that may be available over the Term of this Development Agreement. The 1010 residential units allowed on the AC-1 Property (before California Density Bonus law and other Statutory programs allowing increases in density that may be available over the Term of this Development Agreement) is referred to in this Development Agreement as the **"AC-1 Residential Cap."** The 243 residential units allowed on the Newell Property (before State Density Bonus increases, etc.) is referred to in this Development Agreement as the **"Newell Residential Cap."** Additional allowed residential units on both the AC-1 Property and the Newell Property secured through the California Density Bonus law and other Statutory programs allowing increases in density that may be available over the Term of this Development Agreement shall not be counted against the residential units allowed under Phase 1, Phase 2, Phase 3, and/or Phase 4. Further, while the following sets forth a minimum Phase-by-Phase residential unit count for the Project, such Phase-by-Phase allocation shall not be allowed to exceed the AC-1 Residential Cap, nor shall such Phase-by-Phase allocation be allowed to exceed the Newell Residential Cap, unless such exceeding residential units are secured through the California Density Bonus law and other Statutory programs allowing increases in density that may be available over the Term of this Development Agreement. Finally, by cooperation and agreement of the relevant owners of the AC-1 Property and the Newell Property, all or any portion of the residential units allowed on each respective Property may be transferred to the other respective Property.

(1) The Project shall have the right to the first 318 residential units of the 397 residential unit total allowed in Phase 1. Such right to such residential units shall last the Term of this Agreement. The remaining residential units of the 397 residential unit total allowed in Phase 1 shall be available to the Project, subject to the following:

(A) Only after the Project has pulled building permits for, and/or is constructing, and/or has constructed, the 318 residential units; and

(B) Said remaining residential units in Phase 1 shall be available to both the Project and to the Newell Property on a first-come, first-served basis, provided that the property seeking such building permits has properly applied for, and met the issuance requirements of, such building permits for such remaining residential units.

(2) The Project shall have the right to the first 279 residential units of the residential units allowed in Phase 2. Such right to such residential units shall last the Term of this Agreement. The remaining residential units allowed in Phase 2 shall be available to the Project, subject to the following:

(A) Only after the Project has pulled building permits for, and/or is constructing, and/or has constructed, the 279 residential units; and

(B) Said remaining residential units in the Phase 2 Residential Cap shall be available to both the Project and the Newell Property on a first-come, first served basis, provided that the property seeking such building permits has properly applied for, and met the issuance requirements of, such building permits for such remaining residential units.

(3) The Project shall have the right to the first 217 residential units of the residential units allowed in Phase 3. Such right to such residential units shall last the Term of this Agreement. The remaining residential units allowed in Phase 3 shall be available to the Project, subject to the following:

(A) Only after the Project has pulled building permits for, and/or is constructing, and/or has constructed, the 217 residential units; and

(B) Said remaining residential units in Phase 3 shall be available to both the Project and to the Newell Property on a first-come, first served basis, provided that the property seeking such building permits has properly applied for, and met the issuance requirements of, such building permits for such remaining residential units.

(4) The Project shall have the right to the first 196 residential units of the residential units allowed in Phase 4. Such right to such residential units shall last the Term of this Agreement. Under the provisions of this Development Agreement, Phase 4 shall have 244 residential units, plus Phase 4 shall have all remaining carried over and still unused residential units from previous Phases. Therefore, whatever the number of remaining residential units allowed in Phase 4, such remaining residential units shall be available to the Project, subject to the following:

(A) Only after the Project has pulled building permits for, and/or is constructing, and/or has constructed, the 196 residential units; and

(B) Said remaining residential units in Phase 4 shall be available to both the Project and to the Newell Property on a first-come, first served basis, provided that the property seeking such building permits has properly applied for, and met the issuance requirements of, such building permits for such remaining residential units.

(c) Consistent with the foregoing, and as addressed below and throughout this Development Agreement, the Parties acknowledge that Developer, in Developer's sole and exclusive discretion, shall provide initial access to the Property from one, some, and/or all of the below-described initial access points, with the below-described Phase 1, Phase 2, Phase 3, and Phase 4 roadway improvements applying. Relevant Project subdivision maps shall provide further clarity, provided they do not vary from the basic rules set forth in this Section 2.06 of this Development Agreement. While at least two points of access will ultimately be applicable to the Project, the following addresses and establishes the different terms and conditions depending upon which of the different initial access points are pursued. The specific "segments" of the different roadways referenced below (i.e., Newell Drive, Rio Del Mar, Loop Road, etc.) are provided in detail in Section 2.07 of this Development Agreement and in *Exhibit B* to this Development Agreement. A connection from the existing terminus of Newell Drive northward to the intersection of Newell Drive and Rio Del Mar, and then westward on Rio Del Mar to either its intersection with SR 29 or its transition into South Napa Junction, and then further westward to the intersection of South Napa Junction with SR 29 shall be required by or before the date of City's issuance of the seven hundred forty third (743) building permit for a residential building permit on the Property. Section 2.07 of this Development Agreement speaks to other roadway improvements that Developer shall construct and improve if the "City Precursors" set forth in Section 2.07 of this Development Agreement are

satisfied. Additionally, **"Lot 14"** and **"Lot 15"** of the LLVTM are available for development in Phase 1 (and Phase 2, Phase 3, and Phase 4) of the Project's development, and that maximum density permitted under the Specific Plan shall be allowed on the land comprising Lots 14 and Lot 15. Phase 1 roadway improvements relating to the following described **"Rolling Hills Drive Initial Access"** to the development of Lot 14 and Lot 15 shall be the extension of Rolling Hills Drive from the existing northern terminus of Rolling Hills Drive, northward to the northern boundary of Lot 14 and Lot 15, with a secondary access to Lot 14 and to Lot 15 due at the time of residential construction coming from the northern terminus of Summerwood Drive northward and eastward to its terminus at Rolling Hills Drive, as shown on *Exhibit B* to this Development Agreement. The Phase 2 roadway improvements relating to the Rolling Hills Drive Initial Access shall include the extension of Rolling Hills Drive from the Phase 1 terminus of Rolling Hills Drive northward to the intersection of Rolling Hills Drive and Rio Del Mar, and the extension of Loop Road from the Phase 1 terminus of Loop Road, to the northward edge of Loop Road Segment 2, as both are shown on *Exhibit B* to this Development Agreement. Phase 3 roadway improvements to the Rolling Hills Drive Initial Access shall be from the northern terminus of Loop Road Segment 2 eastward to the intersection of Loop Road and Newell Drive (as shown on *Exhibit B* to this Development Agreement), and Phase 4 roadway improvements relating to the Rolling Hills Drive Initial Access shall be Newell Drive Segment 5, as shown on *Exhibit B* to this Development Agreement.

(1) Phase 1 roadway improvements relating to the following described **"Newell Drive Initial Access"** shall begin (commence) from the existing terminus of Newell Drive, northward to the intersection of Newell Drive and Rio Del Mar then westward on Rio Del Mar to the intersection of Rio Del Mar and Loop Road, then northward on Loop Road to include "Loop Road Segment 1," as that term is defined in Section 2.07 of this Development Agreement, and as shown on *Exhibit B* to this Development Agreement. The Phase 2 roadway improvements relating to the Newell Drive Initial Access shall include the extension of Rolling Hills Drive from the Phase 1 terminus of Rolling Hills Drive northward to the intersection of Rolling Hills Drive and Rio Del Mar, and the extension of Loop Road from the Phase 1 terminus of Loop Road, to the northward edge of Loop Road Segment 2, as both are shown on *Exhibit B* to this Development Agreement. Phase 2 roadway improvements relating to the Newell Drive Initial Access shall also include, at Developer's sole and exclusive discretion, one of the following roadway improvements (all shown on *Exhibit B* to this Development Agreement):

(A) Commencing from the intersection of Loop Road and Rio Del Mar westward on Rio Del Mar to the intersection of Rio Del Mar and SR 29, as shown on *Exhibit B* to this Development Agreement.

(B) Commencing from the intersection of Loop Road and Rio Del Mar westward on Rio Del Mar, then southward as Rio Del Mar becomes South Napa Junction, to the intersection of South Napa Junction and SR 29, as shown on *Exhibit B* to this Development Agreement.

(2) Phase 1 roadway improvements relating to the following described **"SR 29/Rio Del Mar Initial Access"** shall begin (commence) from the intersection of SR 29 and Rio Del Mar, going eastward to the intersection of Rio Del Mar and Loop Road, and then going northward on Loop Road to include "Loop Road Segment 1," as that term is defined in Section 2.07 of this Development Agreement), and as shown on *Exhibit B* to this Development Agreement.

The Phase 2 roadway improvements relating to the SR 29/Rio Del Mar Initial Access shall include the extension of Rolling Hills Drive from the Phase 1 terminus of Rolling Hills Drive northward to the intersection of Rolling Hills Drive and Rio Del Mar, and the extension of Loop Road from the Phase 1 terminus of Loop Road, to the northward edge of Loop Road Segment 2, as both are shown on *Exhibit B* to this Development Agreement. Phase 2 roadway improvements relating to the SR 29/Rio Del Mar Initial Access shall also include the following roadway improvements (all shown on *Exhibit B* to this Development Agreement): Commencing from the intersection of Loop Road and Rio Del Mar eastward on Rio Del Mar to the intersection of Rio Del Mar and Newell Drive, and then southward on Newell Drive to the existing northern terminus of Newell Drive.

(3) Phase 1 roadway improvements relating to the following described **"SR 29/South Napa Junction Initial Access"** shall begin (commence) from the intersection of SR 29 and South Napa Junction, going eastward on South Napa Junction to where South Napa intersections with Rio Del Mar, and then eastward on Rio Del Mar until the intersection of Rio Del Mar and Loop Road, and then going northward on Loop Road to include "Loop Road Segment 1" as that term is defined in Section 2.07 of this Development Agreement), and as shown on *Exhibit B* to this Development Agreement. The Phase 2 roadway improvements relating to the SR 29/South Napa Junction Initial Access shall include the extension of Rolling Hills Drive from the Phase 1 terminus of Rolling Hills Drive northward to the intersection of Rolling Hills Drive and Rio Del Mar, and the extension of Loop Road from the Phase 1 terminus of Loop Road, to the northward edge of Loop Road Segment 2, as both are shown on *Exhibit B* to this Development Agreement. Phase 3 roadway improvements to the SR 29/South Napa Junction Initial Access shall be from the northern terminus of Loop Road Segment 2 eastward to the intersection of Loop Road and Newell Drive (as shown on *Exhibit B* to this Development Agreement), and Phase 4 roadway improvements relating to the SR 29/South Napa Junction Initial Access shall be Newell Drive Segment 5, as shown on *Exhibit B* to this Development Agreement. Phase 2 roadway improvements relating to the SR 29/South Napa Junction Initial Access shall, at Developer's sole and exclusive discretion, involve one, some, or all of the following roadway improvements (all shown on *Exhibit B* to this Development Agreement): Commencing from the intersection of Loop Road and Rio Del Mar eastward on Rio Del Mar to the intersection of Rio Del Mar and Newell Drive, and then southward on Newell Drive to the existing northern terminus of Newell Drive.

(d) Developer may, in Developer's sole and exclusive discretion, delay commencement of construction of Phase 1 of the Napa Valley Ruins & Gardens development to coincide with commencement of the Specific Plan's Phase 2 of residential development of the Project, provided that commencement of Phase 2 of residential development shall be conditioned upon commencement of Phase 1 of the NVR&G development.

2.07 **Additional Developer Obligations and Permitted Acts.**

(a) This Section 2.07 of this Development Agreement sets forth additional Developer obligations and permitted acts regarding the Project. As required by this Development Agreement for all actions of the Parties, unless given sole and exclusive discretion, Developer shall perform the following actions with Good Faith and Fair and Expeditious Dealing, and in the manner described below. The standards set forth in the Specific Plan shall be generally applicable to said improvements, unless the standards are otherwise set forth in the applicable Project subdivision map. Whether or not expressly set forth in this Section 2.07 of this Development

Agreement, whenever cooperation, coordination and/or application to a third-party public agency is required for any and all actions contemplated by this Development Agreement, then City shall be responsible for making such application to all such relevant public agencies (e.g., **"CalTrans," "PUC,"** etc.). Additionally, Developer shall be responsible for the costs and fees related to such City cooperation, coordination and application, including City Staff time, which City Staff time costs and fees reflect the amount that City actually expends for such City Staff costs and fees, which City actual expenditures shall not include any administrative fees, charges, and/or assessments; but Developer shall not be responsible for any fees and costs related to the City Attorney, and/or any City Special Legal Counsel.

(b) Developer shall record the final map relating to the Large Lot Vesting Tentative Map within ninety (90) days of the Effective Date of this Development Agreement, and shall offer for dedication to the relevant public agency those roadways, parks, trails, civic and community spaces, and other public acreages shown on the face of the final map for the Large Lot Vesting Tentative Map.

(c) The following presumes, consistent with the custom and practices of the relevant trade/profession, that Developer shall submit to City fully engineered and stamped improvement/construction plans. As defined in Section 2.01 of this Development Agreement, Developer shall pay Processing Fee(s)" as follows.

(1) At the time of Building Permit issuance for a "Model Plan Review" (model home plan review) residential unit, Developer shall pay to City Processing Fees in the amount designated for that size/type of model home residential unit set forth in *Exhibit C* to this Development Agreement. Said amount of Processing Fees shall be considered to be in Calendar Year 2019 dollars, and, commencing in 2020, that amount shall be increased each year by the relevant year's percentage amount set forth in the Construction Cost Index for the San Francisco Region.

(2) At the time of Building Permit issuance for an "After Model Plan Review" residential unit, Developer shall pay to City Processing Fees in the amount designated for that size/type of After Model Plan Review residential unit set forth in *Exhibit C* to this Development Agreement. Said amount of Processing Fees shall be considered to be in Calendar Year 2019 dollars, and, commencing in 2020, that amount shall be increased each year by the relevant year's percentage amount set forth in the Construction Cost Index for the San Francisco Region.

(3) For Project construction not addresses by (c)(1) and (c)(2) of this Section 2.07 of this Development Agreement, Developer shall pay, in Developer's sole and exclusive discretion, one or some combination of the following options:

(A) To City, those Processing Fees that at the time Processing Fees are due to City reflects the amount that City actually expends to provide such processing services, which City actual expenditures shall not include any administrative fees, charges, and/or assessments; and/or

(B) To a third-party consultant (**"Processing Consultant"**) acceptable to City and contracted directly with Developer the amount that the Processing Consultant and Developer contract for such processing services. Should Developer desire to contract with a particular Processing Consultant, prior to entering into such contract, Developer shall provide written notice to City at least thirty (30) days prior to Developer entering into such Processing Consultant contract (the "30-day period"), which notice to City shall address such intended contract, including without limitation, naming the intended Processing Consultant. Within thirty (30) days of receipt of such notice from Developer, City shall indicate its consent or objections, in writing. If City fails to raise objection to Developer within such 30-day period, City consent shall be deemed provided. If City raises objection to such Developer-noticed Inspection Consultant within said 30-day period, then the Resolution Process set forth in this Development Agreement shall apply. City and Developer shall maintain and update a list of Processing Consultants acceptable to City. And/or,

(C) To a Processing Consultant acceptable to City and contracted directly with Developer and City (a three-party agreement) the amount that the Processing Consultant and Developer contract for such processing services. Again, City and Developer shall maintain and update a list of Processing Consultants acceptable to City.

(d) The following presumes, consistent with the custom and practices of the relevant trade/profession, that Developer shall submit to City fully engineered and stamped improvement/construction plans. In Developer's sole and exclusive discretion, Developer shall pay Inspection Fees for residential development, MBI, in-tract infrastructure, NVRG and Hotel, and/or any other Project construction requiring inspection, in either or some combination of the following options:

(1) To City, those Inspection Fees that at the time Inspection Fees are due to City reflects the amount that City actually expends to provide such inspection services, which City actual expenditures shall not include any administrative fees, charges, and/or assessments; and/or;

(2) To a third-party consultant acceptable to City and contracted directly with Developer (**"Inspection Consultant"**) the amount that the Inspection Consultant and Developer contract for such inspection services. Should Developer desire to contract with a particular Inspection Consultant, prior to entering into such contract, Developer shall provide written notice to City at least thirty (30) days prior to Developer entering into such Inspection Consultant contract (the "30-day period"), which notice to City shall address such intended contract, including without limitation, naming the intended Inspection Consultant. Within thirty (30) days of receipt of such notice from Developer, City shall indicate its consent or objections, in writing. If City fails to raise objection to Developer within such 30-day period, City consent shall be deemed provided. If City raises objection to such Developer-noticed Inspection Consultant within said 30-day period, then the Resolution Process set forth in this Development Agreement shall apply. City and Developer shall maintain and update a list of Inspection Consultants acceptable to City. And/or,

(3) To an Inspection Consultant acceptable to City and contracted directly with Developer and City (a three-party agreement) the amount that the Inspection Consultant and Developer contract for such inspection services. Again, City and Developer shall maintain and update a list of Inspection Consultants acceptable to City.

(e) Regarding the Project's Affordable Housing requirements, Developer compliance with the following (1) or (2) below shall be deemed to be full compliance with all City, State and other controlling affordable housing law requirements:

(1) Developer shall:

(A) Developer shall pay the City's Affordable Housing Fee, in the amounts set forth in *Exhibit C* to this Development Agreement; and

(B) Developer shall ensure that fifty one (51) of the Project's residential units shall be "**Affordable by Design**." For the purposes of this Development Agreement, "Affordable by Design" shall mean that the residential unit has 1200 square feet or less of occupiable space, has exactly three (3) bedrooms (no more or less) and at least two (2) baths. Such Affordable by Design residential units shall not be restricted in any way by City. City may, at City's sole and exclusive discretion, offer program(s) to promote such Affordable by Design residential units, provided City does not restrict in any fashion Developer's sale of such Affordable by Design units; and/or,

(2) Developer shall use the California Housing Density Bonus statute, including without limitation, California Government Code sections 65915 *et seq.*, in one of several ways, including without limitation, the following:

(A) Developer shall provide to City three (3) contiguous acres of land for the purposes of affordable housing. Such 3 acres of land can accommodate up to one hundred one (101) affordable residential units. Such 101 residential units are approximately ten percent (10%) of Developer's market rate residential units. The location of such 3 acres of land shall be at Developer's sole and exclusive discretion. Upon provision of such land to City, the Project (Developer) shall be entitled to the greater of the following: a density bonus of fifteen percent (15%) (additional market rate residential units), which results in one hundred fifty two (152) additional market rate residential units on the Property; and/or,

(B) Developer shall construct fifty one (51) residential units qualifying as "Very Low Income" affordable residential units (under applicable California Density Bonus law) on the Property. The location of such 51 Very Low Income affordable residential units on the Property shall be at Developer's sole and exclusive discretion. Such 51 Very Low Income affordable residential units are approximately five percent (5%) of the Project's total residential units. Such 51 Very Low Income affordable residential units, shall entitle the Project (Developer) to the greater of the following: a density bonus of twenty percent (20%), which density bonus results in two hundred two (202) additional market rate residential units on the Property; and/or

(C) That density bonus allowed by controlling law at such time as the density bonus is sought by Developer.

(3) Consistent with the foregoing, the Parties may enter, but are not required to enter, an **"Affordable Housing Agreement"** reflecting the issues addressed by this Development Agreement. Any such Affordable Housing Agreement shall be considered a Subsequent Approval and shall become part of this Development Agreement's "Applicable Law" once such Affordable Housing Agreement takes Legal Effect.

(f) Because of the extent of Developer construction of MBI, including without limitation, the Rio Del Mar improvements, collectively beyond the impacts of the Project, during the Term of this Development Agreement, Developer shall not pay any past, current and/or future City development fees, impact fees, mitigation fees and/or any and all other impact fees imposed on development in the City in any and all categories (collectively, **"City Impact Fees"**). Such City Impact Fees that Developer shall not pay during the Term of this Agreement include, without limitation, Civic Facility Fees, Wastewater Capacity Fees, Water Capacity Fees, Traffic Impact Fees, Parks & Recreation Fees, and/or General Plan Update Fees, and any other present or future City Impact Fee imposed on development to mitigate Project impacts and provide funding for public infrastructure, services and/or facilities.

(g) Developer shall comply with City's **"Zero Water Footprint Policy,"** as such Policy is set forth in the American Canyon Municipal Code Section 13.10.010, by extending the City's existing recycled water infrastructure so that non-potable demands within the AC-1 Property and Project shall be served by recycled water, and by undertaking one or more of the following alternatives, which alternative(s) Developer choses shall be in Developer's sole and exclusive discretion, set forth in the Water Supply Assessment (February 2016), which was prepared by West Yost Associates and approved by the City on March 1, 2016:

(1) Contribution to the City's potable water offset program to help directly offset the Project's projected potable water demand.

(2) The 1993 Easement Agreement provides Developer the right to purchase up to one hundred sixty (160) acre feet of water per year from the City of Vallejo. That Developer right is subject to other transactions, one of which has transferred approximately twenty five (25) acre feet to a non-Developer entity. Assignment to City of the entirety of Developer's interest in the 1993 Easement Agreement with the City of Vallejo, whatever that Developer interest may be after such other transactions are accounted for.

(3) Purchase of the City's 2016 Vallejo Treated Water option (as set forth in the Water Service Agreement between City and the City of Vallejo dated May 1, 1996) and contribution to a funding mechanism to offset the additional cost of that water supply.

(4) Enter a potential **"Zero Water Footprint Agreement"** (as set forth in Section 2.09 of this Development Agreement), through which the Parties would negotiate these and other options to satisfy the City's Zero Water Footprint policies and goals.

(h) Developer shall take the following actions regarding the following Project's master backbone infrastructure ("**Master Backbone Infrastructure**" or **"MBI"**), a copy of which

is attached as *Exhibit B* to this Development Agreement. The standards set forth in the Specific Plan shall be generally applicable to said improvements, unless the standards are otherwise set forth in the applicable Project subdivision map:

(1) Regarding the below-described Newell Drive and its subparts:

(A) For the purposes of this Development Agreement, **"Newell Drive"** shall mean the collective total of the following five (5) segments:

(i) **"Newell Drive Segment 1"** shall mean that portion of Newell Drive commencing from the existing northern terminus of Newell Drive to the northern edge of the intersection of Newell Drive and Rio Del Mar.

(ii) **"Newell Drive Segment 2"** shall mean that portion of Newell Drive commencing from the northern edge of the intersection of Newell Drive and Rio Del Mar and then northward to and until the existing northeastern boundary of the Newell Property.

(iii) **"Newell Drive Segment 3"** shall mean that portion of Newell Drive commencing from the existing northeastern boundary of the Newell Property northward to and until the southern boundary of the intersection of Newell Drive and Loop Road.

(iv) **"Newell Drive Segment 4"** shall mean that portion of Newell Drive commencing from the southern edge of the intersection of Newell Drive and Loop Road and then northward to and until the existing northeastern boundary of the AC-1 Property.

(v) **"Newell Drive Segment 5"** shall mean that portion of Newell Drive commencing from the existing northeastern boundary of the AC-1 Property northwesterly to Newell Drive's proposed intersection with Green Island Road and State Highway 29.

(B) Developer shall dedicate to City, upon the Project's first recorded subdivision map (*e.g.*, the final map relating to the Large Lot Vesting Tentative Map), the following regarding Newell Drive:

(i) Newell Drive Segment 3 right of way;

(ii) Newell Drive Segment 4 right of way; and

(iii) Any and all other Newell Drive right-of-way land that lays on the AC-1 Property (and described in *Exhibit B* to this Development Agreement).

(C) As further set forth in Section 2.08 of this Development Agreement, City shall secure the dedications of Newell Drive Segment 5 right of way, and any and all other Newell Drive right-of-way land needed (other than that which is the

responsibility of Developer) to complete Newell Drive from its existing terminus to Newell Drive's proposed intersection with Green Island Road and State Highway 29.

(D) Developer shall improve and construct the relevant portions of Newell Drive, including and excluding, as follows: Newell Drive Segment 1, with the exception that the portion of such Newell Drive Segment 1 improvements located on the Newell Property that Developer shall improve and construct shall be limited to one-half (1/2) width of a typical roadway section (as shown in the Specific Plan), which provides for a single travel lane in each direction.

(E) The Newell Parcel Map dedicates to City the right-of-way relating to Newell Drive Segment 1 and Newell Drive Segment 2. However, the timing of development of the Newell Property, including without limitation the full construction and improvement of Newell Drive Segment 1, Newell Drive Segment 2, Newell Drive Segment 3, and Newell Drive Segment 4, is unknown. The Specific Plan and this Development Agreement sets forth "Phases" of MBI, residential and NVR&G and Hotel development. Therefore, to help maximize the potential completion of the entirety of Newell Drive and all of its Segments, the commencement of Watson Ranch Specific Plan's Phase 4 of residential development shall be conditioned upon Developer's commencement of the below-described **"Developer's Newell Drive Obligations,"** which are Newell Drive Segment 2, Newell Drive Segment 3, Newell Drive Segment 4, and Newell Drive Segment 5, provided the relative/relevant below-described "**City Precursors**" (prerequisites) to each such Developer's Newell Drive Obligations have been satisfied by City, as provided below. Developer's Newell Drive Obligation, if invoked, involves the construction and improvement of all or any one of Newell Drive Segment 2, Newell Drive Segment 3, Newell Drive Segment 4, and/or Newell Drive Segment 5, as further detailed in *Exhibit B* to this Development Agreement and the City's General Plan Circulation Element. In other words, if City can satisfy the below-described City Precursors for any one of, or some of, or all of, the Newell Drive Segments (i.e., Newel Drive Segment 2, Newell Drive Segment 3, Newell Drive Segment 4, and/or Newell Drive Segment 5), then Developer shall be required to construct such Newell Drive Segments for which the City Precursors are met (e.g., Newell Drive Segment 2, Newell Drive Segment 3, Newell Drive Segment 4, and/or Newell Drive Segment 5). By way of example only, if City can satisfy the City Precursors for Newell Drive Segment 2, but cannot yet satisfy the City Precursors for Newell Drive Segment 3, Newell Drive Segment 4, and/or Newell Drive Segment 5, then Developer shall be required to construct Newell Drive Segment 2, but Developer shall not be required to construct Newell Drive Segment 3, Newell Drive Segment 4, and/or Newell Drive Segment 5 until, if, and when, if ever, City can satisfy the City Precursors for Newell Drive Segment 3, Newell Drive Segment 4, and/or Newell Drive Segment 5. Developer's Newell Drive Obligations, if invoked, is a construction obligation only, which shall be "cost neutral" to Developer. For the purposes of this Development Agreement, "cost neutral" shall mean that the Parties intend that Developer incurs no legal, equitable, and/or administrative liability, no cost obligations and/or cost liability from performing Developer's Newell Drive Obligation, and that if any costs are incurred by Developer in performing Developer's Newell Drive Obligation, that such incurred Developer cost(s) (including without limitation providing Developer with a reasonable construction management fee in an amount consistent with practices within the trades for such roadway construction, and

every other task required) shall be fully refunded/reimbursed by City within thirty (30) days of presentation of such costs by Developer to City. Further, Developer's Newell Drive Obligation shall not invoke unless and until City has first secured and satisfied (and such items are completed and legally enforceable) all actions necessary and/or desirous for Developer to commence Developer's Newell Drive Obligation, including without limitation, all of the following (collectively, "**City Precursors**"): the Newell Property and its owners have not submitted development applications of any kind and have not been separately obligated to construct and improve Newell Drive Segment 1 (either 2 travel lanes in each direction, or, if Developer has already provided a travel lane in each direction, a single travel lane in each direction), Newell Drive Segment 2, Newell Drive Segment 3 and Newel Drive Segment 4; all design and improvement plans; all permits, permissions, and authorities from all relevant federal, state, regional and/or local authorities (including without limitation PUC); all federal, state, regional and/or local environmental clearances (including without limitation CEQA compliance), all required rights-of-way, all monies necessary to fully fund Developer's Newell Drive Obligation (so that there is no out-of-pocket cost to Developer (cost neutral)), all indemnities and waivers necessary to hold Developer harmless for each and every aspect of such Developer actions included in Developer's Newell Drive Obligation, guaranteed payment to Developer of a construction management fee in an amount consistent with practices within the trades for such roadway construction, and every other task, permission, or other aspect necessary or desirous to the completion of Developer's Newell Drive Obligation. If at the commencement of Watson Ranch Specific Plan's Phase 4 of residential development the City Precursors are not fully satisfied and in place, then Developer may commence development of the Watson Ranch Specific Plan's Phase 4 of residential development and shall no longer be responsible for Developer's Newell Drive Obligation. The status of the City Precursors shall be addressed in the Annual Review of this Development Agreement in order to keep the Parties apprised of status.

(2) Regarding Rio Del Mar With an At-Grade Railroad Crossing. A railroad crossing at Rio Del Mar is anticipated for the Project by the General Plan and Specific Plan. The Parties generally desire that the railroad crossing at Rio Del Mar be an "at-grade" crossing. However, the Parties also recognize that time, money, and the authority of others, including without limitation governmental agencies such as the California Public Utilities Commission (**"PUC"**), have influence and authority over such at-grade crossing options. Further, the Parties recognize that time savings, certain Developer financial obligation reductions, and other factors may make a grade-separated crossing at Rio Del Mar more attractive and achievable. Lastly, the Parties recognize that should an at-grade or grade-separated railroad crossing at Rio Del Mar prove unsuccessful, there exists a private at-grade railroad crossing at South Napa Junction that is the subject of a previous settlement agreement. Therefore, which railroad crossing to pursue will be an evolving analysis by the Parties as they work through the many issues. At any time period during which an at-grade railroad crossing is being pursued, Developer, exercising its sole and exclusive discretion, shall have the right to assert to City that such an at-grade application should be abandoned and/or otherwise put aside and that a grade-separated railroad crossing at Rio Del Mar shall be pursued. If such an assertion is made, then such at-grade application will be abandoned and/or otherwise put aside and a grade-separated railroad crossing at Rio Del Mar shall be pursued by the Parties. The following addresses an at-grade railroad crossing, and the resulting **"At-Grade Rio Del Mar"** and its subparts:

(A) For the purposes of this Development Agreement, and as further described in *Exhibit B* of this Development Agreement, **"At-Grade Rio Del Mar"** shall mean the collective total of land dedications and improvements of Rio Del Mar with an at-grade railroad crossing; At-Grade Rio Del Mar is divided into the following six Segments:

(i) **"At-Grade Rio Del Mar Segment 1"** shall be that segment of At-Grade Rio Del Mar that stretches eastward from the eastern edge of the below-described **"SR 29/Rio Del Mar Tie-In"** to the eastern edge of the Main Street extension;

(ii) **"At-Grade Rio Del Mar Segment 2"** shall be that segment of At-Grade Rio Del Mar that stretches eastward from the eastern edge of the Main Street extension to the western edge of the below-described **"At-Grade Railroad Crossing;"**

(iii) **"At-Grade Rio Del Mar Railroad Crossing Segment"** shall be that segment of At-Grade Rio Del Mar that encompasses the physical railroad tracks and railroad right-of-way;

(iv) **"At-Grade Rio Del Mar Segment 3"** shall be that segment of At-Grade Rio Del Mar that stretches eastward from the eastern edge of the At-Grade Railroad Crossing Segment to the western edge of Loop Road;

(v) **"At-Grade Rio Del Mar Segment 4"** shall be that segment of At-Grade Rio Del Mar that stretches from the western edge of Loop Road to the western edge of the Newell Property; and

(vi) **"At-Grade Rio Del Mar Segment 5"** shall be that segment of At-Grade Rio Del Mar that stretches from the western edge of the Newell Property to the western edge of Newell Drive.

(B) It is understood by the Parties that such right-of-way dedications shall reflect the right-of-way requirements of the General Plan and Specific Plan, and that if City is responsible for securing the dedication, that City shall secure the dedication at City's sole cost and expense and at such time as the Parties agree is necessary to ensure the absence of Developer construction delay on the Rio Del Mar Improvements. City shall coordinate the acquisition of right-of-way from the relevant property owner(s), with the goal being the full dedication of At-Grade Segment 1, At-Grade Segment 2, and At-Grade Segment 5 at no cost to the Parties. The Parties recognize that if *eminent domain* or other City actions are necessary to acquire the right-of-way from the relevant property owner(s) needed for the construction At-Grade Segment 1, At-Grade Segment 2, and At-Grade Segment 5, delays may occur and shall be allowed. Should *eminent domain* be required, acquisition shall be by, and at the sole and exclusive cost and expense of, City. Regarding the dedication of the relevant Segments of At-Grade Rio Del Mar, the following shall apply:

(i) City shall secure the dedication of At-Grade Rio Del Mar Segment 1;

(ii) City shall secure the dedication of At-Grade Rio Del Mar Segment 2;

(iii) The details of the "At-Grade Rio Del Mar Railroad Crossing Segment" are addressed in subdivision (h)(4) of this Section 2.07 of this Development Agreement;

(iv) Developer shall dedicate to City, upon the Project's first recorded subdivision map (*e.g.*, the final map relating to the Large Lot Vesting Tentative Map), At-Grade Rio Del Mar Segment 3;

(v) Developer shall dedicate to City, upon the Project's first recorded subdivision map (*e.g.*, the final map relating to the Large Lot Vesting Tentative Map), At-Grade Rio Del Mar Segment 4; and

(vi) City secured the dedication of At-Grade Rio Del Mar Segment 5 through the recordation of the Newell Parcel Map.

(C) It is understood by the Parties that when Developer or City is required by this Development Agreement (below) to construct (or cause the financing and/or construction of) At-Grade Rio Del Mar improvements, such improvements shall be constructed and improved at such time as set forth in the Project's relevant subdivision map approval. That being stated, general construction and improvement obligations regarding At-Grade Rio Del Mar are as follows:

(i) Developer shall be responsible for the construction and improvement of At-Grade Rio Del Mar Segment 1 at such time as set forth in the Project's relevant subdivision map approval, provided that Developer shall be reimbursed by City for Developer's full costs related to such construction and improvement of such At-Grade Rio Del Mar Segment 1, and provided that such full reimbursement by City to Developer shall occur the earlier of the following events: Within thirty (30) days of the date of the recording of any final subdivision map regarding the **"Adobe Property,"** or within thirty (30) days of the date of the City's issuance of any Building Permit regarding the Adobe Property. For the purposes of this Development Agreement, the **"Adobe Property"** shall mean that property depicted on *Exhibit A* to this Development Agreement. Further, for the purposes of this Development Agreement, Developer's full costs (including without limitation, a reasonable construction management fee in an amount consistent with practices within the trades for such roadway construction, and every other task required) related to such construction and improvement of such At-Grade Rio Del Mar Segment 1 shall be referred to as **"Developer's At-Grade Rio Del Mar Segment 1 Costs"**;

(ii) Developer shall be responsible for the construction and improvement of At-Grade Rio Del Mar Segment 2 at such time as set forth in

the Project's relevant subdivision map approval, provided that Developer shall be reimbursed by City for Developer's full costs related to such construction and improvement of such At-Grade Rio Del Mar Segment 2, with such reimbursement being a priority, and coming from funds City secures through City's imposition on other development in the City some form of fees, charges, assessments and/or other means, and further provided that such City reimbursement obligation to Developer shall continue until such time as Developer is fully so reimbursed, or this Development Agreement's Term concludes, whichever occurs first. For the purposes of this Development Agreement, Developer's full costs related to such construction and improvement of such At-Grade Rio Del Mar Segment 2 shall be referred to as **"Developer's At-Grade Rio Del Mar Segment 2 Costs";**

(iii) The details of the "At-Grade Rio Del Mar Railroad Crossing Segment" are addressed in subdivision (h)(4) of this Section 2.07 of this Development Agreement;

(iv) Developer shall be responsible for the construction and improvement of At-Grade Rio Del Mar Segment 3 at such time as set forth in the Project's relevant subdivision map approval;

(v) Developer shall be responsible for the construction and improvement of At-Grade Rio Del Mar Segment 4 at such time as set forth in the Project's relevant subdivision map approval; and,

(vi) Developer shall be responsible for the construction and improvement of At-Grade Rio Del Mar Segment 5 at such time as set forth in the Project's relevant subdivision map approval.

(3) Regarding Rio Del Mar With a Grade-Separated Railroad Crossing. The following addresses a grade-separated railroad crossing, and the resulting **"Grade-Separated Rio Del Mar"** and its subparts:

(A) For the purposes of this Development Agreement, and as further described in *Exhibit B* of this Development Agreement, **"Grade-Separated Rio Del Mar"** shall mean the collective total of land dedications and improvements of Rio Del Mar with a grade-separated railroad crossing; Grade-Separated Rio Del Mar is divided into the following six Segments:

(i) **"Grade-Separated Rio Del Mar Segment A"** shall be that segment of Grade-Separated Rio Del Mar that stretches eastward from the eastern edge of the below-described **"SR 29/Rio Del Mar Tie-In"** to the eastern edge of the Main Street extension;

(ii) **"Grade-Separated Rio Del Mar Segment B"** shall be that segment of Grade-Separated Rio Del Mar that stretches eastward from the eastern edge of the Main Street extension to the western edge of the below-described **"Grade-Separated Railroad Crossing Segment;"**

(iii) **"Grade-Separated Rio Del Mar Railroad Crossing Segment"** shall be that segment of Grade-Separated Rio Del Mar that encompasses the physical railroad tracks and railroad right-of-way, and further, shall include all ground excavation, retaining walls, footings, railings, groundwater pumping systems, and the like, that are necessary to effect a safe separation of the roadway grade from and under the railroad tracks and crossing regardless of location. By way of example only, retaining walls running under the railroad tracks and then rising up along the roadway to at-grade elevation that are used to support the soil adjacent to such Rio Del Mar roadway shall be considered part of the **"Grade-Separated Rio Del Mar Railroad Crossing Segment"** even if such retaining wall improvements geographically are located within the area described by this Development Agreement as "Grade-Separated Rio Del Mar Segment B."

(iv) **"Grade-Separated Rio Del Mar Segment C"** shall be that segment of Grade-Separated Rio Del Mar that stretches eastward from the eastern edge of the Grade-Separated Railroad Crossing Segment to the western edge of Loop Road;

(v) **"Grade-Separated Rio Del Mar Segment D"** shall be that segment of Grade-Separated Rio Del Mar that stretches eastward from the western edge of Loop Road to the western edge of the Newell Property; and

(vi) **"Grade-Separated Rio Del Mar Segment E"** shall be that segment of Grade-Separated Rio Del Mar that stretches eastward from the western edge of the Newell Property to the western edge of Newell Drive.

(B) It is understood by the Parties that all such right-of-way dedications shall reflect the right-of-way requirements of the General Plan and Specific Plan, and that if City is responsible for securing the dedication, that City shall secure the dedication at City's sole cost and expense and at such time as the Parties agree is necessary to ensure the absence of Developer construction delay on the Rio Del Mar Improvements. City shall coordinate the acquisition of right-of-way from the relevant property owner, with the goal being the full dedication of Grade-Separated Segment A and Grade-Separated Segment B, and Grade-Separated E at no cost to the Parties. The Parties recognize that if *eminent domain* or other City actions are necessary to acquire the right-of-way from the relevant property owner(s) needed for the construction of Grade-Separated Segment A, Grade-Separated Segment B, and Grade-Separated E, delays may occur and shall be allowed. Should *eminent domain* be required, acquisition shall be by, and at the sole and exclusive cost and expense of, City. Regarding the dedication of the relevant Segments of Grade-Separated Rio Del Mar, the following shall apply:

(i) City shall secure the dedication of Grade-Separated Rio Del Mar Segment A;

(ii) City shall secure the dedication of Grade-Separated Rio Del Mar Segment B;

(iii) The details of the "Grade-Separated Rio Del Mar Railroad Crossing Segment" are address below in subdivision (h)(4) of this Section 2.07 of this Development Agreement;

(iv) Developer shall dedicate to City, upon the Project's first recorded subdivision map (*e.g.*, the final map relating to the Large Lot Vesting Tentative Map), Grade-Separated Rio Del Mar Segment C;

(v) Developer shall dedicate to City, upon the Project's first recorded subdivision map (*e.g.*, the final map relating to the Large Lot Vesting Tentative Map), Grade-Separated Rio Del Mar Segment D; and

(vi) City secured the dedication of Grade-Separated Rio Del Mar Segment E through the recordation of the Newell Parcel Map.

(C) It is understood by the Parties that when Developer or City is required by this Development Agreement (below) to construct (or cause the financing and/or construction of) Grade-Separated Rio Del Mar improvements, such improvements shall be constructed and improved at such time as set forth in the Project's relevant subdivision map approval. That being stated, general construction and improvement obligations regarding Grade-Separated Rio Del Mar are as follows:

(i) Developer shall be responsible for the construction and improvement of Grade-Separated Rio Del Mar Segment A at such time as set forth in the Project's relevant subdivision map approval, provided that the portion of the costs to Developer of constructing and improving Grade-Separated Rio Del Mar Segment A that is equal to **"Developer's At-Grade Rio Del Mar Segment 1 Costs"** shall be reimbursed by City to Developer, and provided that such reimbursement by City to Developer (for the dollar amount of the portion of the costs to Developer of constructing and improving Grade-Separated Rio Del Mar Segment A that is equal to **"Developer's At-Grade Rio Del Mar Segment 1 Costs")** shall occur the earlier of the following events: Within 30 days of the date of the recording of any final subdivision map regarding the Adobe Property, or within 30 days of the date of any City issuance of any Building Permit regarding the Adobe Property.

(ii) Developer shall be responsible for the construction and improvement of Grade-Separated Rio Del Mar Segment B at such time as set forth in the Project's relevant subdivision map approval, provided that the portion of the costs to Developer of constructing and improving Grade-Separated Rio Del Mar Segment B that is equal to **"Developer's At-Grade Rio Del Mar Segment 2 Costs"** shall be reimbursed by City to Developer, and provided that such reimbursement by City to Developer (for the dollar amount of the portion of the costs to Developer of constructing and improving Grade-Separated Rio Del Mar Segment B that is equal to **"Developer's At-Grade Rio Del Mar Segment 2 Costs")** shall be a priority, and shall come from funds come from funds City secures through City's imposition on other development in the City some form of fees,

charges, assessments and/or other means, and further provided that such City reimbursement obligation to Developer shall continue until such time as Developer is fully so reimbursed, or this Development Agreement's Term concludes, whichever occurs first.

(iii) The details of the "Grade-Separated Rio Del Mar Railroad Crossing Segment" are addressed below in subdivision (h)(4) of this Section 2.07 of this Development Agreement;

(iv) Developer shall be responsible for the construction and improvement of Grade-Separated Rio Del Mar Segment C at such time as set forth in the Project's relevant subdivision map approval;

(v) Developer shall be responsible for the construction and improvement of Grade-Separated Rio Del Mar Segment D at such time as set forth in the Project's relevant subdivision map approval; and,

(vi) Developer shall be responsible for the construction and improvement of Grade-Separated Rio Del Mar Segment E at such time as set forth in the Project's relevant subdivision map approval.

(D) Regarding South Napa Junction with an At-Grade Railroad Crossing: a potential railroad crossing at South Napa Junction, while not favored by the Parties as the first option, is an option allowed for the Project by the General Plan, Specific Plan, and this Development Agreement. The Parties desire that the railroad crossing at South Napa Junction remain an "at-grade" crossing, and that each of the below-described components that collectively comprise the below-described "South Napa Junction" and "SR 29/South Napa Junction Tie-In" improvements be of a size, and quality of design, improvement, and construction similar to those of the Segments comprising the "At-Grade Rio Del Mar" improvements, the "Grade-Separated Rio Del Mar" improvements, and the "SR 29/Rio Del Mar Tie-In." For the purposes of such an at-grade railroad crossing at South Napa Junction, and the concomitant access to the Property and Project, the following shall apply. The South Napa Junction improvements (**"South Napa Junction"**) shall be the collective total of the following six (6) segments:

(i) **"South Napa Junction Segment 1"** shall be that segment of South Napa Junction that stretches eastward from the eastern edge of the below-described **"SR 29/ South Napa Junction Tie-In"** to the eastern edge of the Main Street extension;

(ii) **"South Napa Junction Segment 2"** shall be that segment of South Napa Junction that stretches eastward from the eastern edge of the Main Street extension to the western edge of the below-described **"South Napa Junction Railroad Crossing Segment;"**

(iii) **"South Napa Junction Railroad Crossing Segment"** shall be that segment of South Napa Junction that encompasses the physical railroad tracks and railroad right-of-way;

(iv) **"South Napa Junction Segment 3"** shall be that segment of South Napa Junction that stretches eastward from the eastern edge of the South Napa Junction Railroad Crossing to the western edge of Loop Road;

(v) **"South Napa Junction Segment 4"** shall be that segment of South Napa Junction that stretches from the western edge of Loop Road to the western edge of the Newell Property; and;

(vi) **"South Napa Junction Segment 5"** shall be that segment of At-Grade Rio Del Mar that stretches from the western edge of the Newell Property to the western edge of Newell Drive.

(E) It is understood by the Parties that right-of-way dedications shall reflect the right-of-way requirements of the General Plan and Specific Plan, and that if City is responsible for securing the dedication under this Development Agreement, that City shall secure the dedication at City's sole cost and expense and at such time as the Parties agree is necessary to ensure the absence of Developer construction delay on South Napa Junction. City shall coordinate the acquisition of right-of-way from the relevant property owner, with the goal being the full dedication of South Napa Junction Segment 1 and/or South Napa Junction Segment 2 at no cost to the Parties. The Parties recognize that if *eminent domain* or other City actions are necessary to acquire the right-of-way from the relevant property owner(s) needed for the construction South Napa Junction Segment 1 and/or South Napa Junction Segment 2, delays may occur and shall be allowed. Should *eminent domain* be required, acquisition shall be by, and at the sole and exclusive cost and expense of, City. Regarding the dedication of the relevant Segments of South Napa Junction, the following shall apply:

(i) City shall secure the dedication of South Napa Junction Segment 1;

(ii) City shall secure the dedication of South Napa Junction Segment 2;

(iii) The details of the "South Napa Junction Railroad Crossing" are addressed in subdivision (h)(4) of this Section 2.07 of this Development Agreement;

(iv) Developer shall dedicate to City, upon the Project's first recorded subdivision map (*e.g.*, the final map relating to the Large Lot Vesting Tentative Map), South Napa Junction Segment 3;

(vii) Developer shall dedicate to City, upon the Project's first recorded subdivision map (*e.g.*, the final map relating to the Large Lot Vesting Tentative Map), South Napa Junction Segment 4; and

(viii) South Napa Junction Segment 5 was dedicated to City through the Newell Parcel Map.

(F) It is understood by the Parties that when Developer or City is required by this Development Agreement (below) to construct (or cause the financing and/or construction of) South Napa Junction improvements, such improvements shall be constructed and improved at such time as set forth in the Project's relevant subdivision map approval. That being stated, general construction and improvement obligations regarding South Napa Junction are as follows:

(i) Developer shall be responsible for the construction and improvement of South Napa Junction Segment 1 at such time as set forth in the Project's relevant subdivision map approval, provided that Developer shall be reimbursed by City for Developer's full costs related to such construction and improvement of such South Napa Junction Segment 1, and provided that such full reimbursement by City to Developer shall occur the earlier of the following events: The recording of any final subdivision map regarding the **"Adobe Property,"** or the City issuance of any Building Permit regarding the Adobe Property. For the purposes of this Development Agreement, the **"Adobe Property"** shall mean that property depicted on *Exhibit A* to this Development Agreement. Further, for the purposes of this Development Agreement, Developer's full costs related to such construction and improvement of such South Napa Junction Segment 1 shall be referred to as **"Developer's South Napa Junction Segment 1 Costs";**

(ii) Developer shall be responsible for the construction and improvement of South Napa Junction Segment 2 at such time as set forth in the Project's relevant subdivision map approval, provided that Developer shall be reimbursed by City for Developer's full costs related to such construction and improvement of such South Napa Junction Segment 2, with such reimbursement being a priority, and coming from funds City secures through City's imposition on other development in the City some form of fees, charges, assessments and/or other means, and further provided that such City reimbursement obligation to Developer shall continue until such time as Developer is fully so reimbursed, or this Development Agreement's Term concludes, whichever occurs first;

(iii) The details of the "South Napa Junction Railroad Crossing" are addressed in subdivision (h)(4) of this Section 2.07 of this Development Agreement;

(iv) Developer shall be responsible for the construction and improvement of South Napa Junction Segment 3 at such time as set forth in the Project's relevant subdivision map approval;

(v) Developer shall be responsible for the construction and improvement of South Napa Junction Segment 4 at such time as set forth in the Project's relevant subdivision map approval; and,

(vi) Developer shall be responsible for the construction and improvement of South Napa Junction Segment 5 at such time as set forth in the Project's relevant subdivision map approval.

(G) The Parties recognize that development of Residential Phase 1 of the Specific Plan shall only require adequate access, as further described in Section 2.06 of this Development Agreement.

(4) Relating to Any Railroad Crossing:

(A) Generally. A railroad crossing at Rio Del Mar is anticipated for the Project by the General Plan and Specific Plan. The Parties generally desire that the railroad crossing at Rio Del Mar be an "at-grade" crossing. However, the Parties also recognize that time, money, and the authority of others, including without limitation governmental agencies such as the California Public Utilities Commission (**"PUC"**), have influence and authority over such at-grade crossing options. Further, the Parties recognize that time savings, certain Developer financial obligation reductions, and other factors may make a grade-separated crossing at Rio Del Mar more attractive and achievable. Lastly, the Parties recognize that should an at-grade or grade-separated railroad crossing at Rio Del Mar prove unsuccessful, there exists a private at-grade railroad crossing at South Napa Junction that is the subject of a previous settlement agreement, and therefore shall be available as an access point to the Project. Therefore, which railroad crossing to pursue will be an evolving analysis by Developer, as the Parties work through the many issues. At any time period during which an at-grade railroad crossing is being pursued, Developer, exercising its sole and exclusive discretion, shall have the right to assert to City that such an at-grade application shall be not submitted, or if already submitted, shall be abandoned and/or otherwise put aside and that a grade-separated railroad crossing at Rio Del Mar shall be pursued. If such an assertion is made, then such at-grade application shall be not submitted, or if already submitted, shall be abandoned and/or otherwise put aside and a grade-separated railroad crossing at Rio Del Mar shall be pursued by the Parties.

(B) Developer and City shall coordinate and cooperate with each other toward the goal of securing permission from all relevant public agencies, including without limitation the PUC, to build whatever at-grade or grade-separated crossing is ultimately determined and pursued by Developer, in Developer's sole and exclusive discretion. City shall be responsible for making any and all application(s) to such relevant public agencies including without limitation the PUC for any and all such rail crossing(s), and Developer shall be responsible for coordinating and paying for the consultants needed to support that effort. Developer shall be responsible for all City Staff costs and fees relating to whichever/all railroad crossings pursued, which City Staff costs and fees reflect the amount that City actually expends for such City Staff costs and fees, which City actual expenditures shall not include any administrative fees, charges, and/or assessments; Developer shall not be responsible for the City costs and fees relating to the City Attorney, and any additional City-hired special legal counsel, regarding whichever/all railroad crossings are pursued.

(C) If Developer, in its sole and exclusive discretion, determines to pursue the At-Grade Railroad Crossing, then the following shall apply:

(i) Developer shall provide City written notice that Developer has determined to pursue the At-Grade Railroad Crossing; and

(ii) Developer shall be responsible for the costs and fees related to such At-Grade Railroad Crossing Segment.

(iii) Developer shall be responsible for all costs related to the SR 29/Rio Del Mar Tie-in, up to a maximum of $2.5 million. Any amount beyond such $2.5 million shall be subject to the "Resolution Process" requirements of Section 2.03 of this Development Agreement, where the Parties will endeavor to resolve the amount in excess of $2.5 million dollars. City shall be responsible for making application to all relevant public agencies - including without limitation, the California Department of Transportation (**"CalTrans"**) - to secure encroachment Permits required to build that SR 29 Tie-In Developer decides to pursue (either the SR 29/Rio Del Mar Tie-In or the SR 29/South Napa Junction Tie-In). Developer shall be responsible for the costs and fees related to such City cooperation, coordination and application, including the costs and fees related to City Staff, which City Staff costs and fees reflect the amount that City actually expends for such City Staff costs and fees, which City actual expenditures shall not include any administrative fees, charges, and/or assessments; time; however, Developer shall not be responsible for any costs and fees relating to the City Attorney and/or Special Counsel hired by City to assist. Developer shall be reimbursed by City for Developer's costs (up to a maximum of $2.5 million - any amount beyond such $2.5 million shall be subject to the "Resolution Process" requirements of Section 2.03 of this Development Agreement) related to such construction and improvement of such SR 29/Rio Del Mar Tie-in in two ways: First, the first fifty percent (50%) of Developer's costs related to such construction and improvement of such SR 29/Rio Del Mar Tie-shall be reimbursed by City to Developer at the earlier of the following events: Within 30 days of the date of the recording of any final subdivision map regarding the Adobe Property, or within 30 days of the date of City's issuance of any Building Permit regarding the Adobe Property; and Second, the second and final 50% of Developer's costs related to such construction and improvement of such SR 29/Rio Del Mar Tie-shall be reimbursed by City to Developer, with such reimbursement being given priority, and such reimbursement coming from funds City secures through City's imposition on other development in the City some form of fees, charges, assessments and/or other means, and further provided that such City reimbursement obligation to Developer shall continue until such time as Developer is fully so reimbursed, or this Development Agreement's Term concludes, whichever occurs first. provided further that the second.

(D) If Developer, in its sole and exclusive discretion, determines to pursue the Grade-Separated Railroad Crossing, then the following shall apply:

(i) Developer shall provide City written notice that Developer has determined to pursue the Grade-Separated Crossing at Rio Del Mar.

(ii) Developer shall be responsible for all costs and fees related to the Grade-Separated Railroad Crossing Segment, including the costs and fees related to City Staff time, which City Staff time costs and fees reflect the

amount that City actually expends for such City Staff costs and fees, which City actual expenditures shall not include any administrative fees, charges, and/or assessments; however, Developer shall not be responsible for any costs and fees relating to the City Attorney and/or Special Counsel hired by City to assist.

(E) If neither the At-Grade Railroad Crossing Segment nor the Grade-Separated Railroad Crossing Segment is pursued by Developer and/or either or both are pursued but denied by the PUC (and/or others), and/or either or both are pursued but abandoned by Developer, then if Developer, in its sole and exclusive discretion, determines to pursue the existing at-grade railroad crossing at South Napa Junction, then the following shall apply:

(i) Developer shall provide City written notice that Developer has determined to pursue the at-grade railroad crossing at South Napa Junction; and,

(ii) Developer shall be responsible for the costs and fees related to such South Napa Junction Railroad Crossing Segment.

(iii) Developer shall be responsible for all costs and fees related to the SR 29/South Napa Junction Tie-In, up to a maximum of $2.5 million. Any amount beyond such $2.5 million shall be subject to the "Resolution Process" requirements of Section 2.03 of this Development Agreement, where the Parties will endeavor to resolve the amount in excess of $2.5 million dollars. City shall be responsible for making application to all relevant public agencies - including without limitation, the California Department of Transportation (**"CalTrans"**) - to secure encroachment Permits required to build that SR 29 Tie-In Developer decides to pursue (either the SR 29/Rio Del Mar Tie-In or the SR 29/South Napa Junction Tie-In). Developer shall be responsible for the costs and fees related to such City cooperation, coordination and application, including the costs and fees related to City Staff time, which City Staff costs and fees reflect the amount that City actually expends for such City Staff costs and fees, which City actual expenditures shall not include any administrative fees, charges, and/or assessments; however, Developer shall not be responsible for any costs and fees relating to the City Attorney and/or Special Counsel hired by City to assist. Developer shall be reimbursed by City for Developer's costs (up to a maximum of $2.5 million - any amount beyond such $2.5 million shall be subject to the "Resolution Process" requirements of Section 2.03 of this Development Agreement) related to such construction and improvement of such SR 29/South Napa Junction Tie-In in two ways: First, the first fifty percent (50%) of Developer's costs related to such construction and improvement of such SR 29/South Napa Junction Tie-In shall be reimbursed by City to Developer at the earlier of the following events: The recording of any final subdivision map regarding the Adobe Property, or the City issuance of any Building Permit regarding the Adobe Property; and Second, the second and final 50% of Developer's costs related to such construction and improvement of such SR 29/South Napa Junction Tie-In shall be reimbursed by City to Developer, with such reimbursement being a priority, and coming from funds City secures through City's

imposition on other development in the City some form of fees, charges, assessments and/or other means, and further provided that such City reimbursement obligation to Developer shall continue until such time as Developer is fully so reimbursed, or this Development Agreement's Term concludes, whichever occurs first.

(5) Relating to the SR 29/Rio Del Mar Tie-In and the SR 29/South Napa Junction Tie-In:

(A) Section 2.07(h)(4) of this Development Agreement and this Section 2.07(h)(5) of this Development Agreement shall apply regarding required actions of the Parties, the expenditure of money, reimbursements, and other actions contemplated, regarding any and all State Highway 29 intersection improvements or other traffic and/or transportation improvements of any kind on State Highway 29, including the tie-in of At-Grade Rio Del Mar, or Grade-Separated Rio Del Mar to State Highway 29 ("**SR 29/Rio Del Mar Tie-In**"), or the tie-in of South Napa Junction to State Highway 29 ("**SR 29/South Napa Junction Tie-In**"). All such Tie-In options are shown on *Exhibit B* to this Development Agreement.

(B) City and Developer shall cooperate and coordinate their efforts to secure approval of the SR 29 Tie-In that Developer decides to pursue (either the SR 29/Rio Del Mar Tie-In or the SR 29/South Napa Junction Tie-In) in a manner to ensure the absence of Developer construction delay on either the At-Grade Rio Del Mar, Grade-Separated Rio Del Mar improvements, or South Napa Junction improvements. The Parties recognize the approval of Caltrans may cause delays and such delays shall be allowed.

(6) Relating to the Loop Road Improvements.

(A) Developer shall dedicate to City at such relevant Project subdivision map recordation date, that land described in *Exhibit B* to this Development Agreement.

(B) Developer shall construct (or cause the finance and construction of) at such time as set forth in the Specific Plan (and such relevant Project subdivision map approval), those roadway improvements described in *Exhibit C* to this Development Agreement (collectively, the "**Loop Road Improvements**"). The Loop Road Improvements are comprised of **"Loop Road Segment 1," "Loop Road Segment 2,"** and **"Loop Road Segment 3,"** as shown on *Exhibit B* to this Development Agreement.

(7) Relating to the Rolling Hills Drive Improvements:

(A) Developer shall dedicate to City at such relevant Project subdivision map recordation date, that land described in *Exhibit B* to this Development Agreement (collectively, the **"Rolling Hills Drive Improvements").**

(B) Developer shall construct (or cause the finance and construction of) at such time as the commencement of Watson Ranch Specific Plan's Phase 2 of residential development (and such relevant Project subdivision map approval) or

sooner if required to meet secondary access requirements for residential development, those roadway improvements described in *Exhibit B* to this Development Agreement.

(8) Relating to Underground Utilities:

(A) Developer shall dedicate to City at such relevant Project subdivision map recordation date those underground utility and storm drain infrastructure improvements within the Project required by the Project's development.

(B) Developer shall construct (or cause the finance and construction of) at such time as set forth in such relevant Project subdivision map approval, those underground utility and storm drain infrastructure improvements within the Project required by the Project's development.

(i) The Parties understand that Developer and the Napa Valley Unified School District have taken actions and will take actions regarding new elementary school and new middle school, and that Developer and the Napa Valley Unified School District alone shall determine such actions for the Project.

(j) Developer shall assign to City, at such time as the Project's first recorded subdivision map, those water line easement rights and water use rights given by the City of Vallejo to AC-1 through the Grant of Easement (Waterline) between the City of Vallejo and Jaeger Vineyards, provided such assignment to City ensures AC-1 receives a credit for eighty (80) acre-feet of raw water and eighty (80) acre-feet of potable water for the AC-1 Property (for a combined total of one hundred sixty (160) acre-feet).

(k) Developer shall dedicate to City at such relevant Project subdivision map recordation date and improve at such time as set forth in the Specific Plan and such relevant Project subdivision map approval, approximately three and fifty-five/one hundredths (3.55) acres of the Property for use as "**Park A**," as more particularly set forth in *Exhibit B* to this Development Agreement. Developer shall be obligated to contribute no more than five million six hundred thousand ($5,600,000) for the improvement of Park A; said $5,600,000 maximum shall include any and all Processing Fees, Building Permit Fees, User Fees, and/or Inspection Fees. Notwithstanding the forgoing, the $5,600,000 amount (for the improvement of Park A) shall be considered to be in Calendar Year 2019 dollars, and, commencing in 2020, that amount shall be increased each year by the relevant year's percentage amount set forth in the Construction Cost Index for the San Francisco Region, until such Park A improvements are completed. Consistent with the foregoing, the Parties shall work together to secure that portion of Park A that sits on the Newell Property, including seeking to have the controlling owners of the Newell Property dedicate such portion to the City through existing and/or future subdivision maps. Developer's obligation to improve/construct Park A shall commence only after both fee title to that portion of Park A that sits on the Newell Property has been secured and is in City possession, and the Specific Plan's Phase 2 of development of the Project has commenced.

(l) Developer shall dedicate to City at such relevant Project subdivision map recordation date and improve at such time as set forth in at such relevant Project subdivision map approval, approximately five and fifty-seven/one hundredths (5.57) acres for use as "**Park B**," as

more particularly set forth in *Exhibit B* to this Development Agreement. Developer shall be obligated to contribute no more than two million eight hundred thousand dollars ($2,800,000) for the improvement of Park B; said $2,800,000 maximum shall include any and all Processing Fees, and/or Inspection Fees. Notwithstanding the forgoing, the $2,800,000 amount (for the improvement of Park B) shall be considered to be in Calendar Year 2019 dollars, and, commencing in 2020, that amount shall be increased each year by the relevant year's percentage amount set forth in the Construction Cost Index for the San Francisco Region, until such Park B improvements are completed. Consistent with the foregoing, the Parties shall work together to secure that portion of Park B that sits on the Newell Property, including seeking to have the controlling owners of the Newell Property dedicate such portion to the City through existing and/or future subdivision maps. Developer's obligation to improve/construct Park B shall commence only after both: fee title to that portion of Park B that sits on the Newell Property has been secured and is in City possession; and the Specific Plan's Phase 3 of development of the Project has commenced.

(m) Developer shall dedicate to the City, at such relevant Project subdivision map recordation date, and improve at such time as set forth in such relevant Project subdivision map approval, approximately sixty-seven one hundredths (.67) acres for use as the "**Napa Valley Vine Trail**," as more particularly set forth in *Exhibit B* to this Development Agreement. Developer shall be obligated to contribute no more than four hundred sixty thousand dollars ($460,000) for the improvement of the Napa Valley Vine Trail; said $460,000 maximum shall include any and all Processing Fees, and/or Inspection Fees. Notwithstanding the forgoing, the $460,000 amount (for the improvement of the Napa Valley Vine Trail) shall be considered to be in Calendar Year 2019 dollars, and, commencing in 2020, that amount shall be increased each year by the relevant year's percentage amount set forth in the Construction Cost Index for the San Francisco Region, until such Napa Valley Vine Trail improvements are completed. Consistent with the foregoing, the Parties shall work together to secure that portion of the Napa Valley Vine Trail that sits on the Newell Property, including seeking to have the controlling owners of the Newell Property dedicate such portion to the City through existing and/or future subdivision maps. Said Developer's obligation to improve the Napa Valley Vine Trail shall commence only after fee title to that portion of the Napa Valley Vine Trail that sits on the Newell Property has been secured and is in City possession. The Parties recognize the City has exercised its discretion in requiring the Developer to construct various Class I trails including the Napa Valley Vine Trail and the River to Ridge Trail. The Parties shall coordinate and cooperate, including without limitation, the entering into of any necessary or desirous "**Measure T Funding Equivalent Set-Aside Agreement,**" regarding the accounting procedures used to memorialize the Developer's costs in dedicating and improving said Class I trails with express purpose of maximizing the amount of "Measure T Funding Equivalent Set-Aside" defined by that certain Napa Valley Transportation Authority – Tax Authority Measure T Ordinance, and that certain Measure T Funding Agreement by and between the City and the Napa Valley Transportation Authority – Tax Authority.

(n) Developer shall dedicate to the City at such relevant Project subdivision map recordation date approximately two (2) acres of the Property for use as the "**Community Plaza and Community Center Site**" (which includes the required parking for this use), as more particularly set forth in *Exhibit B* to this Development Agreement. The Parties recognize that Developer, in Developer's sole and exclusive discretion, may save the "Silos" depicted in the Specific Plan, and if Developer determines to so save the Silos, then Developer may move the location of the Community Plaza and Community Center Site further south to accommodate the

Silos preservation. City shall complete the improvements to the Community Plaza and the Community Center Site as set forth in the Specific Plan.

(o) Developer shall dedicate an easement to the City, at such relevant Project subdivision map recordation date, and improve at such time as set forth in at such relevant Project subdivision map approval, approximately six and seventy one hundredths (6.7) acres of the Property for use as the "**Quarry Lake Park**," as more particularly set forth in *Exhibit B* to this Development Agreement. Developer shall be obligated to contribute no more than one million six hundred thousand dollars ($1,600,000) for the improvement of the Quarry Lake Park; said $1,600,000 maximum shall include any and all Processing Fees, and/or Inspection Fees. Developer may, in Developer's sole and exclusive discretion, further improve the Quarry Lake Park with additional uses that complement the "**Napa Valley Ruins & Gardens**" (described herein). The $1,600,000 maximum (for the improvement of Quarry Lake Park) shall be considered to be in Calendar Year 2019 dollars, and, commencing in 2020, that amount shall be increased each year by the relevant year's percentage amount set forth in the Construction Cost Index for the San Francisco Region, until such Quarry Lake Park improvements are completed.

(p) Through the parkland dedication and improvement requirements set forth in this Section 2.07 of this Development Agreement, Developer has satisfied all parkland dedication, improvement, and funding requirements of State law, including without limitation, the requirements set forth in the Subdivision Map Act, as amended.

(q) Developer may perform the following actions, in Developer's sole and exclusive discretion:

(1) Build up to that number of market rate residential units approved by the City through the Watson Ranch Specific Plan, through density increases allowed by this Development Agreement, and through density increases allowed by controlling California Density Bonus law (affordable housing/density bonus laws), as may be amended during the Term of this Development Agreement.

(2) Start construction of the first one-hundred (100) rooms of the Hotel use in Phase 2 of the Napa Valley Ruins & Gardens development, as more specifically set forth in the Specific Plan.

(3) Otherwise develop all or any aspect of the Project approved by City.

(4) Seek and secure an agreement with the American Canyon Fire Protection District regarding future fees, taxes, and the like.

2.08 Additional City Obligations and Permitted Acts.

(a) This Section 2.08 of this Development Agreement sets forth additional City obligations and permitted acts regarding the Project. As is required of all actions by the Parties under this Development Agreement, City shall take all action necessary or desirous to effect the development of the Project approved by City with Good Faith and Fair and Expeditious Dealing, including without limitation, all actions required under this Section 2.08 of this Development Agreement.

(b) City shall take the following actions:

(1) City shall accept all dedications from Developer required by this Development Agreement, as such time as offered by Developer, as such timing of dedication that is required by this Development Agreement.

(2) City shall charge Developer no more than the cost to City of the actual time City expends on administering, directing, supervising, and/or overseeing Consultants, or others working on the Project, or the invoices from Consultants, or others working on the Project.

(3) City shall secure the dedication of Newell Drive Segment 5 right of way, and any and all other Newell Drive right-of-way land needed (other than that which is the responsibility of Developer) to complete Newell Drive from its existing terminus to Newell Drive's proposed intersection with Green Island Road and State Highway 29.

(4) As an incentive for Developer to complete the Napa Valley Ruins & Gardens and Hotel, and thereby generate sales tax and transient occupancy tax revenues, City agrees to reimburse Developer for a portion of the costs incurred in the development of the Napa Valley Ruins & Gardens and Hotel. Therefore, commencing on the Effective Date of this Development Agreement and continuing uninterrupted until such earlier time as: the day after the Term of this Development Agreement has expired, or that date by which Developer has received from City either forty five million dollars ($45,000,000.00) or that sum resulting from the application of Sections 2.08(b)(4)(C) below (the time period is collectively referred in this Development Agreement as the **"Repayment Period"** and the $45,000,000 or that sum resulting from the application of Sections 2.08(b)(4)(C) below, is referred to as the **"City Contribution"**), City shall do the following:

(A) Pay to Developer (or Developer's assignee) an amount equal to fifty percent (50%) of any and all past, present, and/or future sales tax, and any and all past, present, and/or future transient occupancy tax that City receives, collects and/or otherwise has the ability to secure from the Napa Valley Ruins & Gardens and Hotel uses on the Property ("**Equivalent Total Funds**") for the immediately preceding calendar year (collectively, "**Annual City Payment**").

(B) The Annual City Payment shall be made to Developer on or before March 15 of each year of the Repayment Period. For example, the Equivalent Total Funds received by the City in Calendar Year 2025 would be made as City's 2025 Annual City Payment to Developer on or before March 15 of Calendar Year 2026.

(C) Consistent with the foregoing, in the event the City is able to provide Developer with a dollar-for-dollar reduction (savings) on the Master Backbone Infrastructure related to the Napa Valley Ruins & Gardens and Hotel, then the City may reduce its City Contribution to Developer by such dollar-for-dollar savings on the Napa Valley Ruins & Gardens and Hotel MBI. By way of example only, if City is able to provide Developer with $2 million in MBI reduction (savings) relating to Developer's otherwise

owing Napa Valley Ruins & Gardens and Hotel MBI obligations, then the City Contribution would be reduced by such $2 million.

(5) City guarantees all City services and facilities, such as City wastewater capacity, City water service, and the like, to the Project, and City shall issue "will serve letters" for such City services and facilities as requested by Developer. Developer shall be responsible for the acquisition of permits, approvals, easements, and services required to serve the Project from all non-City providers of utilities at Developer's cost. Developer shall also be responsible for coordinating with any non-City providers of utilities to ensure the proper installation and construction of non-City utilities in accordance with the Applicable Law. The provision of all such services shall be subject to City approval, which City approval, like all actions of the Parties under this Development Agreement, shall be subject to the Good Faith and Fair and Expeditious Dealing requirements of this Development Agreement. For example, if any facilities and/or services contemplated in the Watson Specific Plan or related Project Approvals are determined by the City to not be needed in order to properly serve the Project to the standard set forth in the Existing City Law, then any such facilities and/or services shall not be required of Developer and/or the Project.

(c) City and Developer shall cooperate with the formation of municipal Finance Mechanism(s) and shall take related actions as follows:

(1) Developer, in its sole and exclusive discretion, shall have the right from time to time to request City to establish one or more **"Project Finance Mechanism(s)"** (**"Project Finance Mechanism(s)"** shall mean and include the singular **"Project Finance Mechanism"**) to finance Project infrastructure, including without limitation roadway, sewer, water, drainage, fire, utility, and/or park improvements, facilities, the Impact Fees related thereto **("Public Improvements")**, and/or to maintain and operate the Public Improvements and to provide for any public services that may be required in connection with the development of the Project. Upon receipt of such Developer request, City shall implement such requests subject to applicable State and Federal law and other controlling laws.

(A) City's participation in forming any Project Finance Mechanism(s) approved by City (and its operation thereafter) and in issuing any debt in connection therewith **("Project Debt"** and/or **"Bonds")** approved by City shall include all of the usual and customary municipal functions associated with such tasks, including without limitation, the formation and administration of special districts, the issuance of Project Debt, the monitoring and collection of fees, taxes, assessments, and charges such as utility charges, the creation and administration of enterprise funds, the enforcement of debt obligations, and other functions or duties authorized or required by the laws, regulations, or customs relating to such tasks.

(B) There shall be no limitation on the number or kinds of Project Finance Mechanism(s) used on the Project/Property. Within any individual Project Finance Mechanism, City shall allow apportionment between funding construction of infrastructure and funding on-going maintenance and operation. Additionally, City shall specify that any and all apportionments may be based on land uses rather than benefits

received, so that such apportionment can consider and take into account market acceptance, feasibility, and affordability.

(C) Establishing any Project Finance Mechanism(s) to finance the construction, operation or maintenance of Public Improvements, the payment of Impact Fees and/or Project Debt shall be initiated upon the request of Developer in connection with the development of any phase of the Project, or by City in cooperation with Developer. In such regard, Developer shall submit to City its phasing plan for any facilities to be financed, including without limitation, the priority and financing needs related to such Public Improvements and the type of Project Finance Mechanism(s) Developer desires, and phases and Bond issuances related thereto, which Developer elects to use for specified purposes at the earliest possible time.

(2) Nothing in this Section shall be construed to limit the discussion and evaluation of Project Finance Mechanism(s) solely to **"Mello-Roos Community Facilities Districts"** (also referred to in this Development Agreement as **"CFDs"**), which are entities formed pursuant to Government Code 53313.5 (Mello-Roos Act) for the purposes of financing all or a portion of the cost of certain Public Improvements and/or services utilizing a **"Rate and Method of Apportionment of Special Taxes"** (also referred to in this Development Agreement as **"RMA"**).

(3) For instance, City shall evaluate the formation of one or more entities known as **Assessment Districts** (also referred to in this Development Agreement as **"ADs"**) formed pursuant to applicable law (including but not limited to: the Municipal Improvement Act of 1913 (Streets and Highway Code section 10000 et seq.) ("1913 Act"), Landscape and Lighting Act of 1972 (Streets and Highway Code section 22500 et seq.) ("1972 Act") Benefit Assessment Act of 1982 (Government Code section 54703 et seq.) ("1982 Act") Property and Business Improvement District Law of 1994 (Streets and Highway Code section 36600 et seq.) ("PBID")) for the purposes of financing all or a portion of the cost of certain Public Improvements and/or services utilizing a discrete methodology known as an **"Engineer's Report"** to assess amounts sufficient to cover the proportional cost of the special benefit that the property owner receives from the improvements or services that are paid for by the special assessment.

(4) The decision to pursue CFDs or ADs to finance the construction of Public Improvements shall remain the Developer's sole and exclusive discretion. Notwithstanding the foregoing, the Developer shall utilize one or more Finance Mechanism(s) (or functionally equivalent annuity thereof) to provide the **"Services CFD Amount"** to the City for the funding of on-going maintenance and operations of Public Improvements as set forth below.

(5) As required by applicable law, 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 Public Improvements to be financed by a CFD. The City and Developer agree that they shall take any and all steps necessary 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 finance the construction or acquisition of Public Improvements to be owned or operated by such other governmental entities.

(6) Developer's request shall be made to the City in written form and shall outline the purposes for which the Project Finance Mechanism(s) and/or Project Debt will be established or issued, the general terms and conditions upon which it will be established or issued, the specific list of Public Improvements, and a proposed timeline for its establishment and/or issuance. In the case of a CFD, said Developer request shall include the RMA, and in the case of other Project Finance Mechanisms, said request shall include the relevant and analogous information as required by applicable law. City's consideration of Developer's request shall be consistent with the requirements of this Development Agreement.

(7) Developer, in Developer's sole and exclusive discretion shall have the right to elect to establish Project Finance Mechanisms through the California Statewide Community Development Authority (CSCDA), the Association of Bay Area Governments (ABAG), and/or any other public and/or quasi-public agencies with authority to form community facilities districts (collectively referred to as **"Alternative Project Finance Mechanism Agency")** and said agencies shall comply with the City's Goals and Policies for CFDs (Resolution 2018-105, and as set forth in this Section). Prior to submitting a Project Finance Mechanism Application to Alternative Project Finance Mechanism Agency, Developer shall cooperate with the City and the City Manager or his designee in facilitating a review of the Project Finance Mechanism Application and to provide the City with such additional information and documentation as is reasonably necessary for the City Manager or his designee to conclude such review within thirty (30) days of receipt of any such Project Finance Mechanism Application. City's review and approval of an application for a CFD shall be limited to ensuring consistency with City Goals and Policies for CFDs (e.g. Resolution 2018-105, etc.) and the requirements set forth in this Section 2.08(c) of this Development Agreement.

(8) As of the Effective Date of this Development Agreement, the effective tax rate for the Property is 1.14%. Developer shall have the right to create a Project Finance Mechanism that increases the Aggregate Tax Burden on the Property to 1.80%. Regardless of the number or kind of Project Finance Mechanism(s) used on the Project/Property, the "Special Tax Rate" established in conjunction with said Project Finance Mechanism(s) shall not exceed sixty-six one-hundredths percent (0.66%) of the estimated sales price of a dwelling unit to be constructed in conjunction with the Project. The sales prices shall be determined in conjunction with an absorption study or appraisal prepared for the CFD at the time of preparation of the RMA (or Engineer's Report).

(9) If the Developer elects to use CFDs or ADs as a Project Finance Mechanism, the City shall not take any action to increase the sum of any special taxes/assessment, property taxes, special taxes for any overlapping CFD, and any other taxes, fees, and charges which are collected by the County of Napa on ad valorem tax bills **("Aggregate Tax Burden")** for the Property within the Project above 1.18% until all CFDs or ADs for a particular Improvement Area have been formed and Bonds issued.

(10) In the event Project Finance Mechanisms are established to finance construction of Public Improvements, Developer shall have the ability to establish an annually increasing Special Tax Rate in an amount increasing no more than 2% per annum and as determined by the formational RMA (or Engineer's Report) for each Improvement Area.

(11) Irrespective of other Project Finance Mechanism or other CFDs (or elements of a Master CFD), a Special Tax Rate (or Special Assessment, as appropriate) shall be developed, committed, and utilized for the funding of on-going maintenance and operations of Public Improvements in the annual amount of $302 per residential dwelling unit ("**Services CFD Amount**"). Moreover, irrespective of the limitation on the duration of levying of Special Taxes, etc. set forth below, said Services CFD Amount shall also be subject to an annual increase of 3.00%, and this amount shall be levied and collected in perpetuity to meet the **"Special Tax Requirement for Services"** – which is a term to be defined in the RMA (or similar).

(12) Based on the phasing plan submitted to the City or Alternative Project Finance Mechanism Agency, the Developer shall have the right to identify the initial and each subsequent phase as a different improvement area of the CFD **("Improvement Area")** under the CFD Act. The City has determined that the Public Improvements benefit the CFD and each Improvement Area as a whole, and, therefore, any of the Public Improvements may be financed in any Improvement Area without regard to the specific benefit to such Improvement Area.

(13) The appraised or assessed value-to-lien ratio for any CFD Bond issue will be three to one (3:1), unless a lesser amount is mutually agreed to by City and Developer. City shall not require Developer or any property owner within the Improvement Area to provide a Letter of Credit or other credit enhancement as security for the payment of special taxes in the CFD.

(14) The term **"Remainder Taxes"** shall mean that, in each, year, as of the day following the Principal Payment Date for an Improvement Area, all 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 of 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 payable in that fiscal year; 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.

(15) 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. The term **"Remainder Taxes Project Account"** means a separate account created by City for the CFD and maintained by City or Alternative Project Finance Mechanism Agency to hold all Remainder Taxes for all of the Improvement Areas of the CFD to be used for financing Public Improvements.

(16) Developer and City contemplate that, within each Improvement Area of the CFD, Public Improvements shall be paid from Remainder Taxes (as defined below) both before and after the issuance of Bonds for such Improvement Area. Accordingly, each RMA (or equivalent formation document thereof) will provide that Remainder Taxes may be used to finance Public Improvements. For each CFD, annually, on the day following each **"Principal**

Payment Date" for such Improvement Area, all **"Remainder Taxes"** for such Improvement Area shall be deposited in the applicable **"Remainder Taxes Project Account."**

(17) Commencing with the issuance of the first series of Bonds of an Improvement Area, continuing through the issuance of the final series of Bonds of the Improvement Area, and then continuing further for a period of fifteen (15) years from the date of the issuance of the final series of Bonds of the Improvement Area, the City or Alternative Project Finance Mechanism Agency shall levy Special Taxes on all Assessor's Parcels pursuant to the RMA or such lesser amount which complies with the Indenture, Fiscal Agent Agreement, Services CFD Amount, or similar. Following the issuance of the first series of Bonds, the priority for allocation of the Special Taxes collected shall be as follows:

(A) First, to fund an amount up to any priority administrative expense requirement, as such term is generally understood;

(B) Second, to pay principal and interest on outstanding Bonds and to replenish the reserve fund to the applicable reserve fund requirement;

(C) Third, to fund all actual Improvement Area administrative expenses in excess of the priority administrative expense requirement; and

(D) Fourth, all remaining amounts shall be deposited in the Remainder Taxes Project Account and disbursed according to the following priority: First, to reimburse prior deposits paid by Developer to City or Alternative Project Finance Mechanism Agency pursuant to any Deposit Agreement and Developer's third-party consultant costs incurred relating to the formation of the CFD(s); Second, to the extent not funded with the proceeds of such series of Bonds, to pay or reimburse Developer for any Public Improvements in the order requested by Developer but subject to the terms of this Acquisition Agreement.

(E) Notwithstanding the above, City (or Alternative Project Finance Mechanism Agency) shall not levy any Special Taxes beyond the term of the Acquisition Agreement, except to fund items in (A) through (C) above.

(18) The City shall take all actions necessary to satisfy Section 53314.9 of the Government Code (or any similar statute subsequently enacted) to use Project Debt proceeds to reimburse Developer for Project Finance Mechanism formation and Project Debt issuance deposits and to advance funding of Public Improvements or costs. Contemporaneously with the formation of the Project Finance Mechanism, Developer and City shall execute an acquisition and funding agreement **("Acquisition Agreement")** that shall apply to the acquisition and construction of the Public Improvements for each and every Improvement Area. The Acquisition Agreement shall be structured so that it is automatically applicable to any financing by special taxes levied in, or CFD Bonds issued for, a subsequent phase annexed into its respective Improvement Area of the CFD, without requiring any modifications to the Acquisition Agreement or any further approvals by the City.

(19) The Acquisition Agreement shall contain an acknowledgement by the City and Developer as to the following:

(A) Developer may be constructing Public Improvements before CFD Bond proceeds and Remainder Taxes (herein, **"Project Finance Mechanism Funding Sources"** or **"Funding Sources"**) that shall be used to acquire them are available.

(B) City shall inspect the Public Improvements and process payment requests even if Funding Sources for the amount of pending payment requests are not then sufficient to satisfy them in full.

(C) Public Improvements may be conveyed to and accepted by the City or other governmental entity before the applicable payment requests are paid in full.

(D) If the City or other governmental entity accepts Public Improvements before the applicable payment requests are paid in full, the unpaid balance shall be paid when sufficient Funding Sources become available, and the Acquisition Agreement shall provide that the applicable payment requests for Public Improvements accepted by the City or other governmental entity may be paid in any number of installments as Funding Sources become available and irrespective of the length of time payment is deferred.

(E) Developer's conveyance or dedication of Public Improvements to the City or other governmental entity before the availability of Funding Sources to acquire the Public Improvements shall not be considered a dedication or gift, nor a waiver of Developer's right to payment of Public Improvements under this Development Agreement or the Acquisition Agreement.

(20) Developer shall provide actual and conspicuous notice to potential homeowners, in a form reasonably acceptable to the City and in compliance with all applicable legal requirements including, without limitation, applicable provisions of Government Code Section 53341. 5) of any and all fees, taxes, and assessments to be charged to any and all purchasers of real property interests in the Project. Developer shall provide potential homeowners with a written and itemized notice of such projected costs and the manner in which they will be charged to the potential homeowner, which notice the potential homeowner shall sign. Developer shall retain a copy of each signed notice in Developer' s files for at least fifteen (15) years following the date of such notice, and shall provide a copy of each such signed notice to the City.

(d) At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other private and public and quasi-public entities in connection with the development of, or the provision of services to, the Property. City shall cooperate with Developer in Good Faith and Fair and Expeditious Dealing, at no cost to City, in Developer's efforts to obtain such permits and approvals and City shall, from time to time (at the request of Developer), use its Good Faith and Fair and Expeditious Dealing to enter into binding agreements with any such other entity as may be necessary to ensure the timely availability of such permits and approvals to Developer, provided such permits and approvals are mutually determined by City and Developer to be reasonably

necessary or desirable and are consistent with Applicable Law. In the event that any such permit or approval as set forth above is not obtained within three (3) months from the date application is deemed complete by the appropriate entity, and such circumstance materially deprives Developer of the ability to proceed with development of the Property or any portion thereof, or materially deprives City of a bargained-for public benefit of this Development Agreement, then, in such case, and at the election of Developer, Developer and City shall meet and confer with the objective of attempting to mutually agree on alternatives, Project Approvals, and/or an amendment to this Development Agreement to allow the development of the Property to proceed with each Party substantially realizing its bargained-for benefit there from.

(e) City and Developer acknowledge and agree that City may from time to time enter into (with Good Faith and Fair and Expeditious Dealing) joint exercise of power agreements or memoranda of understanding with other governmental agencies consistent with and to further the purposes of this Development Agreement.

(f) City and Developer acknowledge and agree that City may enter into a Development Agreement with the owners of the Newell Property, and that if such a Development Agreement is entered, the obligations binding the Newell Property by such a Development Agreement shall include that a Project Labor Agreement applying to at least one hundred (100) residential units on the Newell Property shall be entered and executed by the owners of the Newell Property.

(g) City and Developer acknowledge and agree that Developer shall dedicate land to the City and other public agencies, and shall construct roadways, parks, MBI, and other public improvements for public purposes and benefits pursuant to this Development Agreement and the development of the Project in amounts in excess of the Project's impacts and concomitant mitigation obligations, and in excess of what could otherwise be required and/or imposed by City under controlling law. The fair market value of such dedicated lands at the Effective Date is approximately one million ($1,000,000.00) per acre. All of the foregoing benefits provide the consideration for this Development Agreement, and further lead to reimbursements and City Impact Fee payment forgiveness owed to Developer, as set forth in this Development Agreement. Notwithstanding any other provision of this Development Agreement to the contrary, in no event shall the total value of the City Contribution, when combined with all other "public funds" (as defined in California Labor Code section 1720(b)) in the Project exceed the costs of performing the public works of improvement required as a condition of regulatory approval of the Project, recognizing that certain reimbursements and Fees Credits to Developer are in exchange for contributions in excess of Project impacts or mitigation measures or other obligations, or which could otherwise not be required by City under controlling law (including but not limited to available reimbursements for all land contributions, etc.).

2.09 Subsequent Project Conditions of Approval and Agreements.

(a) Applicability. The Parties anticipate that the actions/approvals listed in this Section 2.09 of this Development Agreement will occur after the Approval Date of this Development Agreement and within six (6) months of this Development Agreement's Effective Date.

(b) Project Conditions of Approval and Subdivision Improvement Agreements.

(1) City and Developer shall draft and coordinate **"Conditions of Approval"** to list all of the Conditions of Approval that shall be applicable to the entirety of the Project development, and then shall organize such Conditions of Approval so that City and Developer understand during which Project phase (**"Phase"**) that each such Conditions of Approval applies and therefore must be performed/satisfied. Further, City and Developer shall draft and coordinate such Conditions of Approval for each such Phase to provide applicable timing of performance/satisfaction for each such Conditions of Approval within each specific Phase. For example, within a particular Phase, some Conditions of Approval shall require performance during the term of that Phase's Subdivision Improvement Agreement (**"Phase SIA,"** defined below), yet other Conditions of Approval shall be performed during or after the term of a Phase SIA, but prior to or at the time of Building Permit issuance or Certificate of Occupancy issuance for structures built within the area of such Phase. The Conditions of Approval shall be drafted and organized so that Developer understands within which Phase the particular Conditions of Approval have to be satisfied, and the timing of such performance (e.g., prior to the Final Map, during the term of the Phase SIA, or prior to or at the time of Building Permit/Occupancy Permit issuance, etc.).

(2) Additionally, City and Developer shall draft and coordinate such Conditions of Approval to ensure that all Mitigation Measures relating to the Project (contained in the Project EIR and its Mitigation Monitoring and Reporting Program) are converted into actual Conditions of Approval to the Project Approvals. To coordinate all of these Phases and to ensure that all Conditions of Approval are performed and completed, a list of all such Project Conditions of Approval shall be compiled (the "**Master Conditions List**"). As provided above, the Master Conditions List shall do all of the following:

(A) List, segregate and assign the Conditions of Approval that are to be performed and completed with each Phase or sub-phase.

(B) Provide applicable timing of performance for each such Condition of Approval (i.e., before the filing of the Project Final Map, after the filing of the Project Final Map but during the term of a Phase SIA (defined below), or after the filing of a Project Final Map but during or after the term of a Phase SIA related to such Phase, but prior to or at the time of Certificate of Occupancy issuance for structures built within the area of such Phase).

(3) Additionally, City shall limit any security (e.g., bonding) requirements to only those Public Improvements being constructed and completed within the Phase or sub-phase being pursued by Developer.

(4) Any such Conditions of Approval and/or Master Conditions List shall be considered a Subsequent Approval and shall become part of this Development Agreement's "Applicable Law" once such Conditions of Approval and/or Master Conditions List SIA takes Legal Effect.

(5) The Parties shall adopt a "**Master Subdivision Improvement Agreement**" (also "**Master SIA**"). Such Master Subdivision Improvement Agreement shall set forth the material terms and Conditions of Approval for each and all subsequent Phase Subdivision Improvement Agreements (each a "**Phase SIA**").

(6) Once the Master SIA is adopted by City, having set forth all material terms and the Conditions of Approval, the City may delegate authority to the City Manager, or his/her designee, to execute such subsequent Phase SIAs on behalf of City.

(7) Any such Master SIA and/or Phase SIA shall be considered a Subsequent Approval and shall become part of this Development Agreement's "Applicable Law" once such Master SIA and/or Phase SIA takes Legal Effect.

(c) Assignment Agreements

(1) As set forth in Article 4 of this Development Agreement, any **"Assignment"** (defined in Article 4 of this Development Agreement) shall be memorialized in an **"Assignment Agreement."** A form Assignment Agreement shall be drafted by the Parties capturing and setting forth the requirements of this Development Agreement, including without limitation, the requirements of Article 4 of this Development Agreement. Such Assignment Agreement drafting shall involve the City Attorney and shall secure his/her approval.

(2) Any such Assignment Agreement shall be considered a Subsequent Approval and shall become part of this Development Agreement's "Applicable Law" once such Assignment Agreement takes Legal Effect.

(d) Zero Water Footprint Agreement.

(1) As set forth in Section 2.07 of this Development Agreement, the Parties may choose to negotiate a **"Zero Water Footprint Agreement"** that determines and sets forth the Zero Water Footprint requirements of the Project, as further discussed in Section 2.07 of this Development Agreement.

(2) Any such Zero Water Footprint Agreement shall be considered a Subsequent Approval and shall become part of this Development Agreement's "Applicable Law" once such Zero Water Footprint Agreement takes Legal Effect.

(e) Adobe Lumber Agreement.

(1) The Parties understand that Section 2.07 of this Development Agreement establishes certain obligations regarding Rio Del Mar, and more specifically the portion of Rio Del Mar that abuts the Adobe Lumber property. Therefore, at no cost to Developer, the Parties shall seek to negotiate an agreement with the relevant owner(s) of Adobe Lumber regarding Rio Del Mar, the use of a detention basin on AC-1 Property to hold and detain storm water for the benefit of the Adobe Lumber Property (at no cost to Developer), the provision of utilities for the benefit of the Adobe Lumber Property, and other matters addressed by this Development Agreement, and/or sought by the Parties for inclusion (**"Adobe Lumber Agreement"**).

(2) Any such Adobe Lumber Agreement shall be considered a Subsequent Approval and shall become part of this Development Agreement's "Applicable Law" once such Adobe Lumber Agreement takes Legal Effect.

ARTICLE 3
AMENDMENT OF DEVELOPMENT AGREEMENT AND SUBSEQUENT APPROVALS

3.01 Amendment of Development Agreement.

(a) This Development Agreement may be amended from time to time in accordance with California Government Code section 65868, only upon the mutual written consent of City and Developer. However, any amendment which relates to the term, permitted uses, density, intensity of use, height and size of proposed buildings, or provisions for reservation and dedication of land shall require a noticed public hearing before the Parties may execute an amendment.

(b) No amendment of this Development Agreement shall be required in connection with the issuance of any Subsequent Approval or any New City Law Developer elects to be subject to pursuant to Section 2.04(e). Any Subsequent Approval or New City Law Developer elects to be subject to pursuant to Section 2.04(e) shall be vested into by Developer and City as if set forth in full when the Subsequent Approval satisfies the requirements of Section 2.01(a)(4) of this Development Agreement. City shall not amend or issue any Subsequent Approval unless Developer requests such an amendment or issuance from City.

3.02 Amendments of Project Approvals.

(a) The Project Approvals may, from time to time, be amended or modified.

(b) Upon the written request of Developer, the City Manager ("**City Manager**") shall determine:

(1) Whether the requested amendment or modification is minor; and

(2) Whether the requested amendment or modification is consistent with this Development Agreement. If the City Manager finds that the amendment is both minor and consistent with this Development Agreement, the amendment shall be determined to be an "**Administrative Amendment**," and the City Manager shall approve the Administrative Amendment without notice and public hearing.

(c) Any request by Developer for an amendment that is determined by the City Manager not to be an Administrative Amendment shall be subject to review, consideration, and action pursuant to the Applicable Law.

3.03 Operating Memoranda.

(a) The provisions of this Development Agreement and the Project Approvals require Good Faith and Fair and Expeditious Dealing between City and Developer. The Parties acknowledge that, from time to time, clarifications of the provisions of this Development Agreement

and/or the Project Approvals may be necessary with respect to the details of performance of City and/or Developer. During the Term of this Development Agreement, if the Parties agree that such clarifications are necessary and appropriate, the Parties shall effectuate such clarifications through **"Operating Memoranda,"** which Operating Memoranda shall be a written memorial of such clarification, shall be signed by an authorized representative of each of the Parties (the City Manager shall be considered a representative authorized to execute such Operating Memoranda on behalf of City), and, which, after such Parties' execution, shall be attached as an addenda to this Development Agreement and become a part of the Applicable Law.

(b) No such Operating Memoranda shall constitute an amendment to this Development Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 3.03 or whether the requested clarification is of such a character as to constitute an amendment pursuant to Sections 3.01 and/or 3.02 above.

ARTICLE 4
COVENANTS RUN WITH THE LAND; ASSIGNMENTS; DEFAULT, REMEDIES, TERMINATION

4.01 Covenants Run with the Land; Assignments; Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Development Agreement, which failure continues uncured for a period of thirty (30) 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 Development 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 30-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 30-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 failure or default, the Party charged shall not be considered in default for purposes of this Development 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 this Development Agreement as provided herein.

(d) City shall continue to process in good faith development applications during any cure period but need not approve any such application if it relates to a development 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 Development 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 Development Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by the other Party to this Development Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder or to seek specific performance, or to seek damages where suffered. Nothing in this section shall be deemed to limit either Party's rights under the Tort Claims Act. For purposes of instituting a legal action under this Development Agreement, any City Council determination under this Development Agreement shall be deemed a final agency action.

(g) This Development Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants, obligations, and/or other benefits and burdens (collectively, "**Benefits and Burdens**") run with the Property and shall be binding upon and inure to the Property, and/or any lot, parcel or portion thereof (collectively **"Portion"**) and to the benefit and burden of the Parties, and their respective heirs, successors, assigns, devisees, administrators, representatives, lessees, and all other persons or entities (by merger, consolidation or otherwise) acquiring the Property and/or any Portion, whether by sale, operation of law or in any manner whatsoever (collectively, **"Assignee"**).

(h) The following shall apply relative to Developer and an Assignee:

(1) Developer shall have the right to sell, assign, or transfer this Development Agreement (with all or any part of its Benefits and Burdens) (collectively, **"Assignment"**) to any Assignee acquiring a legal and/or equitable interest in the Property and/or any Portion thereof (collectively, **"Assignment Property"**). An Assignment shall mean and include without limitation Developer assigning certain rights, title, and interests in this Development Agreement to an Assignee and its Assignment Property, while Developer retains certain obligations under this Development Agreement regarding the Assignment Property, and Developer assigning certain obligations under this Development Agreement to an Assignee regarding the Assignment Property, while Developer retains certain rights, title, and interests in this Development Agreement regarding the Assignment Property, and/or any combination of the forgoing. The below-described **"Assignment Agreement"** shall set forth such respective rights and obligations assigned and retained.

(2) Developer shall provide City with written notice of any such Assignment of all or a Portion of the Property (i.e., the Assignment Property) no later than thirty (30) days prior to such Assignment, unless the Parties agree to a shorter time period. Developer shall provide the name, address, telephone numbers and other relevant contact information of the new Assignee. Failure to provide such written notice shall not be grounds for a Notice of Default. Any proposed Assignment shall be subject to the express written consent of City, which consent shall be subject to this Development Agreement's requirements of Good Faith and Fair and Expeditious dealing. City's consideration of the proposed Assignment shall be limited to the proposed Assignee's experience, financial resources and access to credit and capability to successfully carry out the development of the Portion of the Project (Property) to completion that is the topic of the proposed Assignment. Any Assignment involving AC-1 possessing an

ownership interest in the Assignee shall be approved by City. Any Assignment involving Brookfield Homes possessing an ownership interest in the Assignee shall be approved by City. An Assignment to an Assignee shall be memorialized in an **"Assignment Agreement,"** as addressed in Section 2.09 of this Development Agreement. Any reference to an "Assignment" in this Development Agreement shall assume the approval and execution of an Assignment Agreement by the Parties relative to such Assignment.

(3) Upon approval of such Assignment Agreement form conformance by the City Attorney and execution of such Assignment Agreement, such Assignment Agreement shall control the benefits, burdens, and other terms and conditions of this Development Agreement with respect to both the Assignment Property that is the subject of said Assignment Agreement, and to the Property and/or Portion that is not the subject of said Assignment Agreement. For example, an Assignment Agreement that includes the express written assumption by the Assignee of Developer's obligations under this Development Agreement shall release Developer from such obligations to the extent set forth in such Assignment Agreement, but shall not affect the Benefits and Burdens of other Portions of the Property not the subject of such Assignment Agreement.

(4) Upon an Assignment, a default by any Assignee regarding any such Assignment shall only affect that Portion of the Property so assigned to such Assignee (i.e., the Assignment Property) and shall not cancel or diminish in any way Developer's rights hereunder with respect to the Property or Portion not assigned to such Assignee. Therefore, a default by any Assignee ("**Defaulting Assignee**") shall only affect the Assignment Property owned by such Defaulting Assignee, shall not be considered a default by Developer or any other Assignee who is not the Defaulting Assignee, shall not cancel or diminish in any way Developer's or any other non-defaulting Assignee's Benefits and Burdens rights hereunder, and otherwise shall not be considered a default by Developer or other Assignees who are not the Defaulting Assignee.

(5) Any and all Assignee(s) shall be responsible for the reporting and Annual Review requirements of this Development Agreement relating to the Portion of the Property owned by such Assignee. Additionally, any amendment to this Development Agreement between City and Assignee shall only affect the Portion of the Property controlled by such Assignee.

4.02 Annual Review.

(a) Commencing July 1st of calendar year 2020, and for each July 1st thereafter during the Term of this Development Agreement, City shall initiate the **"Annual Review"** by written notice to Developer. Upon receipt of such written notice, Developer shall furnish to City, by June 1st of that same calendar, a report demonstrating good faith compliance by Developer with the terms of this Development Agreement.

(b) Following any such Annual Review, if Developer is determined to be in good faith compliance with the terms of this Development Agreement, City shall furnish Developer, upon Developer's request, a certification of compliance in recordable form.

(c) Following any such Annual Review, if Developer is determined to not be in good faith compliance with the terms of this Development Agreement, City shall furnish to

Developer a notice of noncompliance, which shall be deemed a notice of default and shall commence the cure period set forth in Section 4.01 of this Development Agreement (above).

(d) If City fails to notify Developer in writing (following the date the Review meeting is to be held) of the City's determination as to compliance or noncompliance with the terms of this Development Agreement, such failure shall be deemed an approval by City of Developer's current compliance with the terms of this Development Agreement.

(e) In addition to the Annual Review provided for in this Section 4.02, City may investigate or evaluate from time to time during the course of any given year, and regardless of whether such investigation or evaluation takes place as part of the Annual Review, any subject matter that is properly the subject of an Annual Review.

4.03 Force Majeure Delay, Extension of Times of Performance.

(a) In addition to specific provisions of this Development Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities other than City, its departments, agencies, boards and commissions, enactment of conflicting State or Federal laws or regulations, or litigation - including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Development Agreement whether instituted by Developer, City, or any other person or entity (each a "**Force Majeure Event**").

(b) Either Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time for performance shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, either Party may take action as permitted under this Development Agreement.

(c) Upon mutual agreement of the Parties in writing, the Term of this Development Agreement shall be extended by that time period that the Parties mutually agree to be the length of the time delay caused by the Force Majeure Event.

4.04 Legal Actions.

(a) In the event of any administrative, legal, or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Development Agreement) challenging the validity of this Development Agreement, any Project Approval, or the sufficiency of any environmental review under CEQA during the Term of this Development Agreement ("**Third-Party Challenge**"), this Section 4.04 shall apply.

(b) The Parties shall mutually cooperate with each regarding such other in the defense of any such Third-Party Challenge and shall discuss and determine how to fund the defense

against such Third-Party Challenge. City shall tender the complete defense of any such Third-Party Challenge to Developer ("**Tender**"), and upon acceptance of such Tender by Developer, Developer shall control all aspects of the defense. If City wishes to assist Developer when Developer has accepted the Tender, City may do so, and Developer shall coordinate with City in such regard.

(c) If any part of this Development Agreement (including, without limitation, any part of the exhibits and attachments thereto) or any Project Approval is held by a court of competent jurisdiction to be invalid, all of the following shall apply:

(1) City shall use its best efforts to sustain and/or re-enact that part of this Development Agreement and/or Project Approval.

(2) City shall take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Development Agreement, and then adopting or re-enacting such part of this Development Agreement and/or Project Approval as necessary or desirable to permit execution of this Development Agreement and/or Project Approval.

(d) If despite such efforts such part of this Development Agreement and/or Project Approval cannot be cured and/or re-enacted or re-adopted, and such invalidity or unenforceability would have a material adverse impact on the Developer, by depriving Developer of a material benefit of this Development Agreement, then Developer may terminate this Development Agreement by providing written notice thereof to the City, and upon such termination, Developer shall no longer be subject to the benefits and burdens of this Development Agreement.

(e) If any term or provision of this Development Agreement, or the application of any term or provision of this Development Agreement to a specific situation, is otherwise found to be invalid, void, or unenforceable, the remaining terms and provisions of this Development Agreement, or the application of this Development Agreement to other situations, shall continue in full force and effect. However, again, if such invalidity or unenforceability would have a material adverse impact on the Developer, by depriving Developer of a material benefit of this Development Agreement, then Developer may terminate this Development Agreement by providing written notice thereof to the City, and upon such termination, Developer shall no longer be subject to the benefits and burdens of this Development Agreement.

4.05 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Development Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) This Development Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) Such a written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within thirty (30) days following the receipt thereof, unless the Party in order to determine the appropriateness of the Estoppel Certificate, shall promptly commence and proceed to conclude a review pursuant to the provisions of Section 4.04 hereof. The Parties acknowledge that an Estoppel Certificate hereunder may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute for City.

(c) If a Party fails to deliver an Estoppel Certificate within the thirty (30) day period, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Development Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence upon the Party which fails to deliver such certificate that this Development Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

ARTICLE 5
MORTGAGE RIGHTS AND OBLIGATIONS

5.01 Encumbrances on the Property.

(a) The Parties hereto agree that this Development Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. City acknowledges that Mortgagee may require certain modifications to this Development Agreement, and City shall, upon request, from time to time to meet with Developer and/or representatives of any such Mortgagee shall negotiate in good faith any such request for modification or subordination.

(b) City shall not unreasonably withhold its consent to any such requested modification to this Development Agreement provided such modifications are processed in accordance with the procedures for amendment of this Development Agreement.

(c) Any Mortgagee, and/or its successors and assigns, that comes into possession of the Property and/or any portion thereof shall be entitled to the rights, privileges and obligations set forth in this Development Agreement regarding such Property and/or any portion thereof, including, without limitation, the right to cure any and all Defaults.

5.02 Obligations and Rights of Mortgage Lenders.

(a) The non-possessory holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Development Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Development Agreement which pertain to the Property or such portion thereof in which it holds an interest.

(b) Any such holder who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any and all applicable obligations of this Development Agreement (including without limitation pro rata claims for payments or charges against the Property, or such portion thereof), which accrue prior to the time such holder comes into possession.

(c) Nothing in this Development Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses, and improvements provided for or authorized by this Development Agreement, subject to all of the terms and conditions of this Development Agreement.

ARTICLE 6
GENERAL PROVISIONS

6.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to this "Development Agreement" shall include the Preamble, Recitals, and all of the exhibits of this Development Agreement.

(b) Governing Law and Attorneys' Fees. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. Developer acknowledges and agrees that City has approved and entered into this Development Agreement in the sole exercise of their respective discretion and that the standard of review of the validity and meaning of this Development Agreement shall be that accorded legislative acts of City. Should any legal action be brought by a Party for breach of this Development Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(c) Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Property is a separately undertaken private development. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Development Agreement. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the Developers of such private Property.

(d) Construction. As used in this Development Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(e) Notices. All notices, demands, or other communications which this Development Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

If to City:
City of American Canyon

Attention: City Manager
4381 Broadway Street, Suite 201
American Canyon, CA 94503
(707) 647-4360

With a Copy To:
City of American Canyon
Attention: City Attorney
400 Lambert Avenue
Palo Alto, CA 94306
(650) 843-8080

If to Developer:
Terrence McGrath
American Canyon 1, LLC
c/o McGrath Properties, Inc.
1001 42nd Street, Suite 200
Oakland, CA 94608
(510) 273-2010

Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to such new address. Any notice given to the Developer as required by this Development Agreement shall also be given to all other signatory Parties hereto and any lender which requests that such notice be provided. Any signatory Party or lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Development Agreement.

(f) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Development Agreement in the Official Records of the Recorder's Office of Napa County. Developer shall be responsible for all recordation fees, if any.

(g) Jurisdiction and Venue. The interpretation, validity, and enforcement of this Development Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Development Agreement shall be filed and heard in a court of competent jurisdiction in Napa County.

(h) Waivers. Waiver of a breach or default under this Development Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Development Agreement.

(i) Entire Agreement. This Development Agreement may be executed in multiple originals, each of which is deemed to be an original. This Development Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(j) Signatures. The individuals executing this Development Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Development Agreement on behalf of the respective legal entities of Developer and

City. This Development Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, as set forth in this Development Agreement.

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

Exhibit A	*Property Depiction and Legal Description*
Exhibit B	*Dedications; Master Backbone Infrastructure*
Exhibit C	*City Fees*
Exhibit D	*City Resolution No. 2018-105*

IN WITNESS WHEREOF, City and Developer have executed this Development Agreement as of the date first hereinabove written.

"City":

CITY OF AMERICAN CANYON,
a municipal corporation

By: _____
Leon Garcia, Mayor

ATTEST:

By: _____
Suellen Johnston, City Clerk

APPROVED AS TO FORM:

By: _____
William D. Ross, City Attorney

"Developer":

"AC-1"

AMERICAN CANYON I, LLC, A DELAWARE LIMITED LIABILITY COMPANY

By: _____
Name: Terrence McGrath
Its: Managing Member

By: _____
Name: John "Jack" Jaeger
Its: Managing Member
AKA John Jaeger

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

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

State of California
County of Napa }

On July 19, 2019 before me, Cherri S. Walton, Notary Public.
Date *Here Insert Name and Title of the Officer*

personally appeared Leon Garcia
Name(s) of Signer(s)

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

CHERRI S. WALTON
Notary Public - California
Napa County
Commission # 2263305
My Comm. Expires Oct 22, 2022

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 _____
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

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

Description of Attached Document
Title or Type of Document: Development Agreement AC-1 Property
Document Date: July 18, 2019 Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

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

ACKNOWLEDGMENT

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

State of California
County of San Diego)

On July 17, 2019 before me, Sandra M. Quinn
(insert name and title of the officer)

personally appeared John Jaeger,
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.

SANDRA M. QUINN
Notary Public – California
San Diego County
Commission # 2222926
My Comm. Expires Nov 23, 2021

Signature Sandra M. Quinn (Seal)

ALL-PURPOSE ACKNOWLEDGEMENT

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 Alameda

On July 16, 2019, before me, J. Scott, Notary Public,

personally appeared Terrence McGrath

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 State of California that the foregoing paragraph is true and correct.

NCC1 J. SCOTT Commission No. 2211510 NOTARY PUBLIC-CALIFORNIA ALAMEDA COUNTY My Comm Expires SEPTEMBER 22, 2021 NCC1

WITNESS my hand and official seal.

SIGNATURE J. Scott

PLACE NOTARY SEAL ABOVE

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of attached document

Title or type of document:
Development Agreement / Between City of American Canyon and American Canyon I LLC

Document Date: 07/16/2019 Number of Pages: 76

Signer(s) Other than Named Above: —

Table of Contents

Exhibit A

Property Depiction and Legal Description

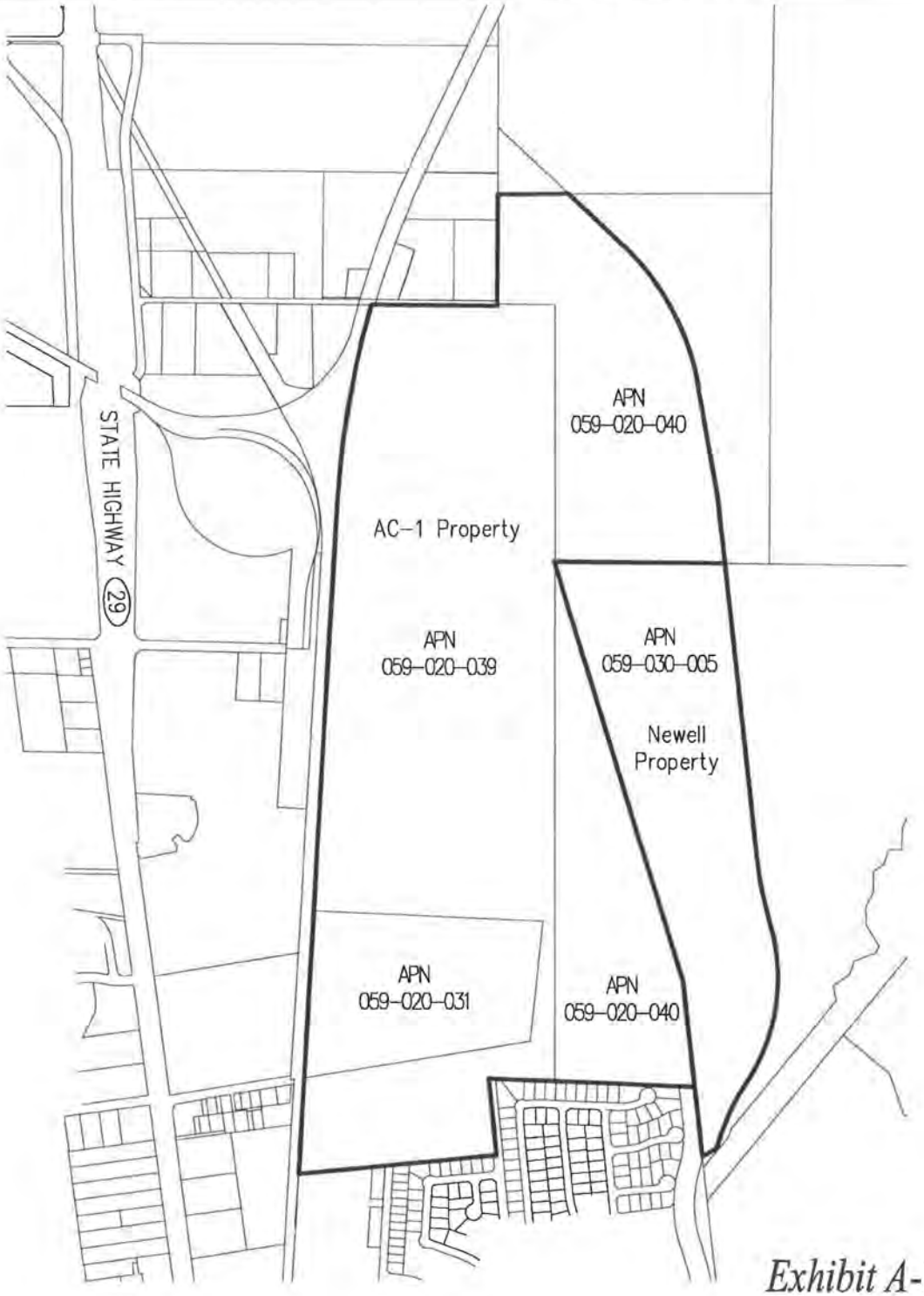

Exhibit A-1

AC-1 & Newell Properties

Watson Ranch

CITY OF AMERICAN CANYON NAPA COUNTY CALIFORNIA

DATE: MAY 30, 2019 SCALE: 1"=1000'

AC-1 Property:

APN 059-020-031
APN 059-020-039
APN 059-020-040

Newell Property:

APN 059-030-005

cbg
SAN RAMON (925) 866-0322
SACRAMENTO (916) 375-1877
WWW.CBANDG.COM
CIVIL ENGINEERS ▪ SURVEYORS ▪ PLANNERS

LEGAL DESCRIPTION

The land referred to in this report is situated in the City of American Canyon, County of Napa, State of California, and is described as follows:

TRACT ONE:
PARCEL ONE:
Being all of Tract Two, as said Tract Two is described in that certain Grant Deed to Jaeger-Basalt LLC, recorded January 23, 2004, in Document No. 2004-0002720 of Official Records, in the office of the County Recorder of Napa County and more particularly described as follows:

Beginning at the intersection of the eastern line of the Southern Pacific Railroad right of way with the northeast extension of the monumented centerline of South Napa Junction Road as said road is shown on Map No. 2486 entitled, "Parcel Map of a portion of the lands of S. Mark Taper", recorded February 15, 1974 in Book 5 of Parcel Maps at page 98 in the office of the County Recorder of said Napa County; thence from said intersection, North 80' 04' 36" East 1415.27 feet along said northeast extension to a 3/4" iron pipe and tag, L.S. 3801; thence North 5' 23' 13" East 749.40 feet to a 3/4" iron pipe and tag, L.S. 3801; thence North 87' 57' 35" West 1418.53 feet to said eastern line of the Southern Pacific right of way; thence along said right of way, North 2' 30' 00" East 6.4 chains, more or less, to a stake marked 1 on the west line of the 168.45 acre tract of land conveyed to John Watson by Deed of record in Book P of Deeds, at page 133, said Napa County Records; thence North 80' 14" 00" East 29 chains to a stake marked 2 on the east line of said 168.45 acre tract; thence along said east line, South 17' 25' 00" East 19.36 chains to a stake and South 6' 48' 00" East 2.55 chains to the northeast comer of Lot 17 as said lot is shown on the map entitled, "Map of Bella Vista Ranch", recorded December 13, 1964 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County; thence along the easterly and southerly lines of said Lot 17, South 6' 53' 00" East 7.06 chains and North 88' 23' 00" West 19.25 chains to the southwest comer thereof in the center of Center Street; thence along the center of said street, South 6' 23' 00" East 7.23 chains to the southeast comer of Lot 18 shown on said map of Bella Vista Ranch; thence along the southerly line of said lot, South 84' 04' 00" West 18.52 chains to said eastern right of way line; thence North 2' 34' 00" East 620 feet, more or less, to the point of beginning.

PARCEL TWO:
Being a portion of that certain parcel of land granted to Jamcan, LLC, by deed recorded December 30, 2005, in Document No. 2005-0053462 of Official Records, in the office of the County Recorder of Napa County, more particularly described as follows:

Beginning at the southwestern corner of said parcel of land (2005-0053462);
Thence, from said point of beginning, along the boundary line of said parcel of land, the following nine (9) courses:

North 02°30'00" East 2,166.78 feet,

North 05°15'00" East 264.00 feet,

North 07°30'00" East 132.00 feet,

North 08°45'00" East 132.00 feet,

North 11°45'00" East 612.48 feet,

North 90°00'00" East 784.74 feet,

North 00°00'00" East 33.00 feet,

North 00°26'40" East 660.00 feet, and

North 90°00'00" East 441.43 feet;

Thence, leaving said boundary line, South 46°26'18" East 458.92 feet;

Thence, along the arc of a tangent 1,560.00 foot radius curve to the right, through a central angle of 36°33'14", an arc distance of 995.26 feet;

Thence, South 09°53'04" East 597.78 feet;

Thence, along the arc of a tangent 3,062.00 foot radius curve to the right, through a central angle of 03°53'47", an arc distance of 208.23 feet;

Thence, South 05°59'17" East 312.38 feet to a point on said boundary line;

Thence, along said boundary line, the following three (3) courses:

North 90°00'00" West 1,014.49 feet,

South 17°25'00" East 1,438.14 feet, and

South 80°14'00" West 1,914.00 feet to said point of beginning.

APN: 059-020-039 & -040

TRACT TWO:
Beginning at the intersection of the Eastern line of the Southern Pacific Railroad right of way with the Northeast Extension of the monumented centerline of South Napa Junction Road as said road is shown on map number 2486 entitled "Parcel Map of a portion of the lands of S. Mark Taper", recorded February 15, 1974 and filed in Book 5 of Parcel Maps, at page 98 in the Office of the Napa County Recorder; thence from said intersection, North 80° 04' 36" East 1415.27 feet along said Northeast extension to a 3/4" iron pipe and tag, L.S. 3801; thence North 5° 23' 13" East 749.40 feet to a 3/4" iron pipe and tag, L.S. 3801; thence North 97° 57' 35" West 1418.53 feet to said Eastern line of the Southern Pacific right of way; thence along said right of way, South 2° 34' 36" West 1041.54 feet to the point of beginning.

APN 059-020-031

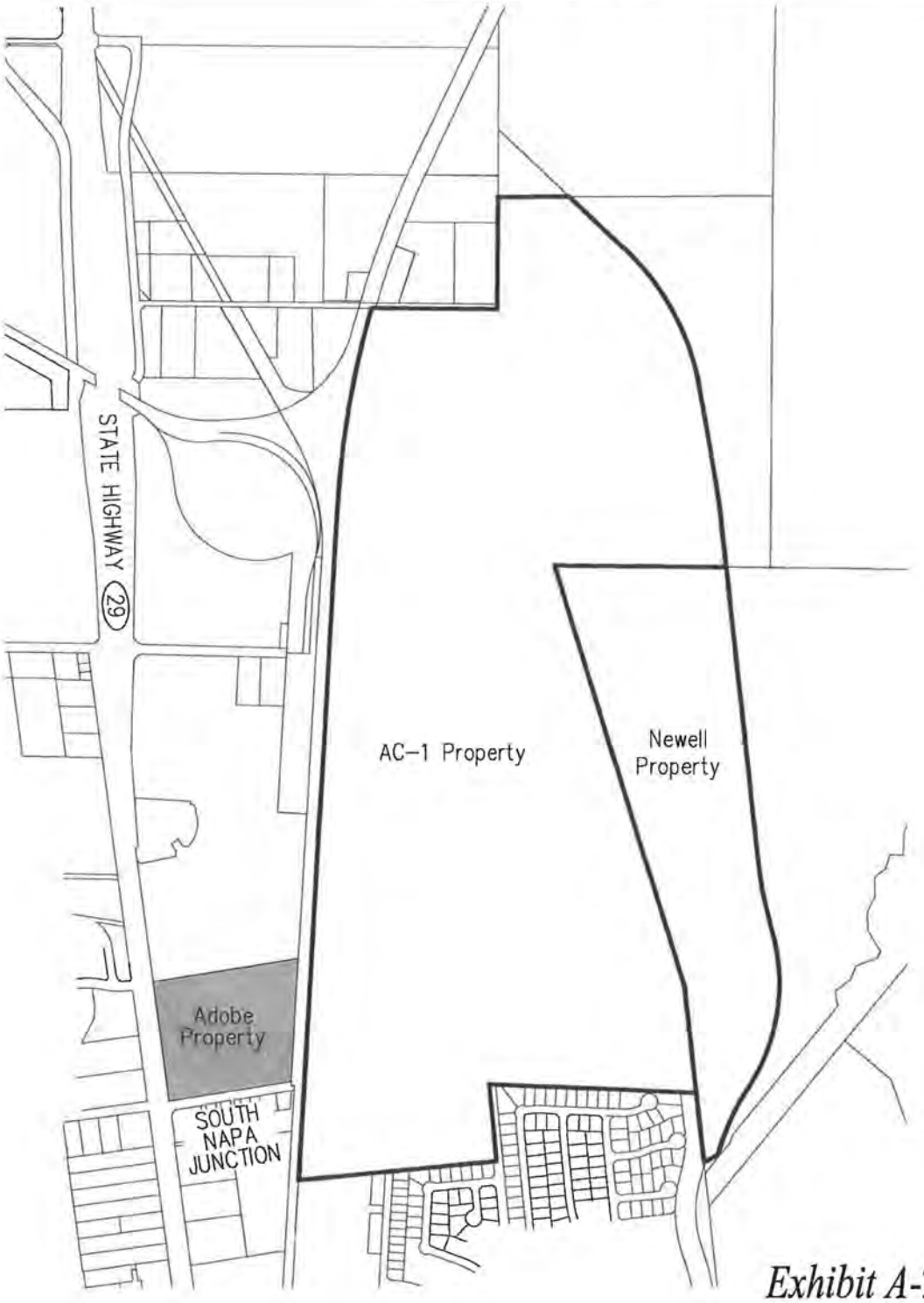

Exhibit A-2

Adobe Property

Watson Ranch

CITY OF AMERICAN CANYON NAPA COUNTY CALIFORNIA

DATE: MAY 30, 2019 SCALE: 1"=1000'

cbg
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Exhibit B

Dedications; Master Backbone Infrastructure

Sub-Topic	Sub-Exhibit B
Newell Drive Roadway Improvements	B-1
Rio Del Mar (At-Grade RRX)	B-2
Rio Del Mar (Grade-Separated RRX)	B-3
SR 29 / Rio Del Mar Tie-In	B-4
South Napa Junction (Grade-Separated RRX)	B-5
SR 29 / South Napa Junction Tie-In	B-6
Loop Road Improvements	B-7
Rolling Hills Drive Improvement	B-8
Parks, Trails and Plaza	B-9

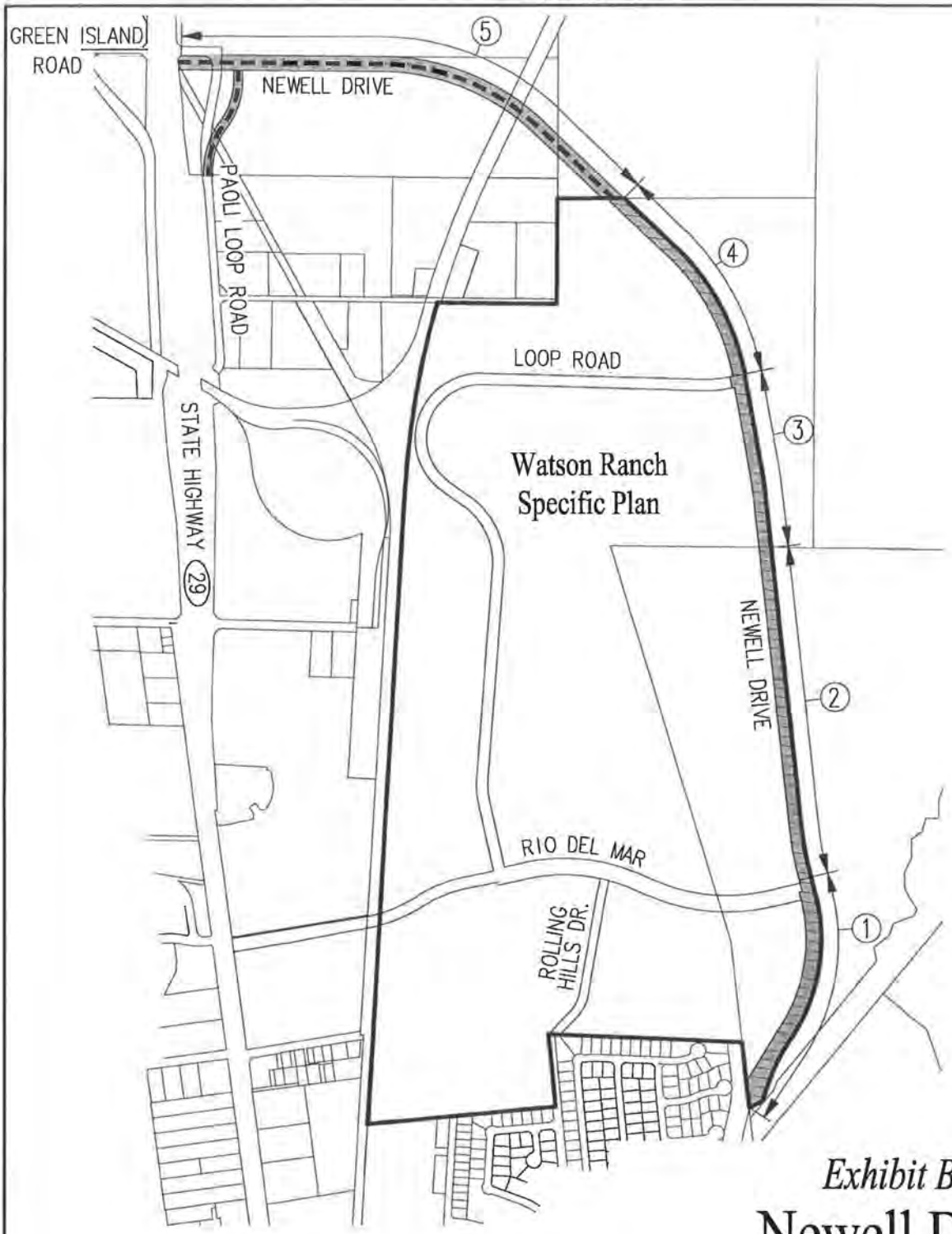

Exhibit B-1

Newell Drive Roadway Improvements

Watson Ranch

CITY OF AMERICAN CANYON NAPA COUNTY CALIFORNIA

DATE: MAY 21, 2019 SCALE: 1"=1000'

Legend

1. NEWELL DRIVE SEGMENT 1
2. NEWELL DRIVE SEGMENT 2
3. NEWELL DRIVE SEGMENT 3
4. NEWELL DRIVE SEGMENT 4
5. NEWELL DRIVE SEGMENT 5

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Exhibit B-2

Rio Del Mar
(At-Grade RRX)

Watson Ranch

CITY OF AMERICAN CANYON NAPA COUNTY CALIFORNIA

DATE: MAY 21, 2019 SCALE: 1"=1000'

Legend

1. AT-GRADE RIO DEL MAR SEGMENT 1
2. AT-GRADE RIO DEL MAR SEGMENT 2

AT-GRADE RIO DEL MAR RRX SEGMENT

3. AT-GRADE RIO DEL MAR SEGMENT 3
4. AT-GRADE RIO DEL MAR SEGMENT 4
5. AT-GRADE RIO DEL MAR SEGMENT 5

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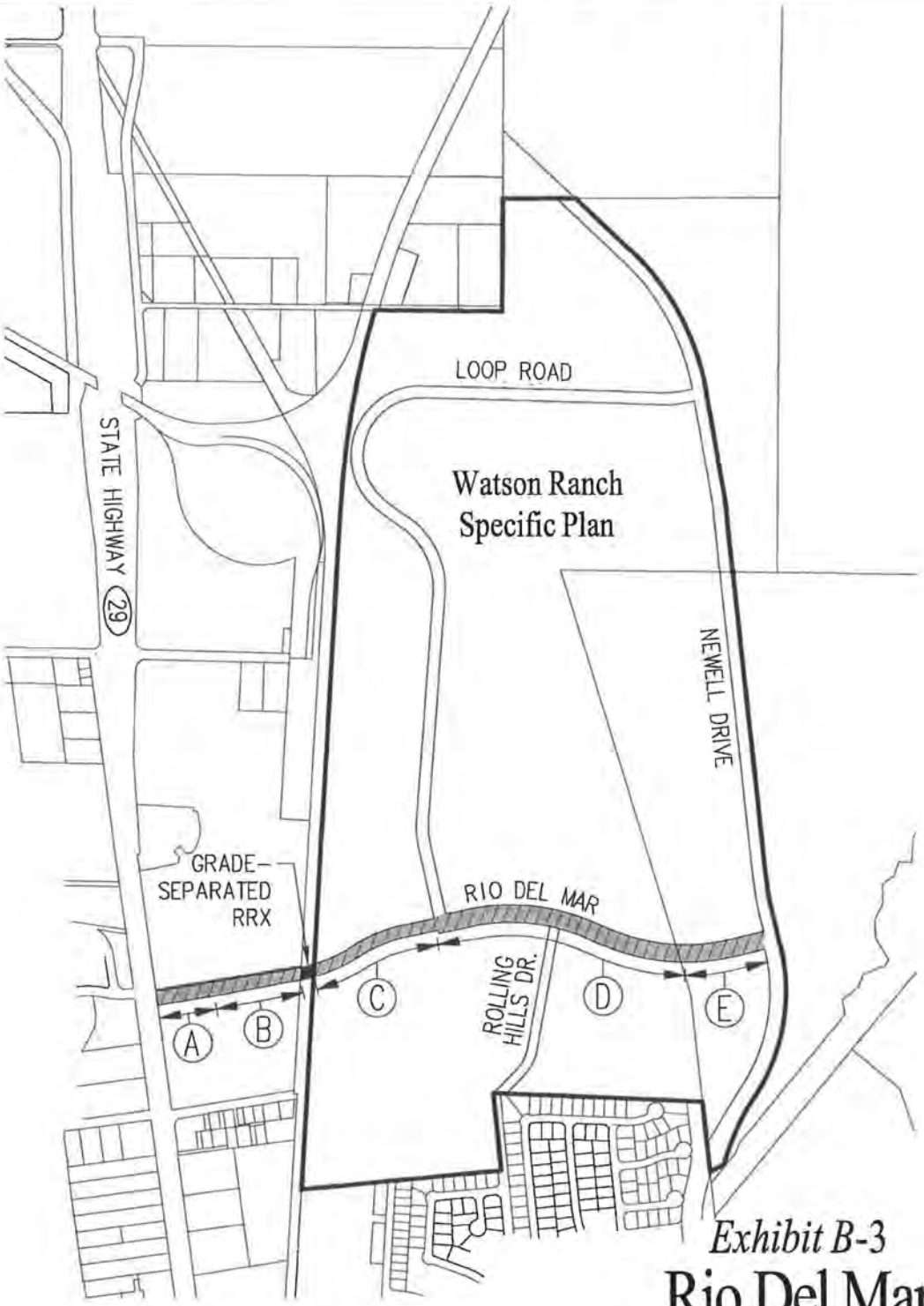

Exhibit B-3

Rio Del Mar
(Grade-Separated RRX)

Watson Ranch

CITY OF AMERICAN CANYON NAPA COUNTY CALIFORNIA

DATE: MAY 21, 2019 SCALE: 1"=1000'

Legend

- (A) GRADE-SEPARATED RIO DEL MAR SEGMENT A
- (B) GRADE-SEPARATED RIO DEL MAR SEGMENT B
- GRADE-SEPARATED RIO DEL MAR RRX SEGMENT
- (C) GRADE-SEPARATED RIO DEL MAR SEGMENT C
- (D) GRADE-SEPARATED RIO DEL MAR SEGMENT D
- (E) GRADE-SEPARATED RIO DEL MAR SEGMENT E

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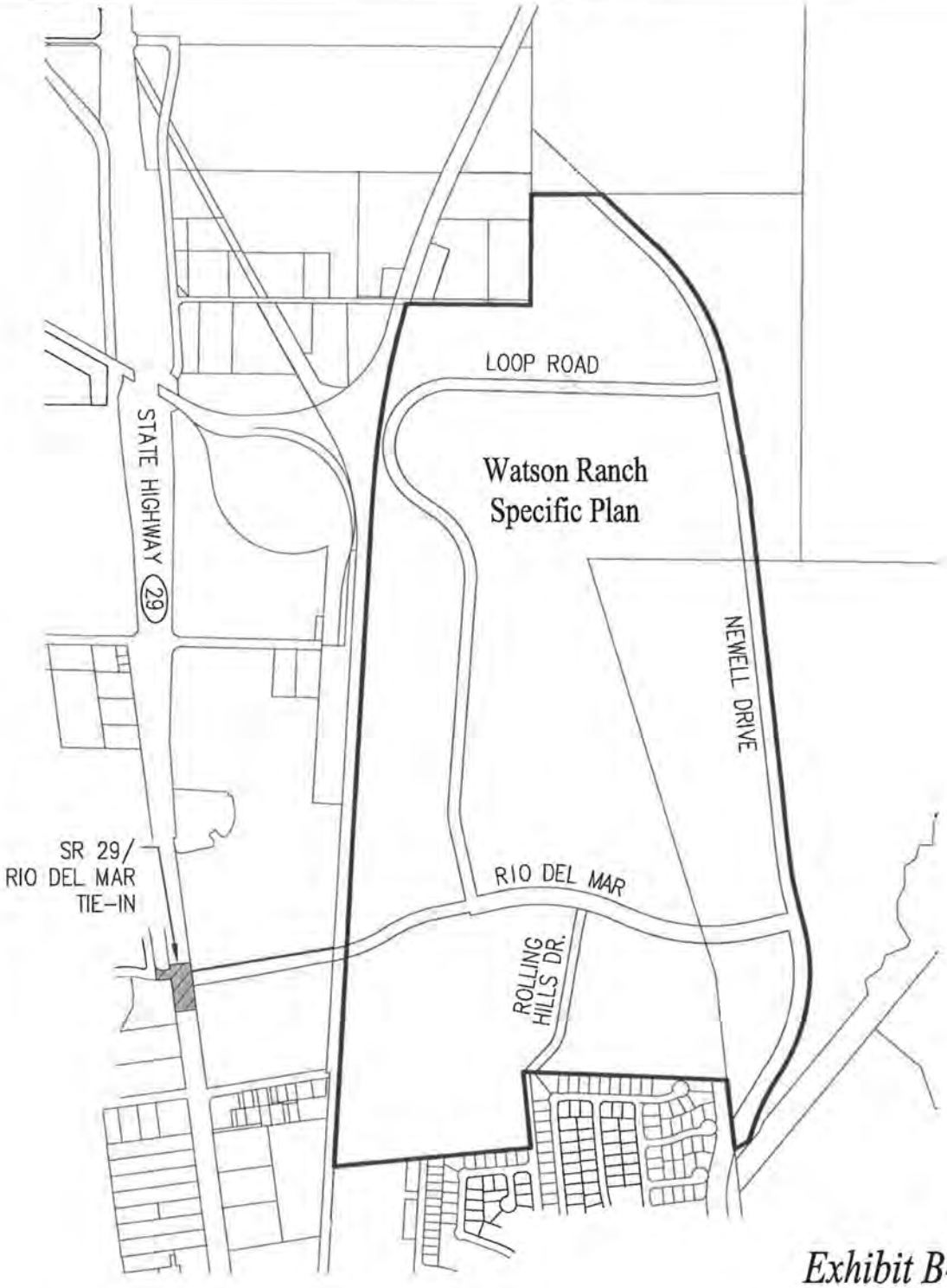

Exhibit B-4

SR 29 / Rio Del Mar Tie-in

Watson Ranch

CITY OF AMERICAN CANYON NAPA COUNTY CALIFORNIA

DATE: MAY 21, 2019 SCALE: 1"=1000'

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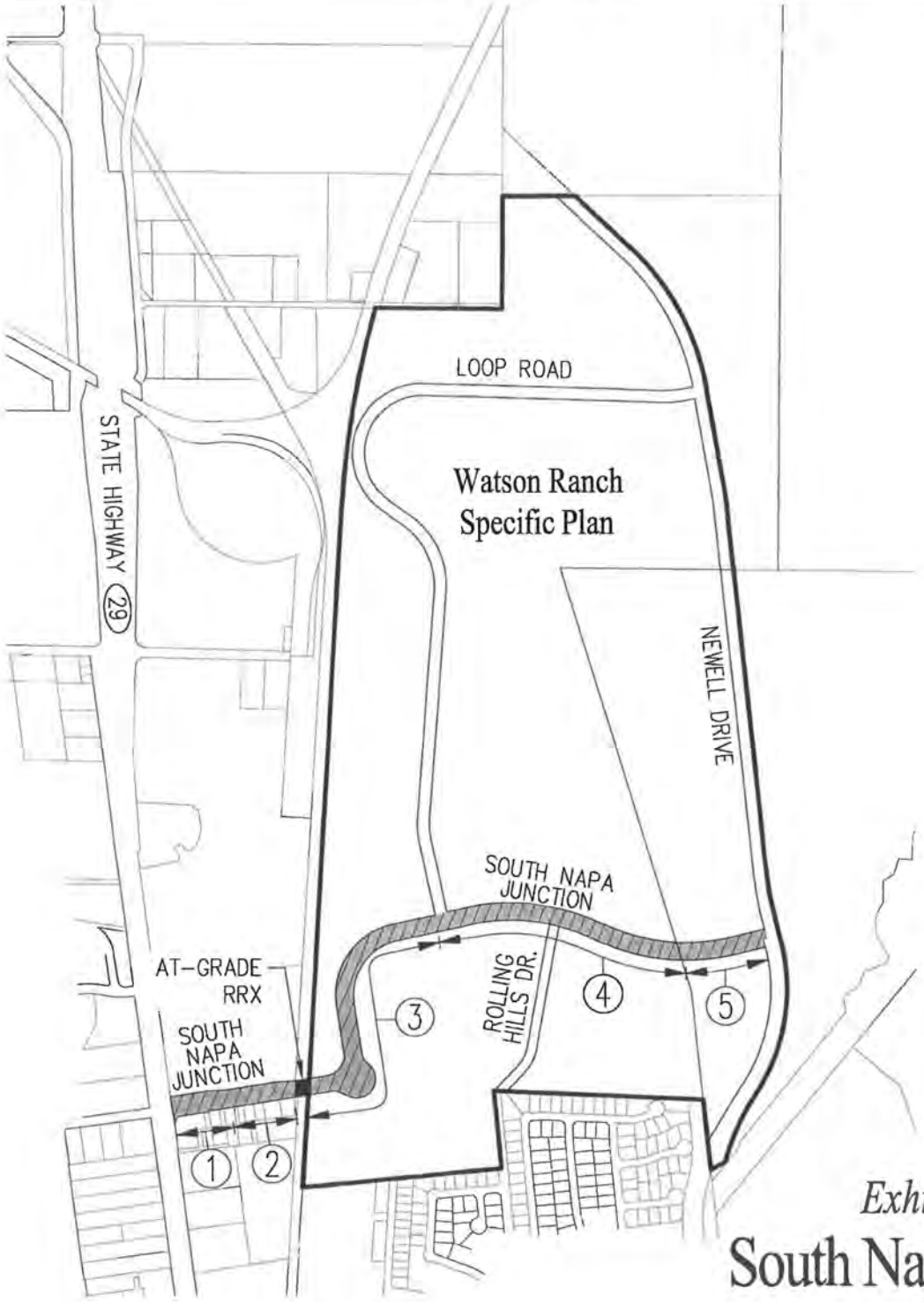

Exhibit B-5

South Napa Junction

(At-Grade RRX)

Watson Ranch

CITY OF AMERICAN CANYON NAPA COUNTY CALIFORNIA

DATE: MAY 21, 2019 SCALE: 1"=1000'

Legend

1. AT-GRADE SOUTH NAPA JUNCTION SEGMENT 1
2. AT-GRADE SOUTH NAPA JUNCTION SEGMENT 2

AT-GRADE SOUTH NAPA JUNCTION RRX SEGMENT

3. AT-GRADE SOUTH NAPA JUNCTION SEGMENT 3
4. AT-GRADE SOUTH NAPA JUNCTION SEGMENT 4
5. AT-GRADE SOUTH NAPA JUNCTION SEGMENT 5

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Exhibit B-6

SR 29 / South Napa Junction Tie-In

Watson Ranch

CITY OF AMERICAN CANYON NAPA COUNTY CALIFORNIA

DATE: MAY 21, 2019 SCALE: 1"=1000'

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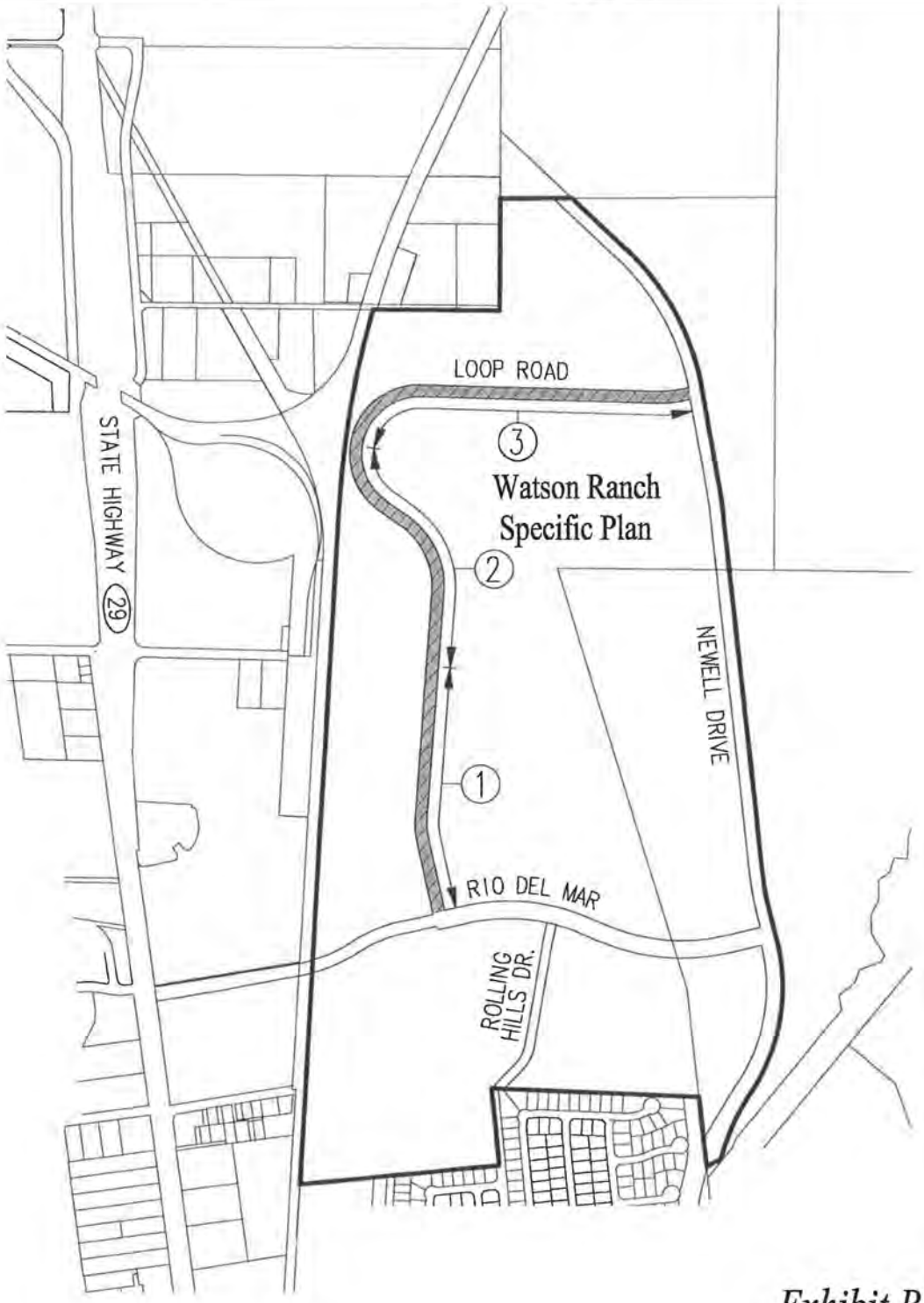

Exhibit B-7

Loop Road Improvements

Watson Ranch

CITY OF AMERICAN CANYON NAPA COUNTY CALIFORNIA

DATE: MAY 21, 2019 SCALE: 1"=1000'

Legend

1. LOOP ROAD SEGMENT 1
2. LOOP ROAD SEGMENT 2
3. LOOP ROAD SEGMENT 3

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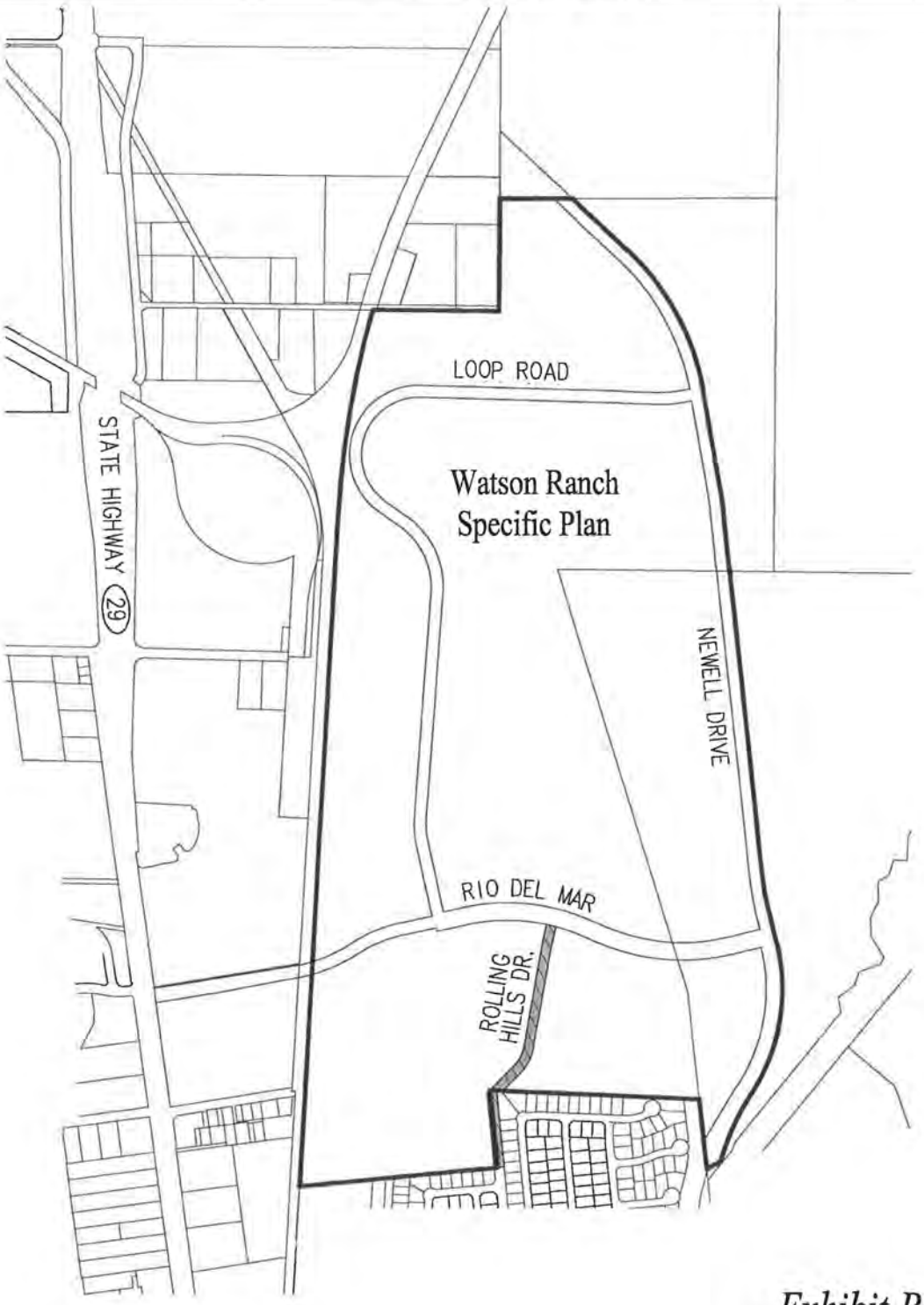

Exhibit B-8

Rolling Hills Drive Improvements

Watson Ranch

CITY OF AMERICAN CANYON NAPA COUNTY CALIFORNIA

DATE: MAY 21, 2019 SCALE: 1"=1000'

Legend

ROLLING HILLS DRIVE IMPROVEMENTS

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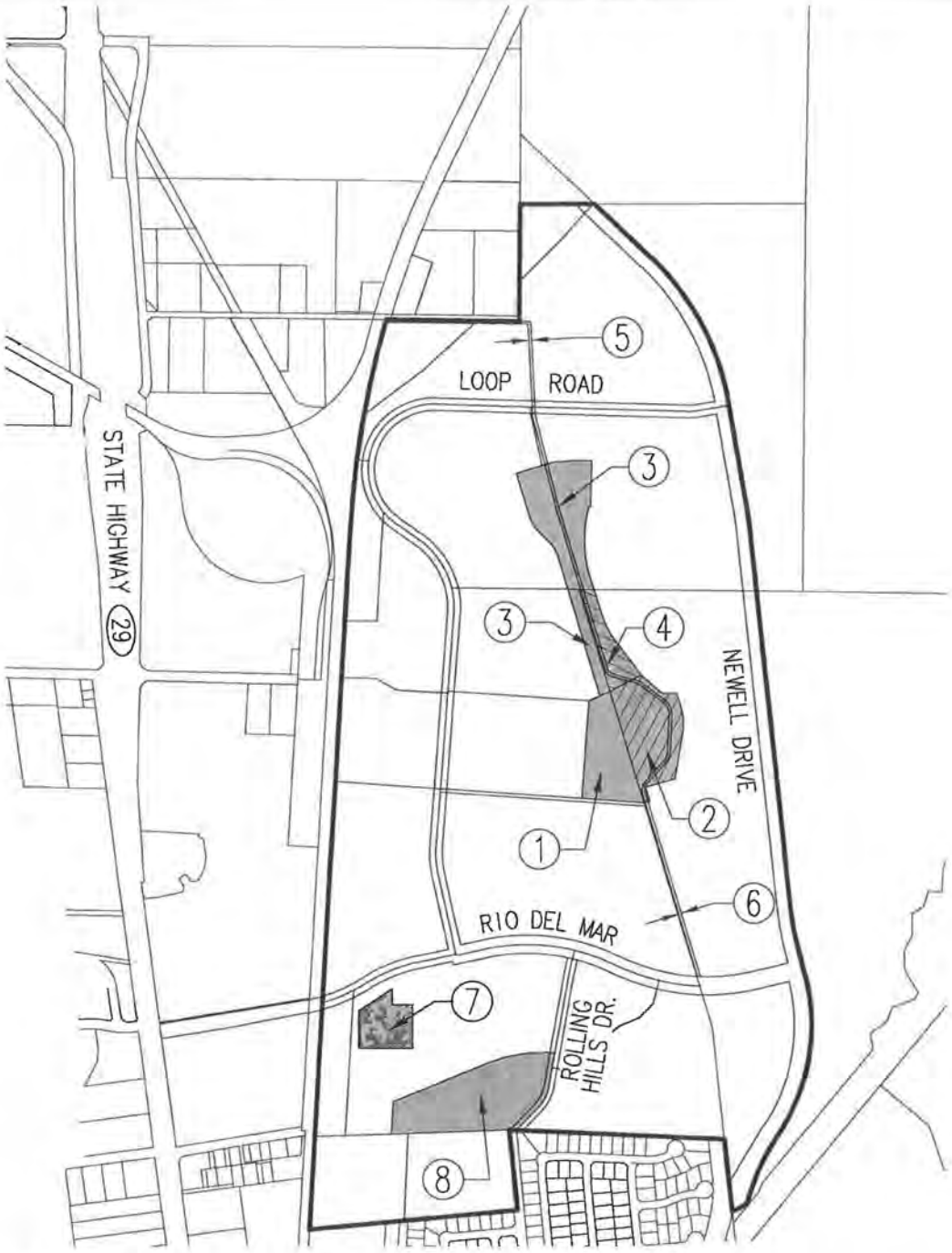

Legend

1. PARK A (AC–1 PROPERTY)
2. PARK A (NEWELL PROPERTY)
3. PARK B (AC–1 PROPERTY)
4. PARK B (NEWELL PROPERTY)
5. NAPA VALLEY VINE TRAIL (AC–1 PROPERTY)
6. NAPA VALLEY VINE TRAIL (NEWELL PROPERTY)
7. COMMUNITY PLAZA
8. QUARRY LAKE PARK

Exhibit B-9

Parks, Trails and Plaza

Watson Ranch

CITY OF AMERICAN CANYON NAPA COUNTY CALIFORNIA

DATE: MAY 21, 2019 SCALE: 1"=1000'

cbg
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SACRAMENTO (916) 375-1877
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Exhibit C

City Fees

Exhibit C

SECTION 1: The 2017 Traffic Impact Fees as shown on the table below:

2017 Traffic Impact Fee

Land Use	Traffic Impact Fee Per Net New Daily Trip
All	$574.85

SECTION 2: The 2017 Water Capacity Fees as shown on the table below:

2017 Water Capacity Fee

Land Use	Units	EDU	Water Capacity Fee
Single Family	each	1.00	$14,441
Multi-Family	unit	0.65	$9,386
Commercial/Industrial	gpd	n/a	$21.24

SECTION 3: The 2017 Wastewater Capacity Fees as shown on the table below:

2017 Wastewater Capacity Fee

Land Use	Units	EDU	Wastewater Capacity Fee
Single Family	each	1.00	$9,959
Multi-Family	unit	0.65	$6,473
Commercial/Industrial	gpd	n/a	$33.20

SECTION 4: The 2017 Parks & Recreation Fees as shown on the table below:

2017 Parks & Recreation Fee

Parks and Recreation	Parks & Recreation Fee Per Dwelling Unit
Parkland Acquisition	$2,010.97
Parkland Development	$2,285.91
Community Gym	$787.31
Aquatic Center/Pool	$266.60
Aquatic Center/Slide	$56.24
Total - Park and Rec Fees	**$5,407**

SECTION 5: The 2017 Civic Facility Fees as shown on the table below:

2017 Civic Facility Fee

Civic Facilities	Civic Facility Fee Per Residential Unit	Civic Facility Fee Per Commercial Sqft	Civic Facility Fee Per Office Sqft	Civic Facility Fee Per Industrial Sqft
City Hall Expansion	$261.40	$0.14	$0.27	$0.094
Police Station	$79.15	$0.04	$0.08	$0.042
Aquatic Center Offices	$242.65	$0.04	$0.06	$0.010
Construction - City Library	$915.40	$0.14	$0.23	$0.083
Corp Yard Expansion and offsite improvements	$71.86	$0.01	$0.04	$0.010
Total - Civic Facilities	**$1,570.46**	**$0.36**	**$0.69**	**$0.24**

SECTION 6: The 2017 General Plan Update Fees as shown on the table below:

2017 General Plan Update Fee

Land Use	Units	General Plan Update Fee
Residential	Per DU	**$83.31**
Commercial, Office, Industrial	Per Sqft	**$0.0104**

SECTION 7: The 2017 General Plan Update Fees as shown on the table below:

2017 Affordable Housing Nexus Fee

Type of Use	Affordable Housing Nexus Fee Per Gross Sqft
Residential, Single Family, Townhouse	$3.05
Residential, Stacked Flats, Apartment	$3.55
Office	$0.76
Hotel	$0.76
Retail	$0.76
Warehouse	$0.51
Industrial	$0.51
All Other Nonresidential	$0.76

Residential Building Plan Review Fees

SINGLE-FAMILY	Fees Per Unit	Notes
1 - 1,500 square feet	631.00	Minimum; any cost in excess of $631 is to be charged to applicant based on the FB Hourly Rate
1,501 - 3,000	667.00	Minimum; any cost in excess of $667 is to be charged to applicant based on the FB Hourly Rate
3,001 - 4,500	779.00	Minimum; any cost in excess of $779 is to be charged to applicant based on the FB Hourly Rate
4,501 - 6,000	870.00	Minimum; any cost in excess of $870 is to be charged to applicant based on the FB Hourly Rate
6,001 + square feet - Additional time per 200 square feet	53.00	Minimum; any cost in excess of $53 is to be charged to applicant based on the FB Hourly Rate
After Model Plan Review Fee	146.00	Minimum; any cost in excess of $146 is to be charged to applicant based on the FB Hourly Rate
MULTI-FAMILY	**Fees Per Building**	**Notes**
1 - 5000 square feet	2,302.00	Minimum; any cost in excess of $2302 is to be charged to applicant based on the FB Hourly Rate
5001 - 10,000	3,136.00	Minimum; any cost in excess of $3136 is to be charged to applicant based on the FB Hourly Rate
10,001 - 15,000	4,693.00	Minimum; any cost in excess of $4693 is to be charged to applicant based on the FB Hourly Rate
15,001 - 30,000	6,290.00	Minimum; any cost in excess of $6290 is to be charged to applicant based on the FB Hourly Rate
30,001 - 50,000	8,660.00	Minimum; any cost in excess of $8660 is to be charged to applicant based on the FB Hourly Rate
50,001 + square feet - Additional time per 5,000 square feet	531.00	Minimum; any cost in excess of $531 is to be charged to applicant based on the FB Hourly Rate
After Model Plan Review Fee	232.00	Minimum; any cost in excess of $232 is to be charged to applicant based on the FB Hourly Rate

Exhibit D

City Resolution 2018-105

Exhibit D

RESOLUTION NO. 2018-105

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON APPROVING GOALS AND POLICIES FOR COMMUNITY FACILITIES DISTRICTS CREATED PURSUANT TO THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982

WHEREAS, Section 53312.7(a) of the California Government Code requires that the City of American Canyon (the "City") consider and adopt goals and policies concerning the use of the Mello-Roos Community Facilities Act of 1982 (the "Act") prior to the initiation of proceedings on or after January 1, 1994 to establish a new community facilities district ("CFD") under the Act; and

WHEREAS, a form of goals and policies (the "Goals and Policies") are attached as Exhibit A hereto; and

WHEREAS, these Goals and Policies for Community Facilities Districts provide guidance and conditions for the conduct by the City of proceedings for, and the issuance of bonds secured by special taxes levied in, a CFD; and

WHEREAS, the Goals and Policies are applicable to financings under the Act and are intended to comply with Section 53312.7 (a) of the Government Code.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of American Canyon hereby approves the Goals and Policies for Community Facilities Districts created pursuant to the Provisions of the Mello-Roos Community Facilities Act Of 1982, attached hereto as Exhibit A, and are found to meet the requirements of the Act and are adopted by this Council for purposes of compliance with the Act, subject to further amendment by this Council as may be required from time to time.

PASSED, APPROVED and **ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 18th day of September, 2018, by the following vote:

AYES:	Council Members Aboudamous, Joseph, Oro, Vice Mayor Leary and Mayor Garcia
NOES:	None
ABSTAIN:	None
ABSENT:	None

Leon Garcia

Leon Garcia, Mayor

ATTEST:

Suellen Johnston

Suellen Johnston, City Clerk

Attachments – Exhibit A – Goals and Policies

Exhibit A

CITY OF AMERICAN CANYON
LOCAL GOALS AND POLICIES FOR
COMMUNITY FACILITIES DISTRICTS

I. GENERAL.

Section 53312.7(a) of the California Government Code requires that the City of American Canyon (the "City") consider and adopt local goals and policies concerning the use of the Mello-Roos Community Facilities Act of 1982 (the "Act") prior to the initiation of proceedings on or after January 1, 1994 to establish a new community facilities district ("CFD") under the Act.

These Local Goals and Policies for Community Facilities Districts (the "Policies") provide guidance and conditions for the conduct by the City of proceedings for financing facilities and/or services through the levy of special taxes in a CFD, and to issue bonds to finance such facilities. The Policies are intended to be general in nature; specific details will depend on the nature of each particular financing and variances may be appropriate as determined by staff. The Policies are applicable to financings under the Act and are intended to comply with Section 53312.7 (a) of the Government Code. These Policies shall not apply to any assessment financing or any certificate of participation or similar financings involving leases of or security in public property. The Policies are subject to amendment by the City Council at any time.

II. FINANCING PRIORITIES.

Eligible Facilities. The improvements eligible to be financed by a CFD must be owned by a public agency or public utility and must have a useful life of at least five years, except that up to five percent of the proceeds of an issue may be used for facilities owned and operated by a privately-owned public utility. The development proposed within a CFD must be consistent with the City's general plan and must have received any required legislative approvals such as zoning or specific plan approvals. A CFD shall not vest any rights to future land use on any properties, including those which are responsible for paying special taxes. Facilities eligible to be financed by a CFD include all those allowed under the Act.

It is acknowledged that the Act permits the financing of fee obligations imposed by governmental agencies the proceeds of which fees are to be used to fund public capital improvements of the nature listed above. The City will consider an application to finance fee obligations on a case-by-case basis.

The funding of public facilities to be owned and operated by public agencies other than the City shall be considered on a case-by-case basis. If the proposed financing is consistent with a public facilities financing plan approved by the City, or the proposed facilities are otherwise consistent with approved land use plans for the property, the City shall consider entering into a joint financing agreement or joint powers authority in order to finance these facilities.

A CFD may also be formed for the purpose of refinancing any fixed special assessment or other governmental lien on property, to the extent permitted under the Act, as applicable.

Priority Facilities. Priority for CFD financing of public facilities shall be given to public facilities which: (a) are necessary for development to proceed in an orderly fashion, or (b) are otherwise coordinated to correspond to the phasing of the related private development project. If appropriate, the

City shall prepare a public facilities financing plan as a part of the specific plan or other land use document that identifies the public facilities required to serve a project, and the type of financing to be utilized for each facility. The City will attempt to schedule construction of CFD-financed facilities in a manner such that private development will not occur ahead of the installation of public infrastructure necessary to support that development.

Eligible Services; Priority Services. The services eligible to be financed by a CFD (the "Services") are those identified in the Act. Subject to the conditions set forth in the Act, priority for public services to be financed by a CFD shall be given to services which are (a) necessary for the public health, safety and welfare and (b) would otherwise be paid from the City's general fund. The City may finance services to be provided by another local agency if it determines the public convenience and necessity require it to do so, although the City prioritizes financing services to be provided by the City. If appropriate, the City shall prepare a public services financing plan as a part of the specific plan or other land use document that identifies the public services required to serve a project and the source of funding for each such service.

Eligible Private Facilities. Financed improvements may be privately-owned in the specific circumstances, and subject to the conditions, set forth in the Act.

III. BOND FINANCINGS; CREDIT QUALITY.

Value-to-Public Lien Ratio. All CFD bond issues should have at least a three to one property value to public lien ratio after calculating the value of the financed public improvements to be installed, unless otherwise specifically approved by the City Council as provided in Section 53345.8(b) or (c) of the Act. Property value may be based on either an appraisal (as described in VI below) or on assessed values as indicated on the county assessor's tax roll, or a combination of the two.

Entitlement Status. The City will prefer that all major land use approvals and non-ministerial governmental permits necessary for development of land in the CFD are substantially in place before bonds may be issued. In limited circumstances this may vary and in phased developments, such approvals need only be required for the portions of the project which substantially support payment for the bonds.

Reserve Fund. In most cases, a reserve fund equal to the lesser of (i) ten percent of the original proceeds of the bond issue, (ii) the maximum annual debt service on the bonds, or (iii) one hundred twenty-five percent of the average annual debt service on the bonds will be required for all bond issues where less than fifty percent of the buildable acreage has been developed. A smaller reserve fund may be determined by City staff, upon consultation with the City's bond consultants, for bond issues where appropriate development thresholds have been met.

Failure to Meet Credit Criteria. Less than a three to one property value to public lien ratio, excessive tax delinquencies, or projects of uncertain economic viability may cause the City to disallow the sale of bonds or require credit enhancement prior to bond sale. The City may consider exceptions to the above policies for bond issues that do not represent an unusual credit risk, either due to credit enhancement or other reasons specified by the City, and/or which otherwise provide extraordinary public benefits, to the extent permitted by and subject to any applicable requirements of the Act.

If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution, in a form and upon terms and conditions satisfactory to the City. Any security required to

be provided by the applicant may be discharged by the City upon satisfaction of the applicable credit criteria specified by the City.

As an alternative to providing other security, and subject to federal tax law, the applicant may request that a portion of the bond proceeds be placed in escrow with a trustee or fiscal agent in an amount sufficient to assure the financing will meet the applicable credit criteria, including, but not limited to, meeting a value-to-lien ratio of at least three to one on the outstanding proceeds. The escrowed proceeds shall be released at such times and in such amounts as may be necessary to assure the applicable credit criteria has been met.

The City will require that bond financings be structured so that bonds are purchased and owned by suitable investors. For example, the City may require placement of bonds with a limited number of sophisticated investors, large bond denominations and/or transfer restrictions in situations where there is an insufficient value-to-lien ratio, where a substantial amount of the property within a CFD is undeveloped, where tax delinquencies are present in parcels within the CFD, and in any other situation identified by the City.

Variances from these Policies shall not invalidate or place in doubt any approval by the Council of the issuance of the bonds and related actions, and such approval shall likewise constitute approval of any variations to these Policies with respect to the CFD and such bonds.

IV. DISCLOSURES

Purchasers of Property. As a minimum, any disclosures mandated by applicable state law to inform prospective purchasers of their obligations under the CFD shall apply to each CFD. In addition, there may be additional requirements mandated by the City for particular kinds of financings on a case-by-case basis. The City may prescribe specific forms to be used to disclose the existence and extent of obligations imposed by CFD.

Disclosure Requirements for the Resale of Lots. The City shall cooperate with sellers of property (other than developers) to provide information which will enable them to comply with their notice requirements under Section 1102.6 of the Civil Code. A reasonable fee may be charged for providing the notice, not to exceed any maximum fee specified in the Act.

Continuing Bond Disclosure. Landowners in a CFD that are responsible for ten percent (10%) or more of the annual special taxes must, if requested by the City, agree to provide: (i) initial disclosure at the time of issuance of any bonds; and (ii) annual disclosure as required under Rule 15c2-12 of the Securities Exchange Commission until the special tax obligation of the property owned by such owner drops below 10% or other threshold established by the City.

V. EQUITY OF SPECIAL TAX FORMULAS AND MAXIMUM SPECIAL TAXES

Minimum Special Tax Levels. Special tax formulas shall provide for minimum special tax levels which satisfy the following payment obligations of a CFD: (a) 110 percent gross debt service coverage for all CFD bonded indebtedness, (b) the administrative expenses of the CFD, and (c) amounts equal to the differences between expected earnings on any escrow fund and the interest payments due on related bonds of the CFD.

In addition, the special tax formula may provide for the following to be included in the special tax levels: (a) any amounts required to establish or replenish any reserve fund established in association with the indebtedness of the CFD, (b) the accumulation of funds reasonably required for future debt service, (c) amounts equal to projected delinquencies of special tax payments, (d) the costs of remarketing, credit enhancement and liquidity facility fees, (e) the cost of acquisition, construction, furnishing or equipping of authorized Facilities, (f) lease payments for existing or future facilities, (g) costs associated with the release of funds from an escrow account, (h) the costs of Services, and (i) any other costs or payments permitted by law.

Equity of Special Tax Allocation Formula. The special tax formula shall be reasonable in allocating the CFD's payment obligations to parcels within the CFD. Exemptions from the special tax may be given to parcels which are publicly owned, are held by a property owners' association, are used for a public purpose such as open space or wetlands, are affected by public utility easements making impractical their utilization for other than the purposes set forth in the easements, or have insufficient value to support bonded indebtedness.

Aggregate Tax Burden. The total projected non-residential property tax levels for any CFD (including ad valorem taxes, any maintenance, landscaping or other impositions on the land in the CFD and other similar annual government charges levied on parcels in the CFD, but excluding property owners' association annual levies and as to any special tax levies, based on the expected special tax rates and not any "back-up" special taxes) must be reasonable, and will be considered by the City Council on a case-by-case basis.

The total projected residential property tax levels (including ad valorem taxes, any maintenance, landscaping or other impositions on the land in the CFD and other similar annual government charges levied on parcels in the CFD, but excluding homeowners' association annual levies and as to any special tax levies, based on the expected special tax rates and not any "back-up" special taxes) for any CFD (or, if a CFD has multiple improvement areas, for each improvement area and not the entire CFD) shall not exceed the lesser of (i) 2.0% of the estimated sales prices of the respective homes to be constructed in the CFD (with such prices to be determined by reference to an absorption study or appraisal prepared for the CFD or such other information as the City shall determine), or (ii) any maximum specified in the Act. The annual increase, if any, in the maximum special tax for any parcel shall not exceed any maximum specified in the Act. The increase in the special tax levied on any residential parcel as a consequence of delinquency or default by the owner of any other parcel shall not exceed any maximum specified in the Act.

Levy on Entire Parcels. Special taxes will only be levied on an entire county assessor's parcel, and any allocation of special tax liability of a county assessor's parcel to leasehold or possessory interest in the fee ownership of such county assessor's parcel shall be the responsibility of the fee owner of such parcel and the City shall have no responsibility therefore and has no interest therein. Failure of the owner of any county assessor's parcel to pay or cause to be paid any special taxes in full when due, shall subject the entire parcel to foreclosure in accordance with the Act.

Feasibility Analysis. The City may retain a special tax consultant to prepare a report which: (a) recommends a special tax for the proposed CFD, and (b) evaluates the special tax proposed to determine its ability to adequately fund identified public facilities, City administrative costs, services (if applicable) and other related expenditures. Such analysis shall also address the resulting aggregate tax burden of all

proposed special taxes plus existing special taxes, ad valorem taxes and assessments on the properties within the CFD.

VI. APPRAISALS

The definitions, standards and assumptions to be used for appraisals shall be determined by City staff on a case-by-case basis, with input from City consultants and CFD applicants, and by reference to relevant materials and information promulgated by the State of California (including, but not limited to, the California Debt Investment and Advisory Commission). The appraiser shall be selected by or otherwise acceptable to the City, and the appraisal shall be coordinated by and under the direction of, or otherwise as acceptable to, the City.

The appraisal must be dated within three months of the date the bonds are priced, unless the City Council determines a longer time is appropriate.

All costs associated with the preparation of the appraisal report shall be paid by the entity requesting the establishment of the CFD, if applicable, through the advance deposit mechanism described below.

VII. CITY PROCEEDINGS.

Petition. For new development projects, a petition meeting the requirements of the applicable authorizing law may be required. The applicant is urged to obtain unanimous waivers of the election waiting period and other election matters to expedite formation of the CFD. In applying to the City for formation of a CFD, the applicant must specify any reasonably expected impediments to obtaining petitions and waivers, including from co-owners and/or lenders of record (where required).

Deposits and Reimbursements. All City staff and consultant costs incurred in the evaluation of CFD applications and the establishment of the CFD will be paid by the entity or entitiesif any, requesting the establishment of the CFD by advance deposit increments. The City shall not incur any expenses for processing and administering a CFD that are not paid by the applicant or from CFD bond proceeds. In general, expenses not chargeable to the CFD shall be directly borne by the proponents of the CFD.

If a petition for formation of a CFD is required, it shall be accompanied by an initial deposit in the amount determined by the City to fund initial staff and consultant costs associated with CFD review and implementation. If additional funds are needed to off-set costs and expenses incurred by the City, the City shall make written demand upon the applicant for such funds. If the applicant fails to make any deposit of additional funds for the proceedings, the City may suspend all proceedings until receipt of such additional deposit.

The City shall not accrue or pay any interest on any portion of the deposit refunded to any applicant or the costs and expenses reimbursed to an applicant. Neither the City nor the CFD shall be required to reimburse any applicant or property owner from any funds other than the proceeds of bonds issued by the CFD or special taxes levied in the CFD.

Representatives. The City and the applicant shall each designate a representative for each financing district proceeding. The representatives shall be responsible for coordinating the activities of their respective interests and shall be the spokespersons for each such interest. The purpose of this requirement is to avoid duplication of effort and misunderstandings from failure to communicate effectively. In the case of the City, it allows the City's consultants to report to a single official who will, in turn, communicate with other staff members.

Time Schedule. The final schedule of events for any proceeding and the timing of issuance of bonds shall be determined by the City, in consultation with its financing team and the applicant. Any changes will require approval by the appropriate City official. Time schedules will (unless specific exceptions are allowed) observe established City Council meeting schedules and agenda deadlines. To the extent possible, financings will be scheduled to allow debt service to be placed on the tax rolls with a minimum of capitalized interest.

VIII. FINANCING TERMS

All terms and conditions of any CFD bonds shall be established by the City. The City will control, manage and invest all CFD issued bond proceeds. Each bond issue shall be structured to adequately protect bond owners and to not negatively impact the bonding capacity or credit rating of the City through the special taxes, credit enhancements, foreclosure covenant, and reserve funds.

All statements and material related to the sale of bonds shall emphasize and state that neither the faith, credit nor the taxing power of the City is pledged to security or repayment of the Bonds. The sole source of pledged revenues to repay CFD bonds are special taxes, bond proceeds and reserve funds held under the bond document, and the proceeds of foreclosure proceedings and additional security instruments provided at the time of bond issuance.

The City shall select all consultants necessary for the formation of the CFD and the issuance of bonds, including the underwriter(s), bond counsel, disclosure counsel, financial advisors, appraiser, market absorption/pricing consultant and the special tax consultant. Prior consent of the applicant shall not be required in the determination by the City of the consulting and financing team.

IX. EXCEPTIONS TO THESE POLICIES

City staff may find in limited instances that a waiver to any of the above stated policies is reasonable given identified special benefits to be derived from such waiver. In connection with such finding, City staff shall determine if such waiver constitutes a substantial deviation to be approved by action of the City Council.