COMMUNITY DEVELOPMENT AND RESOURCES COMMISSION OF THE CITY OF ATWATER

RESOLUTION NO. 034-17

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND RESOURCES COMMISSION OF THE CITY OF ATWATER RECOMMENDING ADOPTION OF ORDINANCE CS 981 FOR THE FERRARI RANCH DEVELOPMENT AGREEMENT

WHEREAS, Government Code Section 65864 et seq. permits the City of Atwater to contract with private interests for their mutual benefits in a manner not otherwise available to the contracting parties, and such agreements assure property developers that they may proceed with their projects with the assurance that approvals granted by the City of Atwater will not change during the period of development, and the City of Atwater is equally assured that costly infrastructure such as roads, sewers, fire protection facilities, etc., will be available at the time development projects are proposed are constructed; and,

WHEREAS, the applicant proposes to enter into a Development Agreement for development of a retail/commercial/medical/recreational project within the 159.5-acre Ferrari Ranch property (Assessor Parcel Numbers 005-120-045 and 005-120-046), consistent with the General Plan, as amended, the Housing Element as it has been adopted by the City Council on July 18, 2016, and prezoning; and,

WHEREAS, pursuant to the California Environmental Quality Act, the Community Development and Resources Commission adopted Resolution No. 027-17 on _____ which found that project environmental impacts were adequately evaluated in the Ferrari Project Final Program Environmental Impact Report (EIR) State Clearinghouse No. 20141011045, incorporated herein by reference; and,

WHEREAS, through adoption of Resolution No. 028-17 on____ the Community Development and Resources Commission recommended approval of a General Plan Amendment (GPA 17-01), amending the land use designation for Ferrari Ranch to Business Park; and,

WHEREAS, through adoption of Resolution No. 029-17 on _____the Community Development and Resources Commission recommended adoption of Ordinance CS 980 prezoning Ferrari Ranch as Planned Development (PD) with a Business Park Overlay (Z 17-01); and,

WHEREAS, through adoption of Resolution No. 030-17 on _____the Community Development and Resources Commission recommended approval of the initiation of annexation proceedings for a 358.79-acre "Annexation Area" which includes the 159.50-acre Ferrari Ranch Site (ANX 17-01); and,

WHEREAS, through adoption of Resolution No. 031-17 on _____the Community Development and Resources Commission recommended approval of the disestablishment of Ferrari Ranch from Merced County Agricultural Preserve; and,

WHEREAS, through adoption of Resolution No. 032-17 on ____the Community Development and Resources Commission of the City of Atwater recommended approval of a Planned Development Master Plan (PD 17-01) as submitted by the applicant, for Ferrari Ranch; and,

WHEREAS, subject to the mitigation measures and conditions of approval in the Planned Development Master Plan and the Vesting Tentative Map, the use is in conformance with the codes and standards of the City of Atwater;

NOW THEREFORE BE IT RESOLVED, that the Community Development and Resources Commission recommends that the City Council find the Development Agreement conforms to the California Government Code section 65864 et seq. (the "Development Agreement Statute").

NOW THEREFORE BE IT FURTHER RESOLVED, that the Community Development and Resources Commission of the City of Atwater hereby recommends that the City Council approve the Ordinance Adopting the Development Agreement, attached hereto as Attachment A, to which the Ferrari Ranch Development Agreement is incorporated by reference;

The foregoing resolution was introduced at a regular meeting of the Community Development and Resources Commission of the City of Atwater held on the ___day of___ _____, by City Commissioner _____, who moved its adoption, which motion was duly seconded by City Commissioner _____, and Resolution No. 034-17 was adopted by the following vote:

AYES: XXXX
NOES: XXXX
ABSENT: XXXX

APPROVED:

ATTEST:

____

Attachment:

Attachment A	Ordinance CS 981 Adopting the Ferrari Ranch Development Agreement (including the Ferrari Ranch Development Agreement)

FERRARI RANCH DEVELOPMENT AGREEMENT RESOLUTION ATTACHMENT A

DEVELOPMENT AGREEMENT ORDINANCE

ORDINANCE CS 981

AN ORDINANCE OF THE CITY OF ATWATER AUTHORIZING THE CITY OF ATWATER TO EXECUTE A DEVELOPMENT AGREEMENT ON BEHALF OF THE CITY RELATIVE TO THE DEVELOPMENT KNOWN AS FERRARI RANCH

IT IS HEREBY ORDAINED by the City Council of the City of Atwater as follows:

Section 1.

A. The City Council has considered and certified the Ferrari Project Final Program Environmental Impact Report for the development project, and finds that there is no evidence which would require the preparation of a new or updated environmental document pursuant to the California Environmental Quality Act.

B. The Ferrari Ranch project is in compliance with the General Plan, as amended, including its Housing Element as it has been adopted by the City Council on July 18, 2016.

Section 2. The City Council finds that the draft Development Agreement, attached hereto as Exhibit A and incorporated by reference herein, is consistent with the City of Atwater General Plan, as amended, including its Housing Element as it has been adopted by the City Council on July 18, 2016.

Section 3. The City Manager hereby certifies that the developer/applicant has deposited with the City a sum equal to the estimated costs associated with the processing of the Development Agreement.

Section 4. Upon the passage of this Ordinance, the City is authorized to execute the Development Agreement on behalf of the City. Within ten (10) days of the execution, but no earlier than 30 days after passage of this Ordinance, the City Clerk shall cause the Development Agreement to be recorded in the Office of the County Recorder as provided for by Government Code §65868.5. The Development Agreement shall not take effect for thirty (30) days following passage and adoption of this Ordinance and shall not become operative until the completion of annexation proceedings.

Introduced by Council Member _____ seconded by Council Member _____ on the___day of ____, 2017.

Passed on the __ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

____
Mayor-City of Atwater

ATTEST:

____
City Clerk-City of Atwater

RECORDING REQUESTED BY:
CITY OF ATWATER

When Recorded Mail To:
City Clerk
City of Atwater
750 Bellevue Road
Atwater, CA 95301

Fee Waived per Govt. Code section 27383

Space above this line for Recorder's use

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF ATWATER

AND

THE FERRARI RANCH OWNERS

RELATING TO THE

FERRARI RANCH PROJECT

_____________, 2017

DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF ATWATER
AND FERRARI RANCH LLC
RELATING TO THE FERRARI RANCH PROJECT

THIS DEVELOPMENT AGREEMENT (this "**Development Agreement**" or this "**Agreement**") is made and entered into as of _____________ , 2017, by and between the City of Atwater, a municipal corporation ("**City**"), and (a) John P. Ferrari and Jeani Ferrari as Co-Trustees of the Second Restatement dated April 8, 1994 of the John P. Ferrari and Jeani Ferrari Family Trust Dated June 24, 1982, as first restated July 25, 1990 and (b) Maggie Hooks as Trustee of the Justin Ferrari Family Trust dated May 24, 2012 ((a) and (b) together, "**Owner**") pursuant to the authority of California Government Code Section 65864 et seq. (City and Owner each are also referred to individually as a "**Party**" and together as the "**Parties**.")

RECITALS

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted California Government Code section 65864 et seq. (the "**Development Agreement Statute**"), which authorizes City to enter into a development agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. City has not adopted local regulations or procedures for consideration of development agreements, but instead relies on and follows the Development Agreement Statute and the Atwater Municipal Code as applicable.

B. Owner is the legal owner of that certain approximately 171-5-acre real property located in unincorporated Merced County, California commonly known as Ferrari Ranch and identified as Assessor Parcel Nos. 005-120-045 and 005-120-046, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**").

C. Owner proposes that City authorize use and development of the Property consisting of up to 1,574,990 square feet of commercial uses on 102.5 acres, a medical complex with up to 666,100 square feet of hospital and medical office space on 30.1 acres, a storm water detention area on 6.5 acres, and associated infrastructure to serve the Property and the immediate vicinity, with 20.4 acres set aside for a potential regional sports center, all as further described in the Ferrari Ranch Planned Development Master Plan described below (the "**Project**").

D. The Property is part of a larger area of unincorporated land adjacent to the City of Atwater, as shown on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Annexation Area**"). The Annexation Area consists of the Property plus an additional approximately 199.3 acres also designated for development but not subject to this Development Agreement.

E. City and Owner's representative entered into a reimbursement agreement dated March 11, 2013, which set forth terms and conditions upon which City would be reimbursed for

processing Owner's applications for various discretionary approvals, but without committing City to approve any such applications (the "**Processing Agreement**").

F. On ___________, 2017, the Atwater City Council held a duly noticed public hearing and took the following actions requested by Owner (collectively, the "**Initial Approvals**", and together with approval of this Agreement, the "**Project Approvals**"):

(1) **Environmental Impact Report.** Adopted Resolution No. ______ (a) certifying the Ferrari Project Final Program Environmental Impact Report (SCH No. 2014101045) (the "**EIR**") as adequate under the California Environmental Quality Act (Public Resources Code section 21000 et seq., hereinafter "**CEQA**") to consider approval of the other Initial Approvals and this Agreement, (b) adopting mitigation measures and a mitigation monitoring and reporting program ("**Mitigation Program**") in connection therewith to be applied to development of the Property and the overall Annexation Area, and (c) adopting findings as required by CEQA supporting certification of the EIR and approval of the Initial Approvals and this Agreement;

(2) **General Plan Amendment.** Adopted Resolution No. ________ amending the City of Atwater General Plan (the "**General Plan**") to allow the uses proposed by Owner on the Property and the overall Annexation Area (the "**General Plan Amendment**");

(3) **Prezoning.** Adopted Ordinance No. ________ prezoning the Property and the overall Annexation Area to allow the uses proposed by Owner, conditioned and effective upon annexation of the Annexation Area to the City (the "**Prezoning**");

(4) **Agricultural Designation Removal.** Adopted Resolution No. ________ removing the "Agricultural Preserve" designation applied by Merced County from the Annexation Area, conditioned and effective upon annexation of the Annexation Area to the City;

(5) **Master Plan.** Adopted Resolution No. ________ approving The Ferrari Ranch Planned Development Master Plan designating specified uses and criteria to be applied to the Property to allow development of the Project (the "**Ferrari Ranch Planned Development Master Plan**" or "**Master Plan**");

(6) **Vesting Tentative Map.** Adopted Resolution No. ________ approving Vesting Tentative Map No. ________ subdividing the Property into parcels for development of the Project (the "**Ferrari Ranch Vesting Tentative Map**" or "**Tentative Map**"); and

(7) **Annexation.** Adopted Resolution No. ________ authorizing submission of an application to the Merced County Local Agency Formation Commission ("**LAFCO**") requesting approval to annex the Annexation Area to the City of Atwater (the "**Annexation**").

G. On ____________, 2017 (the "**Approval Date**"), the Atwater City Council held a duly noticed public hearing, considered the certified EIR as it applied to this Agreement, and adopted Ordinance No. ______ approving this Agreement and authorizing its execution (the "**Approving Ordinance**"). As part of the Approving Ordinance, the City Council has made the findings required by the Atwater Municipal Code and the Development Agreement Statute with respect to this Agreement. As required by Government Code section 65867.5, the City Council has found that, among other attributes, this Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, and it has been reviewed and evaluated in accordance with the Development Agreement Statute. As required by Government Code section 65865.5, the City Council has adopted findings and imposed conditions on this Agreement that will provide the required flood protection for the Property.

H. The Parties acknowledge that pursuant to Government Code section 65865(b), this Agreement shall not become operative unless the Property is annexed to the City on or before December 31, 2017 (the **"Annexation Deadline"**), and that this Agreement shall be null and void if annexation proceedings annexing the Property to the City are not completed by that date unless City in its discretion agrees to extend the Annexation Deadline. To avoid uncertainty, the Parties acknowledge that the action which must occur to complete annexation by the Annexation Deadline is issuance of the Certificate of Completion by LAFCO, and the date of such issuance shall be the "**Operative Date**".

I. City has determined that the Project implements the goals and policies of the General Plan applicable to the Project and the Property and imposes appropriate standards and requirements with respect to development of the Property as to maintain and improve the overall quality of life and of the environment within and around City. As part of the process of approving the Project and the Project Approvals, the City has in accordance with CEQA undertaken the required analyses of potential environmental effects that could be caused by the Project, and City as part of the Project Approvals has imposed mitigation measures to address anticipated adverse effects.

J. Development of the Property is subject to other future discretionary and non-discretionary City approvals and permits (collectively, the "**Subsequent Approvals**") including but not limited to additional subdivision maps and site development review approvals, which if granted by City in accordance with this Agreement shall automatically become part of the Project Approvals for purposes of this Agreement.

K. By entering into this Agreement, in exchange for the benefits it will provide Owner as described herein, City will recognize substantial benefits, including but not limited to the following:

(1) Ensure the productive use of property and foster orderly growth and quality development in City;

(2) Ensure that development will proceed in accordance with the goals and policies set forth in the General Plan and will implement City's stated General Plan policies;

(3) Receive substantially increased property tax revenues;

(4) Benefit from increased employment opportunities for residents that are created by the Project and from continued diversification of City's economic base;

(5) Benefit from availability of high-quality medical services and sports recreation facilities to be developed in the Project for City's residents;

(6) Enhance the image, appearance and identity of City and its primary gateway;

(7) Ensure coordination and consistency in subsequent construction on the Property, in terms of land use, architecture, landscaping, site engineering and design, infrastructure and other elements of development;

(8) Ensure construction of required public facilities, improvements and services as and when expected; and

(9) Induce Owner to incur substantial financial and other commitments to provide public infrastructure and amenities by giving Owner the certainty and predictability in the development process provided by this Agreement.

L. By entering into this Agreement, in exchange for providing the benefits to City described herein, Owner will obtain sufficient certainty and predictability in the development process to justify the substantial investments required to plan and develop a Project that will take many years to fully construct, and will be able to proceed with development of the Project in accordance with the Applicable Law (as defined herein) and the Project Approvals, subject to the terms, conditions and exceptions contained herein. This Agreement will promote and encourage development of the Project by providing Owner and any future owners and lenders a greater degree of certainty of the ability to expeditiously and economically complete the development effort.

M. City and Owner have reached agreement and desire to express herein a Development Agreement that will facilitate development of the Project subject to conditions set forth herein. This Agreement is intended to be and should be construed as a development agreement within the meaning of the Development Agreement Statute. City and Owner have taken all actions mandated by and have fulfilled all requirements set forth in the Development Agreement Statute. The consideration to be received by City and the rights secured to Owner pursuant to this Agreement constitute sufficient consideration to support the covenants and agreements of City and Owner herein.

N. City, by electing to enter into this Agreement, acknowledges that the obligations of City herein shall survive beyond the term or terms of the present City Council members and that such action will serve to bind City and future City Councils to the obligations undertaken. By approving this Agreement, the City Council has elected to exercise certain governmental

powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by both City and its City Council and have been found to be fair, just and reasonable, and City has concluded that the pursuit of the Project will serve the best interests of its citizens and the public health, safety and welfare will be best served by entering into this obligation.

AGREEMENT

NOW, THEREFORE, with reference to the Recitals above, and in consideration of the mutual promises, obligations and covenants herein contained and other considerations, the value and adequacy of which are hereby acknowledged, City and Owner agree as follows:

1. Definition of Terms. The following capitalized terms are defined where indicated below, which shall apply when the capitalized terms are used in this Agreement:

Administrative Agreement Amendment: See Section 9.1.4.

Administrative Project Amendment: See Section 9.2.1.

Agreement: See Introductory paragraph.

Annexation Deadline: see Recital H.

Annexation: See Recital F.

Annexation Area: See Recital D.

Applicable Law: See Section 5.1.

Approval Date: See Recital G.

Approving Ordinance: See Recital G.

Benefitted Properties: See Section 7.2.1.

Benefitting Approvals: See Section 7.2.2.

Benefitting Improvements: See Section 7.2.2 and **Exhibit C**.

Benefitting Labor Costs: See Section 7.2.2.

CEQA: See Recital F.

City: See Introductory paragraph.

Construction Codes: See Section 5.4.1.

Cure Period: See Section 11.1.

Development Agreement: See Introductory Paragraph.

Development Agreement Statute: See Recital A.

Development Fees: See Section 5.3.1.

Development Restrictions: See Section 5.7.

Director: See Section 9.1.4.

Effective Date: See Section 4.1.

EIR: See Recital F.

Enforced Delay: See Section 15.9.

Enhanced Infrastructure Financing District or EIF: See Section 7.1.1.

Event of Default: See Section 11.1.

Ferrari Ranch Planned Development Master Plan: See Recital F.

Ferrari Ranch Vesting Tentative Map: See Recital F.

Financing Mechanism: See Section 7.1.1.

General Plan: See Recital F.

General Plan Amendment: See Recital F.

Initial Approvals: See Recital F.

LAFCO: See Recital F.

Local Traffic Improvements: See Section 7.2.5.

Master Plan: See Recital F.

Mitigation Program: See Recital F.

Mortgage: See Section 13.1.

Mortgagee: See Section 13.1.

New Rules: See Section 5.5.1.

Notice of Default: See Section 11.1.

Notice of Intent to Terminate: See Section 12.2.

Notice of Non-Compliance: See Section 10.4.

Notice of Termination: See Section 12.2.

Offsite Land: See Section 5.12.

Operative Date: See Recital H.

Owner: See Introductory paragraph.

Party and Parties: See Introductory paragraph.

PDMP: See Recital F.

Portion: See Section 9.1.3.

Prezoning: See Recital F.

Processing Agreement: See Recital E.

Processing Fees: See Section 5.3.2.

Project: See Recital C.

Project Approvals: See Recital F.

Project-Related Infrastructure: See Section 8.1.

Property: See Recital B.

Regional Traffic Improvements: See Section 7.2.5.

Regional Transportation Impact Fee or RTIF: See Section 5.3.1.

Reimbursable Expenses: See Section 7.2.2.

Release from Obligations: See Section 12.3.

Sewer Facilities: See Section 8.1.

Storm Drainage Facilities: See Section 8.1.

Subsequent Approvals: See Recital J.

Tentative Map: See Recital F.

Term: See Section 5.2.1.

Transportation Facilities: See Section 8.1.

Transportation Improvement Plan or TIP: See Section 7.2.5 and **Exhibit D**.

Water Facilities: See Section 8.1.

2. Property and Owner.

2.1. Property. The Property which is the subject of this Development Agreement is described in Recital B.

2.2. Interest of Owner. Owner has a legal or equitable interest in the Property in that it owns the Property in fee simple. Accordingly, this Agreement once executed and effective shall be fully binding and enforceable by the Parties.

3. Relationship of City and Owner.

This Agreement has been negotiated and voluntarily entered into by City and Owner. Owner is not an agent of City, and City is not an agent of Owner. City and Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Owner joint venturers or partners.

4. Effective Date and Term.

4.1 Effective Date. The effective date of this Agreement (**"Effective Date**") shall be _____________, 2017, which is thirty (30) days after the Approval Date as defined in Recital G. Said date shall function as the Effective Date for purposes of this Agreement even if annexation making this Agreement operative as described in Recital H occurs later.

4.2 Term of Agreement.

The following provisions were established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Property, and obtain the public benefits of

the Project. City finds that such time and provisions are reasonably necessary to assure City of realization of the public benefits of the Project.

4.2.1 Term. The term of this Development Agreement (the **"Term"**) shall commence on the Effective Date and shall continue for twenty (20) years from the Effective Date, unless otherwise modified, extended or terminated as provided in this Agreement.

4.2.2 Tolling of Term. The Term shall not begin or continue to run during any time that there is litigation or other action challenging this Agreement or any other Project Approval, or challenging or preventing Owner's efforts to implement the Project, or challenging or preventing City or any service provider from taking the actions necessary to develop or occupy the Project, including associated environmental analyses and determinations. The Term shall be extended for the period of time from the date such litigation or other action is commenced until its final conclusion so as to eliminate the challenge or remove the obstacle. By way of illustration but not limitation, in the case of litigation the tolling and extension period shall start upon filing of such litigation and continue until its dismissal or final entry of judgment. Filing of litigation shall not delay or stop the development, construction or occupancy of the Project or processing and approval of any Subsequent Approval unless enjoined by a court of competent jurisdiction, and City shall not stipulate to the issuance of any such order.

4.3 Term of Project Approvals. Pursuant to the Subdivision Map Act (Government Code section 66410 *et seq.),* and in particular, Government Code section 66452.6(a), the term of any tentative or vesting tentative map, parcel map or vesting parcel map, and subdivision improvement agreement for the Property or any Portion thereof, shall be the longer of (i) the Term of this Agreement (as it may be extended) or (ii) the term of such map otherwise allowed under the Subdivision Map Act and the Municipal Code (as may be extended by changes to such laws during the life of the map). Pursuant to Government Code section 65863.9, the term of any use permit or other entitlement for development for the Property or any Portion thereof shall be the longer of (i) the Term of this Agreement (as it may be extended), (ii) the term of such permit or entitlement, or (iii) the term of the subdivision or parcel map relating to that portion of the Property that is the subject of the permit or entitlement.

5. Vested Rights/Use of the Property/Applicable Law/Processing.

5.1 Right to Develop. Owner shall have the vested right to develop the Project on the Property in accordance with, and subject only to, the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. For the Term of this Agreement, the City's ordinances, codes, resolutions, rules, regulations and official policies governing the development, construction, subdivision, occupancy and use of the Project and the Property including without limitation the General Plan, the Atwater Municipal Code, and the Master Plan, shall be those that are in force and effect on the Approval Date (collectively, the **"Applicable Law"**). In exercising its discretion when acting upon Subsequent Approvals,

City shall apply the Applicable Law as the controlling body of law. Notwithstanding the foregoing, Owner in its sole discretion may elect to comply with or receive the benefits of changes in Applicable Law by providing written notice to City of said election. Notwithstanding anything to the contrary contained herein, this Agreement shall not supersede any other rights Owner may obtain pursuant to City's approval of the Vesting Map or any other vesting tentative tract map or vesting tentative parcel map for the Project.

5.2 Permitted Uses. The permitted uses of the Property, density and intensity of use of the Property, the maximum height, bulk and size of proposed buildings, the general provisions for reservation or dedication of land for public purposes and for the location and maintenance of on-site and off-site improvements and public utilities, and other terms and conditions of development applicable to the Property, shall be those set forth in the Project Approvals and this Agreement.

5.3 Applicable Fees, Exactions and Dedications.

5.3.1 Development Impact Fees. City may levy those fees, charges, exactions and dedication requirements relative to development of the Property which are in force and effect as of the Approval Date (collectively, the "**Development Fees**"). Unless otherwise set forth in this Agreement, no increase in the amount of Development Fees and no new Development Fees shall be imposed. Notwithstanding the above:

(a) Adjustments to the Regional Transportation Impact Fee (**"RTIF"**) may be allowed if and when adopted by the City Council or if already specified or authorized in applicable City codes and regulations, so long as the fee as adjusted is applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance. If City elects to withdraw from the RTIF program and adopt a new local transportation impact fee, the amount of such fee equal to the "return to source" funds the City then was receiving from the RTIF may be levied on future applications for the Project from the time the new fee takes effect, and the entirety of such new City fee may be imposed starting in year eleven (11) of the Term.

(b) No increase to any other Development Fee shall be allowed during the first ten (10) years of the Term, even if already specified or authorized in applicable City codes and regulations; provided, City may adjust the amount of its different Development Fees from time to time so long as the total of all City Development Fees does not exceed the total in effect as of the Approval Date (e.g., reducing one fee and increasing another fee by the same amount). Beginning in year eleven (11) of the Term, new increases to Development Fees and any new Development Fees adopted since the Approval Date may be applied from time to time during the remainder of the Term so long as the fees as adjusted are applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance.

(c) This Agreement does not limit City's discretion to impose or require payment of fees, dedication of land, or construction of public improvements or facilities in connection with development of the Property that are identified as required to mitigate specific environmental and other impacts of a Subsequent Approval, so long as not inconsistent with the terms and conditions of this Agreement.

(d) Nothing shall restrict the ability of City to impose conditions or fees on the issuance of building permits that lawfully could have been imposed as conditions of approval of an approved tentative map based on a finding that the condition or fee is necessary because (i) it is required in order to comply with state or federal law, or (ii) failing to impose the condition or fee would place occupants of the Project or the community in a condition dangerous to their health or safety.

5.3.2 Processing Fees. City may levy those fees and charges adopted for the purpose of defraying City's actual costs incurred for the processing and administration of the Subsequent Approvals and any form of regulatory permit, license, land use entitlement, financing district or mechanism, or other approval related to development, use or occupancy of the Property, or to defray the costs of periodically updating City's plans, policies and procedures, including without limitation the fees and charges referred to in Government Code section 66014 (collectively, the "**Processing Fees**") which are in force and effect as of the Approval Date, so long as and to the extent that such fees are applied uniformly to all similar development on a City-wide basis. City may levy new or increased Processing Fees adopted after the Approval Date so long as (a) such fees are applied uniformly to all similar development on a City-wide basis, (b) the application of such fees is prospective, and (c) the application of such fees would not prevent, impose a substantial financial burden on, or materially delay development of the Project in accordance with this Agreement. By so agreeing, Owner does not waive its rights to challenge the legality or amount of any such new or increased Processing Fee. To avoid uncertainty, the Parties agree that if not terminated earlier the Reimbursement Agreement shall expire as of the Operative Date, and thereafter the Processing Fees shall apply as to any applications and permits for the Project.

5.4 Construction Codes.

5.4.1 Uniform Codes Applicable. Notwithstanding the provisions of Section 5.1 above, to the extent Applicable Law includes requirements under the state or locally adopted building, plumbing, mechanical, electrical and fire codes (collectively the **"Construction Codes"),** the Construction Codes included shall be those in force and effect at the time Owner submits its application for the relevant building, grading, or other construction permits to City; provided, in the event of a conflict between such Construction Codes and the Project Approvals, the Project Approvals shall, to the maximum extent allowed by law, prevail.

5.4.2 Rules for Public Improvements. For construction of public infrastructure, the Construction Codes along with any ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to such construction shall be those in force and effect at the time of

execution of the applicable improvement agreement between City and Owner, or at the time of permit approval if there is no improvement agreement.

5.5 New Rules and Regulations.

5.5.1 During the term of this Agreement, City may apply new or modified ordinances, resolutions, rules, regulations and official policies of the City to the Property which were not in force and effect on the Approval Date (**"New Rules"**), so long as the New Rules are applied uniformly to similar development on a City-wide basis; provided, however, such New Rules shall be applicable to the Project or the Property only to the extent that such application will not modify, prevent or impede development of the Project or conflict with any of the vested rights granted by this Agreement, the Applicable Law, or the Project Approvals. In addition to any other conflicts that may occur, each of the following New Rules shall be deemed to conflict and may not be applied if it would:

(a) Cause or impose a substantial financial burden on, or materially delay development of the Property as otherwise contemplated by this Agreement or the Project Approvals;

(b) Frustrate in a more than insignificant way the intent or purpose of the Project Approvals or preclude compliance therewith including, without limitation, by preventing or imposing limits or controls in the rate, timing, phasing or sequencing of development of the Project;

(c) Prevent or limit the processing or procuring of Subsequent Approvals;

(d) Reduce the density or intensity of use of the Property as a whole, or otherwise require any reduction in the square footage of, or total number of, proposed improvements;

(e) Restrict the types of uses permitted, in a manner that is inconsistent with or more restrictive than the limitations included in this Agreement and the Master Plan; and/or

(f) If any of such ordinances, resolutions, rules, regulations or official policies do not have general (City-wide) applicability.

5.5.2 Notwithstanding Section 5.5.1, City shall not be precluded from applying any New Rules to the Project or the Property under the following circumstances, where the New Rules are:

(a) Specifically mandated by changes in state or federal laws or regulations adopted after the Approval Date pursuant to Government Code section 65869.5;

(b) Specifically mandated by a court of competent jurisdiction taking into consideration the vested rights protection provided by this Agreement and the Development Agreement Statute;

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

(d) Required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate adverse risk on the health and safety of the surrounding community.

5.6 Flood Protection. In conjunction with filing the initial application for a detailed development plan approval pursuant to Section 17.44.110 of the Atwater Municipal Code, Owner shall prepare and submit a detailed flood study confirming that areas subject to flooding within the Project outside of the Canal Creek channel itself will meet federal, state and local flood control protection standards as of the Approval Date.

5.7 Moratorium Not Applicable. Notwithstanding anything to the contrary contained herein, if an ordinance, resolution, policy, directive or other measure is enacted or becomes effective, whether by action of City, by initiative, referendum, or otherwise, and if it imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which affects all or any part of the Property or Owner's ability to develop the Project (collectively, "**Development Restrictions**"), City agrees that such Development Restriction shall not apply to the Project, the Property, this Agreement or the Project Approvals unless it is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code section 8558, provided that to the extent it applies to all or any part of the Project then the Term shall automatically be extended for a period of time equal to the period during which the Development Restriction applies.

5.8 New Taxes and Assessments. No new taxes, assessments or other charges not in force and effect as of the Approval Date shall be levied against the Property, the Project or Owner except as specified in this Agreement. No increase in an existing tax, assessment or other charge shall be levied during the first ten (10) years of the Term, even if an increase already is specified or authorized in applicable City codes and regulations. Thereafter, new increases to those taxes, assessments and other charges in force and effect as of the Approval Date may be applied during the remainder of the Term so long as the adjustments are applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance.

5.9 Development of the Project; Phasing; Timing.

5.9.1 No Requirement to Develop. Notwithstanding any provision of this Agreement, City and Owner expressly agree that there is no requirement that Owner must initiate or complete any action, including without limitation development of the Project or any

phase of the Project, within any period of time set by City, and City shall not impose such a requirement on any Project Approval or Subsequent Approval except as needed to ensure that necessary infrastructure is completed in an orderly fashion. Nothing in this Agreement is intended to create nor shall it be construed to create any affirmative development obligations to develop the Project at all or in any particular order or manner, or liability in Owner under this Agreement if the development fails to occur. It is the intention of this provision that Owner be able to develop the Property in accordance with its own time schedules and the Project Approvals. City acknowledges that Owner at this time cannot predict when or the rate at which or the order in which phases of the Project will be developed, and City recognizes that many factors affect such actions that may not be within Owner's control, including but not limited to market orientation and demand, interest rates and funding availability, and competition. Nothing in this Agreement shall exempt Owner from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof, nor shall this Section 5.9 affect the term of this Agreement or of any related Project Approvals or Subsequent Approvals.

5.9.2 No Restriction on Timing. City agrees that Owner shall be able to develop in accordance with Owner's own time schedule as such schedule may exist from time to time, and Owner shall determine which part of the Property to develop first, and in what sequence, and at Owner's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to avoid that result by acknowledging that Owner shall have the right to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment, and that the timing, rate or sequence of development and occupancy of the Project shall not be restricted or dictated by any means other than as specifically may be recognized in this Agreement.

5.10 Processing and City Discretion.

(a) Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, nor to limit the discretion of City or any of its officers or officials with regard to those Subsequent Approvals that require the exercise of discretion by City, provided that such discretion shall be exercised consistent with the vested rights granted by this Agreement, the Applicable Law and the Project Approvals.

(b) Owner acknowledges that implementation of the Project will require City's consideration and approval of applications for Subsequent Approvals and that City will complete environmental review in connection with those Subsequent Approvals as required by CEQA and other applicable federal, state and local laws and regulations. City's environmental review of the Subsequent Approvals pursuant to CEQA shall utilize the EIR to the fullest extent permitted by law; provided, however, nothing in this Agreement shall be deemed to limit the legal authority of City to conduct any environmental review required under CEQA or other applicable laws and regulations.

5.11 Regulation by Other Public Agencies. The Parties acknowledge that other public agencies not within City's control may possess authority to regulate aspects of development of the Property, and this Agreement does not limit such authority of other public agencies.

5.12 Eminent Domain. The Parties acknowledge and agree that development of the Project-Related Infrastructure (as defined in Section 8.1) is a critical component of the Project and also will result in key benefits to the community generally. The Parties further acknowledge that fulfilling said obligations may require acquisition of additional land outside the Property. If such acquisition is necessary to develop any aspect of the Project Infrastructure, Owner shall use its best efforts to acquire any and all such land (**"Offsite Land"**), which shall include: a) paying for and obtaining an appraisal prepared by a qualified Member of the Appraisal Institute (MAI), in connection with acquisition of the Offsite Land; and b) offering to acquire the Offsite Land based on such appraisal. In the event Owner is not successful in acquiring the Offsite Land, City and Owner shall meet and confer to determine: (a) whether the need for the Offsite Land is such that City should consider informally intervening to facilitate said acquisition; (b) whether there may be other feasible means of accomplishing the public objectives at issue such that acquisition of the Offsite Land is no longer needed; and (c) whether it would be appropriate for City to consider using its statutory powers of eminent domain to acquire the Offsite Land. In the event that City determines to use its statutory powers of eminent domain to pursue acquisition of the Offsite Land, Owner shall be responsible for all costs associated therewith. Notwithstanding the foregoing, neither this Section 5.12 nor any other provision of this Agreement is intended to abrogate City's responsibilities, in the exercise of eminent domain, to satisfy the substantive and procedural requirements of the Eminent Domain Law (California Code of Civil Procedure Part 3, Title 7, Sections 1230.010-1273.050), as amended from time to time. In the event the Offsite Land is not ultimately acquired, either through private acquisition or eminent domain, or in the event that City determines not to pursue eminent domain of the Offsite Land, Owner's obligations in connection with that aspect of the Project Infrastructure that necessitated acquisition of the Offsite Land shall terminate and be of no further force or effect in accordance with Government Code section 66462.5 of the Subdivision Map Act.

6. Obligations of City.

The Parties acknowledge and agree that Owner's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Owner's decision to annex the Property to the City and process siting of the Project in the City, is material consideration for City's agreement to perform and abide by the covenants and obligations of City, as set forth in this Agreement.

6.1 Processing of Annexation. City shall promptly, in cooperation with Owner, process all documents necessary to achieve annexation of the Annexation Area, and at a minimum annexation of the Property, to the City.

6.2 Cooperation in Subsequent Approvals.

6.2.1 Owner's Application for Subsequent Approvals. Owner shall be obligated to obtain any and all required Subsequent Approvals to develop the Project. Owner's obligations under this Section 6.2.1 apply to those approvals that are under City's jurisdiction and also to those approvals that may be required by other governmental or quasi-governmental agencies having jurisdiction over the implementation of any aspect of the Project (including, without limitation, the Department of Transportation; agencies having jurisdiction over boundary changes or district formation, flood control, sewer service, water service or fire protection; and agencies having jurisdiction over air quality, biological resources, solid wastes and hazardous wastes and materials). City shall cooperate with Owner in its efforts to obtain such approvals from other agencies and shall at the request of Owner use its best efforts to ensure the timely availability of such approvals.

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

6.3 Availability of Public Services.

6.3.1 Sewage Capacity. To the extent permitted by law, City shall reserve or provide such capacity for sewage transmission and treatment as may be necessary to serve the Project. Owner will consult and cooperate with City from time to time in determining the anticipated timing, sequence and amount of development in the Project so as to give City sufficient advance notice to ensure that adequate capacity is available when needed, so as to avoid delaying development or occupancy of any portion of the Project.

6.3.2 Water System. To the extent required to ensure adequate domestic and firefighting water capacity and redundancy for the Project, City shall cooperate in connecting the Project's water supply system with the City's. City acknowledges that such connection also benefits City by providing similar redundancy from the Project's water well.

6.3.3 Construction Water. Until the Project's own water supply infrastructure is installed and operating, City agrees to make construction water available to the Project by permitting the Project to connect with the existing City water supply infrastructure at one or more locations Owner may from time to time request, subject to City approval in its reasonable discretion, at Owner's cost and on those terms and conditions and charges customarily applied by City to similar requests consistent with City standards. City also shall permit Owner to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to various portions of the Property for Owner's use in any and all Project grading and construction operations.

6.4 Right to Rebuild. City agrees that Owner, in Owner's sole discretion, may renovate or rebuild the Project or portions thereof during the Term should it become necessary due to natural disaster, changes in seismic, flood or other requirements, or other causes. Any such renovation or rebuilding shall comply with the terms of this Agreement and shall be subject to CEQA as may be required under applicable law.

7. Financing Mechanisms and Owner Funding.

7.1. Assessment Districts or Other Funding Mechanisms. The Parties acknowledge that each of them requires financial assistance to build the infrastructure and improvements required to support the Project and serve the Annexation Area, and that City's assurances to cooperate in arranging such assistance is a material consideration for Owner agreeing to proceed with development of the Project. City also acknowledges that development of the Project will provide material benefits, including but limited to employment opportunities for City's residents and tax revenues to support City operations, constituting consideration for City to enter into this Agreement and to provide the assurances in this Section 7.

(a) City shall cooperate in the formation of, or annexation to, one or more assessment districts, geologic hazard abatement districts, landscaping and lighting districts, community facilities districts, utility authority, lease leasebacks, project-specific tax reimbursement tax-exempt financing mechanisms, or other funding mechanisms related to public safety, traffic, sewer, water, fire, storm water, recreation or other infrastructure or public service needs (collectively, "**Funding Mechanisms**") that include the Property and to the extent permitted by law include other properties within or outside the City, to the extent such Funding Mechanism and its provisions are permitted under applicable law, that Owner requests to help fund infrastructure improvements and to ensure the orderly development of the Project.

(b) City shall diligently and expeditiously process applications by Owner necessary to establish such Funding Mechanisms, as long as (i) the application complies with law, (ii) is consistent with City standards, and (iii) will result in no commitment of City general funds. Notwithstanding the foregoing, while City agrees to cooperate in the process of formation of Funding Mechanisms, the final determination as to City's participation in any Funding Mechanism, including an EIFD as defined below (either by pledging property tax increment or otherwise) or any other financing district shall be made by the City Council in its sole and absolute discretion.. City shall cooperate in good faith with Owner's efforts to obtain the participation of Merced County or other public agencies as needed to establish and implement such Funding Mechanisms. Without limiting the foregoing, among the Financing Mechanisms Owner may request, City acknowledges that Owner initially proposes utilizing one or more Enhanced Infrastructure Financing Districts (**"EIFD"**) pursuant to Government Code section 53398.50 et seq. with participation by Merced County to fund infrastructure of regional significance within and outside the City.

(c) City shall diligently seek to sell any bonds to be issued and secured by such Funding Mechanisms upon the best terms reasonably available in the marketplace.

(d) Notwithstanding the foregoing, Owner retains all its rights to oppose the formation or proposed assessments of new Funding Mechanisms, or any new or increased assessment under a Funding Mechanism, or to request or pursue assessment credits or reductions, unless otherwise provided for herein. Notwithstanding any terms to the contrary, nothing contained in this Agreement shall be construed as waiving City's discretion to the extent required under applicable law in deciding whether and in what form to establish a Funding Mechanism, impose and collect assessments, issue and sell bonds, or undertake any other discretionary action related thereto. Any and all costs associated with forming or joining and then implementing Funding Mechanisms under this Section 7.1 shall be shared equally by City (50%) and Owner and other benefitting property owners (50%).

7.2. Owner Reimbursement by Benefitting Properties.

7.2.1 Reimbursement Obligation. City acknowledges that Owner has expended and will expend considerable funds for approvals and improvements which may benefit properties within the Annexation Area but outside the Property (collectively, the **"Benefitted Properties"**) by facilitating their development and use. To the extent that the owner of a Benefitted Property either (i) applies for and is approved to develop the Benefitted Property relying on the Benefitting Approvals (as defined below), or (ii) makes use of a Benefitting Improvement (as defined below) to support either the current use on the Benefitted Property or some new development or use on the Benefitted Property, Owner shall be entitled to reimbursement based on a pro rata, fair share apportionment of the Reimbursable Expenses (as defined below), such reimbursement to come directly from the owner of the Benefitted Property unless Owner agrees to reimbursement via a Financing Mechanism. Notwithstanding the foregoing, Owner agrees that residential development will not be required to provide any payment, and the Reimbursable Expenses will be shared by development on the Property and non-residential development on the Benefitted Properties.

7.2.2 Reimbursable Expenses. City agrees that expenditures by Owner for the following items will qualify for fair share reimbursement by the Benefitted Properties pursuant to the terms of this Section 7.2 (collectively, the "**Reimbursable Expenses**");:

(a) Preparation, processing and approval of the EIR, General Plan Amendment, Prezoning, Master Plan, Agricultural Designation Removal, Annexation, and General Plan Housing Element update, including related consultant studies and work (collectively, the "(**Benefitting Approvals**");

(b) Those portions of Project-Related Infrastructure (as defined in Section 8.1) to be built or funded by Owner as part of developing the Project, that either are (i) oversized to accommodate use by the Benefitted Properties or (ii) extend services that as of the Effective Date are not available to the Benefitted Properties, including related consultant studies and work (collectively, the **"Benefitting Improvements"**);

(c) Consultant and legal fees to manage and implement the planning, design, approval and implementation effort, payments to subsidize or reimburse City

approval processing and other expenses, and expenses to determine the appropriate water service entity and other utility service providers (collectively, the "**Benefitting Labor Costs**")

7.2.3 Reimbursement Procedure.

(a) If Owner seeks reimbursement from time to time under this Section 7.2, City shall negotiate in good faith with Owner to enter into one or more reimbursement agreements with Owner, in which among other things City will (i) identify the improvements qualifying as Benefitting Improvements, (ii) identify the properties qualifying as Benefitted Properties as to each Benefitting Approval or Benefitting Improvement, (iii) determine the Owner costs qualifying as Reimbursable Expenses, (iv) establish the allocation of Reimbursable Expenses to each Benefitted Property, and (v) establish the timing and method of reimbursement to Owner.

(b) City thereafter shall use its best efforts, to the extent permitted under applicable law, (i) to require as a condition to approval of development or use on the Benefitted Property that Owner be reimbursed by the owner of the Benefitted Property at the earliest opportunity, and (ii) to form, consistent with all applicable federal, state, and local laws and regulations (including without limitation Proposition 218), a local benefit district for the purpose of facilitating the reimbursement of Owner, to the extent such reimbursement is not otherwise provided. Owner shall pay all of City's costs associated therewith and shall indemnify and hold City harmless from and against all claims in connection therewith. Notwithstanding the foregoing, Owner agrees that City's obligations hereunder are limited to facilitating reimbursement from other private property owners as set forth above, and City shall have no obligation to reimburse Owner.

7.2.4 Reimbursement by Financing Mechanisms. To the extent not reimbursed by the Benefitted Properties, Owner shall be entitled to reimbursement from the Financing Mechanisms for Owner's actual costs to install improvements that are included in the Financing Mechanisms beyond Owner's fair share for such improvements, including but not limited to a share of the costs to plan and design such improvements. The details of such reimbursement shall be included as part of establishing each Financing Mechanism.

7.2.5 Credit Against Traffic Fees.

(a) In return for Owner's obligation to install any of the "City Fee Program" facilities listed in Table 9 of the Transportation Improvement Plan ("**TIP**"), such Table 9 attached hereto as **Exhibit C** (the "**Local Traffic Improvements**"), Owner shall be entitled to credit its costs against City's Traffic Circulation Fee that otherwise would be payable for development of the Project.

(b) In return for Owner's obligation to install any of the "Regional Fee Program" facilities (or portions thereof) listed in Table 9 of the TIP, as shown in **Exhibit C** (the "**Regional Traffic Improvements**"), Owner shall be entitled to credit its costs against the RTIF that otherwise would be payable for development of the Project.

(c) City agrees that credit against City's Traffic Circulation Fee and against the RTIF is justified by the many traffic improvements beyond CEQA-required mitigation measures that Owner will provide, in addition to the substantial employment, tax and other benefits that the Project will provide City, the County and their residents.

8. Owner Obligations.

8.1 Project-Related Infrastructure. As part of developing the Project, Owner shall build or cause to be built the following public improvements (collectively, the "**Project-Related Infrastructure**"):

(a) The water storage, transmission and distribution facilities shown in Figure 20 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Water Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them;

(b) The sanitary sewer facilities shown in Figure 23 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Sewer Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them;

(c) The storm drainage facilities shown in Figure 26 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Storm Drainage Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them; and

(d) The traffic, roadway and transportation facilities shown in Figures 14 and 15(a) of the Master Plan, in Sheet 2 of the Vesting Map, and in the TIP attached hereto as **Exhibit D** (collectively, the "**Transportation Facilities**"); provided, the TIP shall govern if there is any inconsistency between them.

The precise phasing of each aspect of the Project-Related Infrastructure will be determined at the time of Subsequent Approvals. Notwithstanding the above, Owner may be eligible for reimbursement by the Benefitted Properties, funding or reimbursement by the Financing Mechanisms, and/or credit against Development Fees, to the extent authorized by this Agreement as to qualifying portions of the Project-Related Infrastructure.

9. Amendment or Cancellation.

9.1 Amendment of Agreement.

9.1.1 Modification Because of Conflict with State or Federal Laws. If state or federal laws or regulations enacted after the Approval Date or an action of any state or federal agency prevents or precludes compliance with one or more provisions of this Agreement or the Project Approvals or require changes in plans, maps or permits approved by City, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state laws or regulations or with the actions of state or federal

agencies in a manner that protects, to the greatest extent feasible, the vested rights of Owner under this Agreement. Any such amendment of this Agreement shall be consented to by Owner and considered by the City Council. Each Party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans. During the interim until this Agreement is so amended, or for the remainder of the Term if this Agreement is not so amended, the provisions at issue shall be deemed suspended but the remainder of this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce; provided, Owner retains the right in Owner's sole discretion to terminate this Agreement and Owner's obligations hereunder in response to suspension of such provisions.

9.1.2 Amendment or Cancellation by Mutual Consent. This Agreement may be amended (in whole or part) in writing from time to time by mutual consent of the Parties and in accordance with the procedures of Government Code section 65868. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by an action which complies with Government Code section 65868.

9.1.3 Amendment as to Portion of Property. When a Party that is successor to Owner as to a portion of the Property (**"Portion"**) seeks such an amendment, then such Party may only seek amendment of this Agreement as directly relates to the Portion, and the Party or Parties owning the remainder of the Property shall not be required or entitled to be a signatory or to consent to an amendment that affects only the other Party's Portion so long as such amendment does not directly or indirectly affect the rights or obligations of the Parties owning the remainder of the Property. If any Portion of the Property is subject to a document which creates an association which oversees common areas and any construction or reconstruction on or of the same, then the association shall be deemed to be the "owner" of that Portion of the Property for the purpose of amending this Agreement.

9.1.4 Administrative Agreement Amendments. Notwithstanding the provisions of Section 9.1.2, City's Community Development Director or designee (**"Director"**) may, except to the extent otherwise required by law, enter into certain amendments to this Agreement on behalf of City so long as such amendment does not substantially affect (a) the Term; (b) the permitted uses of the Property; (c) provisions for significant reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Property; (f) the maximum height or size of proposed buildings; or (g) monetary contributions by Owner as provided in this Agreement ("**Administrative Agreement Amendment**"), and shall not, except to the extent otherwise required by law, require notice or public hearing before the Parties may execute an amendment hereto. The Director shall determine whether a reservation or dedication is "significant", and shall evaluate and apply the term "substantially affect" in the context of the Project as a whole.

9.1.5 Amendment Exemptions. No amendment of an Initial Approval or Subsequent Approval, whether done as an administrative amendment or otherwise, shall require an amendment to this Agreement. Instead, any such matter automatically shall be

deemed to be incorporated into the Project and vested under this Agreement when written and executed by the Parties.

9.1.6 Amendment Limitations. In consideration of the scope of benefits to City provided by this Agreement and the Project, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to impacts on City directly attributable to such amendment.

9.2 Amendment of Project Approvals. To the extent permitted by law, any Initial Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner.

9.2.1 Administrative Project Amendments. Upon written request by Owner for an amendment or modification to an Initial Approval or Subsequent Approval, the Director shall determine (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole, and (b) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable Construction Codes, and State and Federal law. If the Director finds that the proposed amendment or modification satisfies the terms of this Section 9.2.1, and will result in no new significant environmental impacts not addressed and mitigated in the EIR or mitigated by conditions to any Project Approval, it shall be determined to be an "**Administrative Project Amendment**" and the Director may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice or public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or access points, changes in pedestrian path alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure that do not substantially alter the design concepts of the Project, and minor adjustments to the Project site diagram or Property legal description shall be treated as Administrative Project Amendments.

9.2.2. Non-Administrative Project Amendments. Any request of Owner for an amendment or modification to an Initial Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment pursuant to Section 9.2.1 shall be subject to review, consideration and action pursuant to Applicable Law and this Agreement.

10. Annual Review.

10.1 Initiation of Review. The annual review date for this Agreement shall be during the thirty (30) days following each anniversary of the Effective Date during the Term. The Director shall initiate the annual review, as required under Government Code section 65865.1, by giving Owner at least thirty (30) days' written notice that the City intends to undertake such review. At least ten (10) days prior to any annual review, City shall deposit in

the mail and transmit by electronic mail to Owner a copy of all staff reports and related exhibits concerning contract performance that City will rely on in its annual review.

10.2 Good Faith Compliance. Owner shall provide evidence to the Director demonstrating Owner's good faith efforts to comply with the provisions of this Agreement. Owner shall be permitted an opportunity to respond to City's documentation and City's evaluation of Owner's performance.

10.3 Procedure. Director shall review Owner's good faith compliance with the terms of this Agreement, after considering any evidence and responses provided by Owner, and shall make written findings and determinations on the basis of substantial evidence as to whether or not Owner has complied in good faith with this Agreement. Director's decision may be appealed to the City Council, which shall hold a duly noticed hearing on the appeal and thereafter uphold or reverse the Director's decision.

10.4 Notice of Non-Compliance. If on the basis of the annual review, the Director, or on appeal the City Council, finds and determines, on the basis of substantial evidence, that Owner has not complied in good faith with the terms or conditions of this Agreement, or if the City determines that Owner has failed to cure a default in accordance with Section 11.2, City may commence proceedings to enforce, modify or terminate this Agreement as follows. City shall give Owner a written "**Notice of Non-Compliance**" and thereafter Owner shall have forty-five (45) days, or such longer period as City and Owner may agree in writing, to respond in writing to such finding by specifying either how Owner's non-compliance has been cured (or is diligently being cured) or the grounds upon which it believes that it is complying with this Agreement. If Owner's response to the Notice of Non-Compliance has not been received by City within the prescribed forty-five (45) days, or such additional period of time as mutually agreed, the Notice of Non-Compliance shall be conclusively presumed to be valid, and the City may commence proceedings on termination or modification of this Agreement pursuant to Section 10.5. If Owner responds within the time period provided, the Parties agree to meet in good faith at reasonable times and from time to time for a period of at least sixty (60) days to arrive at a mutually acceptable resolution of the matters asserted in the Notice of Non-Compliance and disputed in the response. If after sixty (60) days, or any extension of time as mutually agreed to by the Parties, the Parties have failed to arrive at a mutually acceptable resolution of such matter(s), City may commence proceedings on termination or modification of this Agreement pursuant to Section 10.5.

10.5 Modification or Termination. If City determines to proceed with modification or termination of this Agreement after following the procedure under Section 10.4, City shall give notice to Owner or successor in interest thereto of its intention to do so in accordance with the procedures for such notice set forth in Government Code section 65868. Nothing in this Section 10 shall prevent or restrict Owner from providing additional evidence as to Owner's compliance with the terms of this Agreement.

10.6 Costs. Costs reasonably incurred by City in connection with the annual review shall be paid by Owner in accordance with the City's schedule of fees in effect at the time

of review; provided, Owner shall not be liable for City's costs incurred to terminate this Agreement.

10.7 Written Notice of Compliance. Within thirty (30) days of a written request by Owner, City shall provide Owner with written notice of compliance, in recordable form, duly executed and acknowledged by City. Owner shall have the right in its sole discretion to record such notice of compliance.

10.8 Failure to Conduct Annual Review. If City fails to initiate or complete its annual review in any year, then after thirty (30) days of Owner's notice regarding such failure Owner shall be deemed in compliance with the terms of this Agreement for the year in question.

11. Default.

11.1 Notice and Cure. Failure or unreasonable delay by a Party to perform any material provision herein shall constitute a default of this Agreement. The Party alleging a default shall serve written notice ("**Notice of Default**") upon the defaulting Party, specifying the nature of the alleged default and the manner and period of time in which the default may be satisfactorily cured. If the default is not cured by the defaulting Party within thirty (30) days after actual receipt of the Notice of Default by the defaulting Party or such longer period of time that may be specified in the Notice of Default (the "**Cure Period**"), such uncured default shall be treated as an "**Event of Default**"; provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within the Cure Period, no Event of Default shall be deemed to have occurred if the defaulting Party (a) begins to cure the default within the Cure Period, (b) gives the nondefaulting Party notice before the end of the Cure Period that the cure cannot practicably be completed in the Cure Period, together with an explanation and estimated cure time needed, and (c) diligently pursues such cure to completion. Failure to give notice of an alleged default shall not constitute a waiver of any default.

11.2 Right to Challenge Notice. After receiving a Notice of Default, during the Cure Period a defaulting Party may provide evidence establishing it was never in fact in breach of this Agreement, and may initiate mediation proceedings. Unless curing the alleged default in the interim is reasonably necessary to protect the public health and safety, the defaulting Party need not initiate cure efforts specified in the Notice of Default during mediation and the Cure Period shall not begin to run until mediation either concludes or is terminated by a Party.

11.3 Remedies and Damages. Following expiration of any applicable Cure Period resulting in an uncured Event of Default, the nondefaulting Party may institute legal proceedings to enforce the terms of this Agreement, or in the event of a material Event of Default (as defined in Section 12.2) may terminate this Agreement pursuant to the provisions of Section 12.2, subject to the defaulting Party's ability to require mediation. In no event shall either Party be liable in damages for any default or upon termination of this Agreement, it being expressly understood and agreed that the sole legal or equitable remedy available to either Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude

actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to obligations to pay reasonable attorneys' fees and obligations to advance monies or reimburse monies.

11.4 Default as to a Portion of the Property. When an Event of Default applies only to a Portion of the Property owned by a successor to Owner, and does not affect or involve the rights or obligations under this Agreement regarding the remainder of the Property or the separate Owner(s) of such remainder, the proceedings under this Section 11 and the remedies available to City shall be applied to and enforced against only said Portion and the Owner thereof, and this Agreement shall remain in full force and effect as to such remainder and separate Owner(s).

12. Termination of Agreement.

12.1 Termination Generally. This Agreement shall terminate (a) upon the expiration of the Term (plus any extensions mutually agreed), or (b) when the Project has been fully developed and (i) all of Owner's obligations in connection therewith and with this Agreement have been satisfied as reasonably determined by City and (ii) the Project and Property have no further need for the rights and protections provided by this Agreement as reasonably determined by Owner. This Agreement may be terminated by mutual consent of the Parties.

12.2 Termination Due to Default.

12.2.1 Default by Owner.

(a) After notice and expiration of the Cure Period process as specified in Section 11 above and completion of any mediation process, if the Event of Default has not been cured by Owner or it is not being diligently cured in the manner set forth above, then in the case of an Event of Default that is alleged to be material, City may, at its option, give notice of its intent to terminate this Agreement pursuant to the Development Agreement Statute ("**Notice of Intent to Terminate**"). As used herein, City's finding of materiality allowing termination shall be based on the effect of the default in relation to the size and scope of the Project.

(b) The City Council shall hold a duly noticed and conducted public hearing within thirty (30) days after sending Owner the Notice of Intent to Terminate, in compliance with the requirements of the Development Agreement Statute. Owner shall have the right to offer written and oral evidence prior to or at the public hearing.

(c) Following consideration of the evidence presented in said hearing, if the City Council determines that a material Event of Default has occurred and is continuing, and elects to terminate this Agreement, City shall give Owner written notice of termination of this Agreement by certified mail ("**Notice of Termination**"), and this Agreement shall be deemed terminated sixty (60) days following receipt of the Notice of Termination by Owner; provided, if Owner files an action to challenge City's termination of this Agreement

within such sixty- (60-) day period, this Agreement shall remain in full force and effect until a trial court has affirmed termination and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

12.2.2 Default by City. After notice and expiration of the Cure Period process as specified in Section 11 above and completion of any mediation process, if the Event of Default has not been cured by City or it is not being diligently cured in the manner set forth above, then in the case of a material Event of Default, Owner may, at its option, give City a Notice of Termination terminating this Agreement"), and this Agreement shall be deemed terminated sixty (60) days following receipt of the Notice of Termination by City; provided, if City files an action to challenge Owner's termination of this Agreement within such sixty (60) day period, this Agreement shall remain in full force and effect until a trial court has affirmed termination and all appeals have been exhausted (or the time for requesting any and all appellate review has expired). As used herein, Owner's treatment of an Event of Default as material allowing termination shall be based on the effect of the default on Owner's rights and obligations under this Agreement, Owner's ability to develop the Project, or financial commitments and requirements to develop the Project.

12.2.3 Remaining Rights and Obligations. Notwithstanding the foregoing, a Notice of Termination given under this Section 12.2 is effective to terminate the obligations of the nondefaulting Party under this Agreement only if an Event of Default has occurred and such Event of Default, as a matter of law, authorizes the nondefaulting Party to terminate its obligations under this Agreement. In the event the nondefaulting Party is not so authorized to terminate, the nondefaulting Party shall have all rights and remedies provided herein or under applicable law, including, without limitation, the right to specific performance of this Agreement. Once a Party alleging an Event of Default has given a Notice of Termination, mediation proceedings may be instituted to attempt to resolve the dispute and determine the respective termination rights and obligations of the Parties under this Agreement. Where an Event of Default only involves a Portion pursuant to Section 11.4, termination of this Agreement shall only apply as to that Portion.

12.3 Release from Obligations with Respect to Individual Parcels. The Owner of a Portion may request that City provide certification in recordable form that said Owner and Portion have no further obligations under this Agreement (the "**Release from Obligations**"), which City in its reasonable discretion shall provide and the Owner may record. Thereafter the assignment provisions of Section 14 shall not apply, and the obligations of this Agreement shall terminate with respect to the Portion and the Owner of such Portion.Notwithstanding the above, the rights provided and protected by this Agreement shall remain in effect as to such Portion and its Owner (and successors) for the remainder of the Term, including without limitation the uses permitted and type and intensity of development.

12.4 Recordation of Termination. Upon termination of this Agreement as to all or part of the Property, City upon request by Owner shall cause a notice of termination to be duly recorded in the official records of Merced County.

13. Mortgagee Protection; Certain Rights of Cure.

13.1 Mortgagee Protection. This Agreement shall not prevent or limit Owner, in any manner, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property **("Mortgage").** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee (**"Mortgagee"**) who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

13.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 13.1, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement or as may be otherwise authorized by City.

13.3 Notice of Default to Mortgagee and Extension of Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice given to Owner with respect to any claim by City that Owner has defaulted or committed an Event of Default. Each Mortgagee shall have the right during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the default claimed set forth in the City's notice. City, through the Director, may extend the cure periods provided in Section 11 for not more than an additional sixty (60) days upon request of Owner or a Mortgagee.

14. Transfers and Assignments.

14.1 Agreement Runs with the Land. All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including but not limited to Civil Code section 1468. Each covenant to do, or refrain from doing, some act on all or any part of the Property, (a) is a burden upon such property, (b) is for the benefit of each other portion of the Property, (c) runs with such

properties, and (d) is binding upon each Party and each successive Owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each Party and its property hereunder and each other person succeeding to an interest in such properties. The provisions of this Section 15.1 are subject and subordinate to the provisions of Section 9.1 which permit amendment of this Agreement.

14.2 Owner's Right to Assign. All of Owner's rights, interests and obligations hereunder (or any portion of such rights which Owner wishes to transfer) may be transferred, sold or assigned in conjunction with the transfer, sale, or assignment of the Property, or any Portion thereof, at any time during the Term, provided that no transfer, sale or assignment of Owner's rights, interests and obligations hereunder shall occur without prior written notice to City and approval by the Director, which approval shall not be unreasonably withheld or delayed and shall not be conditioned. The Director shall consider and decide the matter within twenty (20) business days after Owner's notice provided and receipt by the Director of all necessary documents, certifications and other information required by the Director to decide the matter. In considering the request, the Director shall base the decision upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out development of the Property to completion. The Director's approval shall be for the purposes of: a) providing notice to City; b) assuring that all obligations of Owner are allocated as between Owner and the proposed purchaser, transferee or assignee as provided by this Agreement; and c) assuring City that the proposed purchaser, transferee or assignee is financially capable of performing the Owner's obligations hereunder not withheld by Owner.

14.3 Release Upon Transfer. Upon the transfer, sale, or assignment of Owner's rights, interests and obligations hereunder, Owner shall be released from the obligations under this Agreement with respect to the Property transferred, sold, or assigned pertaining to the Portion of the Property transferred to such transferee, purchaser or assignee to the extent that such obligations are expressly assumed by the transferee, purchaser, or assignee. In any event, the transferee, purchaser, or assignee shall be subject to all the provisions hereof pertaining to the Portion of the Property transferred to such transferee, purchaser or assignee, and shall provide all necessary documents, certifications and other necessary information prior to Director approval if required by the provisions of this Agreement. The allocation of rights and responsibilities between the transferor and transferee shall be set forth in the assignment agreement executed by such parties.

14.4 Owner's Right to Retain Specified Rights or Obligations. Owner may withhold from a sale, transfer or assignment of this Agreement or any Portion of the Property transferred, certain rights, interests and/or obligations which Owner wishes to retain, provided that Owner specifies such rights, interests and/or obligations in a written document to be appended to this Agreement and recorded with the Merced County Recorder prior to the sale, transfer or assignment of the Property. Owner's purchaser, transferee or assignee shall then have no interest or obligations for such rights, interests and obligations and this Agreement shall remain applicable to Owner with respect to such retained rights, interests and/or obligations.

15. Miscellaneous.

15.1. Estoppel Certificate. Any Party may, at any time, and from time to time, request written notice from the other Party requesting such Party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying Party the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within twenty (20) days following the receipt thereof, or such longer period as may reasonably be agreed to in writing by the Parties. The Director shall be authorized to execute any certificate requested by Owner. The certificate shall be addressed to and may be relied upon by the requesting Party.

15.2. Severability; Conflict. The unenforceability, invalidity or illegality (collectively, "illegality" or "illegal") of any provision, covenant, condition or term of this Agreement (collectively, "provision(s)") shall not render the other provisions of this Agreement illegal, and shall be considered "severed" from this Agreement. In the event of a conflict between this Agreement or any provision hereof and the Project Approvals or any provision thereof, this Agreement shall control.

15.3. Attorneys' Fees and Costs.

15.3.1 Prevailing Party. If City or Owner initiates any action at law or in equity to enforce or to interpret the terms and conditions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled.

15.3.2 Third Party Challenge. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding. Owner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action, including but not limited to City's costs for outside counsel.

15.4. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

15.5. Indemnification. Owner agrees to indemnify, defend and hold harmless City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by Owner, or any actions or inactions of Owner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, provided that Owner shall have no obligation under this Section 15.5 with respect to negligence or wrongful conduct of City, its contractors,

subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been delivered or dedicated to and accepted by City or another public entity (except as provided in an improvement agreement or maintenance bond). If City is named as a party to any legal action for which Owner has a duty to defend or indemnify City then City will cooperate with Owner, will appear in such action and will not unreasonably withhold approval of a settlement otherwise acceptable to Owner. Notwithstanding anything to the contrary set forth in this Section 15.5 or elsewhere in this Agreement, it is understood that each Party or successor or transferee of Owner is providing the indemnities described in this Section 15.5 as to its respective development on its respective Portion only.

15.6. Insurance.

15.6.1 Public Liability and Property Damage Insurance. At all times that Owner is constructing any improvements that will become public improvements, Owner shall maintain in effect a policy of commercial general liability insurance with a per-occurrence combined single limit of not less than one million dollars ($1,000,000.00) and a deductible of not more than ten thousand dollars ($10,000.00) per claim. The policy so maintained by Owner shall name City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

15.6.2 Workers' Compensation Insurance. At all times that Owner is constructing any improvements that will become public improvements, Owner shall maintain Workers' Compensation insurance for all persons employed by Owner for work at the Project site. Owner shall require each contractor and subcontractor similarly to provide Workers' Compensation insurance for its respective employees. Owner agrees to indemnify City for any damage resulting from Owner's failure to maintain any such insurance.

15.6.3 Evidence of Insurance. Prior to commencement of construction of any improvements which will become public improvements, Owner shall furnish City satisfactory evidence of the insurance required in this Section 15.6 and evidence that the carrier is required to give City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy.

15.7 Notices. All notices required or provided for under this Agreement shall be in writing. A Party may change address by giving notice in writing to the other Party and thereafter all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or if mailed, upon the expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following business day. Notices may also be given by facsimile transmission which shall be deemed given upon verification of receipt if received during normal business hours, otherwise on the next business day.

Notices required to be given to City shall be addressed as follows:

City Manager
City of Atwater
750 Bellevue Road
Atwater, CA 95301
Fax: __________

With copies to:

Thomas H. Terpstra
The Law Office of Thomas H. Terpstra
City of Atwater City Attorney
578 N. Wilma Avenue, Suite A
Ripon, CA 95366
Fax: (209) 599-5008

Notices required to be given to Owner shall be addressed as follows:

Ferrari Ranch Owners
c/o John P. Ferrari
By Mail: P.O. Box 55
Ballico, CA 95303
By Delivery: 11016 North Ballico Avenue
Ballico, CA 95303
Fax: (209) 667-1013

With copies to:

David Dolter
3068 Oakraider Drive
Alamo, CA 94507
Fax: (925) 718-8532

15.8 Agreement is Entire Understanding. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject of this Agreement.

15.9 Enforced Delay; Extension of Time of Performance. No Party shall be deemed in default of its obligations under this Agreement where a delay or default is due to an act of God, natural disaster, accident, breakage or failure of equipment, enactment of conflicting federal or state laws or regulations, third-party litigation, strikes, lockouts or other labor disturbances or disputes of any character, interruption of services by suppliers thereof, unavailability of materials or labor, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disturbance, riot, terrorism, inability or delay in obtaining funding through Financing Mechanisms, inability or delay in obtaining use of Offsite Land, unforeseen adverse economic circumstances, or by any other severe and unforeseeable occurrence that is beyond the control of that

Party (collectively, "**Enforced Delay**"). Performance by a Party of its obligations shall be excused during, and extended for a period of time equal to, the period (on a day-for-day basis) for which the cause of such Enforced Delay is in effect.

15.10 Dispute Resolution.

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

15.10.2 Litigation. By agreeing to the mediation process in Section 15.10.1, neither City nor Owner hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. Except for an action for equitable relief, neither Party may commence a civil action with respect to the matters submitted to mediation until after completion of the initial mediation session or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after commencement of a civil action, if the Parties agree in writing. Nothing in this Agreement shall prevent the Parties from submitting a dispute to binding or non-binding arbitration if mutually acceptable.

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

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

15.13 Recordation of Agreement. Within ten (10) days of the Effective Date, City shall cause this Agreement to be duly recorded in the official records of Merced County.

15.14. Recitals; Exhibits. The foregoing Recitals are true and correct and are made a part hereof. The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Exhibit A	Legal Description of the Property
Exhibit B	Map of Annexation Area and Property
Exhibit C:	Local and Regional Traffic Improvements
Exhibit D:	Transportation Improvement Plan ("TIP")

15.15. Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed to be an original.

[REMAINDER OF PAGE LEFT BLANK. SIGNATURES ON NEXT PAGE.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date and year first above written.

CITY OF ATWATER	OWNER

Attest:

________________, City Clerk

Approved as to form

________________, City Attorney