ARTICLE 2
APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "Applicable Law" shall mean all of the items listed below. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

(1) All of the provisions, terms and conditions of this Agreement.

(2) The "Climate Action Plan" and the "Early Climate Protection Actions" (defined in Section 2.03 of this Agreement).

(3) The Existing Approvals. Developer hereby waives any legal or equitable right to challenge administratively or judicially any Existing Approvals including conditions of those Existing Approvals. Such waiver includes acts of protest and/or litigation pursuant to the Mitigation Fee Act and/or other applicable law.

(4) The Subsequent Approvals, provided such Subsequent Approvals are:

(A) In compliance with all controlling California law;

(B) Mutually agreed to by the Parties;

(C) Duly enacted by City; and

(D) "Triggered" by City to be included within this Agreement. As used herein, "Triggered" shall mean when City adopts a Subsequent Approval, it shall make all necessary findings and take all actions required by law, including but not limited to the Development Agreement Statute, to recognize that the Subsequent Approval is consistent with the applicable City of Stockton General Plan and is part of the Applicable Law.

(5) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.

(6) Any "New City Laws" (as defined in Section 2.09(a)) Developer is subject to under this Agreement; for example, as provided in, but not limited to, Section 2.09. Additionally, any New City Laws to which Developer elects to be subject pursuant to Section 2.09(e).
(b) The Parties acknowledge that the Subsequent Approvals may be processed in stages and therefore one or more Subsequent Approvals may be adopted and approved before other Subsequent Approvals needed for development of the Project are adopted and approved by City.

(c) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

(d) Any conflicts between and among subparts (1), (2), (3), (4), (5) and/or (6) of subdivision (a) above shall be resolved in favor of the higher listed subpart, i.e., subpart (1) is highest and (6) is lowest.

2.02 **Vested Right to Applicable Law.**

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Under this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, when the Climate Action Plan and/or Early Climate Protection Actions are adopted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

2.03 **Compliance With Climate Action Plan/Early Climate Protection Actions.**

(a) The Parties acknowledge that the City has reached a settlement agreement with the Attorney General and the Sierra Club relative to *Sierra Club v. City of Stockton* (San Joaquin County Superior Court Case No. CV 034405) and that certain New City Laws must be enacted and imposed by City on development to comply with and implement that settlement agreement. For the purposes of this Agreement, that settlement agreement and all such Plans, Protection Actions, and other New City Laws enacted and imposed by City on development to comply with and implement that settlement agreement shall be collectively referred to in this Agreement as the "General Plan Settlement." In order to implement the General Plan Settlement, City may adopt Climate Action Plans, regulations, and/or other similar New City Laws reflective of the goals, policies, action plans and other terms and conditions of the General Plan Settlement (the General Plan Settlement and all such New City Laws implementing it are collectively referred to in this Agreement as "Climate Action Plan"). However, as of the Effective Date of this Agreement, it appears that the General Plan Settlement may be the subject of a referendum, lawsuit or other challenge. If the General Plan Settlement for any reason is rescinded or otherwise not legally binding, then City nonetheless may adopt Climate Action Plans, regulations, and/or other similar New City Laws reflective of, or similar to, the goals, policies and action plans set forth in the General Plan Settlement (such New City Laws are likewise included in any reference in this Agreement to "Climate Action Plan").
(b) Additionally, pursuant to the General Plan Settlement, the Project shall be subject to the "Early Climate Protection Actions," including the process described in Section 9(a) through (e) of the General Plan Settlement prior to the adoption of the final discretionary approval leading to the Project's first phase of construction, including the requirement of Planning Commission and City Council public hearings on how the Project has addressed the steps set forth in Section 9(a)(1) through 9(a)(8) of the General Plan Settlement. For the purposes of the Project and this Agreement, the City shall ensure that the granting of a Subsequent Approval is coordinated with the completion of that process. If no Subsequent Approvals are needed, then Developer's subdivision map approval shall be modified pursuant to the requirements of the Stockton Municipal Code in order to ensure that the Project is compliant with the requirements of the Early Climate Protection Actions.

(c) Likewise, the Climate Action Plan (whether adopted as a product of the General Plan Settlement or adopted by independent action of the City (if the General Plan Settlement is for any reason rescinded or otherwise not legally binding)) shall apply in full force and effect to the Project and Property. As such, the Parties recognize that amendments to the Project’s Existing Approvals and Subsequent Approvals, including without limitation the General Plan Amendment, the Master Plan, and the Tidewater Crossing Zoning may be needed to comply with the Climate Action Plan, and that such amendments must be approved by City before any physical disturbance of the Property is allowed to take place.

(d) Notwithstanding any of the foregoing, if the City does not adopt a Climate Action Plan and/or Early Climate Protection Actions that applies to development beyond this Project, then this Project shall not be subject to such Climate Action Plan and/or Early Climate Protection Actions.

2.04 Project Impacts and Costs.

(a) Overarching Requirement Regarding Project Impacts. Notwithstanding any other express or implied term or condition of this Agreement to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental, physical, fiscal and other impacts of the Project and the Property on the community and on the City of Stockton and its services, facilities, operations and maintenance (collectively, "Project Mitigation") shall be borne by and shall be the sole and exclusive responsibility of the Project and Property (and the Developer who is the owner of same). Such Project Mitigation may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "Financing Mechanisms"). City shall cooperate with Developer in good faith to determine and facilitate the necessary Project Mitigation and necessary Financing Mechanisms. However, the ultimate scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, with City taking into account and guided by the FIA and the PFFP and other similar
studies and plans (approved by City), as well as City taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. However, City shall not lien nor otherwise record encumbrances on Developer’s property relative to a Financing Mechanism without first following controlling law. In the event that controlling law requires Developer’s consent for the particular Financing Mechanism, which Developer consent is not provided, then City shall not pursue such Financing Mechanism. Instead, City shall pursue another Financing Mechanism that is available (because it either does not require Developer consent by law or does require Developer consent by law and such consent is given by Developer) and that will likewise ensure the success of the Project Mitigation. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) **Project Facilities and Infrastructure.** Consistent with subdivision (a) above, City has required the preparation of both the FIA and the PFFP to ensure that: (1) there shall be no cost to City for the facilities and infrastructure needed to serve the Project and/or the provision of municipal services to the Project (including the operation and maintenance of all such facilities, infrastructure and services); and (2) that all costs associated with the facilities and infrastructure needed to serve the Project and/or the provision of municipal services to the Project (including the operation and maintenance of all such facilities, infrastructure and services) shall be borne by the Project alone.

1. City, in determining how to establish any and all Financing Mechanisms, shall consider the following principles:

   (A) The level of facilities and infrastructure needed to serve the Project and/or the provision of municipal services to the Project (including the operation and maintenance of all such facilities, infrastructure and services) shall be at least equal to the facilities, infrastructure and/or provision of municipal services (including the operation and maintenance of all such facilities, infrastructure and services) provided within the existing City limits on the Effective Date.

   (B) Any costs associated with such Financing Mechanism shall be borne by the Project.

2. City and Developer shall meet on an annual basis concurrent with City’s annual budgeting process to review anticipated City expenses, revenues and allocations.

(c) **Impact Fees.** As part of the Project and Property’s sole and exclusive obligation (and the Developer’s as the owner of same) to cover the full and complete mitigation of all environmental, physical, fiscal and other impacts of the Project and the Property on the community and on the City of Stockton and its services, facilities, operations and maintenance, (i.e., Project Mitigation) and as part of City’s obligations to set and determine Financing Mechanisms, City shall determine whether Developer shall pay all or only some or some portion of the categories and rates of "Impact Fees" imposed by City on development (or collected by
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City from development) in legal effect at the time any such Impact Fees become due and payable under City law, or whether some other Financing Mechanism will adequately fund such Project and Property's Project Mitigation obligations. For the purposes of this Agreement, Impact Fees shall include those fees used to help mitigate the environmental, physical, fiscal and other impacts of the Project and the Property on the community and on the City of Stockton.

(d) Processing Fees. The Project and Property (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall determine whether such future City processing costs are already fully and adequately included in the FIA. If the City determines in good faith that the FIA already fully and adequately includes such future City processing costs, then no addition funding requirement shall be imposed by City. If the City determines in good faith that the FIA does not already fully and adequately include such future City processing costs, then the City shall impose those additional funding requirement needed to ensure that the processing costs to the City are fully covered by the Project and Property (including Developer as owner of same). Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City’s ordinary course of business, then City may either hire additional contract inspectors, or City may hire a full or part time employee. If City hires additional contract inspectors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "Construction Codes") in place at that time that a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

The parties acknowledge that the rate, phasing, timing and sequencing (collectively, for this Section only, "phasing" or "phases") of the development of the Property depends upon numerous factors, including the Climate Action Plan. In particular, the Parties recognize that the phasing of development of the Property shall be governed by the Climate Action Plan. Provided that the requirements of the Climate Action Plan have been satisfied with respect to the establishment of the phasing of the development of the Property, Developer shall have the right
to develop the Project in such phases as Developer deems appropriate within the exercise of its subjective business judgment.

2.07 **Improvements.**

In any instance where Developer is required to install improvements, Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner.

2.08 **Overcapacity, Oversizing.**

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and service outside of the Project ("Oversizing"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Developer’s right to receive credits and reimbursements shall be governed by City's "Public Facilities Fee Program Administrative Guidelines" and other controlling City law (collectively, "City Reimbursement Law"). City shall consider and act upon those Developer’s requested amendments to the City Reimbursement Law within one hundred twenty (120) days of Developer's submission of such amendments to City. Such Developer requested amendments may include, without limitation, a request that the term of a Reimbursement Agreement be allowed to be up to thirty-five (35) years.

(c) In the event that City requires Developer to install a specific improvement (for example, a traffic signal), Developer's obligation to pay the fees otherwise owing under this Agreement regarding the category of improvement the Developer is installing shall be satisfied by the installation of such improvement; and if the costs of the improvement to Developer exceed Developer’s fee obligation, Developer shall be entitled to credits or reimbursement of such improvement costs in excess of Developer’s obligation, consistent with or pursuant to the City Reimbursement Law and any Reimbursement Agreement.

2.09 **New City Laws.**

(a) For purposes of this Agreement, "New City Laws" shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes "Legal Effect" after the Effective Date of this Agreement, and that applies City wide.

(b) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement.
Climate Action Plan is not in conflict with this Agreement and the Applicable Law it describes, nor does it otherwise reduce the development rights or assurances provided by this Agreement. As such, the Climate Action Plan is part of the Applicable Law and shall apply to the Project and the Property. This Agreement embraces and enforces the Climate Action Plan. Other than the Climate Action Plan, City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development. Consistent with the foregoing and by way of example without intended limitation, the Climate Action Plan requires that Developer shall be subject to those New City Laws relating to “Build-It-Green” (green point rated guidelines) or a green building program in effect at the time of Developer building permit application for development within the Property, and, as to non-residential construction (i.e., commercial, industrial) within the Property, Developer shall be subject to those New City Laws relating to LEED Silver-certified standards or a green building program in effect at the time of building permit application. However, such non-residential construction would not be required to participate in the formal LEED Silver inspection and certification process.

(c) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Except as may be provided in the Climate Action Plan, change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Except as may be provided in the Climate Action Plan, limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Except as may be provided in the Climate Action Plan, limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer’s having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Except as may be provided in the Climate Action Plan, limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals and the Subsequent Approvals (as and when they are issued).
(5) Except as may be provided in the Climate Action Plan, limit the processing of Subsequent Approvals.

(d) If City determines that it has the right under this Agreement to impose/apply a New City Law on the Property/Project, it shall send written notice to Developer of that City determination ("Notice of New City Law"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of Notice of New City Law ("Objection to New City Law"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("City Response") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "Meet and Confer Period") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project and Property, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (e.g., City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project and Property).

(e) Developer in its sole and absolute discretion, may elect to have applied to the Project and Property a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (e). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations under this Agreement, including without limitation Developer's obligations of full Project Mitigation. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(f) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State
or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level) ("Mandated New City Laws"), including without limitation those provisions in the Development Agreement Statute concerning property located in a flood hazard zone (Gov. Code § 65865.5).

(g) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3
PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. For any Subsequent Approvals necessary for the Project, this Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later included into this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), have secured approval of the Parties, and are adopted/approved by City, which shall retain all lawful discretion in this regard. That public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. 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 the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall the discretion afforded by the Applicable Law.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Williamson Act Contracts.

(a) As of the Effective Date, a significant portion of the Property is subject to agricultural preservation contracts with San Joaquin County pursuant to the provisions of the Williamson Act (Government Code §§ 51245 et seq.). As development is initiated and proceeds on the Property, land may be removed from the Williamson Act on a phased basis of nonrenewal, termination, and/or cancellation. In "Phase I," attached hereto as Exhibit D, and potentially in some other instances, land that will be annexed to City may be needed for urban development prior to the expiration of the Williamson Act contract or contracts affecting such
land pursuant to a notice of nonrenewal. In such instances, provided a notice of nonrenewal of the relevant contract has been duly given, Developer may petition City for its early cancellation of such contract.

(b) City shall, in good faith, process and consider any such cancellation request pursuant to then applicable law regarding the cancellation of Williamson Act contracts.

(c) Developer shall pay all fees and costs related thereto, including without limitation any and all cancellation fees and other costs incurred regarding such potential cancellation.

3.03 **Significant Actions by Third Parties Necessary to Implement the Approvals.**

(a) At Developer’s sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("Other Entity") as may be necessary to the development of, or the provision of services and facilities to, the Project ("Other Permits").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.04 **Administrative Amendments.**

Upon the written request of Developer for an amendment or modification of this Agreement or a Project Approval, the City Community Development Director ("Community Development Director") or his designee shall determine: (1) whether the requested amendment or modification is minor; and (2) whether the requested amendment or modification is consistent with this Agreement and the Applicable Law. If the Community Development Director or his designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and the Applicable Law, the Community Development Director or his designee may approve the proposed amendment or modification without notice and public hearing. Such minor amendments or modifications approved pursuant to this Section shall not constitute subsequent discretionary approvals subject to further CEQA review.
3.05 **Non-Administrative Amendments.**

Any request by Developer for an amendment or modification to this Agreement or a Project Approval that is determined to be not minor by the Community Development Director or his designee shall be subject to the applicable substantive and procedural provisions of the City’s General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

**ARTICLE 4**

**DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT**

4.01 **Defaults.**

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagor as that term is defined in Section 4.10(a))) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("Notice of Default"), shall constitute a default under this Agreement ("Default"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagor), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagor). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 **Actions During Cure Period.**

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

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.
4.03 Resolution of Disputes.

(a) In the event either Party is in default under the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action under this Agreement, any City council determination under this Agreement shall be deemed a final agency action.

(c) The Parties agree to meet and confer regarding any dispute, in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Annual Review.

(a) City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance with the terms of this Agreement and Government Code section 65865.1 and Municipal Code section 16-525.110.

(b) Within thirty (30) days of Developer’s receipt of the written request of City made not more than once each year at least sixty (60) days prior to the anniversary date of this Agreement, Developer shall submit to City a letter setting forth Developer’s good faith compliance with the terms and conditions of this Agreement. Such letter shall be accompanied by such documents and other information as may be reasonably necessary and available to Developer to enable City to undertake the review of Developer’s good faith compliance with the terms of this Agreement, and shall state that such letter is submitted to City pursuant to the requirements of Government Code section 65865.1 and Municipal Code section 16-525.110.

(c) Upon receipt of the submission, City shall conduct a review of the good faith compliance by Developer with the terms of this Agreement. If City finds good faith compliance by Developer with the terms of this Agreement, the Community Development Director shall, upon request by Developer, provide to Developer written confirmation of such finding within thirty (30) days of the request.

(d) If City, on the basis of substantial evidence, finds that Developer has not complied in good faith with the terms of this Agreement, City shall notify Developer in writing and proceed in accordance with the default provisions of this Agreement.
4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities other than City, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "Force Majeure Event").

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

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review under CEQA ("Third Party Challenge"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third Party Challenge or to tender the complete defense of such Third Party Challenge to the Developer ("Tender"). If City chooses to defend the Third Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City’s attorneys fees and costs (including related court costs).

(c) If Developer accepts City’s Tender, Developer shall control all aspects of the defense and shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City’s own attorneys fees and costs (including related court costs) ("City Costs"), and Developer shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure
any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

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

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

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

(b) This written certification shall be known as an "Estoppel Certificate." A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "Second Notice") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Property and/or Project at any time during the term of this Agreement ("Assignee"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City’s approval of a proposed assignment or transfer shall be based upon the proposed assignee’s reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. In addition, express written assumption by an Assignee, to the satisfaction of the
City Attorney, of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred, shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form of the Assignment and Assumption Agreement attached hereto as Exhibit E or such other form as may be approved by the City Attorney.

(b) **Release Upon Assignment.** Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests under this Agreement, Developer shall be released from its obligations with respect to the Property/Project, and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) **Covenants Run with the Land.** This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code section 1468.

4.09 **Encumbrances on the Property.**

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

4.10 **Obligations and Rights of Mortgage Lenders.**

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("Mortgagee"), shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.
(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer under this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief under any chapter of Title 11 of the United States Code (the "Bankruptcy Code"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay under Bankruptcy Code section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rate claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer under this Agreement.

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

4.11 Large Lot Maps.

Developer shall be entitled to employ Large Lot Maps for the purposes of subdividing the Project into parcels for the purposes of phasing, leasing, financing, construction or sale. Provided that such Large Lot Map(s) have an express condition that no development may take place from said Large Lot Map and that instead development shall take place from tentative or vesting tentative maps, then the City shall only place conditions of approval on the Large Lot Map(s) dealing with the provision of legal access easements consistent with the circulation routes as shown in the Specific Plan, common usage easements, common facilities and any applicable mitigation measures. This Section is subject to Government Code section 66411.1. Developer shall not be obligated to provide any form of bond or other security to guarantee any public improvements unless and until required under the Subdivision Map Act or other controlling law.
4.12 **Compliance with Government Code Section 65867.5.**

In accordance with the requirements of Government Code section 65867.5, City and Developer agree that any tentative subdivision map(s) for the Project is hereby made subject to a condition that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be secured in accordance with the provisions of Government Code section 66473.7.

4.13 **Termination.**

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.02(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney and substantially as set forth in Exhibit F that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force or effect as to any single-family residence, any other residential dwelling unit(s), or any on any non-residential building, and the lot or parcel upon which such residence or building is located, when it has been approved by the City for occupancy.

**ARTICLE 5**

**GENERAL PROVISIONS**

5.01 **Miscellaneous.**

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

(b) **Requirements of Development Agreement Statute.** The permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project and Property shall be those set forth in the Applicable Law. As Subsequent Approvals are adopted and therefore become part of the Applicable Law, the Subsequent Approvals will refine the permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project and Property.

(c) **Governing Law and Attorneys’ Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys’ fees, court costs, and such other costs as may be fixed by the court.

(d) **Project as a Private Undertaking.** No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.
(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed under this agreement, shall be as follows:

A. Limit of Liability for Injury or Accidental Death

Per Occurrence ................. $1,000,000

B. Limit of Liability for Property Damage

Aggregate Liability for Loss ...... $1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed under this agreement and before permitting any Contractor or Subcontractors to perform work under this agreement, the Subdivider shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Subdivider as it may be applied to the Contractor's or Subcontractor's work.
(f) **Interpretation/Construction.** This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(g) **Notices.**

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

**If to City:**
City Clerk  
425 N. El Dorado Street, 1st Floor  
Stockton, CA 95202  
Tel: (209) 937-8459  
Fax: (209) 937-8568

**With a copy to:**
Richard E. Nosky, Jr., City Attorney  
425 N. El Dorado Street, 2nd Floor  
Stockton, CA 95202  
Tel: (209) 937-8333  
Fax: (209) 937-8898

**If to Developer:**
c/o PCCP Mariposa Lakes, LLC  
222 N. Sepulveda Boulevard, Suite 2222  
El Segundo, CA 90245  
Attention: William R. Lindsay  
Telephone: (310) 414-7868  
Facsimile: (310) 414-7872

and:
c/o PCCP Mariposa Lakes, LLC  
150 California Street  
22nd Floor  
San Francisco, CA 94111  
Attention: Phil Russick  
Facsimile: (415) 732-7547

**With a copy to:**
Gerry N. Kamilos, LLC  
11249 Gold Country Blvd., Suite 190  
Gold River, CA 95670  
Tel: (916) 631-8440  
Fax: (916) 631-8445
(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

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

(i) **Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(j) **Jurisdiction.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(k) **Entire Agreement.** This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(l) **Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

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

*Exhibit A*  
*Legal Description of the Property.*

*Exhibit B*  
*Annexation Agreement*

*Exhibit C*  
*City Authorization to Record Development Agreement*

*Exhibit D*  
*Phase I of Mariposa Lakes*

*Exhibit E*  
*Assignment and Assumption Agreement*

*Exhibit F*  
*Notice of Termination*